



36 & 37#

% 25.07.2011

Present: Mr. Kiran Babu, Sr. Standing Counsel for the Revenue.
Mr. Salil Kapoor, Advocate with Mr. Sanat Kaor and
Mr. Ankit Gupta, Advocates for the assessee.

+ ITA 1150/2009
ITA 596/2010

(common orders)

In the return filed by the respondent/assessee in respect of assessment year 2001-02, the Assessing Officer found that the assessee had received fresh share application money of ₹31,66,000/- and loan of ₹ 2,25,000/- during the year. The Assessing Officer took the view that the assessee could not prove the identity of some of the creditors and credit worthiness of the share applicant as well as creditors and genuineness of the transactions and made the additions of ₹ 28,15,000/-. Likewise, ₹2,25,000/- which was given by Mr. G.L. Sharma, father of the Managing Director of the company, the Assessing Officer took the view that the creditworthiness of Mr. G.L. Sharma was not proved and thus made additions of ₹ 2,25,2000/- as well on account on unexplained cash credit under Section 68 of the Income-Tax Act. In fact Mr. G.L. Sharma had also subscribed to the share capital in the sum of ₹ 12,50,000/- which was part of the addition made by the Assessing Officer in so far as share application money is concerned. The appeal of the assessee was partly allowed. The



CIT (A) sustained the addition to the extent of ₹ 19,85,000 in respect of share application money reducing the same from ₹ 28,15,000/-. The CIT (A) also confirmed the addition of ₹ 2,25,000/-. Both the Revenue as well as the assessee had filed the appeals. The Tribunal has dismissed the appeal of the Revenue but allowed the appeal of the assessee. In so far as appeal of the assessee is concerned, the additions primarily made on account of the share applications money contributed by Mr. G.L. Sharma, the Tribunal, after analyzing the evidence on record and explanation submitted by the assessee had accepted the contention of the assessee that Mr. G.L. Sharma was a person of means and subscribed to the share capital and had sufficient means to cash credit of ₹ 2,25,000/-. The findings of the Tribunal in this respect areas under:-

“We have duly considered the rival contentions and gone through the records carefully. The contention of the assessee is that this is the first year of the company and before commencement of commercial production, the shares application money has been received by it. Apart from this assessee has prove the identity of the share applicant Shri G.L. Sharma. It has also proved the genuineness of the transaction. The only objection of the revenue emerges out from the record is that Shri G.L. Sharma has no known course of income, therefore, this amount should be added as unexplained cash credit in the hands of the assessee. In our opinion, the assessee has no unexplained money which could have been routed through Shri GL Sharma. It has received



the share application money prior to the commencement of the commercial production. Apart from the above assessee has produced a document alleged to be will of Shri GL Sharma. It exhibits the distribution of property amongst the worth family members. He has agricultural land in the past and house which means that he is a man of means and he distributed lots of assets among the beneficiaries on account of natural relationship. His creditworthiness in a way cannot be doubted. Therefore, we delete the addition of ₹ 12,50,000/- confirmed by the CIT (Appeals).”

Even with regard to other share applicants, the ITAT has held that the assessee has been able to prove the identity of the applicants and their creditworthiness which is clear from the following:-

“As far as the other share applicants’ money are concerned, the assessee has proved the identity of the applicant. Mode of receipt of the money and also raised the plea that these amounts have also been received prior to the commencement of the commercial production. A sum of ₹ 1,65,000/- is appearing in the name of Shri Jitender Kumar Sharma. He submitted that this investment was made on receipt of money from Shri GL Sharma. The addition has been made on the ground that creditworthiness of Shri G.I. Sharma has been doubted. How he could have given loan to Shri Jitender Sharma. Since we have deleted the addition appearing against the name of Shri GL Sharma on same logic this addition is also not sustainable. More particularly, the identity of share applicant has not been doubted. In that situation, the decision of Hon’ble Delhi High Court in the case of Sophia Finance Ltd. 205 ITR 98 is applicable on the facts and circumstances of the case.

As far as cash credits appearing in the name of six persons noted at page 6 of the present order is



concerned, we are of the view that the first amount of ₹ 1,50,000/- is relatable to Shri GL Sharma basis of his will and we have already deleted an addition of ₹12,50,000/- therefore, adopting similar yard stick, this addition is also deleted. With regard to the other cash credits are concerned, all the creditors have given confirmation of advancing money, they have filed their affidavits deposing therein that money has been given to the assessee. These are the small amounts varying in between ₹ 5,000/- to ₹ 20,000/- the creditors have confirmed the transaction. The Assessing Officer has doubted about their creditworthiness only. We find that amounts are very small and even a deposit of Rs, 5000/- and ₹ 20,000/- can be expected from the saving of labour. Therefore, taking into consideration all the facts and circumstances, are of the view that assessee has explained the source of share application money received by it as well as the alleged unexplained credit. We allow the ground of appeal raised by the assessee and delete the addition of ₹ 19.85 lacs and ₹ 2.25 lacs made by the Assessing Officer.

These are pure findings of facts. No question of law arises.

These appeals are accordingly dismissed.

A.K. SIKRI, J.

M.L. MEHTA, J.

JULY 25, 2011

skb