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

+ **ITA No.465 of 2011**

% Decision Delivered On: 8th September, 2011

BEUTEX INDIA PVT. LTD. . . . APPELLANT

Through: Mr. Deepak Agarwal with Mr.
Rajesh Chauhan and Mr.
Siddharth Mittal, Advocates
for the appellant.

VERSUS

COMMISSIONER OF INCOME TAX . . .RESPONDENT

Through: Abhishek Maratha, Sr.
Standing Counsel.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. The instant appeal is preferred by the appellant/assessee against the impugned order dated 25.9.2009 passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') thereby dismissing the appeal of the appellant. Though there were three issues before the Tribunal, the present appeal is confined only to one issue,



viz., addition of ₹22.50 lacs Section 68 of the Income Tax Act (hereinafter referred to as 'the Act') on account of purported share capital contributed by eight shareholders holding that the assessee has not been able to substantiate their capacity to give money or the genuineness of transaction.

2. The brief facts are that the assessee raised share application money of ₹27,40,600/- from eight persons. Out of the above, during the year in question, only a sum of ₹22,50,000/- was received towards share capital. The Assessing Officer (AO) initiated enquiry proceedings in respect of shareholders and sent summons to Shri Amit Gupta, Shri Surender Kumar Srivastava, Shri Moolchand Nirmal and Shri Yogesh Saxena. The summons issued to Shri Amit Gupta and Shri Surender Kumar Srivastava were returned back with the remark incomplete address and no such person respectively. Further, in response to the summons issued to Shri Moolchand Nirmal and Shri Yogesh Saxena both appeared on dated 05.12.2006 and 29.1.2007 respectively and their statements were recorded by the AO. They denied investing any amount in the assessee company. However, in the meantime, the assessee vide his reply dated



02.2.2007, requested the AO to issue notice under Section 131 of the Act to the shareholders to secure their attendance. Further, the AO made enquiries and come to the conclusion that the share application money received from an account maintained in the name of Mr. Agarwal with ABN Amro Bank, Barakhamba Road, New Delhi. The AO on 28.2.2007 issued a show cause notice along with the statements of Shri Moolchand Nirmal and Shri Yogesh Saxena to the assessee, which was replied by the assessee on 30.4.2007 where confirmations, receipt of filing income tax returns, affidavits were filed. Not satisfied with the aforesaid replies/documents, the AO made an addition of ₹25,50,000/- towards addition in share capital during the year and passed the assessment order on 30.4.2007.

3. Being aggrieved by the orders passed by the AO, the assessee preferred an appeal before the CIT (A), wherein the CIT (A) held that the addition be made on account of introduction of share capital which was found credited during the impugned year i.e. Assessment Year 2005-06 and the share capital which was received in earlier years cannot be added in the impugned year.



4. The assessee once again preferred appeal before the Tribunal against the order of the CIT (A). The Tribunal vide impugned order affirmed the order of the CIT (A) on this issue. Thereafter, the appellant also filed Misc. Application under Section 254 (2) of the Act, which was again dismissed on 05.3.2010.
5. Still dissatisfied, the appellant preferred the instant appeal under Section 260A of the Act.
6. After perusing the orders of the three authorities below, we find that the findings of fact have been recorded by all the Authorities holding that the transaction relating to share application money was bogus and in fact, these persons had never invested in the assessee's company. The assessee had not been able to discharge the primary onus put on him to prove the cash credit. The assessee had also not produced its shareholders of the company for verification and therefore, the identity of these shareholders was not proved. Two persons, viz., Mr. Yogesh Saxena and Mr. Moolchand Nirmal, who appeared before the AO had specifically made statement denied that they had made any investment with the share application money. Further finding which is recorded by all the three Authorities that the



money had not come from their accounts. In fact, it was found that the accounts from which those amounts were received as share application money was belonging to one Mr. Aggarwal. Mr. Yogesh Saxena even stated that his signatures on confirmation as well as on affidavit were forged. As per the bank reports, the share application money were received from Mr. Aggarwal through his proprietary concern and thus, transactions were not genuine. These are all findings of fact accorded by all the three Authorities below. Faced with these findings, the only contention which could be raised by the learned counsel for the appellant was that Shri Moolchand Nirmal and Mr. Yogesh Saxena were not allowed to be cross-examined by the appellant even when specific opportunities were sought for. We may note that the Tribunal in the impugned judgment had categorically observed that no such cross-examination was sought for by the assessee and the learned counsel for the assessee argued that this was factually wrong observation, as vide communication dated 02.2.2007, the assessee had made a specific request for summoning the investors under Section 131 of the Act.



7. In view of the aforesaid submissions, we had called for the original records vide our orders dated 03.8.2011. Those records have been produced and we have gone through the same. From the order-sheet recorded by the AO on various dates, we find that the assessee was specifically told about the statement of two persons, but he never asked for fresh cross-examination. When we go through the communication dated 02.2.2007 along with the order-sheet and read the said communication in that perspective, we find that there was no such specific request made by the appellant.
8. We, thus, do not find any infirmity in the impugned order. No question of law arises for consideration. This appeal is dismissed *in limine*.

(A.K. SIKRI)
JUDGE

(M.L. MEHTA)
JUDGE

SEPTEMBER 08, 2011

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