

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA No.340/2009

**CIT Appellant through
Ms. P.L. Bansal with
Mr. M.P. Gupta and
Mr. Sanjeev Rajpal, Advs.**

versus

TDI MARKETING PVT. LTD.Respondent through

None

CORAM:

**HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE RAJIV SHAKDHER**

O R D E R

19.05.2009

This Appeal under Section 260A of the Income Tax Act, 1961 assails the concurrent findings of CIT(A) as well as the ITAT. Forty persons had applied for

the share capital of the Respondent furnishing complete details of their name,

address, PAN No. and bankers. These details were forwarded to the Assessing Officer who has failed to give an account of his inquiries pertaining to them, except for the nine shareholders residing in Bombay. The Assessing Officer has

not given adequate details as to why additions have been made in respect of all the shareholders, even though all of them had confirmed the transaction. The

ITAT has applied the ratio in CIT ?vs- Sophia Finance Ltd., 205 ITR 98 where the

Full Bench had had held that as soon as the shareholders are identified and that

they have established that they have invested monies for the purchase of the shares, no additions would be justified. The ITAT has opined that the

Assessing

Officer has treated the share capital as unexplained cash credit merely on surmises and conjectures. It has concluded that the assessee has discharged the

onus and has kept in view the absence of material with the Assessing Officer. It has, therefore, observed that the CIT(A) has rightly deleted the additions made

by the Assessing Officer.

The factual matrix in the impugned Order has been set out as follows:-
Firstly it is to be noted that the issue though under section 68 is not of the simply cash credit but is in the form of share capital. The assessee received application for allotment of shares from 40 persons. All these parties made necessary application and their complete details like name, address, PAN number, bank details etc. are available and were filed before the Assessing Officer. The Assessing Officer is silent about the enquiries conducted with the parties other than 9 shareholders stationed at Bombay. However, the addition is made in respect of all the shareholders. This is not only surprising but is disturbing. If the shareholders have appeared and confirmed having entered into transaction, in absence of any contrary material, the Assessing Officer could not merely on presumption treat the share capital as unexplained cash credit.
The Full Bench of Delhi High Court in the case of CIT ?vs- Sophia Finance Ltd., 205 ITR 98 have held that if the shareholders are identified and it is established that they have invested money in the purchase of shares, then the amount received would be regarded as capital receipt and to that extent the observations of the Hon'ble Delhi High Court in the case of CIT ?vs- Stellar Investment Ltd., 192 ITR 287 are correct. The Full Bench of the Hon'ble Delhi High Court also held that if the shareholders exist, then possibly no further enquiry need be made but if the Assessing Officer finds that the alleged shareholders do not exist, then in fact it would be mean that there is no valid issuance of share capital. In the present case it is seen that the assessee have not only filed all the requisite details but to the extent possible produced the shareholders also. The Assessing Officer has not given his comments as regards shareholders other than 9 shareholders stationed at Bombay. Even these 9 shareholders have confirmed having applied and having invested in the share capital. In such circumstances, there is no material before the Assessing Officer except the surmises and conjectures for treating the share capital as unexplained cash credit. It is settled law that suspicion how so far strong, cannot be considered as evidence and no addition can be made merely on the basis of surmises, suspicion and conjectures. The assessee having discharged the

onus

and in absence of any material in the possession of the Assessing Officer, the addition was rightly deleted by the learned CIT(A).

It will be useful to clarify that CIT ?vs- Divine Leasing and Finance Ltd., [2008] 299 ITR 268(Delhi) has been affirmed by the Supreme Court of India

in CIT -vs- Lovely Exports (P) Ltd., 6 DTR (SC) 308. Their Lordships have succinctly commented that there was no merit in the 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

assessing officer, 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?.

In the present case we share the concern of the ITAT on the failure of the Assessing Officer to give his specific comments concerning the several shareholders, other than the 9 shareholders stationed at Bombay who had appeared

before him, none of whom have disowned the transaction. We agree with the ITAT

that, apart from failing to appreciate the correct legal position, so far as the facts are concerned, the Assessing Officer has acted on surmises and conjectures.

Appeal is dismissed. It deserves to be dismissed with exemplary costs but we decline to do so.

VIKRAMAJIT SEN, J

RAJIV SHAKDHER, J

MAY 19, 2009

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