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

+ ITA 989/2010

COMMISSIONER OF
INCOME TAX

..... Appellant
Through: Mrs. Prem Lata Bansal,
Advocate

versus

M/S. ORBITAL COMMUNICATION
(P) LTD.

..... Respondent
Through: Mr. Piyush Kaushik, Advocate

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Date of Decision: 30th 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:

CM 13064/2010

For the reasons stated in the application, delay in re-filing the appeal is condoned.

Accordingly, application stands disposed of.

ITA 989/2010

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 29th July, 2009 passed by the Income Tax Appellate Tribunal (for brevity "Tribunal") in ITA No. 14/Del/2007 for

the Assessment Year 2001-2002.

2. Ms. Prem Lata Bansal, learned counsel for the Revenue submitted that the Tribunal had erred in deleting the addition of ₹ 1,70,00,000/- made by the Assessing Officer on account of share application money received by the respondent-assessee during the period under consideration. She pointed out that the Assessing Officer had reached the said conclusion as the assessee had deliberately failed to produce Mrs. Shakuntala Devi and, therefore, the deposits in her account remained uncontroverted.

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 assessee had produced substantial evidence to establish the identity and creditworthiness of Mrs. Shakuntala Devi. In fact, the CIT(A) in its order deleting the addition has observed as under :-

"5.2 I have examined the remand report furnished by the A.O. as well as the submission filed by the AR of the appellant vide his letter dated 11.06.2005 and rejoinder dated 02.01.2008. The appellant has filed copy of the bank statement of M/s. S.K. Land and Finance Co. (Prop.) Smt. Shakuntala Devi alongwith a typed copy of bank statement where narrations of the credit and debit entries have been given. The appellant has also filed copy of the assessment order of Smt. Shakuntala Devi for the AY 2001-02. It is seen from the details that entire money of Rs. 1,70,00,000/- which was received during the F.Y. 2000-01 as share application money by the appellant was transferred from the bank account of M/s. S.K. Land and Finance Co. running with State Bank of India, Mahrauli Road branch, Gurgaon as under:-

Date	Cheque No.	Amounts
20.06.2000	520686	10,00,000/-
21.08.2000	521086	20,00,000/-

17.11.2000	521983	50,00,000/-
01.09.2000	521898	10,00,000/-
06.12.2000	521997	20,00,000/-
30.12.2000	349910	20,00,000/-
07.02.2001	86946	10,00,000/-
06.03.2001	349958	10,00,000/-
14.03.2001	349966	10,00,000/-
17.03.2001	349970	10,00,000/-

It is also seen from the bank statement that most of the money deposited in M/s. S.K. Land and Finance Co. is credited by way of transfer or clearing. Therefore, the observation made by the A.O. in remand report that most of money was deposited by way of cash is not correct.

I have also gone through the copy of balance sheet of M/s. S.K. Land & Finance Co. filed before me. It is seen that the entire amount of Rs 1,70,00,000/- received by the appellant is shown in her balance sheet as “advance to be recoverable in cash or in kind”. The balance amount of Rs. 13,00,000/- was received in F.Y. 1999-2000 relevant to A.Y. 2000-01. It is also seen from the details filed by the appellant that Smt. Shakuntala Devi Prop, M/s. S.K. Land & Finance Co. is assessed to tax with Assistant Commissioner of Income-tax Central Circle 14 and for A.Y. 2001-02, she has been assessed at Rs. 93,33,166/-.

4. Further, the Tribunal in the impugned order has observed as under:-

“7. We have heard the rival contentions and perused the material available on record. The facts have been narrated above. In our view the assessee produced substantial evidence to establish the identity and credit worthiness of Smt. Shakuntla Devi, genuineness of share application is also manifest from record. Therefore, non-production of Smt. Shakuntla Devi cannot be considered to negate the evidentiary value of rest of material. The issue about share application money being undisclosed of income of assessee has been set at rest by Hon’ble Supreme Court in the case of Lovely Exports (supra) hold that such additions cannot be made in assessee’s hands. In view thereof, we uphold the order of CIT(A).”

5. 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.....”

6. 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.

7. Accordingly, present appeal, being bereft of merit, is dismissed *in limine*.

MANMOHAN, J

CHIEF JUSTICE

AUGUST 30, 2010

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