

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**ITA 1661/2006**

**THE COMMISSIONER OF INCOME TAX ..... Appellant  
Through Mrs. Prem Lata Bansal, Adv.**

**versus**

**GULATI INDUSTRIAL FABRICATION PVT. LTD. .... Respondent  
Through Mr.S.R. Wadhwa, Adv.**

**CORAM:**

**HON'BLE MR. JUSTICE MADAN B. LOKUR**

**HON'BLE DR. JUSTICE S. MURALIDHAR**

**O R D E R**

**22.11.2007**

- 1. The Revenue is aggrieved by an order dt. 3rd March, 2006, passed by the Tribunal, Delhi Bench 'F', in ITA No. 4288/Del/2005 relevant for the asst. yr. 1997-98.**
- 2. The AO had issued a notice under s. 147/148 of the IT Act, 1961 (for short 'the Act'), for reopening the assessment of the assessee.**
- 3. The assessee demanded the reasons for reopening the assessment and those were also supplied to it. The reasons referred to a statement made by one Mr. Sanjay Rastogi to the effect that the assessee had taken accommodation entries to the extent of Rs. 5 lakhs from a front company of Mr. Sanjay Rastogi, that is, M/s Hallmark Healthcare Ltd. The assessee**

required the AO to supply it a copy of the statement wherein the name of M/s Hallmark Healthcare Ltd. and the assessee appear. By letter dt. 14th Feb., 2005, the AO supplied the statement given by Mr. Sanjay Rastogi. This contained question No. 14 and the answer given by Mr. Rastogi thereto.

4. In para 11 of the impugned order, the Tribunal observes that it examined the statement and found that Mr. Sanjay Rastogi had nowhere stated that the loan granted in the name of M/s Hallmark Healthcare Ltd. was bogus. It is also noted that no opportunity was given to the assessee to cross-examine Mr. Sanjay Rastogi.

5. We have also gone through the information supplied to the assessee in the form of the question posed to Mr. Rastogi and his answer thereto. As rightly observed by the Tribunal, there is no mention in this statement about M/s Hallmark Healthcare Ltd. or about the assessee. If there was any other statement given by Mr. Sanjay Rastogi or any other information was available with the AO, that certainly was not disclosed to the assessee. On the material that was disclosed to the assessee, it is not possible to infer that the assessee had taken an accommodation entry from M/s Hallmark Healthcare Ltd.

6. It is submitted by learned counsel for the Revenue that in CIT vs. Highgain Finvest (P) Ltd. ITA No. 1381 of 2006, dt. 23rd May, 2007 [reported at (2008) 214 CTR (Del) 441 —Ed.] this Court had in similar circumstances, remanded the case to the Tribunal for a decision on merits. We find that in the said case, as noted in this Court's order, the statement made by Mr. Sanjay Rastogi specifically mentioned the front company as well as the details of the cheque issued to the front company by the assessee in that case. The said decision is undoubtedly distinguishable on facts since in the instant case the statement given by Mr. Rastogi does not mention either the front company or the assessee.

7. In the circumstances, we are of the view that the Tribunal did not err in taking the view that it did.

8. No substantial question of law arises. Dismissed.

**MADAN B. LOKUR, J**

**NOVEMBER 22, 2007 S. MURALIDHAR, J**

**kapil**