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

+ ITA 1122/2010

COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal,
Advocate

versus

ULTRATECH FINANCE &
INVESTMENT LTD. Respondent
Through: None

% Date of Decision: 12th August, 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? 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 Income Tax Act, 1961 (for brevity "Act, 1961") challenging the order dated 23rd June, 2009 passed by the Income Tax Appellate Tribunal (in short "ITAT") in ITA No. 3103/Del/2009, for the Assessment Year 2002-2003.

2. Ms. Prem Lata Bansal, learned counsel for the Revenue submitted that ITAT had erred in law in deleting the addition of rupees twenty two lacs made by the Assessing Officer (in short 'AO') on

account of unexplained share application money under Section 68 of Act, 1961. She further submitted that ITAT had deleted the said addition even though the primary onus had not been discharged by the respondent-assessee with regard to the identity, creditworthiness and genuineness of the transaction.

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 ITAT on the ground that the four share applicants were corporate entities who had filed documents confirming their source of investment and had furnished even their PAN number. In fact, ITAT in its order has observed as under:-

"4. We have heard the rival submissions and perused the material available on record and have gone through the orders of the authorities below. We find that in the present case, the dispute is regarding receipt of share application money of Rs.22,00,000/- from four different companies. The Assessing Officer has made addition of the same under Section 68 of the Act which has been deleted by Ld. CIT(A) by following the judgment of Hon'ble Apex Court rendered in the case of CIT Vs. Lovely Exports Pvt. Ltd. (supra) by the Ld. DR of the revenue could not show us any difference in facts. In the present case also, the assessee company is a private limited company as in the case of M/s Lovely Exports Pvt. Ltd. (supra). In the present case, it is noted by the Ld. CIT(A) that the parties are in existence in view of confirmation of the respective ITOs of these parties. The relevant para of Ld. CIT(A)'s order is para No. 3.5. which is reproduced below:-

3.5 I have gone through the arguments of the appellant and also the remand reports of the Assessing Officer the various documents and decisions cited by the appellant's counsel. It is an admitted fact that the appellant had received share application money from the above said four parties by cheques which has duly been credited in its bank account and also had filed the confirmation confirming their investment, PAN No., and source of investment. The parties are in

existence is confirmed by the respective ITOs of these parties. The appellant had also furnished the share application form submitted by these parties and copy of Form No. 2 filed with ROC which all lead to the conclusion that the above said companies had subscribed to the share capital of the appellant. The issue is clinched by the decision of the Apex Court in the case of CIT Vs. Lovely Exports Pvt. Ltd. (Supra) and the territorial High Court i.e. Delhi High Court and other High Courts and therefore, the amount of Rs. 22,00,000/- cannot be treated as the income of the appellant. Under such circumstances and keeping in view the ratio of the Hon'ble Supreme Court and Hon'ble jurisdictional High Court, I have no alternative but to allow the appeal of the appellant on this count. Appellant gets relief of Rs. 22,00,000/-”

5. *Since Ld. CIT(A) has decided this issue by following the judgment of Hon'ble Apex Court rendered in the case of Lovely Exports Pvt. Ltd. (supra) and no difference in facts could be shown by the Ld. DR of the revenue, we find no reason to interfere in the order of Ld. CIT(A) on this issue. We, therefore, confirm the same. This ground of the revenue is rejected.”*

4. In our considered opinion, the approach adopted by CIT(A) and ITAT is in consonance with the decision of Supreme Court in ***Commissioner of Income Tax Vs. Lovely Exports (P) Ltd., 216 CTR 195 (SC)*** wherein it has been held 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.....”

5. Keeping in view the aforesaid mandate of law, the share application money of rupees twenty two lacs cannot be regarded as undisclosed income of assessee under Section 68 of Act, 1961.

Accordingly, present appeal is dismissed *in limine*.

MANMOHAN, J

CHIEF JUSTICE

AUGUST 12, 2010

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