



20 to 22#

**% 18.03.2011**

Present: Dr. Rakesh Gupta, Advocate with Ms. Rani Kiyala,  
Advocate for assessee.  
Mr. Abhishek Maratha, Sr. Standing Counsel for the  
Revenue.

**+ ITA 1209/2010**  
**ITA 1215/2010**  
**ITA 1214/2010**

**(COMMON ORDERS)**

The issue involved in these appeals pertain to the addition made by the Assessing Officer under Section 68 of the Income-Tax Act (hereinafter referred to as 'the Act) in respect of share application money received by the appellant/assessee herein treating the same as undisclosed income as well as on account of sale proceeds of shares and commission paid. The assessee had preferred appeal against the order of the AO in which the assessee succeeded, inasmuch as, the CIT (A) reversed the order of the Assessing Officer and deleted the addition. In respect of addition made qua share application money, the CIT (A) concluded that the assessee had given sufficient evidence to show the identity of shareholders who had subscribed to the share capital and there creditworthiness. Likewise, the additions made in respect of sale proceeds of the shares, the CIT (A) was of the opinion that the assessee had discharged the requisite onus by disclosing the identity of those persons to whom the shares were sold. The



Department has challenged the order of the CIT (A). It is not necessary to state in detail the manner in which the Tribunal has dealt with the said appeal. It suffices to point out that as per the Tribunal the assessee had not discharged the onus cast upon it as per the provisions of Section 68 of the Act. At the same time, the Tribunal also held that a procedural lapse has taken place in the assessment because of the reason that the assessee was not provided adequate opportunity to produce the share applicants as also the purchasers of the shares from the assessee.

In these circumstances, while remitting the case back to the AO, to examine the issue afresh after giving the aforesaid opportunity, the Tribunal has given the following directions:-

“In respect of the additions made by the A.O. on account of alleged commission paid by the assessee for obtaining the alleged entries this issue is also restored to the file of the A.O. for re-adjudication as the issue of the share application money and the sale of shares held as investment by the assessee has to be restored to the file of the A.O. for re-adjudication: with these directions, these issues are restored to the file of the A.O. for re-adjudication and the order of the CIT (A) is set aside. In these circumstances the appeals of the revenue are partly allowed for statistical purposes”.

Dr. Gupta, learned counsel appearing for the assessee appellant submits that the appellant is not questioning the order of the Tribunal in so far as it restored the matter back to the AO for re-



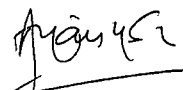
adjudication. However, the apprehension expressed by Dr. Gupta is that the manner in which the order is couched gives an impression that in case the assessee fails to produce the share applicants and/or the purchasers of the share from the assessee, the AO may rest his decision entirely on such failure as the impression which the aforesaid observations of the Tribunal create is that the entire issue is to be decided only on the basis of production of those persons. His submission is that the AO while adjudicating the matter afresh should be given a free hand to decide the issue in accordance with law and in case the assessee is able to discharge the onus by producing whatever permissible evidence, the assessee can produce, that should be taken into consideration.

We find the aforesaid apprehension of learned counsel for the appellant unfounded. The circumstances under which the aforesaid observations are made by the Tribunal would amply demonstrate that it has been done in order to give an opportunity to the assessee. Thus, the directions to the AO to give an opportunity to the assessee to produce the share applicants as also the purchasers of shares from the assessee is to the advantage of the assessee. By giving such an opportunity to the assessee, the Tribunal has by no means stated that in case the assessee is unable to produce the said persons for examination by the AO, the entire decision is to be rested thereupon. Needless to mention, in



addition to availing the opportunity to produce the share applicants and purchaser of shares from the assessee, it would be open to the assessee to produce whatever other evidence in its possession to demonstrate that the share applicants who invested in shares were the genuine persons and had sufficient means to invest in those shares. In a similar manner evidence which is available with the assessee to show the genuineness of the purchase of the shares can be produced in order to discharge the onus which lies on the assessee in terms of the provisions of Section 68 of the Act. Notwithstanding the same, we clarify that the AO shall take into consideration the entire evidence produce by the assessee including the share applicants and the purchaser of shares from the assessee, if possible and the AO would take the view on the basis of such evidence produced in accordance with law.

With these clarifications, the appeal <sup>is</sup> otherwise dismissed.

  
A.K. SIKRI, J.

  
M.L. MEHTA, J.

**MARCH 18, 2011**

skb