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

+ ITA 1380/2010

THE COMMISSIONER OF
INCOME TAXThrough Appellant
Mr. Sanjeev Sabharwal, Senior
Standing Counsel.

versus

IRIS COMPUTERS LTD.

Through Respondent
None

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Date of Decision: 16th September, 2010**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE MANMOHAN**

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, 1961”) challenging the order dated 9th October, 2009 passed by the Income Tax Appellate Tribunal (for brevity “Tribunal”) in ITA No. 2810/Del/2008 for the Assessment Year 2004-05.

2. Mr. Sanjeev Sabharwal, learned senior standing counsel for the Revenue submitted that the Tribunal had erred in law in deleting the addition of ₹ 17,50,000/- made by the Assessing Officer under Section



68 of the Act, 1961.

3. However, upon a perusal of the file we find that the said addition was deleted both by the Commissioner of Income Tax (Appeals) [in short "CIT(A)] and the Tribunal on the ground that the identity of the shareholders was not in doubt. In fact, the CIT(A) in its order has observed as under :-

"4. 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, addressees 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."

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

"4. Upon assessee's appeal the ld. CIT(A) noted that the assessee had submitted the following documents:-

i) Copy of share application form.



- ii) Confirmation from the shareholders.
- iii) Copy of the affidavit.
- iv) Copy of ITR.
- v) Copy of Balance Sheets/Capital Account.
- vi) Copy of share certificate issued.

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6. We have heard the ld. DR for the revenue. None appeared on behalf of the assessee. We have carefully perused the records. As per the admitted fact of the case of the required particulars of the share applicants including their I.T. details & PAN wise provided to the Assessing Officer except for giving notice to the concerned persons under section 131, Assessing Officer did not do anything and made this addition. We find support from the decision of the fact that the Hon'ble Apex Court decision in the case of CIT Vs. Orissa Corporation Pvt. Ltd. 159 ITR 78 wherein it was held that in case the creditor does not appear in response to summon issued under section 131, no adverse inference can be drawn. Further, we find that the assessee had already submitted the names and addresses and IT details of the share applicants and under these circumstances the decision of the Hon'ble Apex Court delivered in the case of CIT Vs. Lovely Exports 216 CTR 195 is directly applicable. In this case it was held that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the Assessing Officer, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of the assessee."

5. Keeping in view the mandate of law in **Commissioner of Income Tax Vs. Lovely Exports (P) Ltd., 216 CTR 195 (SC)** and the concurrent



findings of fact arrived at by the two authorities below, the st
application money, in the present case, cannot be regarded as
undisclosed income of the assessee under Section 68 of the Act, 1961.
Consequently, the present appeal, being bereft of merit, is dismissed in
limine.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 16, 2010

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