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

+ ITA 1031/2010

COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal, Advocate
versus

M/s. VISHAL HOLDING & CAPITAL (P) LTD. Respondent
Through: None

% Date of Decision: 9th August, 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?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

J U D G M E N T

MANMOHAN, J

1. The present appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for brevity "Act 1961") challenging the order dated 30th July, 2009 of the Income Tax Appellate Tribunal (in short "ITAT") in ITA No. 1788/DEL/2007 for the Assessment Year 2000-2001. By virtue of the impugned order, ITAT has deleted the addition of Rs. 49, 55,300/- made by the Assessing Officer (hereinafter referred to as "AO") on account of income from undisclosed sources.

2. Briefly stated the relevant facts of this case are that a return declaring income of Rs. 4,024/- was filed by respondent-assessee. The same was processed u/s 143 (1) of Act, 1961. Subsequently, on the



basis of information received from the Investigation Wing of Department that M/s MKM Finsec (P) Ltd. was involved in providing accommodation entries of Rs. 49,55,300/-, AO issued notice u/s 148 to the respondent-assessee. The respondent-assessee submitted that during the relevant assessment year, the respondent-assessee had purchased and sold certain shares through M/s MKM Finsec (P) Ltd., a share broker and earned a profit of Rs.49, 55,300/- which was received by the respondent-assessee through account payee cheques.

3. An appeal was filed by the respondent-assessee against the order of the AO before the Commissioner of Income Tax (Appeals) [hereinafter referred to as "CIT (A)"] and the same was allowed in favour of the assessee.

4. The Revenue appealed against the order of CIT (A). By the impugned order, ITAT dismissed the Revenue's appeal by observing that assessee had produced all details in respect of its transactions including copies of bills and contract notes issued by M/s MKM Finsec Pvt. Ltd. ITAT further observed that the AO had not verified these details and in respect of the material, which had been relied upon by him, he had not provided any finding of the investigations. Hence, ITAT held that the addition made by the AO could not be said to be on the basis of some evidence. Accordingly, ITAT confirmed the deletion made by CIT (A).



5. Ms. Prem Lata Bansal, learned counsel for the Revenue submitted that ITAT had erred in law in deleting the addition of Rs 49,33,500/- by holding that the assessee had discharged the onus of proof especially when the genuineness of the transaction, identity and creditworthiness of the parties had not been established

6. We are of the view that the assessee had produced copies of accounts, bills and contract notes issued by M/s. MKM Finsec Pvt. Ltd. and had been maintaining books of account as per Companies Act. The assessee had also demonstrated the purchase and sale of shares over a period of time as seen from the balance sheet/s. In our opinion, the AO has simply acted on the information received from the Investigation Wing without verifying the details furnished by the assessee. The assessee has also produced best possible evidence to support its claim. Consequently the addition made by the AO cannot be sustained.

7. In any event, the factual findings of the final fact finding authority are neither perverse nor contrary to record. Accordingly, we find that no substantial question of law arises in the present appeal which, being bereft of merit, is dismissed *in limine* but with no order as to costs.

MANMOHAN, J

CHIEF JUSTICE

AUGUST 09, 2010

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