(1991) 04 DEL CK 0031

In the Delhi High Court

Commissioner of Income Tax APPELLANT

Vs

Stellar Investment Ltd RESPONDENT

Date of Decision : 16-04-1991

Acts Referred:

Citation : (1991) 59 TAXMAN 568

Hon'ble Judges : D.K. Jain, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : B. Gupta and R.C. Pandey, for the Appellant; S.K. Aggarwal, for the Respondent

Judgement

1. The petitioner seeks reference of the following question : "Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct both on facts and in law in holding that the provisions of section 263 have not been validly invoked in this case by ignoring the material fact that the Assessing Officer had failed to discharge his duties regarding the investigation with regard to the genuineness and creditworthiness of the shareholders, many of them being students and housewives ? "

2. In the present case, the subscribed capital of the assessed had been increased. The Income Tax Officer assessed the company an accepted the increase in the subscribed capital. The Commissioner of Income Tax came to the conclusion that the Assessing Officer did not carry out a detailed investigation in as much as there had been a device of converting black money into white by issuing shares with the help of formation of an investment company. The Commissioner of Income Tax further held that the Assessing Officer did not make enquiries with regard to the genuineness of the subscribes of the share capitals. He thereupon set aside the order of assessment.

3. The Tribunal reversed this decision for reasons which we need not go into.

4. It is evident that even if it be assumed that the subscribers to the increased share capital were not genuine, nevertheless, under no circumstances, can the

amount of share capital be regarded as undisclosed income of the assessed. It may be that there are some bogus shareholders in whose names shares had been issued and the money may have been provided by some other persons. If the assessment of the persons who are alleged to have really advanced the money is sought to be reopened, that would have made some sense but we fail to understand as to how this amount of increased share capital can be assessed in the hands of the company itself. In our opinion, no question of law arises and the petition is, Therefore, dismissed.

