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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 234/2015

Reserved on: November 17, 2015

Date of decision: November 27, 2015

COMMISSIONER OF INCOME TAX -3 Appellant
Through: Mr. Rohit Madan and Mr. Akash
Vajpai, Advocates.

versus

FIVE VISION PROMOTERS PVT.LTD. Respondent
Through: Mr C.S. Aggarwal, Senior Advocate
with Mr Prakash Kumar, Mr Rupinder
Aggarwal and Mr Gautam Jain, Advocates,

With

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Through: Mr C.S. Aggarwal, Senior Advocate
with Mr Prakash Kumar, Mr Rupinder
Aggarwal and Mr Gautam Jain, Advocates,

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

J U D G M E N T

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27.11.2015

Dr. S. Muralidhar, J.

1. These are three appeals by the Appellant, Revenue, against the common order dated 29th April 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 4545, 4246 and 4247/Del/2012 for the Assessment Years ('AYs') 2007-08, 2008-09 and 2009-10 respectively.

Limitation

2. Considering that the impugned order is dated 29th April 2014 and the appeals were first listed for hearing nearly a year later on 10th April 2015, the question whether the appeals were in time was examined by the Court. In para 8 of the memorandum of appeal in each of the appeals it is stated that the impugned order was received by the Appellant, i.e. the Commissioner of Income Tax, Delhi -3 (CIT-3) on 24th November 2014. The affidavit in support of the appeal has been signed by Mr. Narendra Prasad Sinha, posted as CIT -3.

3. Enclosed with the memorandum of appeal, is a copy of the certified copy of the impugned order of ITAT which bears different date stamps.

One of them is a date stamp of the CIT-3 dated 1st August 2014. Next to it, is a noting of 5th August 2014 asking the matter to be put up for 'appeal effect' urgently. However, also enclosed is a copy of a covering letter dated 24th November 2014 from the Income Tax Officer (ITO), Headquarters-8 (Judicial), New Delhi addressed to the CIT-III (Post restructured) drawing the attention of the latter to the ITAT's order in the cases of the present Respondent, Five Vision Promoters Pvt. Ltd. ('Five Vision').

4. By an order dated 9th October 2015 the Court required Mr. Kamal Sawhney, learned Senior standing counsel for the Revenue, to produce the certified copy of the order of the ITAT in original with the date stamp to show when it was received by the CIT-3. On the next date, i.e. 17th November 2015, Mr. Sawhney sought more time for that purpose. The Court was not inclined to grant further time for that purpose and decided to proceed on the basis of the documents already on record.

5. It appears from the covering letter dated 24th November 2014 of the ITO (Judicial) that cases concerning Five Vision were under the jurisdiction of the ACIT/DCIT, Circle-9 (1) [Pre restructured Cir.11 (1)]. The letter stated that it was not known whether a copy of the consolidated order of ITAT had been forwarded to the concerned CIT. Therefore, a letter was again being written to the CIT-III (Post restructured). However, as noticed earlier CIT-III had already received a copy of the order on 1st August 2014 itself. In any event, going by the earliest of the date stamps on the certified copy of the impugned order of the ITAT, it is seen that it was first received by the CIT (Judicial) on 10th June 2014. That should normally be taken to be the date of commencement of limitation for the purposes of Section 260A (2) (a) of the Act. On that basis, the appeal filed on 19th March 2015, with

the supporting affidavit attested on 31st March 2015 would be beyond the stipulated limitation period of 120 days in terms of Section 260A (2) (a) of the Act. There is, however, no application for condonation of delay and the appeals have been numbered and listed by the Registry as if they were within limitation.

6. Faced with the above difficulty, Mr. Sawhney, learned Senior standing counsel for the Revenue, volunteered to file a separate application for condonation of delay. However, at that stage Mr. C.S. Aggarwal, learned Senior counsel appearing for the Assessee, Five Vision, made a statement that the Assessee was not pressing the objection as to the delay in filing the appeals. In that view of the matter, the Court proceeds with the merits of the appeals. However, the Registry is directed to hereafter examine carefully the date stamp on the certified copy of the order of the ITAT and insist on the original being produced in order to satisfy itself of the correctness of the statement made in the memorandum of appeal regarding the date of receipt of the certified copy of the ITAT's order.

Question urged

7. The Revenue has in these appeals sought to urge the following question for consideration:

“Whether the ITAT erred in deleting the addition made under Section 68 of the Act of share application money by holding that the identity and genuineness of the share applicants was established?”

Background facts

8. The background to filing of these appeals is that the Assessee, Five Vision, is a company incorporated under the Companies Act, 1956 on 14th

January 2005 with the object of running a shopping mall. The business of the Assessee had not commenced till 31st March 2009 because the Mall was under construction.

9. The genesis of the present proceedings is a search which commenced on 14th October 2008 in the premises of SVP Builders India Limited ('SVP Builders') and the SVP Group of Companies. Four companies were said to comprise the core of the SVP Group, of which the fourth was Five Vision. The other three are SVP Builders, SV Liquor (India) Ltd. and SVP Developers Ltd. These four companies were found to have received share capital from 106 companies between AYs 2003-04 to 2009-10. The said shareholders have been categorised Table-I, II and III shareholders. Table-I shareholders, which were 20 companies, were subjected to search under Section 132 of the Act. Table-II shareholders, comprised 12 companies against whom the proceedings were initiated under Section 153C of the Act consequent upon the search. Table-III shareholders, comprised 74 companies whose identity and existence were not doubted since they were being regularly assessed to tax.

10. The case of the Revenue is that SVP Group of companies (in whose premises, and the residential premises of their Directors, searches were conducted) were engaged in the business of construction of residential, commercial and business complexes and also sale/purchase of lands. The further case of the Revenue was that the Group had been charging 'on-money' on the sale of flats, shops etc. which was not accounted for in their regular books of accounts. The allegation was that 'on-money' was taken in cash and in turn was routed back into the Group companies in the form of share application/unsecured loans, share capital etc. The unaccounted

money routed through the said channel was reinvested in the purchase of further lands and for new projects. The share application money received in cash was also utilized for booking bogus expenses as site development charges for inflating the cost of construction to bring down profits. Among the SVP Group of companies, which are stated to have constituted the core group, is the Assessee, Five Vision.

11. The further case of the Revenue was that during the pre-search enquiries it was gathered that SVP Group of companies had been receiving share capital from several companies which did not undertake any genuine business activities but acted as 'conduit channels' for converting black money into white. The broad general allegation was that in the course of the investigation undertaken by the Additional Director of Income Tax (Investigation), Ghaziabad, the SVP Group of companies did not produce the shareholders despite being served with notices for that purpose. It was alleged that the shareholders were not produced till finalization of assessment order, i.e., upto 21 months thereafter.

12. As far as the present Assessee, Five Vision, is concerned, it filed its return of income for AY 2007-08 on 2nd November 2007. For AY 2007-08, the amount contributed by the corporate shareholders to the share capital of Five Vision aggregated to Rs. 4,56,47,500. The extent of investment in the share capital of Five Vision by these three categories of shareholders for AY 2007-08 was as under:

(i) Table – I (14 companies):	Rs. 1.33 crores
(ii) Table – II (9 companies)	Rs. 87 lakhs
(iii) Table – III (15 companies)	Rs. 2.36 crores

13. The Assessee filed its return of income for AY 2008-09 on 6th October 2008 and for AY 2009-10 on 26th September 2009. As far as AYs 2008-09 and 2009-10 are concerned, the total contribution to the equity share capital of Five Vision aggregated to Rs. 2 crores and Rs. 4.55 crores respectively. The said contribution was entirely from Table-III category shareholders.

14. Consequent upon the search that took place on the SVP Group of companies on 14th October 2008, notices were sent to Five Vision on 14th May 2010 under Section 153C of the Act for AYs 2007-08, 2008-09 and under Section 271F of the Act for AY 2009-10. In response to the above notices, the Assessee filed its return of income for AYs 2007-08 and 2008-09 on 4th June 2010. It replied on the same date to the notice under Section 271F stating that it had already filed a return for AY 2009-10 on 29th September 2009. It enclosed to the reply a hard copy of the said return. Thereafter, notices were again sent to the Assessee by the Assessing Officer ('AO') on 15th September 2010 under Section 143 (2) of the Act. The jurisdiction of the case was shifted from Meerut to Ghaziabad on 13th October 2010. Again notices under Section 142 (1) of Act were issued to the Assessee for the AYs in question by the ACIT, Central Circle, Ghaziabad on 25th October 2010. For AY 2007-08, a further notice under Section 142 (1) was issued on 22nd November 2010 and for AYs 2008-09 and 2009-10 on 2nd December 2010.

15. As already noted, there were 20 companies belonging to Table-I. As far as Five Vision is concerned, the case of the Revenue was that 14 of these Table-I companies were its shareholders during AY 2007-08, contributing an aggregate of Rs. 1.33 crores. As far as Table-II is

concerned, of the 12 companies therein, 9 were shareholders of Five Vision during 2007-08 contributing in the aggregate Rs. 87 lakhs. These are companies against whom information was gathered during the course of search although these companies themselves were not searched. Of the 74 companies in Table-III, 15 were stated to have contributed in the aggregate Rs. 2,36,47,500 to the share capital of Five Vision during the AY 2007-08.

16. As far as AY 2008-09 was concerned, four of the Table-III companies contributed Rs. 2 crores to the share capital of Five Vision. As far as AY 2009-10 was concerned, 20 of the Table-III companies contributed an aggregate of Rs. 4.55 crores to its share capital. None of the companies in Tables I and II contributed to the share capital of Five Vision for AYS 2008-09 and 2009-10.

Assessment order

17. The assessment order was passed on 30th December 2010 by the AO holding that the above investments were not genuine. He held that:

(i) As far as the Table I shareholders were concerned, the AO noted that none of the companies were found to be operating at the given addresses. There was neither any display board for name of these companies nor their books of accounts or related accounts or documents were found from such premises.

(ii) Moreover, even the persons available at the said premises namely Shri Bajrang Bahadur Dubey, Smt. Meena Goyal, Smt. Sushila Goyal and Shri Sachin Garg denied that any of the said companies existed at the said

addresses. Further, despite letter dated 5th March 2009, and summons under Section 131 dated 20th March and 6th April 2009, the Assessee failed to produce the shareholders for cross examination.

(iii) As far as the Table III companies were concerned, many of the summons issued were returned unserved with the remarks "unknown" or "no such person". 24 of the companies submitted replies and some filed affidavits but did not submit any other details. The letter of M/s. Ganesh Buildtech showed that it had invested Rs. 10.50 crores in 16 of the companies in figuring in Tables III and they in turn invested in the SVP Group companies. This was proof of the said companies acting as a "conduit channel". Further, the Assessee failed to produce the shareholders for cross-examination.

(iv) Also, the nexus of the shareholders and the beneficiary, i.e. the SVP Group stood proved from the fact that shares were bought back by the individuals/concerns belonging to SVP Group. During the search, original share certificate worth Rs. 38 crores were found out of which some were seized. During the search one Shri Vijay Jindal gave a statement that the shares were allotted at Rs. 10 per share and later on bought back at Rs.2-3/- per share. The actual average purchase price was Rs. 1.04 per share. Thus shares that were initially issued by the SVP Group to the extent of Rs. 81.19 crores had been cheaply bought back for Rs. 10.38 crores and therefore the transactions were sham.

(v) Thus the Assessee had failed to prove the identity, genuineness and creditworthiness of the said shareholders. Accordingly, the

aforementioned sums shown as investments in its shares for the AYs in question were added to its income for those AYs.

Proceedings before the CIT (A)

18. Aggrieved by the aforementioned assessment orders, the Assessee, Five Vision filed appeals before the Commissioner of Income Tax (Appeals) ['CIT (A)']. The Assessee furnished some more documents on which remand report was called for by the CIT (A) from the AO. The remand report was submitted by the AO on 11th November 2011. A rejoinder and recapitulation note was submitted before the CIT (A) on 8th December 2011. A reply dated 21st December 2011 was also filed by the Assessee on the questions raised by the CIT (A) on 8th December 2011. Further responses were submitted on 7th and 10th February 2012 for questions raised on 3rd and 8th February 2012 respectively.

19. The CIT (A) issued common directions in all the cases on 10th February 2012 directing the shareholders of SVP Group of companies to be produced before the AO. The remand report was submitted by the AO on 24th February 2012. A rejoinder was filed to the said report on 5th March 2012.

20. By an order dated 31st May 2012, the CIT (A) upheld the additions made by the AO. Against the said order of the CIT (A), the Assessee, Five Vision, filed appeals before the ITAT.

Impugned order of the ITAT

21. By the impugned order dated 29th April 2014, the ITAT deleted the additions made under Section 68 of the Act by holding that:

(i) The Revenue had been unable to deny the factual position that only 11 of the 20 companies in Table I had actually been searched. The material on record showed that directors of 18 companies of the 20 companies were examined by the AO in the course of the remand proceedings and found from the books of accounts that the share capital stands duly recorded in their books of accounts. Thus there was no justification for drawing an adverse inference particularly since no contrary material was placed on record by the revenue.

(ii) The statements of Shri Bajrang Dubey and Shri Sachin Garg when carefully examined did not show that the investor companies did not exist or did not in fact subscribe to the share capital of the SVP Group companies.

(iii) As far as Ganesh Buildtech was concerned, while no addition was made by the AO of the sum of Rs. 28 lakhs invested by it in Five Vision for AY 2006-07 and Rs. 1,57,27,500 in AY 2007-08, he added the sum of Rs. 1,74,75,000 received from it in AY 2007-08. This apparent contradiction showed that the addition was made without appreciating the complete facts on record.

(iv) The decision of this Court in *M/s. Nova Promoters and Finlease (P) Ltd. 342 ITR 169 (Del)* was distinguishable on facts since in that case two directors of the shareholder companies admitted to maintaining benami accounts and providing accommodation entries, whereas in the present cases there were no such statements. Also, here the AO did not take any steps to rebut the confirmation and evidence tendered by the shareholders.

(v) The common address of shareholders was not a valid basis to disregard the claim of the Assessee in view of the decision of this Court in *CIT v. Winstral-Petrochemicals Pvt. Ltd.* 330 ITR 603 (Del).

(vi) The subsequent sale of the shares subscribed was not germane to the question of the genuineness of the share capital amount received by the Assessee. Once the capital raised stood explained, the issue of disinvestment by the shareholder subsequently was a non-issue. The addition if at all was to be examined in the hands of the person purchasing the shares.

(vii) There was no material to support the Revenue's case that the 'on-money' collected in cash was routed back into the SVP Group companies in the form of share application and later reinvested in purchase of further lands for new projects.

(viii) There was no material to conclude that some of the investors were 'paper' companies. They had been regularly assessed to tax and had produced their books of accounts during their respective assessment proceedings to show that they had made the investment in question. This had been accepted by the CIT (A) in their assessments by deleting the additions made of the said sums to their income by the AO concerned by holding that the additions if at all should be made in the hands of the beneficiaries. In the appeals filed in those cases, the Revenue had contended that the additions ought to have been sustained. Thus, the stand of the Revenue was contradictory and untenable.

(ix) The Assessee had discharged primary onus of proving the the identity, genuineness and creditworthiness of the said shareholders.

Submissions of counsel

22. Mr. Rohit Madan, learned counsel for the Revenue reiterated the grounds of appeal. He first submitted that the CIT (A) had found that the Assessee had manipulated substantial fund movement through 'paper existence' of the investor companies. Secondly, the CIT (A) found that the common directors repetitively appeared in the list of directors of the companies which clearly indicated that they belonged to the same group, and were manipulating their books for the purpose of introduction of unexplained cash money and creating 5-6 steps of cheque transactions before the investment was made eventually in SVP group of companies. Thirdly, the CIT (A) checked the creditworthiness of three shareholding companies, viz., (i) Quality Security Services Pvt. Ltd. (b) United Head Hunters Pvt. Ltd. and (iii) Wellset Pharma & Drugs Pvt. Ltd. and found that these companies did not have any worthwhile share capital and their activities were only in the form of management of fund rotation in the garb of share application money invested in each other. Such rotation was with a view to artificially inflate their credit worthiness. Fourthly, the AO had found that the Assessee bought back its own shares at a very low price. The share allotted at the face value of Rs. 10 were transferred in the names of individuals/ concerns belonging to SVP group at a meagre price ranging from Rs. 0.50 to Rs. 2 per share. Fifthly, the persons available at the premises during search of the Table I companies denied the existence of such companies at that place. The Assessee had received huge amounts of money of Rs. 11 crores in cash in the form of share application money, which was not explained. Lastly, it was submitted that the decision in *M/s.*

Nova Promoters and Finlease (P) Ltd. (*supra*) was wrongly distinguished by the ITAT in its application to the facts of the present case.

23. Mr. C.S. Aggarwal, learned Senior counsel for the Assessee, filed the entire record of the case submitted before the AO, CIT (A) and the ITAT and urged that no substantial question of law arises since the findings of the ITAT were purely factual and consistent with the well settled law explained by the Supreme Court and the High Courts in several decisions concerning Section 68 of the Act. Mr. Aggarwal pointed out that as regards the 38 shareholders who contributed share capital for AY 2007-08, a sum of Rs. 4,56,47,500, 14 belonged to Table-I, 9 to Table-II and 15 to Table-III. Evidence in respect of each of the 14 Table I companies was filed by the Assessee. This included, *inter alia*

- (i) copy of share application forms;
- (ii) copy of board resolution;
- (iii) copy of allotment letter confirming the allotment;
- (iv) confirmation in affidavit by the investor
- (v) copy of share certificate evidencing the allotment of shares;
- (vi) copy of income tax return ('ITR') for the relevant AY;
- (vii) the relevant extracts of the copy of bank book; and
- (viii) copy of the letter with enclosures filed by the investor company addressed to AO in response to summons issued under Section 131 of the Act making direct enquiries.

24. Mr. Aggarwal pointed out that similar details were provided for 9 corporate shareholders belonging to Table-II who invested in Five Vision for AY 2007-08 and in respect of 15 corporate shareholders belonging to Table-III who invested in the same AY, i.e., 2007-08.

25. Mr. Aggarwal drew the attention of the Court to the fact that the following details were furnished in respect of the four corporate

shareholders which contributed a sum of Rs. 2 crores for the share capital of Five Vision for AY 2008-09:

- (a) copy of certificate of incorporation/MOA;
- (b) copy of ITR filed for relevant AY;
- (c) copy of share application forms;
- (d) copy of board resolutions;
- (e) copy of bank statement (relevant extracts);
- (f) copy of confirmation;
- (g) confirmation in the affidavit by the investor
- (h) copy of the letter with enclosures submitted by the investor companies in response to the summons under Section 131 of the Act.

26. As regards 18 shareholders who contributed Rs. 4.55 crores to the share capital for AY 2009-10, all the aforesaid documents were filed by the Assessee. The said documents were also placed before this Court. Mr. Aggarwal submitted that the Assessee had therefore, discharged its initial onus on the identity, creditworthiness and genuineness of the transactions. He submitted that the ITAT had itself recorded the fact that the AO had issued summons under Section 131 of the Act which had been duly complied with and then the shareholders independently confirmed having subscribed to the share capital in Five Vision.

27. Reliance was placed by Mr. Aggarwal on the decision of the Supreme Court in *CIT v. Lovely Exports (P) Ltd.* 216 CTR 195 (SC), *CIT v. Divine Leasing and Finance Ltd.* (decision dated 21st January 2008 of the Supreme Court in Special Leave to Appeal (Civil) (CC) 375 of 2008) and decision dated 17th September 2012 of the Supreme Court in *CIT v. Kamdhenu Steel & Alloys Limited* [SLP (Civil) CC 15640 of 2012)]. In all the above three decisions the Supreme Court had affirmed the corresponding decisions of this Court including *CIT v. Divine Leasing and Finance Ltd.* 299 ITR 268. Reliance was also placed on the decision of

this Court in *(1994) CIT v. Sophia Finance Ltd. (1994)205 ITR 98 (FB) (Del)*.

Law concerning Section 68 of the Act

28. Before proceeding to discuss the above submissions, a brief recapitulation of the legal position as regards Section 68 of the Act is necessary. Under Section 68 of the Act, the AO has jurisdiction to undertake enquiries with regard to the amount credited in the books of the accounts of an Assessee. This could be any sum whether in the form of sale proceeds or receipt of share capital money. First, the AO is to enquire whether the alleged shareholders in fact exist or not. The truthfulness of the assertion by the Assessee regarding the nature and the source of the credit in its books of accounts can be examined by the AO. Where the identity of the shareholders stands established and it is shown that they had in fact invested money in the purchase of the Assessee's shares, then the amount received would be regarded as capital. Where the Assessee offers no explanation at all or the explanation offered is unsatisfactory, the provision of Section 68 may be invoked.

29. A Full Bench of this Court in *CIT v. Sophia Finance Limited (supra)* held in the context of Section 68 of the Act that:

(i) 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 creditworthiness or financial strength of the creditor/subscriber".

(ii) If the relevant details of the address of PAN identity of the

creditor/subscriber are furnished to the Department along with copies of the Shareholders Register, Share Application Forms, Share Transfer Register etc., it would constitute acceptable proof or acceptable explanation by the Assessee.

(iii) The Department would not be justified in drawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices.

(iv) 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.

(v) The AO is duty-bound to investigate the creditworthiness of the creditor/subscriber the genuineness of the transaction and veracity of the repudiation.

30. In the decision *CIT v. Divine Leasing and Finance Ltd. (supra)*, this Court held that if the Assessee had furnished relevant details of the subscribers and the shares were allotted as per the prevalent norms of the Stock Exchange, no addition could be made on account of unexplained cash credits. Where the Assessee had provided the relevant details it had discharged its onus and then it is for the Revenue to show that the subscribers were benamidars or any part of the share capital represented the Assessee's own income from undisclosed sources. In *CIT v. Divine Leasing and Finance Ltd. (supra)*, the Supreme Court while affirming the order of this Court observed that "if the share application money is received by the Assessee company from bogus shareholders, whose names

are given to the AO, then the Department is free to proceed to re-open their individual assessments in accordance with law.”

31. Likewise in *CIT v. Dolphin Canpack Ltd.* 283 ITR 190 the Court held no substantial question of law arose since the ITAT found that the Assessee had disclosed to the AO during the course of enquiry “not only the names and the particulars of the subscribers of the shares but also their bank accounts and the permanent account numbers issued by the income tax department. Superadded to all this was the fact that the amount received by the company was all by way of cheques.”

32. The law was reiterated in *CIT v. Kamdhenu Steel & Alloys Ltd.* 206 Taxman 254. The Assessee there had given particulars of registration of the investing companies; confirmation from share applicants, their bank account details; and had shown payment through account payee cheques etc. In the circumstances, it was held that it could be said that the Assessee had discharged its initial onus and just because some of creditors/share applicants could not be found at the addresses given," would not give Revenue a right to invoke Section 68 without any additional material to support such a move.” It was held likewise in *Sarthak Securities Co. (P) Ltd. v. ITO* 329 ITR 110.

33. In *CIT v. Nipun Builders and Developers (2013) 350 ITR 407 (Del)* it was held that the point at which the initial onus on the Assessee to prove the unexplained credit would stand discharged depends upon the facts and circumstances of each case. It was observed:

“Circumstances might require that there should be some evidence of positive nature to show that the said subscribers had made a genuine investment, acted as angel investors, after due diligence or

for personal reasons. Thus, finding or a conclusion must be practicable, pragmatic and might in a given case take into account that the Assessee might find it difficult to unimpeachably establish creditworthiness of the shareholders.”

34. In *Commissioner of Income Tax v. N.R. Portfolio Pvt. Ltd. (2014) 206 DLT 97 (DB)* the Court reiterated the need of the Assessee to satisfy the AO about the "identity, creditworthiness and genuineness" of the creditors. It was observed that the

“mere production of incorporation details, PAN Nos. or the fact that third persons or company had filed income tax details in case of a private limited company may not be sufficient when surrounding and attending facts predicate a cover up. These facts indicate and reflect proper paper work or documentation but genuineness, creditworthiness, identity are deeper and obtrusive.”

35. Recently in *Jet Lite (India) Ltd. v. CIT* (decision dated 4th November 2015 in ITA No. 204 of 2002), this Court examined the entire case law and reiterated the settled legal position.

Reasons and decision

36. In the present case, there is a basic fallacy in the submission of the Revenue about the precise role of the Assessee, Five Vision. The broad sweeping allegation made is that “the Assessee being a developer is charging on money which is taken in cash”. This, however, does not apply to the Assessee which appears to be involved in the construction of a shopping mall. In fact for the AYs in question, the Assessee had not commenced any business. The construction of the mall was not yet complete during the AYs in question. The profit and loss account of the Assessee for all the three AYs, which has been placed on record, shows that only revenue received was interest on the deposits with the bank. The

Assessee is, therefore, right in the contention that the basic presumption of the Revenue as far as the Assessee is concerned has no legs to stand. Correspondingly, the further allegation that such 'on money' was routed back to the mainstream in the form of capital has also to fail.

37. The other submission that the Assessee was itself being used as a conduit for routing the 'on money' or that the investment in the Assessee was also for routing such 'on money' has not even *prima facie* been able to be established by the Revenue. On the one hand there is an attempt to treat the cash credit found in the Assessee's books of accounts to be 'undisclosed income of the Assessee' by showing the investors to be 'paper companies'. On the other hand, the attempt is to show that this money in fact belongs to certain other entities whose source has not been explained by the Assessee. As noted by the ITAT in the assessment proceedings of the investor companies, the monies invested were sought to be added as income of those companies by the AOs. The said additions were deleted by the CIT (A) in their cases holding that the additions if at all should be made in the hands of the beneficiaries. The Revenue then filed appeals in the ITAT insisting on the additions being sustained. Thus there is no clarity in the stand of the Revenue in these cases.

38. Coming to the core issue concerning the identity, creditworthiness and genuineness of the investor companies, it is seen that as far as the Table I investors were concerned, only 9 were searched and in their cases, the ITAT on a very detailed examination was satisfied that they not only existed, but that the Assessee had discharged the primary onus of proving their creditworthiness and genuineness. They had responded to the

summons issued to them. Directors of 14 of these companies appeared before the AO and produced their books of accounts.

39. In respect of four of the Table II companies, who invested Rs. 2 crores in the share capital of the Assessee for the AY 2008-09, the CIT (A) observed: “I have carefully appreciated the contentions and do admit that at least these few companies do not seem to be having connection with the majority of the 'conduit' companies and their common directors and that their financial credit worthiness is on much better footing.”

40. As regards Table-III companies, notices were issued under Section 131 of the Act to which many of them responded confirming having made investments. The Assessee had been asked by the CIT (A) to produce 7 directors of the Table III companies. 6 directors appeared and their statements were recorded. They had confirmed that they had subscribed to the share capital of the Assessee. These directors had not only produced the books of accounts but showed that the source of investment was duly recorded therein. The Revenue on the other hand did not produce any further evidence to dispute the above evidence produced by the Assessee. As far as Table II shareholders were concerned, if the Revenue was of the view that they were simply using the Assessee for parking their undisclosed income, then it was certainly open to the Revenue to make additions to the income of those Table-II companies. As far as Table-I shareholders was concerned, none of them denied having made the investment in the Assessee company. The AO does not appear to have undertaken any particular investigation into the affairs of the Table-I, II or Table III companies apart from issuance of the notices under Section 131 of the Act which were duly responded to.

41. Detailed findings have been given by the ITAT in the present cases after a thorough examination of the records. These have been extracted hereinabove. The Court finds no reason to differ from the decision of the ITAT in its rejection of the very same contentions urged before the Court by the Revenue. In particular, the Court concurs with the ITAT that the mere fact that some of the investors have a common address is not a valid basis to doubt their identity or genuineness.

42. Also, the fact that the shares of the Assessee were subsequently sold at a reduced price is indeed not germane to the question of the genuineness of the investment in the share capital of the Assessee. The question of avoidance of tax thereby may have to be examined in the hands of the person purchasing the shares.

43. Some of the investor companies for e.g., Quality Security Services Pvt. Ltd. (b) United Head Hunters Pvt. Ltd. and (iii) Wellset Pharma & Drugs Pvt. Ltd. have been shown to be filing returns and being assessed on a regular basis. Some of them have been shown to be in existence even before the incorporation of the Assessee. Indeed the Revenue was unable to produce material to substantiate its case that the genuineness and creditworthiness of the investors and the source of the money received by the Assessee by way of investments in the AYs in question was not satisfactorily explained by the Assessee. Also, the ITAT rightly distinguished the decision in *M/s. Nova Promoters and Finlease (P) Ltd.* (*supra*) in its application to the facts of the present case.

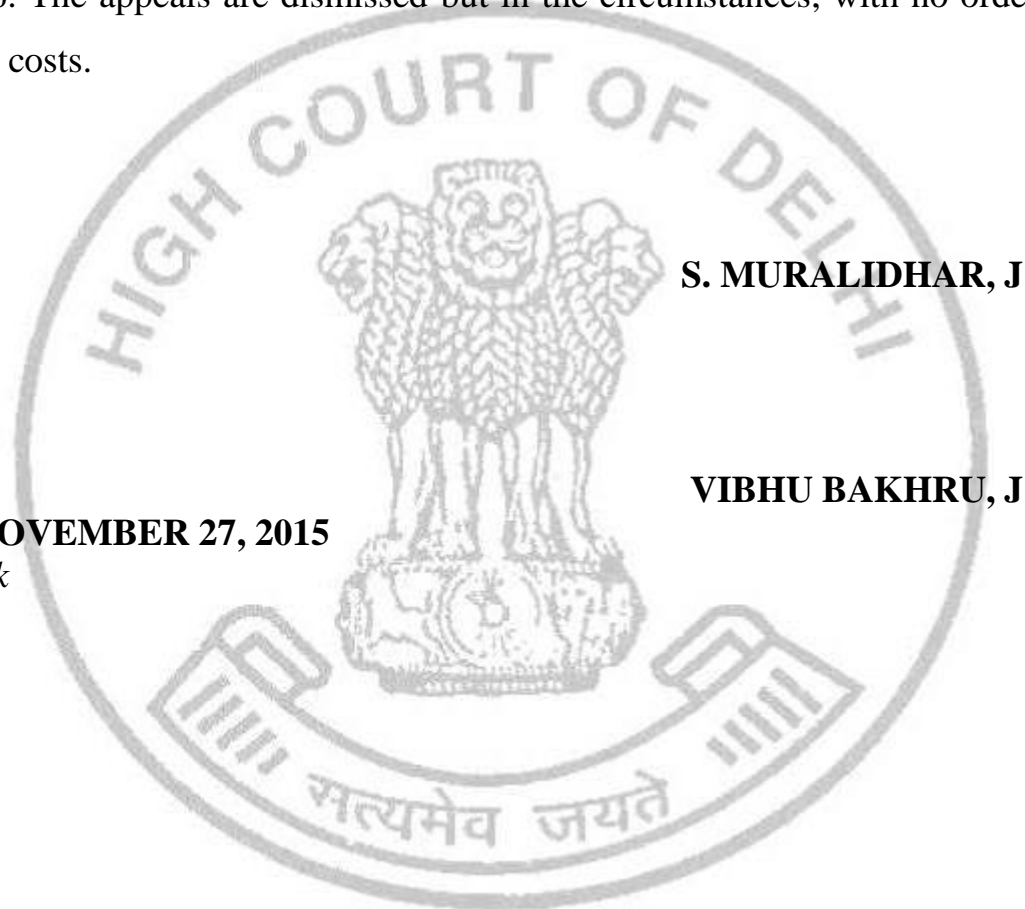
Conclusion

44. The Revenue has not been able to show that there is any legal infirmity in the impugned order of the ITAT as regards the analysis of the facts or the application of the law in relation to Section 68 of the Act.

45. Consequently, no substantial question of law arises for determination.

46. The appeals are dismissed but in the circumstances, with no orders as to costs.

NOVEMBER 27, 2015
Rk



S. MURALIDHAR, J

VIBHU BAKHRU, J