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**(2006) 08 DEL CK 0126**

**In the Delhi High Court**

**Case No :** IT Appeal No. 185 or 2006 , 18 August, 2006

Commissioner of Income Tax

APPELLANT

Vs

Glocom Impex (P) Ltd.

RESPONDENT

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**Date of Decision :** 18-08-2006

**Acts Referred:**

**Citation :** (2006) 205 CTR 571 : (2008) 299 ITR 39 : (2006) 157 TAXMAN 308

**Hon'ble Judges :** Vipin Sanghi, J; Madan B. Lokur, J

**Bench :** Full Bench

**Advocate :** P.L. Bansal, KR. Manjani, for the Responden, for the appearing parties;

**Final Decision :** Dismissed

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## Judgement

By the Court

The revenue is aggrieved by an order dated 29-3-2005 passed by the Tribunal, Delhi Bench "A" in ITA No. 5185/Del/2004 relevant for the assessment year 2001-02.

2. The assessed had received an amount of Rs. 15 lacs towards share capital contribution from one of its directors that is Sint. Kavita Kothari.

To ascertain the source of investment, Smt. Kavita Kothari was summoned by the assessing officer. She appeared before the assessing officer and produced her bank statement which indicated that she had issued three cheques of Rs. 5 lakhs each to the assessed. Prior to this she had received three cheques of Rs. 5 lakhs each from the State bank of India, Fateh Puri, Delhi and these cheques were issued by M/s Mahal Chand Moti Lal Kothari & Co. The assessing officer tried to find out the source of the amounts given by M/s Mahal Chand Moti Lal Kothari to Smt. Kavita Kothari and found that cash deposits were made in the bank account of M/s Mahal Chand Moti Lal Kothari. The assessing officer, Therefore, issued summons to M/s Mahal Chand Moti Lal Kothari at its New Delhi address but the summons were received back unserved. In view of this, the assessing officer was

not satisfied about the genuineness of M/s Mahal Chand Moti Lal Kothari and, Therefore, added the income of Rs. 15 lacs as unexplained cash credit u/s 68 of the Income Tax Act, 1961 to the income of the assessed.

3. The view taken by the assessing officer was upheld by the Commissioner (Appeals). On further appeal before the Tribunal, the assessed was successful in proving its case and, Therefore, the revenue has filed the present appeal u/s 260A of the Act.

The Tribunal has noted that there is no dispute about the genuineness of Smt. Kavita Kothari. In fact, not only did she appear before the assessing officer but her GIR number was also disclosed. She also filed a copy of her return of income along with the balance sheet in which she declared an investment of Rs. 15 lakhs in the shares of the assessed. Insofar as M/s Mahal Chand Moti Lal Kothari is concerned, its bank statement had been produced before the assessing officer, as noted by the assessing officer himself, but even though the company was based in Calcutta, summons was issued to it on the Delhi address. In any case, the creditworthiness of, Smt. Kavita Kothari was not doubted and there was evidence to suggest that M/s Mahal Chand Moti Lal Kothari also had the requisite amount of creditworthiness on the basis of which cheques were issued to Smt. Kavita Kothari. Given these facts, the Tribunal was of the view that the assessed cannot be foisted with a liability. u/s 68 of the Act.

4. We are of the view that the revenue has not been able to raise any substantial question of law. It is clear that the assessed received share application money from Smt. Kavita Kothari who is not only a genuine person but was also creditworthy. She was able to show that she had received cheques from M/s Mahal Chand Moti Lal Kothari. Her bank statements were produced before the assessing officer which clearly showed that she had the requisite amount for investment.

5. Learned counsel for the revenue submitted that for the purpose of invoking section 68 of the Act, it could go as far back as to question the genuineness of M/s Mahal Chand Moti Lal Kothari.

For this, she relied upon Commissioner of Income Tax Vs. Sophia Finance Ltd., . In this Full Bench decision of this Court, the following passage was relied upon by learned counsel for the revenue :

"It is neither necessary nor desirable to give examples to indicate under what circumstance section 68 of the Act can or cannot be invoked. What it clear, however, is that section 68 clearly permits an Income Tax Officer to make enquiries with regard to the nature and source of any or all the sums credited in the books of account of the company irrespective of the nomenclature or the source indicated by the assessed. In other words, the truthfulness of the assertion of the assessed regarding the nature and the source of the credit in its books of account can be gone into by the Income Tax Officer. In the case of Commissioner of Income Tax Vs. Stellar Investment Ltd., , the Income Tax

Officer had accepted the increased subscribed share capital. Section 68 of the Act was not referred to and the observations in the said judgment cannot mean that the Income Tax Officer cannot or should not go into the question as to whether the alleged shareholders actually existed or not. If the shareholders are identified and it is established that they have invested money in the purchase of shares, then the amount received by the company would be regarded as a capital receipt and to that extent the observations in the case of Stellar Investment Ltd. (supra), are correct but if, on the other hand, the assessed offers no Explanation at all. or the Explanation offered is not satisfactory then, the provisions of section 68 may be invoked. In the latter case section 68, being a substantive section, empowers the Income Tax Officer to treat such a sum as income of the assessed which is liable to be taxed in the previous year in which the entry is made in the books of account of the assessed.

6. A reading of the aforesaid passage does not support the case of the revenue. The revenue could have gone back, insofar as the assessed was concerned, to determine whether Smt. Kavita Kothari was a genuine person and whether she had requisite creditworthiness or not, Once that was established, there was no occasion for the revenue to go further to find out whether M/s Mahal Chand Moti Lal Kothari was also genuine and creditworthy. This would be stretching the provisions of section 68 a little too far. Even otherwise, from the facts of the present case, it is quite clear that M/s Mahal Chand Moti Lal Kothari was also genuine and had the requisite creditworthiness. In any case by no stretch of imagination can the revenue travel any further. Under these circumstances, the observations of the Full Bench of this court do not support the case of the revenue but go against the contention urged by learned counsel for the revenue.

7. We may also note that in Commissioner of Income Tax Vs. Stellar Investment Ltd., the Supreme Court dismissed an appeal raising a similar issue arising out of the Division Bench judgment in Commissioner of Income Tax Vs. Stellar Investment Ltd., .

8. There is no merit in the appeal. Dismissed.