

\$~18&19

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

+ ITA Nos.43/2016 & 44/2016

PR. COMMISSIONER OF INCOME TAX – 5 Appellant
Through: Mr. Ashok K. Manchanda, Sr. Standing
Counsel with Mr. Raghvendra Singh, Jr. Standing
Counsel.

versus

JATIN INVESTMENT PVT. LTD. Respondent
Through: Mr. M.P. Rastogi with Mr. K.N. Ahuja,
Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

% **ORDER**
18.01.2017

1. The Revenue claims to be aggrieved by the order of the Income Tax Appellate Tribunal (ITAT). The ITAT affirmed the Appellate Commissioner's order who had ruled that the additions made under Section 68 to the tune of ₹93,45,000/- were unwarranted. It is contended that both the Appellate Commissioner and the ITAT misapplied the law and that the findings in the impugned order are unreasonable.

2. The brief facts are that the assessee for AY 2003-04 reported over ₹96,25,000/- as a receipt and for AY 2004-05 ₹1,50,04,515/-.

After the assessment was framed, a notice under Section 147/148 was issued which led to the reopening of the assessment. The AO by his order, added ₹93,45,000/- on his conclusion that various amounts received from 21 parties were suspect. The AO's findings were based upon his appreciation of the facts which are that upon issuance of summons under Section 131 none of the parties reported or joined the proceedings.

3. The CIT (A) on the one hand upheld the reopening of the assessment but on the other, directed the deletion of the sums brought to tax by the AO. The CIT (A)'s conclusions were based upon the rival submissions especially the assessee's contentions that the amounts were garnered in the ordinary course of business. The assessee is engaged in trading of shares and security and had in previous years acquired shares of some companies. Those were sold during the assessment year in question. The amounts received from purchases of the shares were shown as receipts. The CIT (A) *inter alia* concluded as follows: -

“5.2 I have carefully considered the submissions made on behalf of the appellant, the findings of the Assessing Officer and the facts on record. It is observed that the AO based his argument purely on the basis of information from DIT (Investigation), New Delhi. He is entirely relied upon such information for reaching such conclusion. The above information may be a sufficient ground of initiate reassessment proceedings of a case, but no (sic) make an addition the AO has to establish the fact of fraudulent nature of such transaction. Purely on surmises and conjuncture (sic) no transaction can be held as bogus unless the same is proved on the basis of sound

reasoning and evidence on the part of the AO before making the addition. When the assessee has furnished all necessary proofs in support of its claim, it is all the more necessary to rebut such evidence with cogent and credible evidence on the part of the AO before making the addition. It is true that the said amount of Rs.93,45,000/- has been received during the year under consideration by the appellant from 21 persons listed in the assessment order. However the perusal of the balance sheet as on 31.03.2003 reveals that no new money has been introduced during the year under consideration. This also implies that there has neither been fresh loan nor fresh share capital introduced in the accounts of the appellant company during the year under consideration. The perusal of the account of the appellant company does not leave any room for doubt that the said amount was nothing but the sale proceeds of the shares which have already been shown by the appellant in the profit & loss account for A.Y.2003-04. When the sale proceeds of the shares have already been shown by the appellant and the same has also been offered as income, it cannot be brought to tax again in the same A.Y. 2003-04 which is under appeal.

5.3 It is also seen that the Assessing Officer could not point out any discrepancy in the evidences relied upon by the assessee. He has neither brought out any direct or inference evidence be contradiction of the assessee. It is further observed that even though A.O. has vast powers u/s 131 and 133 (6) of the Act, he has not used any of his powers to verify the genuineness of the claim of the assessee by verifying the documents furnished by it. If A.O. had doubted the impugned transaction after receiving the evidences which had been produced by the assessee in support of its claim it was very much open to the A.O. to do his independent enquiry and verification. This has not been done by the A.O. Further, what is the desired documentary evidence required to support

the claim of the assessee as required by the A.O. is not coming out of the order of the A.O.

5.4 The appellant has adduced the documentary evidences in support of the transaction in question. The identity of the purchasers of the shares was established as it was borne on the record of the Income Tax Department. The purchasers have PAN card as well. Turning to the shares which were sold by the appellant as per its version, there is no evidence or material to even suggest, as pointed out as on behalf of the appellant, that the cheques directly or indirectly emanated from the assessee so that it could be said that the assessee's own money was brought back in the guise of sale proceeds of the shares. Though, the purchasers of the shares could not be examined by the AO, since they were existing on the file of the Income Tax Department and their Income Tax details were made available to the AO, it was equally the duty of the AO to have taken steps to verify their assessment records and if necessary to also have them examined by the respective AOs having jurisdiction over them which has not been done by him."

4. The ITAT agreed with the conclusions of the CIT (A) upon its independent examination of the record. It also discounted the Revenue's submissions that the investment shown in the book of accounts and reflected as assets in the side of the balance sheet, should have been properly treated and that in the absence of such treatment Section 68 applies. The ITAT rejected this contention and held - based upon the principles enunciated in *CIT v. Vishal Holding & Capital Pvt. Ltd.* (order of this Court dated 9.8.2010) that the invocation of Section 68 in the circumstances is unwarranted.

5. Learned counsel for the Revenue reiterated the grounds cited in

some of the contentions made before the ITAT. Learned counsel especially emphasized on the submission that the incorrect reflection of the receipts in the balance sheet belied the true nature of the receipts as a justification for the application of Section 68.

6. The ITAT in our opinion quite correctly appreciated the law and its application by the first appellate authority, i.e., CIT (A). Having regard to the facts and the nature of the analysis based upon the decisions of this Court, as well as the reliance on various decisions with respect to the true nature of Section 68, we are of the opinion that no question of law arises; the appeals are accordingly dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

JANUARY 18, 2017

/vikas/