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

+ **ITA 42/2018**

PR. COMMISSIONER OF INCOME TAX-6, NEW DELHI

..... Appellant

Through : Mr. Asheesh Jain, Sr. Standing
Counsel with Ms. Lakshmi Gurung,
Adv.

versus

NARANG CONSTRUCTION AND FINANCE PVT. LTD.

..... Respondent

Through : None

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R. K. GAUBA

ORDER

% **16.01.2018**

1. The revenue is aggrieved by the ITAT's decision upholding deletion of the sum of ₹1,14,02,600/- under Section 68. The assessee's returns were processed under Section 143(1). Urging the failure to disclose the material and particulars, re-assessment was resorted to. During the course of the re-assessment, the Assessing Officer was of the opinion that bogus transactions were shown as receipts towards share application money through 10 entities. The Assessing Officer disallowed the assessee's claim and brought to tax the sum of ₹1,14,02,600/-. The CIT(A), upon appeal, accepted the plea about the genuineness of the transactions; the ITAT confirmed that finding.

2. The revenue urges that the findings of the CIT(A) and the ITAT cannot be sustained because even though the identity and nature of transactions were disclosed and perhaps even the creditworthiness of the share applicants, the genuineness was not established. Mr. Asheesh Jain, learned counsel relied upon *Commissioner of Income Tax vs. N.R. Portfolio (P) Limited*: (2013) 214 Taxman 408; *Commissioner of Income Tax vs. Navodaya Castles Pvt Ltd*: (2014) 367 ITR 306. It was submitted that the Assessing Officer, on analysis of the bank statements, correctly surmised that the transactions towards share application deposits were not genuine transactions and correctly brought the amounts to tax under Section 68.

3. The CIT(A) and the ITAT reconsidered the materials on the record and upon their overall analysis formed the opinion that the appropriate tests, indicated by the Supreme Court in *Commissioner of Income Tax vs. Lovely Exports* : 301 ITR 218 (SC) were satisfied that the materials on record are not mere superficial details like PAN, ROC, etc. but further facts relating to the bank accounts of the share applicants. The relevant extracts have been reproduced in the order of the Assessing Officer as well as CIT(A) which disclosed that the share applicants were entering into proper commercial transactions and were not *per se* forged, bogus or sham investors. Undoubtedly, the Assessing Officer had ground to suspect that the entries were made prior to the investments. But that was precisely what was required of him. The assessee – in re-assessment, provided all that it

could; share investors' income tax returns and balance-sheets could appropriately have been sourced by the Assessing Officer in the re-assessment proceedings.

4. In these circumstances, it cannot be said that the Assessing Officer exercised due diligence in respect of all facets of the case. Even a contrary view would amount to re-assessment in the facts and circumstances. The CIT(A) and the ITAT's findings, therefore, do not call for any interference. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

R. K. GAUBA, J

JANUARY 16, 2018
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