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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 1303/2010

COMMISSIONER OF INCOME TAX-V Appellant
Through: Mr. Abhishek Maratha, Advocate

versus

M/S. ROCK FORT METAL &
MINERALS LIMITED Respondent
Through: None

% Date of Decision: 07th September, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No. |
| 2. To be referred to the Reporter or not? | No. |
| 3. Whether the judgment should be reported in the Digest? | No. |

MANMOHAN, J:

1. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "Act") challenging the order dated 04th September, 2009 passed by the Income Tax Appellate Tribunal (in short "Tribunal") in ITA No. 746/Del/2009 for the Assessment Year 2005-2006.

2. Mr. Abhishek Maratha, learned counsel for the Revenue submitted that the Tribunal had erred in law in deleting the addition of ₹ 42,50,000/- on account of unexplained share application money under Section 68 of the Act. Mr. Maratha further submitted that in the present



case, the respondent-assessee had miserably failed to discharge the o
cast on it as it had not produced the investors/share applicants and as a
consequence, their identity could not be established.

3. However, upon a perusal of the file, we find that the said addition was deleted by the Commissioner of Income Tax (Appeals) [for short “CIT(A)] and the Tribunal on the ground that the identity of the share applicants was not in doubt as they were income tax assesseees holding valid Permanent Account Number (PAN) and the share application money had been paid by way of cheques. In fact, the CIT(A) in its order has observed as under:-

“9. I have considered the written submission of the appellant, gone through the case laws relied upon and also gone through the assessment order. After considering the entire material, it is seen that the assessee submitted list of all the share holders giving full name, addresses, details of payment made by cheque (cheque no. and name of bank also). The assessee also submitted confirmations from all the share holders giving complete particulars in the form of address, cheque numbers and the name of bank, PAN number and place of assessment etc. The assessee also submitted the copies of the bank statements showing deposit of all these receipts. In my view the assessee has discharged its primary onus as per law in proving the identity of all the share holders. Now it was for the A.O. to put forth some adverse material in case he was not satisfied with the claim of the assessee. On the other hand the assessee has submitted the complete evidences to prove prima facie identity and genuineness of the transactions. The A.O. has not doubted the fact that the entire amount has been received through cheques and these parties were assessed with the Income Tax department. Therefore before proceeding to make addition with regard to share application money the AO was required to discharge his burden as laid upon him under the law by bringing some material on record to disbelieve the claim of the assessee. Mere reference to



‘ADIT’s report’ or some ‘Operator List’ was of no use unless these were brought on the top of the table with an opportunity of rebuttal and/or cross examination to the opposite party. It is noticed that such material was never made available to the assessee nor opportunity to cross examine was allowed to the appellant. Therefore, the addition made by AO without any evidence deserves to be deleted.”

4. The Tribunal in its impugned order has also observed as under:-

“7. It remained uncontroverted before us that during the course of assessment proceedings, the assessee filed confirmations of the shareholders indicating the details of the addresses, the PAN numbers and particulars of the cheques through which the amount was received, copies of returns of income of the shareholders and copies of audited balance sheets of those companies.”

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11. From the ratio of the above decisions (supra), it is clear that even in the case of private limited company, if the share application money is received by the assessee company from the alleged bogus shareholders, whose names are given to the Assessing Officer, it cannot be regarded as undisclosed income of the assessee company because according to their lordships, the Department was free to proceed to reopen the assessments of the individual shareholders in accordance with law but it cannot be regarded as undisclosed income of the assessee.”

5. In our considered opinion, the approach adopted by CIT(A) and the Tribunal is in consonance with the decision of Supreme Court in

Commissioner of Income Tax Vs. Lovely Exports (P) Ltd., 216 CTR 195 (SC) wherein it has been held as under :-

“2. Can the amount of share money be regarded as undisclosed income under s. 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to



*reopen their individual assessments in accordance with law.
Hence, we find no infirmity with the impugned judgment.....”*

6. Keeping in view the aforesaid mandate of law and the concurrent findings of fact arrived at by the two authorities below, the share application money cannot be regarded as undisclosed income of assessee under Section 68 of Act.

7. Accordingly, present appeal is dismissed *in limine*.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 07, 2010

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