

IN THE INCOME-TAX APPELLATE TRIBUNAL "C" BENCH MUMBAI
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER

AND SHRI PAWAN SINGH JUDICIAL MEMBER

ITA No. 3509/Mum/2015 (Assessment Year 2010-11)

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| ITO- 10(2)(2) Room No. 408, 4 th Floor, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai-400020. | Vs. | M/s Lotus Energy India Pvt. Ltd. 409, Laxmi Plaza, Laxmi Industrial Estate, Link Road, Andheri (E), Mumbai-400072. PAN: AABCL0119K |
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Appellant

Respondent

Appellant by : Shri Love Kumar (DR)

Respondent by : Shri Sanjay R. Parikh (AR)

Date of Hearing : 18.09.2018

Date of Pronouncement : 18.09.2018

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by Revenue under Section 253 of Income-tax Act is directed against the order of Id. CIT(A)-17, Mumbai dated 09.03.2015 for Assessment Year 2010-11. The Revenue has raised the following grounds of appeal:

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in that the assessee has discharged its burden of proof as to the genuineness of the transaction and offered a valid explanation without appreciating the fact that same transaction has been accounted as subscription to share capital by the assessee and as unsecured loan by the other party"

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in that the assessee has proved creditworthiness of the

subscriber without appreciating the facts established by the AO clearly prove that subscriber creditworthiness is clearly in doubt and assessee could not explain the same to the satisfaction of the assessing Officer as envisaged under section 68 of the income tax Act,1961."

3. Without prejudice to the above, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition u/s 68 of the Act by holding that AO has not done adequate inquiries, ignoring the facts that CIT(A) has the obligation to conduct proper enquiry on facts or remand the matter to the AO as held by Honble Dehi High Court in the case of CIT vs Jansampark Advertising & Marketing Pvt. Ltd. (ITA No.525 of 2011) delivered on 11.03.2015?"

2. At the outset of hearing, the Id. Authorized Representative (AR) of the assessee submits that the tax effect involved in the present appeal is only Rs. 18,54,000/-, which is less than the monetary limit fixed by CBDT in its Circular No. 3/2018 dated 11th July 2018 and therefore, appeal of the Revenue is not maintainable. The Id. AR of the assessee also furnished the working of tax effect in the following manner:

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| Addition on account of share | |
| Application money | 6,000,000 |
| Tax @ 30% | 1,800,000 |
| Add: Surcharge | 0 |
| Add: Education and Higher Education Cess | <u>54000</u> |
| | <u>1,854,000</u> |

3. On the other hand, the Id. Departmental Representative (DR) for the Revenue after going through the grounds of appeal and the working of tax effect accepted the contention of Id. AR of the assessee that tax effect involved in the present appeal is less than the monetary limit fixed by CBDT in its Circular No. 3/2018 dated 11th July 2018.

4. Considering the contention of both the parties that tax effect involved in the present appeal is less than Rs. 20,00,000/-. Therefore, the appeal of the Revenue is dismissed as not maintainable.
5. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 18/09/2018.

Sd/-
G.S. PANNU
ACCOUNTANT MEMBER

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Mumbai, Date:18.09.2018

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Copy of the Order forwarded to :

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| 1. Assessee | 2. Respondent |
| 3. The concerned CIT(A) | 4. The concerned CIT |
| 5. DR "C" Bench, ITAT, Mumbai | |
| 6. Guard File | |

BY ORDER,
Dy./Asst. Registrar
ITAT, Mumbai