



\$~

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

+ ITA 1542/2010

COMMISSIONER OF INCOME TAX

Through:

..... Appellant

Mrs. Sonia Mathur,
Advocate

versus

M/S. NATRAJ ALBUM

INDUSTRIES (PVT. LTD.)

Through:

..... Respondent

None

%

Date of Decision: 5th 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, 1961”) challenging the order dated 28th August, 2009 passed by the Income Tax Appellate Tribunal (in short “Tribunal”) in ITA No. 1015/Del/2009, for the assessment year 2001-2002.

2. Mrs. Sonia Mathur, learned counsel for Revenue submitted that Tribunal had erred in law in deleting the addition made on account of



unexplained cash credit. Learned counsel for Revenue further submitted that the Tribunal had erred in law in deleting the addition made on account of commission paid by the assessee to the entry operator @2%.

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 :-

“(c) The appellant company has provided details of the IT Return filed, PAN, copy of balance sheet and details filed with Registrar of Companies to substantiate that the amount of share application money received from the said companies was genuine. The AG disregarded these evidences and has emphasized that identity and creditworthiness was not proved and held that the amount received as share application money cannot be treated as genuine and is only an accommodation entry.

(d) On going through the facts of the case and keeping in view the various pronouncements of the courts, it is clear that the appellant had discharged the initial onus of establishing the genuineness of the transaction. It has positive material or evidence to indicate that the share holders were benamidars, fictitious persons or that any part of the share capital money represented the companies own income from undisclosed sources. In this regard, the reliance is placed on following decisions;

1 Divine Leatng & Finance Ltd. 299 JTR, Delhi.

2 General Exports 7 Credits Pvt. Ltd. 880/2006 (SC)

3 Lovely Exports Pvt. Ltd. (2008) 299 ITR 268 (SC)

4 A-One Housing Complex Ltd. Vs. ITO Ward 1(1), 110 IID 361 (Delhi)



5 CIT Vs. Value Capital Service Pvt. Ltd. 307 ZTR 334 (Delhi).

6. CIT Vs. Orissa Corporation Pvt. Ltd. 159 ITR 78 (SC).

In the latest judgment of the Apex Court in the case CIT Vs. Lovely Export 299 ITR 268 (SC) which has confirmed the order of the Delhi High Court it has been held that once the identify of the share holder have been established, even if there is a case of bogus share capital, it cannot be added in the hands of the company unless any adverse evidence is not on record. In the instant case, the appellant has provided evidence in the form of PAN, ROC details, copy of IT return filed and copy of confirmation to establish the genuineness of the transaction.

XXXX

XXXX

XXXX

XXXX

After going through various facts of the case and judicial pronouncement on this issue, cited supra, it is seen that the appellant's case is fully covered by the above judgments.

4. The Tribunal while dismissing the appeal held as under:-

“5. We have carefully considered the submissions of learned Senior DR. We have also carefully gone through the assessment order as well as order of CIT(Appeals). The Assessing Officer observed at page 5 of the assessment order that merely furnishing PAN, assessment particulars and confirmation by the share applicants is not enough. This observation of Assessing Officer is contrary to the law, explained by Hon'ble Supreme Court in the case of Lovely Exports Pvt. Ltd. (supra). It is not disputed in the present that both the share applicants are private limited company, the whereabouts of the company were given to the Assessing Officer along with PAN, assessment particulars and confirmations and in this manner, identity of the share applicants is established. If it is so, the ratio laid down by Hon'ble Supreme Court in the case of Lovely Exports Pvt. Ltd. (supra) will be fully applicable. It would be relevant to reproduce following observations of the



Lordship from the said decision :

“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.

3. Subject to the above, Special Leave Petition is dismissed.”

6. In this view of the situation, we are of the opinion that addition has rightly been deleted by the learned CIT (Appeals) as the necessary particulars were placed on record by the assessee to prove the identity of the share applicants.

7. So as it relates to deletion of addition made on account of commission, it is observed that since principal amount is deleted, the question of assessability of commission paid thereon does not arise and addition of the same is rightly deleted by the learned CIT (Appeals).”

5. In our considered opinion, the approach adopted by the Commissioner and ITAT is in consonance with the decision of Supreme Court in ***Commissioner of Income Tax Vs. Lovely Exports (P) Ltd., 216 CTR 195 (SC)***.

6. Keeping in view the aforesaid mandate of law, the share application money cannot be regarded as undisclosed income of assessee under Section 68 of Act, 1961. In so far as the amount of commission is concerned, since the principal addition has been deleted,



we do not find any infirmity with the decisions of the two authors
below in deleting the commission paid thereon.

7. Accordingly, present appeal is dismissed *in limine*.

MANMOHAN, J

CHIEF JUSTICE

OCTOBER 5, 2010

rn/ms