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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ITA 457/2016

THE PR. COMMISSIONER OF INCOME TAX 4 Appellant
Through : Sh. Ruchir Bhatia, Sr. Standing Counsel
with Sh. Puneet Rai, Jr. Standing Counsel.

versus

ISF SECURITIES PVT. LTD. Respondent
Through : None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

% **ORDER**
22.08.2016

The revenue claims to be aggrieved by the order of the Income Tax Appellate Tribunal (ITAT) which rejected its appeal. During the relevant period, i.e. AY 2005-06, the Assessing Officer (AO) had brought to tax the sum of ₹1,44,85,000/-, contending that the genuineness of the share application money and the identity disclosed by the assessee was suspect. The assessee's appeal was accepted by CIT(A), who noticed that for the subsequent years, the investment to the tune of ₹44 lakhs had been established and accepted. The investment was by the same individual. As far as the assessment year in question is concerned, the CIT(A) was satisfied that an addition under Section 68 was not warranted because the share applicant/Vinay Khosla's particulars, i.e. address, the NRI bank account etc. were specified and disclosed in the assessment proceedings. The CIT(A) held as follows:

“6. After going through various facts of the case and judicial pronouncement on this issue, cited supra, it is seen that the appellant’s case is covered by the above judgments.

In the light of the judicial pronouncement and the facts of the case, I am of the opinion that the appellant during the course of proceedings has discharged the initial onus of establishing the bonafides of the transaction and the AO was not justified in ignoring various evidence provided to him by the appellant. Nothing adverse has been brought on record by the AO to establish that the share capital money received by the appellant represented its own undisclosed income. In fact the appellant had filed the share purchase agreement with Mr. Vinay Khosla who is NRI alongwith all the details of NRE bank a/c from which the share application money was paid. Similarly about other share applicant all the evidence are filed like PAN No. Bank a/c details, residential address etc. was filed.”

Since in the present case the AO has failed to bring any clinching evidences to support the presumption taken by him, it is clear that even the ratio of judgment in the case of McDowell Ltd. is not applicable in the instant case.

In the light of the above discussion, I am inclined to agree with the arguments and evidences provided by the appellant to substantiate that the share application money received by it was genuine transaction and the same was not accommodation entry. I also don’t find any evidence collected by the AO which could prove otherwise. Accordingly, the AO was not justified in treating Rs.1,44,85,000/- the amount of share application money received by the applicant as its undisclosed income.

Therefore, this ground of appeal is allowed;”

We are of the opinion that the CIT(A)’s order – which stands confirmed by the ITAT is both sound and unexceptionable having regard to the principle applicable to Section 68 and the circumstances under which investments and share application money is deemed suspect. In the present case, the share applicant’s identity was disclosed and the source of his funds was also proved. That the AO did not deem it appropriate to probe further did not mean that the incomes were liable to be treated under Section 68. The appeal does not raise any substantial question of law. It is accordingly dismissed as unmerited.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 22, 2016

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