

* HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 26th May, 2010

+ **ITA 498/2010**

The Commissioner of Income Tax-II ... Appellant
Through: Mr.Sanjeev Sabharwal, Adv.

versus

Khushagra Real Estate P. Ltd. ... Respondent
Through: None

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MADAN B. LOKUR

1. Whether reporters of the local papers be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

DIPAK MISRA, CJ

This is an appeal under Section 260A of the Income Tax Act, 1961 (for short 'the Act') by the Revenue challenging the propriety of the order dated 17th July, 2009 passed by the Income Tax Appellate Tribunal Delhi Bench (for short 'the Tribunal') in ITA No.1505(Del)/2007 which pertains to Assessment Year 2000-01.

2. The factual matrix as is exposited are the assessment proceeding for the Assessment Year 2001-02 was completed by the Assessing Officer. Thereafter, the Assessing Officer taking approval of the Additional CIT, Range 5, New Delhi had reopened the assessment. Though the Assessee

initially challenged the reopening of assessment, yet the same was not pressed before the Tribunal and hence, we will not dwell upon the same.

3. The Assessing Officer took note of certain transactions and came to hold that though the identity of the creditors was established, yet the creditworthiness of the subscribers and the genuineness of the transactions were not proved. He was also of the view that the source of the creditors was also not proved. Being of this view, the Assessing Officer assessed the Assessee and issued a notice of demand and further initiated a penalty proceeding under Section 271(1)(c) of the Act.

4. Being dissatisfied with the said order, the Assessee preferred an appeal before the CIT(A) and the Appellate Authority affirmed the order passed by the Assessing Officer.

5. Being dissatisfied with the said order, the assessee moved the Tribunal in appeal. The Tribunal has held as under:

“2.2 We have considered the facts of the case and rival submissions. The details of share application money of Rs.26.57 lakh, received by the assessee in this year, are mentioned at page 2 of the assessment order. These details are reproduced below:-

Sl.No.	Name of the company	Figures as at 31.3.1999	Figures as at 31.3.2000
1.	Himalayan Production & Estate P. Ltd.		500000/-
2.	G.K. Consultants Ltd.		500000/-
3.	Sasa Foods Pvt. Ltd.		500000/-
4.	Cosmos Compu-Tracs Pvt. Ltd.		150000/-
5.	Cosmos Financial Services P. Ltd.		500000/-

6. Suash Trading & Mfg. Pvt. Ltd.		500000/-
Share application money	7000/-	7000/-

2.3. It is an admitted fact that confirmations from these parties have been filed and the money has been received through banking channel. The applicants are limited companies. In such a situation, the decision of Hon'ble Supreme Court in the case of *Lovely Exports (P) Ltd.* (supra) is applicable. Respectfully following this decision, it is held that there was no justification for addition of Rs.26.50 lakh, made by the AO and sustained by the learned CIT(Appeals) u/s 68 of the Act. Thus, ground no.2 is allowed. In view thereof, it is not necessary to decide ground nos.3 and 4, which are in the nature of arguments based upon pre-existing decisions, for the reason that the facts of the case are covered by the latest decision of Hon'ble Supreme Court mentioned above.”

6. On a scrutiny of the order passed by the Tribunal, it is clear as day that the Tribunal has based its conclusion on the decision rendered in *Commissioner of Income Tax v. Lovely Exports (P) Ltd.* (2008) 216 CTR 195 wherein their Lordships have held thus:

“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.”

7. In our considered view, reliance placed by the Tribunal on the said decision in the obtaining factual matrix is totally justified. In the case at hand, the identity of the creditors is known and hence the Assessing Officer can really proceed as has been held by their Lordships in *Lovely Exports (P) Ltd.* (supra) against such creditors in accordance with law.

8. In the result, we do not find any substantial question of law involved in this appeal and accordingly the same stands dismissed in limine.

CHIEF JUSTICE

MADAN B. LOKUR, J

MAY 26, 2010
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