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

+ ITA 1497/2010

THE COMMISSIONER OF
INCOME TAX

..... Appellant

Through: Mr. Sanjeev Sabharwal, , Advocate

versus

DERBY OVERSEAS P. LTD.

..... Respondent

Through: None.

And

+ ITA 1518/2010

THE COMMISSIONER OF
INCOME TAX

..... Appellant

Through: Mr. Sanjeev Sabharwal, , Advocate

versus

DERBY OVERSEAS P. 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?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

MANMOHAN, J

CM No. 17322/2010 (exemption) in ITA No.1518/2010

Allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.



ITA No.1497/2010 & ITA No.1518/2010

1. The present appeals have been filed under Section 260A of Income Tax Act, 1961 (for brevity, “Act”) challenging the composite order dated 21st August, 2009 passed by the Income Tax Appellate Tribunal (in short “Tribunal”) in ITA Nos. 02/Del/2009 and 03/Del/2009, for the Assessment Years 2001-2002 and 2002-2003 respectively.

2. Mr. Sanjeev Sabharwal, learned counsel for the revenue submitted that the Tribunal had erred in law in deleting the addition of ₹ 32,00,00/- made by the Assessing Officer (in short, “AO”) under Section 68 of the Act. Mr. Sabharwal further submitted that the Tribunal had deleted the said addition even though the primary onus had not been discharged by the respondent-assessee.

3. However, upon a perusal of the file, we find that the said addition was deleted by the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”] and Tribunal on the ground that the initial onus had been discharged by the respondent-assessee. In fact, the CIT(A) in its order has observed as under:-

“I have gone through the facts and circumstances of the case, the contentions and submissions of the assessee, observations of the AO as well as various judicial pronouncements on the issue. The important issues and facts on the basis of which I am proceeding to decide these grounds are as follows:-



B. During the course of hearing before me and my predecessor, the AO had also attended and subsequently produced the details of PAN numbers of the various parties vide his letter dated 27.5.2008 and 27.6.2008 in which the various assessments/PAN details of the parties had also been confirmed by him. Details of the various parties and their PAN numbers were confirmed by the AO. On the basis of this document, the identity of the parties cannot be disputed. The AO, however, did not make any further enquiries with regard to the status of these parties, to bring on record any adverse findings regarding their creditworthiness. In view of the various judicial pronouncements, it is widely held that the concerned company cannot be expected to know every detail pertaining to the identity and the financial worth of the subscribers particularly when such subscribers have sold their shares in earlier years and there is no regular interaction with such person. Since the AO himself has confirmed that all these persons are regular income tax assesses and has also not brought anything on record to dispute their creditworthiness or genuineness of the transactions, the conclusion drawn by him to treat the amount of share application money as unexplained income of the appellant does not appear to be justified. In this regard, reliance is placed on the recent decision of CIT Vs. Lovely Exports (supra), CIT Vs. Divine Leasing Pvt. Ltd. (supra), CIT Vs. Dwarkadhish Financial Services (supra) and other similar judicial pronouncements. Since in the first two cases, the SLP of the department has also been dismissed by the Apex Court. In view of the facts and circumstances of the present case, I am of the view that the assessee has discharged the initial onus on it by placing on record various supporting documents including PAN numbers.

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After examining the facts and arguments in the present case, I am of the opinion that in view of the latest judicial pronouncements as elaborated above, the Apex Court has held that even if the share application money is bogus, the department is free to take action against those persons, but



addition in the hands of the company to whom the payment has been made, cannot be justified. In the present case, the appellant has provided various documents to establish the identity of the persons. The AO has not brought any evidence on record to dispute the claim of the appellant. Since, no further investigation were carried out by the AO in the form of issuing summons u/s 131 or any other inquiry, the conclusion drawn by him on the basis of existing material provided by the appellant does not appear to be fair and logical.

After considering the totality of circumstances, as well as various judicial pronouncements on this issue, I am of the opinion that this addition of Rs.32,00,000/- made by the AO is not justified and deserves to be deleted. Accordingly, this ground of the appellant is allowed.”

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

“6. We have heard both the parties and gone through the material available on record. We find that the assessee has established the identity of the share application money depositors. The Assessing Officer had not further made any enquiries. The Assessing Officer had also not brought any material to prove the contrary. The Assessing Officer had also not given opportunity to cross-examine Shri D.K. Gupta on whose statement the Assessing Officer had relied upon that the assessee had received accommodation entries and the parties subscribed the share application money were not genuine. In the recent decision of Hon'ble Apex Court in the case of Commissioner of Income Tax vs. Lovely Exports (P) Ltd. [2008] 216 CTR (SC) 195, the question to be decided before their Lordships was:

“Can the amount of share money be regarded as undisclosed income under Section 68 of the Income Tax Act, 1961?”

While answering to the above question, their Lordships have concluded that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the Assessing



Officer, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of the assessee. Thus, in a case where identity of persons is established, in our considered opinion, no addition is justified in the hands of the assessee. If the Assessing Officer was not satisfied with regard to creditworthiness of the depositors the action could have been taken in their hands. Respectfully following the decision of the Hon'ble Supreme Court, we hold that the Assessing Officer was not justified in making the addition in the case of assessee company. Accordingly, we do not find any infirmity in the order passed by the Commissioner of Income-tax (Appeals) in deleting the addition."

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 cannot be regarded as undisclosed income of the assessee under Section 68 of the Act. Consequently, the present appeal, being bereft of merit, is dismissed in *limine*.

MANMOHAN, J

CHIEF JUSTICE

OCTOBER 01, 2010

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