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

+ ITA 1511/2010

THE COMMISSIONER OF
INCOME TAX

..... Appellant

Through: Mr. Sanjeev Sabharwal, , Advocate

versus

EVERGROWING IRON & FINVEST LTD. Respondent

Through: None.

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Date of Decision: 01st October, 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 Income Tax Act, 1961 (for brevity, "Act") challenging the order dated 25th September, 2009 passed by the Income Tax Appellate Tribunal (in short "Tribunal") in ITA No. 1493/Del/2008, for the Assessment Year 2001-2002.

2. Mr. Sanjeev Sabharwal, learned counsel for the revenue submitted that the Tribunal had erred in law in deleting the addition of ₹ 30,47,601/- made by the Assessing Officer (in short, "AO") on account of income from undisclosed sources. Mr. Sabharwal



submitted that the addition made by the AO under Section 68 of the was justified as the respondent-assessee had failed to discharge the primary onus.

3. However, upon a perusal of the papers, we find that the aforesaid amount was brought forwarded balance and did not relate to the year in question. Moreover, the revenue had already accepted the aforesaid amount as income of the respondent-assessee in the earlier year.

4. In fact, the Tribunal in its impugned order has observed as under:-

“7. We have carefully considered the rival contentions in the light of the material placed before us. A finding has been recorded by the Ld. CIT(A) that a sum of Rs.30,47,600.50 was outstanding in the books of the assessee in the name of MKM Finsec P. Ltd. and that amount represented the income shown by the assessee on account sale of shares which was received during the year under consideration. The said income was shown by the assessee in earlier year. The assessee had not been granted any opportunity to cross examine or rebuttal of evidence collected by Investigation Wing. Considering all these facts the Ld. CIT(A) has deleted the addition. In our view if the amount is received by the assessee during the year on account of opening balance in respect of items which was already considered as income in earlier year, the same cannot be added to the income of the year simply on the ground that assessee has received the amount due from the party. It has not been shown by the department that the claim of the assessee that the amount which represented sale proceeds of shares, in respect of which income was already shown in earlier year, is incorrect. The claim of the assessee that the amount which is added to its income represented sale proceeds of share sold in immediate preceding year has not been shown to be false or incorrect by the revenue. It is also not shown by the revenue that the said amount was not assessed as income (capital gain) in immediate preceding year. If the amount represents the sale proceeds of shares in respect of which



income has already been assessed by the revenue in preceding year then the said amount cannot be assessed in the year under consideration simply on the ground that it was received in the year under consideration. Therefore, we find no infirmity in the order of Ld. CIT(A) vide which impugned addition has been deleted. We declined to interfere.”

5. Keeping in view the aforesaid factual finding arrived at by the final fact finding authority, we are of the opinion that the addition made by the AO was unwarranted and unsustainable and accordingly, the present appeal is dismissed *in limine*.

MANMOHAN, J

CHIEF JUSTICE

OCTOBER 01, 2010

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