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

+ ITA 1113/2010

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

versus

GREEN TECH TOWER BUILDERS PVT. LTD. Respondent
Through: None

% Date of Decision: 12th August, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | No. |
| 3. Whether the judgment should be reported in the Digest? | No. |

MANMOHAN, J (ORAL)

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity “Act, 1961”) challenging the order dated 21st August, 2009 passed by the Income Tax Appellate Tribunal (in short “ITAT”) in ITA No. 2560/Del/2008, for the Assessment Year 2005-2006.

2. Ms. Prem Lata Bansal, learned counsel for the Revenue submitted that ITAT had erred in law in deleting the addition of rupees twenty five 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.

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 share applicant had paid the amount from its current account with Vijaya Bank, Azadpur, Delhi by way of cheques and no cash had been deposited before issuing the said cheques to the respondent-assessee. In fact, ITAT in the impugned order has observed as under:-

"Considering the totality of the facts and circumstances of the case, we are of the considered view that the ld. CIT(A) was justified in deleting the addition in the light of the facts found by him and the conclusion he had drawn, which has been reproduced above. In this case, the AO has made the addition on the basis of statement of Shri Pradeep Kumar Jindal recorded on 15.04.2004, much before the incorporation of the present company on 19.11.2004. The amount has been received by the cheque. The share applicant M/s. Ekka Processors and Distributors Pvt. Ltd. paid the amount from its current account with Vijaya Bank, Azadpur, Delhi -110033 where no cash money was deposited before issuing the cheque to the assessee company. The amount was paid out of the two credits amounting to Rs. 36,00,000/- and Rs. 25,00,000/- which was credited in the share applicant's current account through transfer or clearing. The A.O. has not brought any material on record to prove and establish that the aforesaid two credits were originated directly or indirectly from the coffers of the assessee company. In the light of the facts of the present case and in the light of the various decisions referred to by the ld. CIT (A) in his order including the decision of the Hon'ble Delhi High Court in the case of CIT vs. Value Capital Services Pvt. Ltd. (2008) 307 ITR 334 (Delhi), we hold that the ld. CIT (A) has rightly deleted

the addition. We, therefore, uphold the order of the ld. CIT(A).”

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 five lacs cannot be regarded as undisclosed income of assessee under Section 68 of Act, 1961. Accordingly, present appeal is dismissed *in limine* but with no order as to costs.

MANMOHAN, J

CHIEF JUSTICE

AUGUST 12, 2010
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