



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 12.05.2010

+ **ITA 592/2010**

COMMISSIONER OF INCOME TAX

... Appellant

- versus -

WINSTRAL PETROCHEMICALS PVT LTD

... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Sanjeev Sabharwal

For the Respondent : Mr Salil Aggarwal

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

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| 1. Whether Reporters of local papers may be allowed to see the judgment ? | Yes |
| 2. To be referred to the Reporter or not ? | Yes |
| 3. Whether the judgment should be reported in Digest ? | Yes |

V.K. JAIN, J (ORAL)

1. This appeal is preferred against the order of Income Tax Appellate Tribunal dated 29.05.2009, whereby the appeal filed by the Revenue, being ITA No.3290/Del/2008, against the order of the Commissioner of Income Tax (Appeals), for the Assessment Year 2004-05 was dismissed by it.

2. During the assessment year in question, the assessee company received share application money amounting to Rs 44 lakhs from 12 private limited companies. The assessee company filed income tax return declaring income of Rs 2,20,880/- for the year in question. The case was initially processed under Section 143(1) of Income Tax Act. Subsequently, on receipt of information that the assessee



Section 148 of Income Tax Act was issued. During the course of assessment, when asked to prove the identity and creditworthiness of the applicants and genuineness of the transactions, the assessee company furnished copies of their applications for allotment of shares, confirmation of payments, copies of their Certificates of Incorporation, printouts of their PAN details, copies of their PAN cards as well as company details, downloaded from the site of the Department of Company Affairs, showing their addresses. Notices under Section 133(6) of the Act were issued to all the 12 applicants, who reiterated the confirmation given by them and also supplied copies of their accounts. The Assessing Officer, however, added the entire amount of Rs 44 lakhs to the income of the assessee company, on the grounds that the parties were not produced by the assessee, some of the applicants had a common address during inspection by the Income Tax Inspector, five applicants were not found functioning at the given address and reply submitted by the applicants were late.

3. The Commissioner of Income Tax (Appeals) noted that the report of the Inspector, stating therein that five applicants were not found functioning at the given address was not provided to the assessee and that the notices sent by



the Department had been duly served on all the 12 applicants, at the addresses provided by the assessee company. He also noted that all the payments had been made by account payee cheques. The addition made by the Assessing Officer was deleted by him.

4. While dismissing the appeal of Revenue, it was noted by the Income Tax Appellate Tribunal that all the applicants were Private Ltd. Companies, whose new as well as old addresses, were provided by the assessee during the course of the assessment proceedings. It was further noted that besides filing confirmation from the applicants, copies of Share Application Money, PAN card, etc., were also filed. The Tribunal was of the view that in these circumstances, it cannot be said that the identity of the share applicants did not stand established. Relying upon the decision of the Supreme Court in the case of **CIT vs. Lovely Exports (P) Ltd.**, 216 CTR 198, the Tribunal declined to interfere with the order passed by the Commissioner of Income Tax (Appeals).

5. The issue involved in this appeal came up for consideration before this Court in **CIT vs. Divine Lasing & Finance Ltd.** 299 ITR 268. After reviewing the case law on the subject, this Court was of the view that in the context of Section 68 of the Income Tax Act, the assessee has to prima



facie establish (1) the identity of the creditor/subscriber; (2) the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels; and (3) the creditworthiness or financial strength of the creditor/subscriber. It was observed that (a) if relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department along with copies of the shareholders register, share application forms, share transfer register, etc., it would constitute acceptable proof or acceptable explanation by the assessee; (b) the Department would not be justified in drawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices; (c) the onus would not stand discharged if the creditor/subscriber denies or repudiates the transaction set up by the assessee nor should the Assessing Officer take such repudiation at face value and construe it, without anything more, against the assessee and the Assessing Officer is duty-bound to investigate the creditworthiness of the creditor/subscriber the genuineness of the transaction and the veracity of the repudiation.

6. The Special Leave Petition filed by the Revenue against the above-referred decision of this Court was dismissed by the Supreme Court vide its decision reported



vide 2008 (216) CTR 195 which *inter alia* reads as under:

“Can the amount of share money be regarded as undisclosed income under Section 68 of IT Act, 1961? We find no in 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, no infirmity is found with the impugned judgment.

7. It has not been disputed before us that the share application money was received by the assessee company by way of account payee cheques, through normal banking channels. It is not the case of the Revenue that the payment of Share Application Money was not made from the bank account of the applicant companies. Admittedly, copies of application for allotment of share were also provided to the Assessing Officer. It is not the case of the Revenue that the share applications were not signed on behalf of the applicant companies and were forged documents. It is also not the case of the Revenue that the shares were not actually allotted to the companies. Therefore, the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal, in our view, were justified in holding that the genuineness of the transactions had been duly established by the assessee



8. As regards identity of the subscribers, the assessee filed copies of Certifications of Incorporation, PAN cards, PAN details and company details, downloaded from the site of Department of Company Affairs besides written confirmation from the applicants. It is not the case of the Revenue that the copies of Certificates of Incorporation, PAN cards, PAN details or company details submitted by the assessee were forged documents. In fact, the Assessing Officer did not even make an attempt to verify the genuineness of these documents by summoning the record of Registrar of Companies or Department of Company Affairs. If he entertained any doubt about the genuineness of these documents, nothing prevented him from summoning the record from these authorities. If the Assessing Officer so desired, the genuineness of the PAN cards and PAN details could easily have been verified by him from the record available with the Department. The assessee company also furnished written confirmation from the applicant companies. All the share applicants were duly served with the notices under Section 133(6) of the Act. In these circumstances, the finding of Commissioner of Income Tax (Appeals) and Income Tax Appellate Tribunal that the identity of the subscribers stood duly established from the documents produced by the assessee cannot be said to be



perverse and does not call for interference by this Court.

9. The finding of fact recorded by the Tribunal, which is the final fact finding authority, cannot be said to be perverse merely because some of the applicants had a common address and the Inspector deputed by the Assessing Officer to make field inquiries did not find five applicants functioning at the addresses provided to him. There is no legal bar to more than one companies being registered at the same address. Since the applicant companies were duly incorporated, were issued PAN cards and had bank accounts from which money was transferred to the assessee by way of payee accounts cheque, they cannot be said to be non-existent, even if they, after submitting the share application had changed their address or had stopped functioning.

10. In view of the decision of this Court in the case of **Divine Lasing & Finance Ltd.** (supra), the identity of the share applicants would be established if details of address or PAN card are furnished to the Department alongwith the copies of Shareholders' Register, Share Application Form, Share Transfer Register, etc. In this case, Share Application Forms were duly produced before the Assessing Officer and this is not the case of the Revenue that that the Assessing Officer had asked the assessee to produce Shareholders'



Register and Share Transfer Registers, , but the assessee company had failed to do so.

11. The Assessing Officer was not justified in adding the amount of share application money to the income of the assessee, merely because the applicants did not respond to the notices sent to them. If the Assessing Officer so wanted, he could have found out the current address of those applicants, who, according to the report of the Inspector, were not found functioning at the address given to the Assessing Officer, by summoning the Directors, etc. of those companies and asking them to furnish the current address of the company. The names and addresses of Directors, if not available with the assessee, could have been obtained from the office of Registrar of Companies or from the banks on which the cheques were drawn. No such attempt, however, was made by the Assessing Officer. In these circumstances, we found no reason to disturb the finding of fact recorded by the ITAT.

For the reasons given in the preceding paragraphs, no substantial question of law arises for our consideration.

The appeal is dismissed.

(V.K. JAIN)
JUDGE

(BADAR DURREZ AHMED)