$~45

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

\+ ITA 883/2016

PR. COMMISSIONER OF INCOME TAX – 4 ..... Appellant

Through : Sh. Zoheb Hossain, Sr. Standing Counsel with Sh. Akshay Saxena and Sh. Deepak Anand, Advocates.

versus

GAZIPUR PROPERTIES PVT. LTD. ..... Respondent

Through : None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>ORDER</u>

% **07.12.2016**

In the appeal under Section 260A of the Income Tax Act, 1961 [hereafter "the Act"], the revenue is aggrieved by the order of the Income Tax Appellate Tribunal (ITAT) which confirmed the decision of the CIT (Appeals) on the question of addition under Section 68 of the Act.

During the relevant period, i.e. AY 2006-07, the assessee had *inter alia* claimed in its returns that it received large sums of money from third parties on account of capital issue. The Assessing Officer (AO) doubted the genuineness of the source of funds, added these and brought them to tax. In the appellate proceedings, CIT(A), based upon additional materials, furnished during the course of the proceedings, sought a remand report. In the remand proceedings, the AO called the share applicants and also sought details and particulars. The share applicants complied to the communication, and provided details of PAN numbers, filed copies of the income tax returns along with balance sheets, profit and loss accounts, bank statements and other relevant materials. The remand report concluded that the share applicants, after furnishing these particulars did not choose to appear further. These materials were categorically considered by the CIT(A) who noted that the identity of the share applicants and of the financial particulars, PAN numbers, IT returns, names of banks, the channel through which the funds were spent in respect of the share applicants, profit and loss accounts, balance sheets, bank statements of four applicants during the relevant period showing the relevant transactions etc. had been disclosed. The CIT(A), therefore, held that the assessee had discharged the burden of proving three-pronged requirements under Section 68 of the Act, i.e. identity of the share applicants, genuineness of the transaction and creditworthiness of the investor. So concluding, the CIT(A) allowed the appeal. This order was confirmed by the ITAT.

It is urged on behalf of the revenue that the CIT(A) ignored, and overlooked the incriminating statements made by the accommodation entry providers, who had clearly stated that the sums of money reached through bogus entries and that in reality, the amounts had to be added under Section 68. It was submitted that absence of the share applicants after a point of time led to the inference that there was no genuineness as to the transaction.

This Court is of the opinion the the requirements of Section 68 as spelt out in *CIT v. Lovely Exports Pvt. Ltd.* 2008 (299) ITR 268

(SC) have been complied with. The assessee did all that it was required to do - provide the identity of the shareholders, the financials relating to transactions as well as the materials to establish creditworthiness of the third parties. This Court also notices that the share applicants had contended that the amounts were received by them on account of transfer of their assets at the relevant time.

In these circumstances, having regard to the law that the assessee is not required to prove the *source of the source* but rather only discharge the initial burden placed on it under Section 68, we find no infirmity with the impugned order. No substantial question of law arises. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

DECEMBER 07, 2016
ajk