

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

I.T.A. No. 618 of 2009

DATE OF DECISION : 02.12.2009

Commissioner of Income Tax, Faridabad

.... APPELLANT

Versus

M/s GP International Ltd., Faridabad

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

HON'BLE MR. JUSTICE MEHINDER SINGH SULLAR

Present: Ms. Urvashi Dhugga, Advocate,
for the appellant-revenue.

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SATISH KUMAR MITTAL , J.

The revenue has filed this appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), against the order dated 12.2.2009, passed by the Income Tax Appellate Tribunal, Delhi Bench 'I' New Delhi (hereinafter referred to as 'the ITAT') in ITA No. 4346/Del/2005, pertaining to the assessment year 1996-97, while raising the following substantial questions of law :

- (i) Whether on the facts and in the circumstances of the case, the learned ITAT was right in law in upholding the order of the learned CIT (A) in deleting the addition of Rs. 3,30,000/- made by the Assessing Officer on account of liability of M/s Axis Chemicals & Pharmaceuticals even though the assessee had failed to prove the

existence and genuineness of the liability?

- (ii) Whether on the facts and in the circumstances of the case, the learned ITAT was right in law in confirming the order of the learned CIT (A) in deleting the addition of Rs. 15,00,000/- made by the Assessing Officer on account of unproved share capital disregarding the fact that the assessee had failed to prove the existence, genuineness and creditworthiness of these share holders despite specific requirement of the law?

In the present case, the Assessing Officer, while completing the assessment under Section 143 (3) of the Act, made addition of Rs. 3,30,000/- in respect of outstanding payable to M/s Axis Chemicals and Pharmaceuticals Ltd., Faridabad and addition of Rs. 15,00,000/- on account of unexplained share capital besides other additions. On appeal filed by the assessee, the CIT (A) vide its order dated 9.8.2000 set aside the assessment order and remanded back the matter to the Assessing Officer to frame the assessment afresh after providing full opportunity of being heard to the assessee. Thereafter, the Assessing Officer completed the assessment under Section 143 (3) read with Section 250 of the Act and again made the aforesaid two additions. The assessee again filed appeal against the order of the Assessing Officer. The CIT (A) deleted both the aforesaid additions. The appeal filed by the revenue against the order of the CIT (A) has been dismissed by the ITAT. Hence, this appeal.

We have heard learned counsel for the appellant-revenue.

As far as the addition of Rs. 3,30,000/- is concerned, it has been

held that during the proceedings under Section 143 (3) read with Section 250 of the Act, the assessee furnished a confirmation certificate from M/s Axis Chemicals and Pharmaceuticals Ltd., Faridabad along with PAN number. On asking of the Assessing Officer, the assessee has confirmed that the said liability is still outstanding. In spite of that material, the Assessing Officer made the addition of the amount on the basis that this liability has ceased to exist and the same is not payable by the assessee, and treated the said liability as income by invoking provision of Section 41 (1) of the Act. The CIT (A), while deleting the said addition, has observed that the similar addition was made in the case of Febon Con, Faridabad, where the similar liability was shown to be payable to the same party i.e. M/s Axis Chemicals and Pharmaceuticals Ltd., Faridabad. In that case, the said addition was deleted by the ITAT. It is the admitted position that the said order of the ITAT passed in ITA No. 114 to 116/Del/2004 has become final. In view of these facts, in our opinion, the ITAT has rightly come to the conclusion that the aforesaid liability of the assessee cannot be said to have ceased to exist and the provision of Section 41 (1) and explanation to this provision are not applicable, because the assessee is still showing it as a liability in its books and has not written off the same.

Regarding the addition of Rs. 15,00,000/- on account of unexplained share capital, it has been held that at the time of the original assessment, the assessee had supplied the list of the persons along with their addresses to whom the shares were sold. The said list contained

information, such as name, address and number of shares allotted. The Assessing Officer had issued enquiry letter under Section 133 (6) of the Act at random basis to 25 persons, out of whom some of the persons confirmed the genuineness of the transaction. However, some persons did not respond. In view of this fact, out of the total share capital of Rs. 54,28,500/-, the Assessing Officer made an addition of Rs. 15,00,000/- by treating the sources of share capital of those persons as unexplained. In our opinion, the CIT (A) as well as the ITAT have rightly deleted the aforesaid addition, because in the instant case, the Assessing Officer is not doubting the identity of the persons from whom the assessee has shown receipt of application money. Merely because some of the persons did not respond to the notice issued by the Assessing Officer under Section 133 (6) of the Act, it cannot be taken that the said transaction was ingenuine. It has been held by the Hon'ble Supreme Court in **Commissioner of Income Tax v. Lovely Exports (P) Ltd.** (2008) 216 CTR 195 (SC) that if the share application money is received by the assessee company from alleged bogus shareholders, 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 the said amount cannot be taken as unexplained income in the hands of the assessee.

In view of the above, we do not find any illegality in the impugned order passed by the ITAT and in our opinion, no substantial questions of law, as raised by the revenue in this appeal, arise from the order

of the ITAT.

Dismissed.

**(SATISH KUMAR MITTAL)
JUDGE**

December 02, 2009
ndj

**(MEHINDER SINGH SULLAR)
JUDGE**