
(2010) 08 DEL CK 0154
In the Delhi High Court
Case No : ITA 989 of 2010

Commissioner of Income Tax		APPELLANT
	Vs	
Orbital Communication (P) Ltd.		RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Income Tax Act, 1961 — Section 260A, 68

Citation : (2010) 327 ITR 560

Hon'ble Judges : Dipak Misra, C.J; Manmohan, J

Bench : Division Bench

Advocate : Prem Lata Bansal, for the Appellant; Piyush Kaushik, for the Respondent

Judgement

Manmohan, J.

CM 13064/2010

1. For the reasons stated in the application, delay in re-filing the appeal is condoned.

2. Accordingly, application stands disposed of.

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3. The present appeal has been filed u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as "Act, 1961") challenging the order dated 29th July, 2009 passed by the Income Tax Appellate Tribunal (for brevity "Tribunal") in ITA No. 14/Del/2007 for the Assessment Year 2001-2002.

4. Ms. Prem Lata Bansal, Learned Counsel for the Revenue submitted that the Tribunal had erred in deleting the addition of Rs. 1,70,00,000/- made by the Assessing Officer on account of share application money received by the respondent-assessee during the period under consideration. She pointed out that the Assessing Officer had reached the said conclusion as the assessee had deliberately failed to produce Mrs. Shakuntala Devi and, therefore, the deposits

in her account remained uncontroverted.

5. However, upon a perusal of the file, we find that the said addition was deleted by the Commissioner of Income Tax (Appeals) [for short "CIT(A)"] and the Tribunal on the ground that the assessee had produced substantial evidence to establish the identity and creditworthiness of Mrs. Shakuntala Devi. In fact, the CIT(A) in its order deleting the addition has observed as under:

5.2 I have examined the remand report furnished by the A.O. as well as the submission filed by the AR of the appellant vide his letter dated 11.06.2005 and rejoinder dated 02.01.2008. The appellant has filed copy of the bank statement of M/s. S.K. Land and Finance Co. (Prop.) Smt. Shakuntala Devi alongwith a typed copy of bank statement where narrations of the credit and debit entries have been given. The appellant has also filed copy of the assessment order of Smt. Shakuntala Devi for the AY 2001-02. It is seen from the details that entire money of Rs. 1,70,00,000/- which was received during the F.Y. 2000-01 as share application money by the appellant was transferred from the bank account of M/s. S.K. Land and Finance Co. running with State Bank of India, Mahrauli Road branch, Gurgaon as under:

Amounts	Date	Cheque No.
520686 10,00,000/-	21.08.2000	521086
20,00,000/-	17.11.2000	521983
50,00,000/-	01.09.2000	521898
10,00,000/-	06.12.2000	521997
20,00,000/-	30.12.2000	349910
86946 10,00,000/-	07.02.2001	86946
10,00,000/-	06.03.2001	349958
10,00,000/-	14.03.2001	349966
349970 10,00,000/-	17.03.2001	349970

It is also seen from the bank statement that most of the money deposited in M/s. S.K. Land and Finance Co. is credited by way of transfer or clearing. Therefore, the observation made by the A.O. in remand report that most of money was deposited by way of cash is not correct.

I have also gone through the copy of balance sheet of M/s. S.K. Land & Finance Co. filed before me. It is seen that the entire amount of Rs. 1,70,00,000/- received by the appellant is shown in her balance sheet as "advance to be recoverable in cash or in kind". The balance amount of Rs. 13,00,000/- was received in F.Y. 1999-2000 relevant to A.Y. 2000-01. It is also seen from the details filed by the appellant that Smt. Shakuntala Devi Prop, M/s. S.K. Land &

Finance Co. is assessed to tax with Assistant Commissioner of Income Tax Central Circle 14 and for A.Y. 2001-02, she has been assessed at Rs. 93,33,166/-.

6. Further, the Tribunal in the impugned order has observed as under:

7. We have heard the rival contentions and perused the material available on record. The facts have been narrated above. In our view the assessee produced substantial evidence to establish the identity and credit worthiness of Smt. Shakuntla Devi, genuineness of share application is also manifest from record. Therefore, non-production of Smt. Shakuntla Devi cannot be considered to negate the evidentiary value of rest of material. The issue about share application money being undisclosed of income of assessee has been set at rest by Hon''ble Supreme Court in the case of Lovely Exports (supra) hold that such additions cannot be made in assessee's hands. In view thereof, we uphold the order of CIT(A).

7. In our considered opinion, the approach adopted by CIT(A) and Tribunal is in consonance with the decision of Supreme Court in Commissioner of Income Tax v. Lovely Exports (P) Ltd. 216 CTR 195 (SC) wherein it has been held as under:

2. Can the amount of share money be regarded as undisclosed income u/s 68 of IT Act, 1961? We find no merit in this SLP for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment....

8. Keeping in view the aforesaid mandate of law, the share application money cannot be regarded as undisclosed income of assessee u/s 68 of Act, 1961.

9. Accordingly, present appeal, being bereft of merit, is dismissed in limine.