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

\+ ITA 71/2019

PRINCIPAL COMMISSIONER OF
INCOME TAX-7, CCIT(OSD) ..... Appellant
Through: Mr.Sanjay Kumar, Advocate

versus

PRIYATAM PLASCHEM PVT. LTD. ..... Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

<u>O R D E R</u>

% **28.01.2019**

1. The Revenue claims to be aggrieved by the order of the ITAT contending that the addition of ₹6 crores made by the lower Revenue authorities is justified.

2. The assessee had reported the receipt of ₹6 crores as share application money on account of issue of fresh capital on premium. The share value at face value of ₹10 were issued at a premium of ₹1,190/-. A Notice was issued to the investor M/s Mekastar Finlease Pvt. Ltd. under Section 133(6). The share applicant confirmed the transaction together with its ITR and other relevant documents such as bank statements etc. to the AO. The AO was of the opinion that the investor had received money from M/s SKPJ and

one Bilberry which belong to S.K. Jain Group and the latter was known as accommodation entry providers. On this ground the AO dis-allowed the share application money and brought it to tax under Section 68. The assessee appealed to CIT(A), which dismissed the appeal, concurring with the view, and was of the opinion that the shares were not offered at fair market value and additionally brought to tax under Section 69C. The ITAT in its impugned order set aside the findings of the lower tax authorities, essentially on the ground that the AO did not make any inquiry from the banker of the investor and no notice was issued under Section 131, to the investor or the banker. It relied upon several decisions of the Court including that of this Court in *Commissioner of Income Tax-II vs. M/s. Jansampark Advertising & Marketing (P) Ltd.,* [(2015) 375 ITR 373]. Further decisions in *Commissioner of Income Tax vs. Nova Promoters & Finlease Pvt. Ltd.* [(2012) 342 ITR 169]; *Pr. CIT vs. Bikram Singh* [(2017) 399 ITR 362 (Del.)] were relied upon.

3. The principle applicable to decide whether the amount can be brought to tax under Section 68 of the Income Tax Act are identity of the investor/ creditor, its credit worthiness and genuineness of the transactions. The initial burden of discharging this is upon the assessee [*Commissioner of Income Tax vs. Lovely Exports Pvt. Ltd.* [(2008) 216 CTR 195] : (2010) 14 SCC 761, by which the Division Bench judgment of this Court in *Commissioner of Income Tax v. Divine Leasing & Finance Ltd.* (2008) 299 ITR 268 was affirmed.

4. In this case, the assessee had provided the details of the investor; a survey enquiry pursuant to Section 133(6) was carried out. That the investor

M/s Mekastar Finlease Pvt. Ltd. was genuine stood established; it had resources to the tune of ₹300 crores. The only ground on which the genuineness of the transactions was doubted was that the M/s Mekastar Finlease Pvt. Ltd. also received some amounts from dubious sources. It is now established that the investor's duty is to satisfy the Revenue about the trinity of tests indicated in the said judgment, which itself is an authority for the proposition that the assessee is not under a duty to enquire or satisfy the Revenue about the source of the source. On a fair application of that decision of this Court, as affirmed by the Supreme Court, this Court is satisfied that no case is made out for interference. No substantial question of law arises. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

JANUARY 28, 2019
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