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

+ ITA 1321/2010

COMMISSIONER OF INCOME TAX-II Appellant
Through: Mr. N.P. Sahni, Advocate

versus

JULANIA FINANCE PVT. LTD. Respondent
Through: None

% Date of Decision: 09th 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 11th September, 2009 passed by the Income Tax Appellate Tribunal (in short “Tribunal”) in ITA No. 2830/Del/2009 for the Assessment Year 2006-2007.

2. Mr. N.P. Sahni, learned counsel for the Revenue submitted that the Tribunal had erred in law in deleting the addition of ₹ 60,00,000/- made by the Assessing Officer (in short, “AO”) under Section 68 of the Act. Mr. Sahni further submitted that the Tribunal had deleted the said



addition even though the genuineness and creditworthiness of transaction had not been proved by the respondent-assessee.

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 applicant was not in doubt and the AO had failed to prove that the money invested by the share applicants had actually come from the coffers of the respondent-assessee. In fact, the CIT(A) in its order has observed as under:-

“..... I have come to the conclusion that since the appellant company has proved the establishment of the identity of the share applicant, no addition can be made in its hands on account of share capital subscription by the applicants. The Assessing Officer has also failed to prove that the money invested by the share applicant has actually come from the coffers of the assessee company. If the Assessing Officer is of the view that these share applicant does not have creditworthiness then the concerned officers assessing the share applicant may be informed to take necessary action against it in accordance with the law.

In the light of these discussion, I have no hesitation to direct the Assessing Officer to delete the addition of Rs.60,00,000/- made by him under section 68 of the Income Tax Act 1961.”

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

“4. With the assistance of Ld. Representative we have gone through the record carefully. The assessee has duly established the identity of M/s. Dhanraj Keshri Chand (HUF) it has also established the genuineness of the transaction with the help of evidence indicating the facts that amounts have been received through banking channel. The Ld. First Appellate Authority has rightly placed its



reliance on the decision of jurisdictional High Court and has held that once the identity of share applicants is established then the amount of share capital cannot be added in the hands of assessee unless the AO has some concrete evidence to suggest otherwise. In our opinion the First Appellate Authority has made a lucid analysis of the position of law on the issue and consider all the facts, in the finding extracted supra, no interference is called for at the end of Tribunal. Hence appeal of the revenue is rejected.”

5. In our considered opinion, the approach adopted by CIT(A) and 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 09, 2010

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