

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 619/2007

**COMMISSIONER OF INCOME TAX Appellant
Through Mrs. P.L. Bansal, Advocate**

versus

**INDOCON FINANCE and INVESTMENT LTD Respondent
Through Mr. Salil Aggarwal with Mr. Prakash
Kumar, Advocates.**

CORAM:

**HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE DR. JUSTICE S.MURALIDHAR**

**O R D E R
28.11.2007**

1. The Revenue is aggrieved by an order dt. 27th Oct., 2006 passed by the Income-tax Appellate Tribunal, Delhi Bench, 'A', New Delhi ('the Tribunal') in ITA No. 470/Del/2002 relevant for the asst. yr. 1994-95. The issue that had arisen before the AO was with respect to an amount of Rs. 12,50,000 stated to be share capital invested by bogus concerns.

2. It appears from the record that on 3rd March, 1996 the AO had confronted the assessee with the genuineness of the shareholders and the assessee gave a reply to the AO on 29th March, 1996 that all shareholders are genuine and the share investment was made through account payee cheque. The assessee also filed affidavits of the directors of the said concerns. It appears that one K.C. Hazarika had given a statement before

the IT Department and in light of that statement, the AO did not accept the explanation given by the assessee even though the statement was not given to the assessee nor was he allowed to cross-examine K.C. Hazarika. Faced with this situation, the assessee chose to pay tax on the amount invested by such concerns to prove its bona fides and good intention. The offer to pay tax does not appear to have been accepted by the AO, who added an amount of Rs. 12,50,000 to the income of the assessee and also initiated penalty proceedings. The assessee preferred an appeal before Commissioner of Income-tax (Appeal) [CIT(A)] and on 3rd May, 1999 the CIT(A) required the AO to give his opinion with regard to the submissions made by the assessee in its letter dt. 29th March, 1996. The AO took more than 2 years time to deal with letter dt. 29th March, 1996 but still did not give any reply. Under the circumstances, the CIT(A) decided to dispose of the appeal in the absence of any response from the AO and on the basis of the material already placed before him. The CIT(A) considered the evidence filed by the assessee with regard to identity, creditworthiness and genuineness of the contributors to the share capital and deleted the addition made. The CIT(A) also noted that the statement of K.C. Hazarika was accepted as true by the AO without considering any evidence filed by the assessee and without giving the assessee an opportunity to

cross-examine K.C. Hazarika. The view of the CIT(A) was accepted by the Tribunal and that is how the Revenue is before us.

3. Having heard learned counsel for the Revenue, we find that no error has been committed by the CIT(A) in accepting the contention of the assessee that the evidence it wanted to produce and mentioned in its letter dt. 29th March, 1996 was brushed aside by the AO who merely proceeded on the basis of the statement of K.C. Hazarika. The assessee had, as an alternative, offered to pay tax on the amount of Rs. 12,50,000 to show its good intentions and bona fide s. Of course this was without prejudice to the rights and contention of the assessee that the shareholders were genuine persons. Unfortunately this aspect of the case was not at all looked into by the AO.

4. Learned counsel for the Revenue contends that the matter be remanded back to the file of the AO to look into the issue afresh but we do not think that this will serve any purpose. The CIT(A) had given 2 years to the AO to respond to the submissions made by the assessee but the AO did not find it necessary to do so. Remanding back the matter to the file of AO would not only delay further proceedings but would also cause further harassment to the assessee. The Revenue had an opportunity to justify its

stand but it failed to avail of that occasion. There is no reason why it should be given a second chance. In our opinion no substantial question of law arises. Dismissed.

MADAN B. LOKUR, J

S.MURALIDHAR, J

NOVEMBER 28, 2007