

(2008) 12 DEL CK 0109

In the Delhi High Court

Case No : Income Tax A. 415 of 2008

Commissioner of Income Tax

APPELLANT

Vs

Samir Bio-Tech (Pvt.) Ltd.

RESPONDENT

Date of Decision : 04-12-2008

Acts Referred:

Income Tax Act, 1961 — Section 68

Citation : (2010) 325 ITR 294

Hon'ble Judges : Rajiv Shakdher, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : R.D. Jolly, for the Appellant; Satyen Sethi, for the Respondent

Judgement

Badar Durrez Ahmed, J.—The revenue is aggrieved by the order dated 23.03.2007 passed by the Income Tax Appellate Tribunal in ITA 4213/Del/2001 pertaining to the assessment year 1997-1998.

2. The assessee was before the Tribunal in appeal against the order passed by the Assessing Officer and confirmed by the Commissioner of Income Tax (Appeals) whereby an addition of Rs. 20,50,000/- had been made u/s 68 of the Income Tax Act, 1961 (hereinafter referred to as the ?said Act?). The addition had been made on account of the share application money received by the assessee company from the following parties:

Sr. No.	Name	Amount in Rupees
	1. M/s Sukhshanti Holding Pvt. Ltd.	7,00,000/-
	2. M/s Sumesh Financiers Pvt. Ltd. (Director Shri R. P. Barodia)	50,000/-
	3. M/s S. K. Chemicals (Prop. Kamal Singh Dugar)	3,00,000/-
	4. M/s Cosmos Holding (India) Pvt. Ltd.	4,00,000/-

— TOTAL 20,50,000/-

3. The Tribunal reversed the findings of the authorities below and deleted the addition. The Tribunal examined the facts of the case and concluded that the assessee had discharged the onus of establishing the identity of each of the subscribers. All of them had bank accounts and had issued account payee cheques to the assessee in respect of the application for shares. With regard to the creditworthiness of each of the parties, the Tribunal found that they had all taken loans from certain other persons and that those loans had not been construed in their individual assessments as not being genuine. The parties had shown the said amounts as investment in shares in the assessee company in their balance sheets. Each of the parties were separately assessed and the balance sheets submitted by them were audited by statutory auditors. In these circumstances, the Tribunal concluded as a finding of fact that it cannot be said that the assessee had not proved the creditworthiness of the said subscribers and the genuineness of their share contributions.

4. The Tribunal also placed reliance on the decision of this Court in the case of Commissioner of Income Tax Vs. Divine Leasing and Finance Ltd.,) wherein this court, after analyzing the provisions of Section 68 of the said Act, concluded that the assessee has to, prima facie, prove:

- (1) the identity of the creditor/subscriber;
- (2) the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels; and
- (3) the creditworthiness or financial strength of the creditor/subscriber.

It was also held that:

- (1) if relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department along with copies of the Shareholders Register, Share Application Forms, Share Transfer Register etc. it would constitute acceptable proof or acceptable explanation by the assessee;
- (2) the Department would not be justified in drawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices;
- (3) the onus would not stand discharged if the creditor/subscriber denies or repudiates the transaction set up by the assessee;
- (4) the Assessing Officer is duty bound to investigate the creditworthiness of the creditor/subscriber, the genuineness of the transaction and the veracity of any repudiation.

5. In the present case, we find that the identities of the subscribers are not in doubt. The transactions have also been undertaken through banking channels

inasmuch as the application money for the shares was given through account payee cheques. The creditworthiness has also been established, as indicated by the Tribunal. The subscribers have given their complete details with regard to their tax returns and assessments. In these circumstances, the Department could not draw an adverse inference against the assessee only because the subscribers did not initially respond to the summons. The subscribers, however, subsequently gave their confirmation letters as would be apparent from paragraph 7 of the impugned order. It is in these circumstances that the Tribunal, following the decision of this Court in Divine Leasing and Finance Ltd. (supra), deleted the addition made by the authorities below.

6. Mr Jolly, who appears on behalf of the appellant, sought to place reliance on the Full Bench decision of this Court in the case of Commissioner of Income Tax Vs. Sophia Finance Ltd.,) to contend that the Income Tax Officer would have jurisdiction to enquire from the assessee with regard to the nature and source of the share application money. In Sophia Finance Ltd. (supra) it was observed that enquiries are usually made in order to find out as to whether, firstly, the persons from whom money is alleged to have been received actually existed or not and, secondly, depending upon the facts of each case, the Income Tax Officer may even be justified in trying to ascertain the source of the depositor, assuming he is identified, in order to determine whether that depositor is mere name-lender or not. In the present case, however, we find that there is nothing in the decision in Sophia Finance Ltd.(supra) which would enable us to take a contrary view than the view taken by the Tribunal. This is so because the identity of the subscribers stands established and it is also a fact that they have shown the said amounts in their audited balance sheets and have also filed returns before the Income Tax Authorities. We may also take note of the decision of the Supreme Court in the case of CIT v. Lovely Exports (P) Ltd. 216 CTR 195 wherein the Supreme Court by a short order dismissed the SLP arising out of a matter connected with Divine Leasing and Finance Ltd. (supra). The Supreme Court passed the following order:

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.

7. In view of the foregoing discussion, the decision of the Tribunal cannot be faulted.

The appeal is dismissed.