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

+ ITA 1381/2010

THE COMMISSIONER OF
INCOME TAX

Through Appellant
Mr. Sanjeev Sabharwal, Senior
Standing Counsel.

versus

MERITON TOWERS PVT. LTD. Respondent
Through None

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Date of Decision: 16th September, 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 the Income Tax Act, 1961 (hereinafter referred to as "Act, 1961") challenging the order dated 10th September, 2009 passed by the Income Tax Appellate Tribunal (for brevity "Tribunal") in ITA No. 3188/Del/2009 for the Assessment Year 2006-07.

2. Mr. Sanjeev Sabharwal, learned senior standing counsel for the Revenue submitted that the Tribunal had erred in law in deleting the addition of ₹ 45,90,000/- made by the Assessing Officer under Section



68 of the Act, 1961.

3. However, upon a perusal of the file we find that the said addition was deleted both 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 :-

"3.1It is stated that during the year under consideration, the appellant company has received Rs.22,50,000 and Rs.23,40,000/- from Archit Finescrip Ltd. and At All Times Your Securities P. Ltd. respectively and the AO made the addition u/s 68 of the Act as, as per him, the above amounts were received from the alleged entry operators. The AR referred to the provisions of Section 68 of the Act and stated that the said section is applicable to only those cases where any sum is found credited in the books of the assessee maintained for any previous year and the assessee offers no explanation about the nature and the source thereof or the explanation offered is not satisfactory. But in the present case, the appellant furnished the documents like names and addresses of the share applicants, their income tax particulars and bank particulars along with the confirmation about making investments in the appellant company and copies of their income tax returns/audited statement of accounts duly reflecting the investments made by them in the appellant company. All this prove the identity of the creditors, genuineness of the transactions and the creditworthiness of the creditors especially when the above share applicants are companies registered under the Companies Act and that all the transactions took place by account payee cheques only. The AO has failed to discharge the onus which lies on him in proving as to how the provisions of Section 68 are applicable to the facts of the instant case and that the amount received from the above mentioned two parties are accommodation entries."

4. The Tribunal in its impugned order has also observed as under :-



“4. We have considered the submissions of the Ld. DR of the revenue and since this issue is covered in favour of the assessee by the judgment of Hon’ble Apex Court rendered in the case of *Lovely Export Pvt. Ltd. (supra)*, we find no reason to interfere with the order of the Commissioner of Income Tax (Appeals) because it is noted by the Commissioner of Income Tax (Appeals) on page 4 of his order that the identity of these investors stands proved beyond any doubt. It is further observed by the Commissioner of Income Tax (Appeals) that in fact, the Assessing Officer has also not raised any doubt in respect of the identity of the share applicants. In view of these facts, we confirm the order of the commissioner of Income Tax (Appeals) by following the judgment of the Hon’ble Apex Court rendered in the case of *Lovely Exports Pvt. Ltd.(supra)*, wherein it was held by Hon’ble Apex Court that if the identity of the investors is established, the assessment in the case of the investors can be reopened as per law, but no addition can be made in the hands of the company, who has received the share application money. In view of the above, we decide this issue in favour of the assessee.”

5. Keeping in view the mandate of law in ***Commissioner of Income Tax Vs. Lovely Exports (P) Ltd., 216 CTR 195 (SC)*** and the concurrent findings of fact arrived at by the two authorities below, the share application money, in the present case, cannot be regarded as undisclosed income of the assessee under Section 68 of the Act, 1961. Consequently, the present appeal, being bereft of merit, is dismissed in *limine*.

MANMOHAN, J

CHIEF JUSTICE

September 16, 2010

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