

**Present: Mr. Sanjeev Sabharwal, Advocate for the appellant.**

**I.T.A.No. 516/2009**

**KUBER FLORITECH LTD**

**The only dispute raised in this appeal relates to addition of Rs.1,85,55,000/- by the Assessing Officer purporting to be undisclosed income Under Section 68 of the Income Tax Act. We may note that the CIT in appeal reversed the aforesaid orders of the Assessing Officer and deleted the addition. The I.T.A.T in appeal preferred by the Revenue has confirmed the orders of the CIT(A). While doing so, the I.T.A.T has observed as under:-**

**We have heard both the parties and perused the material available on record. From the assessment order as well as from the order of the Id. CIT(Appeals) it is clear that the share received by shares by transfer agent for transfer in the names of the purchasers. No evidence was found to suggest that the company purchased the shares. The contention of the assessing officer that these shares were purchased the shares. The contention of the assessing that these shares were purchased by Shri P.K.Sharma, in that situation the addition should have been made in the hands of Shri P.K.Sharma and not in the case of the assessee. Moreover, the assessee company cannot acquire its own shares. No evidence was found during the course of search that the shares were purchased under buy-back system by the Directors of the Company. In any case, addition cannot be made in the hands of the assessee. Accordingly, we do not find any infirmity in the order passed by the Id.CIT(Appeals) deleting the addition.**

**The I.T.A.T had referred to the judgment of the Hon ble Supreme Court in CIT Vs. Lovely Exports Pvt. Ltd. 216 CTR 195 for the proposition that if the share application money is received by the assessee from the alleged bogus share holders, whose names are given to the assessing officer, then the department is free to proceed to re-open their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of the assessee company.**

**In the present case, in view of the aforesaid, the Tribunal has categorically mentioned in the aforesaid extracted portion that the department can initiate proceedings against Sh. P.K.Sharma. Thus, when the department is not remediless and the contentions of the assessee that these shares were purchased by Sh. P.K.Sharma and in that situation, additions should have been made in the hands of Sh. P.K.Sharma and not in the case of assessee, it would be open to the Revenue to initiate proceedings by treating the same under Section 153(3) of the Act as income in the hands of Sh. P.K.Sharma, in accordance with law.**

**Subject to the aforesaid, no question of law arises in this appeal otherwise and the same is accordingly dismissed.**

**A.K.SIKRI, J  
VALMIKI J.MEHTA, J  
August**