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

+ ITA 1507/2010

THE COMMISSIONER OF
INCOME TAX

..... Appellant

Through: Mr. Sanjeev Sabharwal, , Advocate

versus

J.J. JINDAL INFIN PVT. LTD.

..... Respondent

Through: None.

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Date of Decision: 01st October, 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 Income Tax Act, 1961 (for brevity, "Act") challenging the order dated 02nd July, 2009 passed by the Income Tax Appellate Tribunal (in short "Tribunal") in ITA No. 104/Del/2008, for the Block Period 01st April, 1990 to 30th November, 2000.

2. Mr. Sanjeev Sabharwal, learned counsel for the revenue submitted that the Tribunal had erred in law in deleting the addition of ₹ 31,37,000/- made by the Assessing Officer (in short, "AO") under Section 68 of the Act on account of unexplained share application money.



3. However, upon a perusal of the file, we find that the said addition was deleted 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 :-

“Rival contentions have carefully been considered. After considering the rival submissions, I have come to the conclusion that in the totality of all the facts, evidences and details brought on the record both by the Assessing Officer and the appellant, it is clear that the identity of the shareholders is established. All the persons who were summoned by the Assessing Officer to make the enquiries from them had presented themselves and confirmed the subscription made by them. It is also a fact that the enquiries made by the Assessing Officer and also the various facts and submissions have indicated that these shareholders were the man of no means. But in view of the decision of the Hon’ble jurisdictional Delhi High Court in the case of CIT vs. Divine Leasing & Finance Ltd. reported at 299 ITR 268 and in the case of Lovely Exports reported at 216 CTR 195 and the SLP filed by the department against these decisions, but same was rejected by the Hon’ble Supreme Court, a principle has been laid down which says that once the identity of the shareholder is established, no addition can be made in the hand of the appellant company even if the shareholder is found to be bogus. While rejecting the SLP filed by the department vide its order SLP 375/2008 in the case of Divine Leasing & Finance Ltd. and Lovely Exports, it has categorically laid down by the Hon’ble Supreme Court that no addition can be made on account of share application money as undisclosed income under Section 68 of the Income Tax Act, 1961 if the same is received by the assessee company even from the 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 the law.

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Considering the totality the facts and circumstances and the principles laid down by the various courts including



Hon'ble Supreme Court and Jurisdictional Delhi High Court, I have come to the conclusion that the appellant company has been able to prove the identity of the share applicants and therefore, no addition can be made in hand of the appellant company even if the share applicant is having no means or creditworthiness. Conclusively, the addition of Rs.31,37,000/- made by the Assessing Officer after invoking the provisions of Section 68 is directed to be deleted."

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

"5. We find that the Assessing Officer has made addition of Rs.31,37,000/- on account of receipt of share application money from 27 persons for obtaining the share application money. The addition has been deleted by the Ld. CIT(A) by following the judgment of Hon'ble Delhi High Court rendered in the case of CIT v. Divine Leasing and Finance Ltd. 158 Taxmann 440 (Del). In the light of this fact, we find that this issue is now covered in favour of the assessee by the judgment of Hon'ble Apex Court rendered in the case of Lovely Exports Pvt. Ltd. (supra). It was held by the Hon'ble Apex Court in this case that if share application money is received by the assessee company even from alleged bogus share holders whose names are given to the Assessing Officer, than the Department is free to proceed to reopen their individual assessment in accordance with law but no addition can be made in the hands of the company who has received the share application money. Respectfully following the judgment of Hon'ble Apex Court, we confirm the order of Ld. CIT(A) on this issue. A clear finding is given by the Ld. CIT(A) on page No.12 of his order that the identity of the shareholder is established. It is noted by him that all the persons who were summoned by the Assessing Officer to make the enquiry from them has presented themselves and confirmed the subscription made by them. Ground No.3 of the revenue is rejected."

5. Keeping in view the mandate of law in **Commissioner of Income**



Tax Vs. Lovely Exports (P) Ltd., 216 CTR 195 (SC) and the concur

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

MANMOHAN, J

CHIEF JUSTICE

OCTOBER 01, 2010

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