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

DECIDED ON: 20.07.2012

\+ ITA 1257/2011

CIT ..... Appellant
Through: Mr. Sanjeev Sabharwal, Sr. Standing Counsel with Mr. Puneet Gupta, Jr. Standing Counsel.

versus

EXPO GLOBE INDIA LTD ..... Respondent
Through: Dr. Rakesh Gupta with Ms. Rani Kiyala and Mr. Piyush Singh, Advocates.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

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1. The Revenue is aggrieved by an order of the Income Tax Appellate Tribunal (ITAT) dated 22.07.2011 whereby its Appeal against the CIT (A)'s order dated 03.11.2009 was rejected.

2. The Revenue urges that the Tribunal's order is unsustainable under the circumstances and that the disallowance of an amount of Rs.69,75,000/- under Section-68 of the Income Tax Act was warranted.

3. The brief facts are that in the relevant assessment year i.e. 2000-01, the Assessing Officer noted that the assessee/respondent had

received share application money to the extent of Rs.69,75,000/- which included some amounts received from M/s Onyx Exim & Sales Pvt. Ltd. and M/s Shorabh Finance Pvt. Ltd. After issuing notice, the Assessing Officer concluded that assessee had not given satisfactorily explanation and included the entire amount under Section-68. The assessee appealed to the CIT (A) who by order dated 03.11.2009, allowed the same. Apparently, the CIT (A) took into consideration materials furnished by the assessee during the remand. The materials were considered which are discussed elaborately in order of the CIT (A) at pages 25-33 of the paper book. These include the entire list of 18 shareholders of whom 16 were companies. Apparently the assessee had furnished particulars such as PAN number, confirmations by the shareholders, bank statements in the case of some of them, bank statements and the balance sheets in respect of some of them and ROC particulars in regard to all the incorporated companies. The assessee had furnished further additional information.

4. After considering these, the CIT (A) accepted the assessee's contentions holding as follows: -

> *"I have gone through the submissions made by both the sides. As far as admission of additional evidences is considered, in my considered opinion these evidences deserve to be admitted and these are hereby admitted. It is settled law that ultimately justice must prevail. It is not denied that these proceedings have been initiated after a long period of 8 years from the execution of the transaction. All these persons are not in control of the appellant and these transactions took long back. The objective of the assessment proceedings is to make fair presentation of tax and objective is not at all to play the*

game of hide and seek. The reasons were recorded with respect to two persons only and no opportunity was given with respect to share application money received from remaining persons. It appear in the appellate proceedings the appellant made more efforts and obtained desired evidences from all the persons. Moreover, these evidences go to the root of the matter and these are very essential for the adjudication of appeal on merits. Under these circumstances it appears that appellant was prevented by sufficient cause in filing these evidences before A.O. Therefore, these evidences are admitted for deciding this appeal.

Regarding decision on merits it is seen that the appellant has submitted sufficient evidences to show that all the persons are properly identified and all assessed to tax. The details of these evidences have already been mentioned in earlier part of the order. A.O. has made allegation about ingenuity of the amount received from two persons only namely M/s Onyx Exim & Sales Ltd. and M/s Shourabh Financial Pvt. Ltd. There is no mention of any adverse material with respect to other persons. Even with respect to these two persons A.O. has mentioned about 'Certain investigation' by DIT (Inv.) Even in the Remand Report he has not discussed and sent any material on the basis of which allegations of bogus entry was made. Nothing has been brought on record and after all what is material against the assessee. On the other hand it is seen that appellant has discharged primary onus despite the fact that primary onus was upon the AO since these proceedings have been initiated u/s 147 and in view of the judgment of Hon'ble Delhi High Court in the case of CIT vs. Pradeep Gupta 303 ITR 95. It is further noticed that in all there are 19 share applicants out of whom 17 are the companies who exist on the record of Registrar of companies. All the persons are assessed to tax. Appellant has also submitted that the amount has been refunded to all these persons in

subsequent years and appellant was not even real beneficiary of share application money. The AO had all the powers under the law to call for the desired information directly from these persons as also held by Hon'ble Supreme Court way back in the case of CIT vs. Orissa Corporation Pvt. Ltd. 159 ITR 78. Moreover, the position of the law is clear with the respect to share application money. It has been held by Hon'ble Supreme Court and various High Courts that no addition can be made on account of share application money once the names of the share applicants are given. In the instant case, identity of these persons are not on doubt and assessment particulars of all the persons are on record and there is no material to hold that credit worthiness of these persons are not established. The judgment of Hon'ble Supreme Court in the case of Lovely Export 216 CTR 195 and also the judgment of Hon'ble Delhi High Court in the case of CIT vs. Value Capital Services Pvt. Ltd. 307 ITR 334 are relevant on this issue. It was held by Hon'ble Madras High Court in the case of CIT vs. Electro Polychem Ltd. 294 ITR 661 and Hon'ble Allahabad High Court in the case of Jaya Securities Ltd. 166 Taxman 7 that no addition can be made on account of share application money even if subscriber to capital are not genuine. The above said judgments were challenged by the Department by way of SLP before Supreme Court of India and SLP has been dismissed by Supreme Court in both the cases. In view of above said facts of case and position of law, I hereby direct the AO to delete the addition of Rs.69,75,000/-.

Regarding other addition of Rs.13,590/- being the amount of alleged commission calculated @ 2%, I find that there is no material and basis to make this addition and the same cannot be upheld and same is hereby deleted.

Regarding ground with respect to charging the interest

u/s 234B, the same is mandatory and therefore, this plea of appellant is dismissed. However, with respect to charging of interest u/s 234D, the same cannot be levied for the impugned assessment year in view of judgment of Hon'ble ITAT in the case of Ekta Promoters Pvt. Ltd. 305 ITR 1 (AT) (SB) and therefore the same is directly to be deleted.

In the result, the appeal is partly allowed."

5. The ITAT while rejecting the Revenue's Appeal took into consideration the judgment of the Supreme Court in *Lovely Export's* case, 216 CTR 195 as well as of this Court in *CIT v. Value Capital Services Pvt. Ltd.,* 307 ITR 334.

6. Counsel for the Revenue submitted that ITAT's order gives indication to the fact that some shareholders were refunded the amounts initially given by them to the assessee and that this aspect itself *prima facie* pointed that an order under Section-68 was warranted. Counsel also relied upon the decision in *Commissioner of Income Tax v. Nova Promoters & Finlease (P) Ltd.* (ITA-342/2011, decided on 15.02.2012) by the Division Bench of this Court.

7. This Court has carefully considered the submissions. The previous discussion, particularly the order of the CIT (A), would reveal that even though the Assessing Officer had initially concluded on the basis of the materials made available at that stage that service of the entry providers had been utilized to bring in capital, after remand the CIT (A) elaborately took into account considerable material furnished by the assessee. These included income tax

returns, balance sheets, ROC particulars and bank account statements. On the basis of these, the CIT (A) held that the share application money or the source of the share application money had been satisfactorily explained. The ITAT was of the opinion that no interference was warranted having regard to the facts of this case. This Court is of the opinion that the only sentence in paragraph-6 of the impugned order that amounts were refunded to the applicants itself should not be a ground to conclude that the findings recorded by the lower authorities are not on the basis of evidence. The entire controversy sought to be raised is purely factual.

8. The Court is not satisfied that the view of the Tribunal is so unreasonable as to warrant interference under Section260A.

9. The Appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

R.V.EASWAR, J

JULY 20, 2012
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