

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

**ITA 5/2007**

**30.10.2007**

**Date of decision : October 30, 2007**

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**COMMISSIONER OF INCOME TAX DEL ..... Appellant  
Through Ms. Prem Lata Bansal, Advocate**

**versus**

**DWARIKADHISH INVESTMENT P.LTD. .... Respondent  
Through Ms. Kavita Jha, Advocate**

**AND**

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**ITA 8/2007**

**COMMISSIONER OF INCOME TAX DEL ..... Appellant  
Through Ms. Prem Lata Bansal, Advocate**

**versus**

**DWARIKADHISH CAPITAL P.LTD. .... Respondent  
Through Ms. Kavita Jha, Advocate**

**CORAM:**

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

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

**O R D E R**

**In these appeals under Section 260-A of the Income Tax Act, 1961 ('the Act'), the Revenue is aggrieved by the order dated 7th April, 2006 passed by the**

**Income Tax Appellate Tribunal ('Tribunal') in ITA Nos. 2549/Del/2002 and 2550/Del/2002 relevant for the Assessment Year 1997-98.**

**Both the Assessee companies are engaged in the business of financing and**

**trading in shares. For the Assessment Year in question, the Assesseees declared a**

**loss but were assessed at a positive income after making additions on account of**

**unexplained share application money to the extent of Rs.17.35 lakh in respect of**

**the Assessee company in ITA No. 2549 of 2002 and Rs.36.22 lakhs in respect of**

**the Assessee company in ITA No. 2550 of 2002.**

**The Assessing Officer required the Assesseees to furnish details and documents. The Assesseees produced copies of sale and purchase bills of the**

**share brokers through whom the transactions took place and photocopies of**

**confirmations of persons who had contributed the fresh share application money.**

**The Assesseees furnished the PAN (GIR) numbers of the applicants, the details of**

**the cheque numbers and dates. The Assesseees contended that letters sent to the**

**shareholders had not been responded to.**

**The Assessing Officer required the Assessee to furnish bank statement to substantiate the money availability with the Assessee and also to prove the**

**genuineness of the transactions. This not having been done, the Assessing**

**Officer got enquiries made through an Income Tax Inspector who found that none**

**of the applicants were found to exist at the address given in the confirmations.**

**However, the report of the Income Tax Inspector was furnished to the Assesseees**

**on 22nd February 2000 and the Assessment order was passed on the very next day,**

**that is, 23rd February 2000 giving the Assesseees no time to respond.**

**Before the CIT (A) the Assesseees furnished additional evidence, copies of which were sent by the CIT (A) to the Assessing Officer for comments.**

**Despite**

**reminders, no response was received from the Assessing Officer by the CIT(A)**

**on the additional evidence. The CIT(A) then admitted the additional evidence.**

**After examining the entire record, the CIT(A) deleted the addition on account of**

**the unexplained share application money for the following reasons:**

**(i) The applicants concerned were identified.**

**(ii) The applicants confirmed the payment of monies to the appellant for purpose of shares.**

**(iii) The transaction in question were by cheques.**

**(iv) The affidavits of the subscribers were filed indicating their full address, details of deposits made with the appellant and the source wherefrom**

**money was obtained to make the deposits. Copies of Bank a/cs were furnished.**

**These affidavits were notarized. There was no ground for disbelieving the contents of the affidavits.**

**(v) If the Assessing Officer entertained any doubts regarding genuineness of the credits in respect of share application money, he could have issued**

summons to the subscribers or could have asked the assessee to produce them.

This was not done.

(vi) Most of the subscribers were companies incorporated with the Registrar of Companies. Proper enquiries would have revealed the true facts of

the case. The appellant cannot be faulted if there was no time to give them an

opportunity to rebut the Inspector's report made at the back of the appellant.

(vii) The deposits were not of an order that could not be believed.?

In the appeal by the Revenue, the Tribunal found that the facts of the case were no different from those in the case of the group company of the present Assessee namely M/s. Dwarikadhish Financial Services. In the said case

the Tribunal had deleted the addition made by the Assessing Officer on account

of unexplained share application money. The said decision was upheld by this

Court in its order in Commissioner of Income Tax v. Dwarkadhish Financial

Services [2005] 197 CTR 202.

That apart, the Tribunal again examined the documents giving the details of each of the applicants. It noted that ?the above documents were available on

the file of the AO.? Accordingly it dismissed the Revenue's appeals.

Learned counsel for the Revenue sought to distinguish this Court's decision in the case of the group company of the Assessee, on the ground that

the facts there were different. However, we find that the findings of the CIT(A) as extracted hereinabove are sufficient to show that the additions made

by the Assessing Officer were not justified. The reasoning and conclusions

arrived at concurrently by the CIT(A) and the Tribunal suffer from no perversity

and are consistent with the law as explained by this Court in Commissioner of

Income Tax v. Divine Leasing and Finance Limited (ITA No. 53/2005 decided on

16th November, 2006) reported in (2007) 207 CTR (Del) 38 and in particular para

16 which reads thus:

?In this analysis, a distillation of the precedents yields the following propositions of law in the context of Section 68 of the IT Act. 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; (3) the credit worthiness or financial

strength of the creditor/subscriber; (4) 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, Shared Application Forms, Share

Transfer Register etc., it would constitute acceptable proof or acceptable explanation by the Assessee; (5) The Department would not be justified in drawing an adverse inference only because the creditor/subscriber fails or

neglects to respond to its notices; (6) the onus would not stand discharged if

the creditor/subscriber denies or repudiates the transaction set up by the Assessee nor should the AO take such repudiation at face value and construe it,

without more, against the Assessee. (7) The Assessing Officer is duty-bound to

investigate the credit worthiness of the creditor/subscriber the genuineness of

the transaction and the veracity of the repudiation.?

**We are of the view that no substantial question of law arises in these appeals. Accordingly, these appeals are dismissed.**

**MADAN B. LOKUR, J**

**S. MURALIDHAR, J  
OCTOBER 30, 2007  
Rk**