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

+ ITA 1364/2010

COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Rashmi Chopra, Advocate

versus

VRM GLOBAL INFRASTRUCTURE
PVT. LTD. Respondent
Through: None

% Date of Decision: 14th 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 01st September, 2009 passed by the Income Tax Appellate Tribunal (in short "Tribunal") in ITA No. 812/Del/2008 for the Assessment Year 2004-2005.

2. Ms. Rashmi Chopra, learned counsel for the Revenue submitted that the Tribunal had erred in law and on merits in deleting the addition made by the Assessing Officer (in short, "AO") on account of unexplained share application money. According to her, the respondent-assessee had failed to prove the identity and



creditworthiness of the share applicants and genuineness of transaction.

3. Ms. Chopra also submitted that the Tribunal had erred in law in allowing deduction of ₹1,77,815/- to the respondent-assessee on account of depreciation on plant and machinery.

4. 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 respondent-assessee had filed the Permanent Account Number, audited balance sheet and bank statements of the share applicants and had further furnished evidence of purchase of plant and machinery as well as its usage.

5. With regard to depreciation, the factual finding of the CIT(A) is as under:-

"I have gone through the order of the AO and written submission of the appellant and copy of relevant documents filed. On a close perusal, it is found that the appellant company has purchased the plant and machinery on a loan from the bank for which it has been paying monthly installments, proof of the same has been filed. The said plant and machinery was delivered at a convenient place of delivery at Ghaziabad at one of the offices of the group company. Subsequently, it was transported to the work site. As there is clear proof of evidence for purchasing the said plant and machinery and the same being put to use, depreciation is to be allowed as per the I.T. Act. The AO has not appreciated the full facts of the case and has denied the claim of depreciation. In view of the above facts, I am of the opinion that the claim denied to the tune of Rs.1,77,815/- as depreciation should be allowed....."

6. In fact, the Tribunal with regard to depreciation has also observed as under:-



“12. We have heard the rival submissions and have gone through the material available on record. We find that the disallowance was made by the Assessing Officer on the basis that these two items were not delivered at the site office of the assessee company by the sellers. There is clear finding given by Ld. CIT(A) that there is clear proof of evidence for purchasing the said plant & machineries and the same being put to use. It is also noted by the Ld. CIT(A) that originally these items were delivered at the convenient place of delivery i.e. Ghaziabad at one of the offices of the group company and subsequently it was transported to the work site. This finding of fact is given by Ld. CIT(A) and that could not be controverted by the Ld. DR of the revenue and hence we find no good reason to interfere in the order of Ld. CIT(A) on this issue. This ground of the revenue is rejected.”

6. Keeping in view the aforesaid factual findings, no substantial question of law with regard to depreciation arises.
7. With regard to share application money, the CIT(A) in its order has observed as under:-

“I have gone through the order of the AO and written submission filed by the appellant. Relevant details filed before the AO have also been filed before me. On a perusal, it is found that all the said companies have Permanent Account Number and are income-tax payees. Their audited balance sheet along with confirmation and bank statement have been verified which were also filed before the AO. The identity of the persons is not in doubt and once they confirmed that they have paid the required amount which is also supported by bank withdrawal no further details could have been asked from the appellant company. The onus has been discharged and if the break-up of the investments were not found in the relevant assessment files of the above mentioned companies, the appellant company could not have done anything about it. As all the relevant papers were available on the record of the AO, mere nonattendance should not have invoked addition for unexplained cash credits.”



8. In our considered opinion, the approach adopted by CIT(A)

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.....”

9. 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.

10. Accordingly, present appeal, being bereft of merit, is dismissed *in limine*.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 14, 2010

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