

## **Such Chains: SC Lovely Exports case to Addition for Unexplained Expense 69C etc:**

ITAT order (affirmed)

“2.10. Coming to the other payments, it is found that the cheques were drawn in favour of Shri Suresh Chand Gupta and not in favour of the respective chit holders. This did not amount to any payment to the chit holders at all. Therefore, the affidavits filed by them are against the tenor of the evidence obtained from the bank. Such an evidence by way of affidavits is not reliable and it does not establish that the payments were made to the concerned chit holders. We are also not able to countenance the argument of the Id. Counsel that in such a situation, the action lied in the hands of the recipients. They were the directors of the assessee company, which is a private limited company, controlled by them. Their acts are the acts of the company and, therefore, payment to them amounts to the payment to company itself. Further, money received by the assessee on chits belonging to it as it merges with the money lying in its till. The money paid out to chit holders will be the expenditure incurred by the assessee. However, if the money involved in the expenditure is appropriated by its, as payment to directors has already been held to be payment to self, then, no expenditure can be said to have been incurred...”

Assessee's Contention in its appeal (rejected)

5. Contention raised is that case for piercing the corporate veil was not made out and additions, if at all, should have been made in the hands of the Director. As far as the assessee company is concerned, the payments had been duly made. The amount received by the Director whose identity is known would be unexplained income of the said Director. Reliance has been placed on judgment of Hon'ble Supreme Court in CIT v. Lovely Exports (P) Ltd. (2008) 216 CTR (SC) 195.

High Court conclusion

7. We are unable to accept the submission. The Tribunal has found that the amount representing payment to chit holders was in fact paid to Suresh Chand Gupta, a Director of the assessee, which was a private company controlled by the recipient of the amount. The amount was available with the assessee itself and payments were made representing expenditure which was never incurred. The amount was, thus, available with the assessee as undisclosed income which justified additions made by the Assessing Officer. In view of this finding, judgment in Lovely Exports (supra) is distinguishable”