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

+ ITA 130/2018

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-1

..... Appellant

Through: Mr. Rahul Chaudhary, Sr. Standing
Counsel with Mr. Sanjay Kumar, Jr. Standing
Counsel for Income Tax Deptt.

versus

M/S ADAMINE CONSTRUCTION PVT. LTD. Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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06.02.2018

1. The question sought to be urged in this case is whether the addition of ₹4.65 crores under Section 68 of the Income Tax Act, 1961 (hereafter referred to as 'the Act') made in the course of re-assessment proceedings for A.Y. 2008-09, was justifiably directed to be deleted.

2. The assessee's original return was processed under Section 143(1) of the Act claiming that some receipts were suspect. Re-assessment proceedings were initiated on 19.09.2011. The AO observed that the assessee received share capital and share premium from various Kolkata and Mumbai based companies aggregating ₹4.65 crores. After eliciting relevant information and conducting enquiries in the course of which notices were issued

under Section 131 of the Act to the concerned share applicant as well as after taking into account reports received from the revenue authorities, these amounts were added under Section 68 of the Act. Furthermore, the AO brought to tax ₹50 lakhs received by the assessee as application money from one Real Gold Trading Private Ltd. The CIT(A) to whom the assessee appealed, considered the same material that was before the AO and by a detailed order, was of the opinion that since the identity of the investors had been established and prima facie their credibility too was revealed, burden of proving that the transactions were not genuine lay upon the Revenue. After noticing the judgment of the Supreme Court in *Commissioner of Income Tax v. Lovely Exports Pvt. Ltd.* (2008) 216 CTR 195 (SC) and other judgments of this Court, the CIT(A) directed that the amounts brought to tax under Section 68 of the Act ought to be deleted. The ITAT by its impugned order confirmed the CIT(A)'s conclusions.

3. The Revenue in its appeal urges that the lower appellate authorities fell into error in not placing much emphasis on the report obtained by the AO during the course of the proceedings in the form of replies to queries received from the concerned Commissioners. It was submitted that these materials clearly pointed to the entities who were shown as share applicants, in fact, did not exist and their financial transactions were dubious. It was submitted that the CIT(A)'s conclusions with respect to the assessee having discharged its onus were anomalous.

4. The material on record in the form of the orders of the lower appellate authorities disclosed that both the assessee and later the share applicants (upon receiving notice under Section 131 of the Act) had produced documentary proof. These included the assessments and income-tax returns filed by the share applicants as well as confirmation and acknowledgment documents. If the AO wished to pursue the matter, there were sufficient clues for him to have proceeded – for instance, it could have issued notices and obtained statements from the bankers of the share applicants or even the balance sheets which existed in the income-tax records of their Assessing Officers. He did not choose to pursue both but instead rested his conclusions entirely on the basis of remarks received from the Commissioner. These remarks can at best be considered opinion but not primary evidence to displace the inferences that had to be drawn with respect to the genuineness of the transaction and the creditworthiness of the parties.

5. In these circumstances, no question of law arises; the appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 06, 2018
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