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

+ ITA 1399/2010

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

versus

M/S. EPICUREAN HOSPITALITY
SERVICESThrough Respondent
Mr. S. Krishnan, Advocate

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Date of Decision: 17th 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. 01/Del/2009 for the Assessment Year 2005-06.

2. Mr. Sanjeev Sabharwal, learned senior standing counsel for the Revenue submitted that the Tribunal had erred in law in deleting the addition of ₹ 7,14,000/- 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) and the Tribunal on the ground that the identity of the shareholders was not in doubt. In fact, the Tribunal in its order has observed as under :-

“We have considered the rival submissions. In the case of share application money ranging between Rs. 12,000/- to Rs. 19,000/-, there is no provision that the same cannot be accepted in cash. All the share applicants have confirmed having applied for shares and their PA Numbers/Income-tax returns were filed so as to establish their identity. Though the assessee stated that the share applicants can be produced whenever required, thereafter the Assessing Officer did not insist on their production. Non-filing of bank statement by the share applicant cannot be viewed against the assessee. Bank statement is a document in the possession of the share applicant and not in the possession of the assessee which the assessee can be compelled to produce. If the Assessing Officer desires such evidence from third party, the Assessing Officer has to use his powers for production of such evidence from the third party. Hon’ble Supreme Court in the case of Lovely Exports (P) Ltd. (supra) held as under:-

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 this amount of share money cannot be regarded as undisclosed income under section 68 of the assessee company.”

In view of the facts prevailing in the present case and the observations of the Hon’ble Supreme Court, we find no reason to sustain the addition made by the Assessing Officer.”

4. 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 cannot be regarded as undisclosed income of the
assessee under Section 68 of the Act, 1961.

5. Consequently, the present appeal, being bereft of merit, is
dismissed in *limine*.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 17, 2010

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