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

\+ ITA 467/2016, CM Nos. 26613-26614/2016

PR. COMMISSIOER OF INCOME TAX-5 ..... Appellant

Through: Mr. Rahul Chaudhary, Advocate along with Mr. Raghvendra Singh, Advocate.

versus

LAKSHMI FLOAT GLASS LTD. ..... Respondent

Through: Mr. Kamal Sawhney, Advocate along with Mr. Prakash Kumar and Gautam Jain, Advocates.

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

O R D E R

% 24.08.2016

The revenue is aggrieved by an order of the Income Tax Appellate Tribunal (ITAT) whereby the CIT (A)'s order setting aside the addition of ` 3.85 crores made under Section 68 of the Income Tax Act was affirmed.

The relevant facts are that for AY 2000-2001, the assessee, an incorporated company increased its share capital by almost ` 8 crores. It was subjected to assessment in the ordinary course.

Initially, the assessment was framed without scrutiny under Section 143(3). Subsequently, on the basis of search on entry operators

and survey of the asseesee company's premises-during the course of which, on the basis of materials and statements, the AO was of the opinion that the assessee in this case had withheld particulars that resulted in failure to disclose income etc. leading to escapment of income; thus reassessment procedures were initiated under Section 147/143.

After completion of the enquiries, the AO passed the final order adding back 3.85 crores. The CIT (A) considered all the circumstances in the submissions before it. He took note of the fact that the substantial amount of share application money by other applicants was accepted. We also noted that five industries i.e. Harpal Associates, M/s Chitragandha Investments & Consultants (P) Ltd., M/s Parvantra Capital & Fin Services (P) Ltd., M/s Vimka Impex (P) Ltd. and SGC Publishing (P) Ltd. did not find any mention in the statements of the three persons who were questioned during the course of seizure procedures. The AO was informed of the fact in the course of Section 147/143 proceedings, that a survey was conducted under Section 143. In the survey proceedings, the assessee had apparently acknowledged the unaccounted amount of ` 3.85 crores. The CIT (A) observed that however there was no nexus between the addition of ` 3.85 crores and the survey material or any other material to the contrary. The CIT (A) took note of all the materials made available to the AO in reassessment proceedings and concluded it to be unwarranted.

The revenue's appeal was rejected; the ITAT in its impugned order stated as follows:-

"The Learned CIT(Appeals) has noted further that five investors, namely, Harpal Associates (P) Ltd., Chitragandha Investments & Consultants (P) Ltd., Parvantra Capital & Fin Services (P) Ltd" VimkaImpex (P) Ltd. and SGC Publishing (P) Ltd. do not find any of above three persons and no material is available on record during assessment proceedings for the basis to justify any addition in these companies. The Learned CIT(Appeals) has noted further that there is no nexus between the additions of Rs.3.85 crores and survey material that could support the addition. The addition was made not on the basis of any evidence found during the course of survey but on the basis of statements of Shri Arvind Kumar Gupta recorded during the survey. Shri Arvind Kumar Gupta on the basis of whose statements, the addition is made has specifically admitted in question Nos. 18 & 21 of the statements that details and genuineness of share capital is as per the shareholders register and there is no incriminating material found during survey. Also that the very basis of question No. 22 that cheques are accommodation entries in ,lieu of cash deposit with them in any of their accounts is not supported by material or bank statement of any account produced on record either during surveyor assessment to justify that question No.22 was factual and bona fide. The Learned CIT(Appeals) has noted further that as per material produced by assessee (page Nos. 253 to 255 of the paper book), the subsource of share capital of Rs.3.85 crores, except an insignificant amount of Rs. 84,858 that too is sum total of miscellaneous small amounts have been made through cheques duly credited in bank accounts of shareholders. Thereafter the Learned CIT(Appeals) at page- Nos.44 to 46 of the First Appellate Order has noted about the particulars and documents of 16 shareholders furnished by the assessee to corroborate the submissions and highlighting the identity and creditworthiness of the shareholders and genuineness of shares subscription transactions. The Learned CIT(Appeals) has noted further that all the shareholders

are incorporated and registered with the concerned registar of companies under the Companies Act, 1956 and are allotted company identification number by the ROC, Ministry of Corporate Affairs, Government of India after they having completed necessary formalities and their status shown is active. He noted further that all the shareholders are income-tax assessees and are assessed to tax under jurisdiction of different Assessing Officers. The genuineness of the share subscription transaction is verifiable from LT. Records, bank statements of the subscribers and all the share holders share application form, board's resulation etc. Besides, the shareholders have confirmed the share money transaction which were produced before the Assessing Officer. At the conclusion of the paragraph, the Learned CIT(Appeals) has directed the Assessing Officer to delete the addition on the basis that the assessee has established the identity of the 16 share-subscribers, their creditworthiness and genuineness of the share transactions with documentary evidence as per law."

Learned counsel relied upon the decision of this court in ***CIT Vs. Jansampark Advertising & Marketing Private Limited, (2015) 56 Taxmann 286 (Del)*** and submits that whereas the assessee might have established the identity of the investor, it failed to establish the genuineness of the investor or the creditworthiness of the share applicants and under the circumstances the impugned order is inconsiderable.

This court has considered the submissions. It is no doubt correct that Section 68 casts an initial burden upon the assessee to disclose the identity of the applicant/investor as well as the genuineness of the transaction. In this case, it is evident that the

discussion of the facts by the CIT(A) and the ITAT, has resulted from the materials on record. The AO shall undoubtedly be justified as to the identity of the share applicants. This Court is however unpersuaded by the revenue submission that the genuineness of the transaction or the creditworthiness of the assessee had to be established in the given facts of this case. The factual narration by the CIT(A) which was affirmed by the ITAT unequivocally point to the assessee disclosing materials such as the bank accounts, the share particulars, income tax details and other materials which would have enabled further enquiry by the AO. The CIT (A) further also records that on a scrutiny of the bank accounts of the share applicants, the source of deposit of ` 3.5 crores, except a small amount of ` 84,858/-, are by way of account payee cheques, there was no cash inclusion. In case AO so wished, it was open for him to make further enquiries. That he did not do so, in our opinion, would not mean that the assessee failed to discharge the initial burden in establishing the genuineness of the transaction or the creditworthiness of the share applicants.

For the above reason, no question of law arises. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 24, 2016
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