

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D' : NEW DELHI

BEFORE SHRI D.R.SINGH, JM AND SHRI R.C.SHARMA, AM

ITA No.4354/Del/2009
Assessment Year : 2005-06

Income Tax Officer,
Ward-4(3),
New Delhi.

(Appellant)

Vs. M/s Le-Mans Overseas Pvt.Ltd.,
2044/6, Chuna Mandi, Pahar Ganj,
New Delhi – 110 055.
PAN No.AAACL3839K.

(Respondent)

Appellant by : Shri B.K.Gupta, Sr.DR.
Respondent by : None.

ORDER

PER R.C.SHARMA, AM :

This is an appeal filed by the Revenue against the order of CIT(A) dated 28.10.2009 for the AY 2005-06, in the matter of order passed u/s 143(3) of the IT Act.

2. We have heard the learned DR and gone through the orders of authorities below. From the record, we found that addition was made by the AO in respect of share application money received by the assessee during the year under consideration. The assessee has submitted share application form and confirmation of the amount received on account of share application money. Both the share applicants were private limited company registered under the Companies Act and are assessed to income tax, furnished their PAN numbers. The AO called for the persons who have applied for the shares but they did not turn up. The AO observed that summons issued to the Principal Officers have remained uncomplied with, therefore creditworthiness and genuineness of the cash receipt of share application money remained unsubstantiated. Accordingly, addition of Rs.19,38,000/- was made u/s 68 of the IT Act.

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3. By the impugned order, the CIT(A) deleted the addition by observing as under:-

"I have considered the written submission on behalf of the appellant, the findings of the Assessing Officer in the assessment order as well as in the remand report and the facts on record. During the course of assessment as well as appellate proceedings, all the particulars/details such as copy of share application form, PAN, income-tax details, copy of ITR, copy of balance sheet and profit & loss a/c, copy of memorandum and articles of association, share application form, copy of resolution of board of directors of both the share applicants. There is also no dispute that all the confirmations were filed before the Assessing Officer. The notices issued by the Assessing Officer under section 133(6) of the Act were duly served upon the parties. Replies to the notices issued by the AO to various share applicants were also filed before the Id.AO with which copy of share application form, copy of ITR, copy of balance sheet and P&L A/c for the AY 2005-06, copy of memorandum of association of company, copy of resolution of board of directors, affidavit for the above effect, confirmation letter and copy of form 18 for address verification of both the share applicants were attached. It is now well settled that where the assessee had furnished (i) the names and addresses of the share applicants (ii) the GIR nos./PAN nos. (iii) the Ward Nos. where assessed (iv) the mode of payment and (v) other information which the assessee knows or possesses, then it can be said that initial burden on the assessee can be said to have been discharged. Once the identity of the shareholders was established it also stands established that the shareholders have invested money in the purchase of shares and hence the onus, on the part of the assessee company, is discharged and there can not be any addition in the hands of the assessee company on account of share application money. Reliance is placed on the following decisions of the Apex Court and the jurisdictional High Court of Delhi :-

- i) CIT Vs. Lovely Exports (P) Ltd. (2008) 216 CTR (SC) 195.
- ii) CIT Vs. Divine Leasing & Finance Ltd. (2007) 299 ITR 268 (Del).
- iii) CIT Vs. Value Capital Services Ltd. (2008) 307 ITR 334 (Del).
- iv) CIT Vs. TDI Marketing Pvt.Ltd. (2009) 26 DTR (Del) 358.


In the present case the assessee can be said to have discharged its onus under section 68 of the Act. The appellant has given all the necessary details in order to establish the identity of the share

applicants. After considering the entire material placed on record, it is fair to conclude that the share applicants were existing parties and their identity was established.

3.3 It is also observed that the Assessing Officer could not point out any discrepancy in the evidences relied upon by the assessee. He has neither brought out any direct or inferential evidence to contradict the contention of the assessee. Though the PAN and income-tax details were given, the Assessing Officer did not pursue the matter further for making enquiries from the various Assessing Officers assessing such persons (share-applicants). Further, what is the desired documentary evidence required to support the claim of the assessee as required by the AO is not coming out of the order of the AO. Though, the share-applicants could not be examined by the AO, since they were existing on the file of the Income Tax Department and its income-tax details were made available to the AO, it was equally the duty of the AO to have taken steps to verify their assessment records and if necessary to also have them examined by the respective AOs having jurisdiction over the share-applicants, which has not been done by him.

3.4 Under the facts and circumstances of the case stated above, it is held that the addition of Rs.19,38,000/- can not be sustained and accordingly, the same is directed to be deleted. As the addition on account of accommodation entry has been deleted, the consequential addition on account of commission of Rs.19,380/- for obtaining the said accommodation entries is also directed to be deleted. As a result, all the grounds of appeal are allowed."


4. We have considered the contention of learned DR and gone through the orders of the authorities below and found that addition made on account of share application was deleted by the CIT(A) after calling for a remand report from the AO. A finding of fact has been recorded by the CIT(A) to the effect that share application form, PAN number, copy of ITR, copy of balance sheet and profit & loss account, copy of memorandum and articles of association, copy of board's resolution etc. were filed. It was also observed that confirmation from both the applicants were filed before the AO and that notice issued by the AO u/s 133(6) was duly served upon the parties and they have also filed replies before the AO. In view of these findings recorded at para-3.2, 3.3 & 3.4, the CIT(A) reached to



the conclusion that once the identity of the share holders was established and it stands established that the shareholders have invested money in the purchase of shares, hence onus on the part of the assessee company is discharged. The CIT(A) has relied on the proposition laid down by the Hon'ble Supreme Court in the case of Lovely Exports – 216 CTR 195, 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. In view of the above, we do not find any infirmity in the order of CIT(A).

5. In the result, the appeal of the Revenue is dismissed.

Decision pronounced in the open Court on ^{2nd March} ~~January~~, 2010.

 (D.R.SINGH)
JUDICIAL MEMBER

(R.C.SHARMA)
ACCOUNTANT MEMBER


Dated : 2 .03.2010.
VK.

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Deputy Registrar