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

+ ITA 771/2010

THE COMMISSIONER OF
INCOME TAX-VI

..... Appellant

Through: Ms. Rashmi Chopra, Advocate

versus

UNITED BIOTECH P. LTD.

..... Respondent

Through:

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Date of Decision: 5th July, 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? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

J U D G M E N T

MANMOHAN, J (ORAL)

1. Present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity "Act 1961") challenging the order in Appeal No. 469/Del/2009 dated 17th April, 2009 passed by the Income Tax Appellate Tribunal (in short "ITAT"). By this appeal, Revenue challenges the deletion of Rs. 51,50,000/- under Section 68 of Act 1961 in respect of share application money received by the assessee.



2. Ms. Rashmi Chopra, learned counsel for Revenue submits that just by filing income tax return or confirmation of creditors does not prove the creditworthiness and identity of a creditor specially when the creditor's bank accounts revealed credit by way of cash deposit or by 'clearing' just before issuing cheques of almost equivalent amount. In this connection, Ms. Chopra relies upon certain observations in the order passed by the Assessing Officer.

3. However, upon perusal of the file, we find that the said addition was deleted by the Commissioner of Income Tax (Appeals) (in short "Commissioner") and ITAT on the ground that confirmations in respect of the share applications were filed in the course of assessment proceedings and all share applicants were corporate assesseees who had been assessed to tax with the Income Tax Department. The Commissioner and ITAT in their orders have not only mentioned each and every corporate entity which has purchased the shares but also the cheque numbers by which share application money has been paid to the assessee. In fact, the Commissioner and the ITAT have found, as a matter of fact, that the assessee has proved the identity of the share applicants.

4. While dealing with a similar issue under Section 68 of the Act, 1961, the Supreme Court in the case of *Commissioner of Income Tax Vs. Lovely Exports (P) Ltd.*, 216 CTR 195 (SC) has stated 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.

3. Subject to the above, Special Leave Petition is dismissed.”

5. In view of aforesaid, since the identity of the share applicants has been established and it has been found that the said applicants are corporate assesseees who were assessed to tax with the Income Tax Department, we are of the view that in the present case no substantial question of law arises. Consequently, appeal is dismissed in limine but with no order as to costs.

MANMOHAN, J

CHIEF JUSTICE

JULY 05th, 2010

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