

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

+ **ITA No.660/2008**

% **Date of Decision: January 17, 2011**

COMMISSIONER OF INCOME TAX PETITIONER
Through Ms.P.L. Bansal, Advocate

Versus

SAMTEL COLOR LIMITED RESPONDENT

Through Mr.Ajay Vohra with Ms.Kavita Jha and
Mr.Somnath Shukla, Advocates

AND

+ **ITA No.599/2010**

SAMTEL COLOR LIMITED PETITIONER
Through Mr.Ajay Vohra with Ms.Kavita Jha and
Mr.Somnath Shukla, Advocates

Versus

COMMISSIONER OF INCOME TAX RESPONDENT
Through Ms.P.L. Bansal, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI

HON'BLE MR. JUSTICE M.L.MEHTA

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| 1. Whether 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. |

A.K. SIKRI, J. (Oral)

CM No.7300/2009 in ITA No.660/2008

By this application, the respondent seeks to place on record some additional documents. The application is allowed and the documents are taken on record.

The application is disposed of.

CMs No.5474 & 5475 of 2010 in ITA No.599/2010

1. In this appeal filed by the assessee against the orders dated 06.07.2007, condonation of delay is sought in filing the appeal as well as refilling the appeal. Further against the same order, Revenue has also filed the appeal, i.e., ITA No.660/2008.

2. For these reasons, we condone the delay of 19 days in filing the appeal and 372 days in refilling the appeal, subject to a payment of Rs.5,000/- as costs to Delhi High Court Legal Services Committee within two weeks.

3. The applications are disposed of.

ITAs No.660/2008 and 599/2010

1. In both these appeals, one preferred by the assessee and other by the Revenue, same order of the Tribunal is under challenge. This order pertains to one issue only that the assessee had filed the return for the assessment year 1997-98. During the assessment proceedings, the Assessing Officer observed that the

assessee had taken deposits from public, which was to the tune of Rs.261.41 lakhs. According to the Assessing Officer, however, credit-worthiness in respect of 18 depositors could not be established by the Assessee and, therefore, deposits given by those 18 depositors, which were to the tune of Rs.18.00 lakhs, were added in the income of the assessee under Section 68 of the Income Tax Act. The details of these persons as given by the Assessing Officer are as follows:-

S.No.	Name of the Depositors	Amount (in Rs.)
1.	Ms.Urmila Agarwal	1,00,000/-
2.	Mr.Kapil Bihari Saxena	1,00,000/-
3.	Ms.Geeta Devi Chauhan	70,000/-
4.	Ms.Nishi Goel	50,000/-
5.	Ms.Prabha Goel	50,000/-
6.	Ms.Kavita Saxena	50,000/-
7.	Ms.Vibha Saxena	50,000/-
8.	Mr.Sandeep Kumar	50,000/-
9.	Mr.Baldev Kumar	2,00,000/-
10.	Ms.Bela Khanna	1,20,000/-
11.	Ms.Sneh Agarwal	2,50,000/-
12.	Ms.Shipli Agarwal	1,00,000/-
13.	Mr.Shobit Agarwal	1,00,000/-
14.	Mr.Rajesh Kumar Sharma	60,000/-
15.	Mr.Ramcharan Sharma	50,000/-
16.	Ms.Rajkumari Sharma	50,000/-
17.	Mr.R.C. Sharma	1,00,000/-
18.	Ms.Rajkumari Sharma	1,00,000/-

2. The CIT(Appeal) had allowed the appeal of the assessee on the ground that the assessee has been able to satisfactorily discharge the onus laid on it by furnishing requisite documents and information establishing the identity of those aforesaid persons and, therefore, deleted the entire amount of Rs.18.00 lakhs. The Revenue preferred an appeal against the order to the Income Tax Appellate Tribunal. The Tribunal has sustained the addition in respect of eight depositors which is to the tune of Rs.5.20 lakh and has sustained the order of the CIT(Appeals) so far as deletion is made in respect of other depositors at serial num.9 to 18, which was to the tune of Rs.12.80 lakhs. This is the reason that both the assessee and the Revenue have filed the appeals. The Revenue is aggrieved by the deletion of Rs.12.80 lakhs which is made by the CIT(Appeals) and sustained by the ITAT. On the other hand, the assessee is aggrieved by the order of the ITAT restoring the addition to the tune of Rs.5.20 lakhs, which was deleted by the CIT(Appeals).

3. In this backdrop, we admit the appeal of the Revenue with the following substantial question of law:

- (i) Whether ITAT was correct in law in deleting the addition of Rs.12.80 lakhs out of total addition of Rs.18 lakhs made by the Assessing Officer under Section 68 of the Act?

4. The appeal of the assessee is also admitted framing the following substantial question of law:

- (i) Whether on the facts and in the circumstances of the case the Tribunal erred in law in sustaining the addition of Rs.5.20 lakhs on account of unexplained deposits under Section 68 of the Act?

5. Both the appeals are heard at this stage itself with the consent of the learned counsel for the parties.

6. The Assessing Officer took the view, as noticed above, stating that there was no confirmation given by depositors at serial number 1 to 18, and, therefore, neither the identity nor the credit-worthiness was proved in these cases. In respect of depositors at serial number 9 to 14, assessee had furnished the confirmations, however, the additions were made on the ground that these depositors were not assessed to tax. Insofar as persons mentioned at serial No.15 to 18 are concerned, these are the retired government servants and their confirmation letters were filed. However, the Assessing Officer was of the view that merely by filing confirmation letters, identity and credit-worthiness of these persons could not be established.

7. The CIT (Appeals), on the other hand, while deleting the entire addition, was persuaded by the fact that the assessee is a public

limited company; it had received these deposits from a public offer and not privately; the assessee had been receiving such deposits; for each deposit, an application form was required to be filed up by the depositors giving his name, address and details of the payments; payments were received by account payee cheques or demand draft and these deposits were also repaid through cheques or demand drafts. It was also noted that in respect of interest paid, even tax at source was deducted under Section 194 (A) of the Act. On this premise, the CIT(Appeal) came to the conclusion that basic information with regard to these deposits was made available to the Assessing Officer and, therefore, onus shifted on the Assessing Officer to probe the matter further, if he was not satisfied with the aforesaid details, by issuing summons to those parties and examining them giving opportunity to the assessee to cross-examine such persons. He was also of the view that merely because some of the depositors were not assessed to income tax and had not given PAN/GIR numbers etc. could not be the reason for making addition under Section 68 of the Act. The Income Tax Appellate Tribunal, as noted above, has sustained the addition in respect of the depositors at serial number 1 to 8 and has sustained the order of the CIT(Appeals) so far as deletion is made in respect of other depositors at serial number 9 to 18. We are of the opinion that the order of the Tribunal confirming the order of the

CIT(Appeal) on the grounds made in the order are perfectly justified. In the additional documents filed by the assessee, the application form is also produced on which comments are made by the CIT(Appeals). The perusal of this application form would indicate that every possible information of the depositors was sought by the assessee, which includes particulars of the applicant/depositors, telephone number, the particulars of demand draft or cheque vide which the deposit is received, tax status of the applicant, other depositors with the assessee, if any, and more particularly the declaration in the following form:

“Declarations: I/We hereby declare that the amount being deposited herewith is not out of any funds acquired by me/us by borrowing or from deposits from any other person(s). I/we declare that I am/we are residents(s) in India and am/are not depositing this amount as nominee of any other resident. I/we declare that the first named depositor mentioned in our application is the beneficial owner of this deposit and as such should be treated as the payee for the purpose of deduction of tax under Section 194 A of the Income Tax Act, 1961 and for other purposes. I hereby solemnly declare that as on the date of this application, I/we have no amount of deposits or loans with company whether original (in cash or otherwise) remaining unpaid (whether repayment has fallen due or not, which by itself or taken together with the present applicants for Rs.20,000/- or more, in terms of section 269 SS of the Income Tax Act, 1961 (applicable only in case of application made in cash and not in Account Payee’s cheque/demand drafts). I/we declare that what is stated in this application is true and correct. I/we have read, understood and agree to abide by the attached terms and conditions governing the deposits.”

8. It is stated at the cost of repetition that assessee is a public limited company and the deposits were invited by public notice and not privately. It is also important to note that total deposits in this year, which was received, were to the tune of Rs.2.61 crores and the Assessing Officer has raised dispute only qua 18 persons and whose total deposits are Rs.18.00 lakhs. By giving the information, which was available with the assessee in the form received in the aforesaid application form filled by the depositors, we are of the view that assessee had, in the aforesaid circumstances, discharged the initial onus.

9. Therefore, we do not find any merit in the appeal filed by the Revenue and answering the question in the appeal of the Revenue against it and in favour of the assessee; we dismiss the appeal.

10. Insofar as addition of Rs.5.20 lakhs sustained by the ITAT is concerned, the only reason given is that in respect of these persons no confirmation letters could be filed. In view of the reasons given above, in a case where public company receives the deposit through public notice and not privately and various depositors make the deposits, it is possible that at relevant time, the assessing company is not in a position to take the confirmation from each and every depositor. The deposits of those eight persons are nominal in nature when compared to the total deposits received by the

assessee. Moreover, the information given in the application forms submitted by these depositors would have served the purpose and it cannot be said that the assessee did not discharge the onus. Thus, on the facts of this case, we are of the opinion that even in respect of these eight depositors, the assessee had discharged the onus. The order of CIT(Appeals) in deleting the entire amount was perfectly justified and could not have been interfered with by the ITAT qua those eight depositors.

11 We, accordingly, decide the question of law framed in the appeal of the assessee in favour of the assessee and against the Revenue thereby setting aside the order of the Tribunal and restoring the order of CIT(Appeals) in its entirety.

12. Both the appeals are disposed of accordingly.

**A.K.SIKRI,
(JUDGE)**

JANUARY 17, 2010
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**M.L.MEHTA
(JUDGE)**