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

\+ ITA 267/2010

THE COMMISSIONER OF INCOME TAX ..... Appellant
Through Mr. Sanjeev Sabharwal, Senior Standing Counsel.

versus

JAGAT DIAGNOSTICS PVT. LTD. ..... Respondent
Through Mr. Johnson Bara, Advocate

% Date of Decision: 10th 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 15th May, 2009 passed by the Income Tax Appellate Tribunal (for brevity "Tribunal") in ITA No. 800/Del/2009 for the Assessment Year 2004-05.

2. Mr. Sanjeev Sabharwal, learned senior standing counsel for the Revenue submitted that the Tribunal had erred in law in deleting the addition of ₹ 49,00,000/- made by the Assessing Officer (in short

"AO") under Section 68 of the Act, 1961.

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 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 :-

> *"The Ld. A.R. of the appellant had further argued that during the course of assessment proceedings itself, they have submitted substantial evidences in the form of the confirmation from the share subscribers, bank statements, PAN numbers, copies of Income Tax Returns, from these shareholders which have been placed in the Paper Book also submitted to me. All these evidences have proved the identity of all the shareholders. Once the identity of the share subscriber is established, no addition can be made in the hands of the appellant company even if the shareholders are found to be bogus……..*
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> *Rival contentions have carefully been considered. After considering the rival submissions I find a substantial support in the contention of the ld. A.R. of the appellant. The totality of the evidences submitted by the ld. A.R. of the appellant in respect of various share capital subscribers, their identity stand proved beyond any doubt……*
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> *After considering the totality of all the facts and circumstances and the latest judicial pronouncements made by the jurisdictional Delhi High Court and Hon'ble Supreme Court, I have come to the conclusion that the appellant company has undoubtedly proved the establishment of the identity of the share appellants. Once the identity of these share applicant stand proved, no additional can be made in the hand of the appellant company even if the share applicants have been found persons of no means until and unless otherwise it is proved by the revenue. The revenue could not proved that the money received by the appellant in the form of the share application has come from its own sources. This ratio of decision is applicable both in the cases of Public Limited Company and Private Limited Company in view of the*

latest decisions, as discussed above. Therefore, I have no hesitation to direct the Assessing Officer to delete the addition of Rs. 49,00,000/- (Rs. 39,00,000/- as per rectification order) which has been made by him under section 68 of the Income Tax Act, 1961. The consequential addition of Rs. 98,000/- will also stand deleted as presumed by the Assessing Officer to have been paid to some broker for obtaining the accommodation entry."

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

"5. We have carefully considered the rival submissions in the light of the material placed before us. It was the submission of the assessee that requisite evidence was filed before the AO to establish the identity of share applicants and all the evidences were also produced before the CIT(A). The CIT(A) has also called for remand report. No material has been brought on record by the revenue to show that assessee has not established identity of the share applicants. In the case of CIT Vs. Lovely Exports (P) Ltd. (supra) the observations of Hon'ble Supreme Court are as under:-

> *"2. Can the amount of share money be regarded as undisclosed income under s. 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.*
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> *3. Subject to the above, Special Leave Petition is dismissed."*

6. If the above ratio is applied with the decision of Hon'ble Delhi High Court in the case of CIT Vs. Value Capital DHC (supra), then Department proves that share application money is actually the money of the assessee, the addition could not be made in the hands of the assessee as the Department will be free to proceed to reopen the individual assessment of shareholders as per aforementioned decision of Hon'ble Supreme Court in the case of CIT Vs. Lovely Exports Pvt. Ltd. (supra). Therefore, we do not find

> *any infirmity in the order of the CIT(A) vide which the impugned addition has been deleted. We decline to interfere and the appeal is dismissed."*

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, 1961. Consequently, the present appeal, being bereft of merit, is dismissed in *limine*.

MANMOHAN, J

CHIEF JUSTICE

September 10, 2010
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