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

+ ITA 1264/2010

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

versus

RAGHVI FINANCE LTD.

..... Respondent
Through: None

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Date of Decision: 31st 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? No.
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 the Income Tax Act, 1961 (hereinafter referred to as "Act, 1961") challenging the order dated 3rd September, 2009 passed by the Income Tax Appellate Tribunal (for brevity "Tribunal") in ITA No. 973/Del/2009 for the Assessment Year 2000-2001.
2. Ms. Prem Lata Bansal, learned counsel for the Revenue submitted that the Tribunal had erred in law in deleting the addition of ₹ 25,05,000/- made by the Assessing Officer (in short "AO") on account of unexplained share capital under Section 68 of Act, 1961.

She further submitted that the Tribunal had deleted the said addition even though the respondent-assessee had not established the identity and creditworthiness of the share applicants and genuineness of the transactions.

3. However, upon a perusal of the file, we find that the said addition was deleted by the Commissioner of Income Tax (Appeals) [for short "CIT(A)] and the Tribunal on the ground that the respondent-assessee had proved identity of the share applicants as well as payments had been received through account payee cheques and the share applicants were assessed to income tax. In fact, the Tribunal in its impugned order has observed as under :-

"4. We have considered the contentions of learned DR and carefully gone through the orders of the authorities below. From the record we found that CIT(A) had deleted the addition by recording a finding that the appellant company has proved the identity of the share applicants and payment has been received through account payee cheques and share applicants are assessed to income tax. This finding has not been controverted by learned DR. The issue with regard to addition on account of share capital is no more res-integra in view of the decision of Hon'ble Supreme Court in case of Lovely Exports wherein SLP was dismissed vide order dated 11.1.2008 holding that when 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. Similar was the finding of the Hon'ble Supreme Court in the case of Shipra Retailers (P) Ltd. in SLP No. 451/08 dated 21/1/2008 as also in the case of Divine Leasing & Finance Ltd. in SLP No. 375/08 dated 21/1/2008. In the instant case, shares have been allotted to all the share applicants on 4/1/2004. Return of allotment of shares in form No. 2 as per the Companies Act, 1956 was filed with Registrar of Companies Delhi and Haryana. Copy of same was also filed with the AO. Confirmations of the share applicants as desired by the AO were filed during the course of assessment proceedings. All the share applicants are the corporate assessee and assessed to tax with the income tax department. Applying the

proposition of law as laid down by Hon'ble Supreme Court, discussed hereinabove, to the facts of the instant case, we do not find any reason to interfere in the order of CIT(A) deleting the addition made on account of share capital."

4. In our considered opinion, the approach adopted by CIT(A) and Tribunal 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 cannot be regarded as undisclosed income of assessee under Section 68 of Act, 1961. Accordingly, present appeal, being bereft of merit, is dismissed *in limine*.

MANMOHAN, J

CHIEF JUSTICE

AUGUST 31, 2010

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