

**(2013) 10 DEL CK 0115**

**Delhi High Court**

**Case No:** Income Tax Appeal No. 391 of 2012

CIT

APPELLANT

Vs

Aapki Marketing Pvt. Ltd.

RESPONDENT

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**Date of Decision:** Oct. 28, 2013

**Acts Referred:**

- Income Tax Act, 1961 - Section 68, 69

**Hon'ble Judges:** Sanjiv Khanna, J; Sanjeev Sachdeva, J

**Bench:** Division Bench

**Advocate:** Rohit Madan, for the Appellant;

**Final Decision:** Disposed Off

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### **Judgement**

Sanjiv Khanna, J.

This appeal by the Revenue, which relates to Assessment Year 2007-08, raises a substantial question of law:-

Whether the Tribunal was justified in giving directions in paragraph 20 of their order dated 02.03.2012 while passing an order of remand?

The respondent-assessee in the return on 15th November, 2007 declared income of Rs. 14,144/-. In the regular scrutiny assessment, substantial addition of Rs. 1,08,60,000/- was made u/s 68 of the Income Tax Act, 1961 (Act for short) on account of share application money. It is apparent that there was substantial addition of Rs. 81,40,000/- for similar reasons in the Assessment Year 2006-07 (see the impugned order of the tribunal dated 2nd March, 2012, which relates to Assessment Years 2006-07 and 2007-08). Suffice it is to notice that we are not concerned with the addition of Rs. 1,08,60,000/-, as the said addition has been upheld by the tribunal. Similar findings have been recorded by the tribunal in respect of Assessment Year 2006-07. Thus, additions of Rs. 81,40,000/- and Rs. 1,08,60,000/- in the Assessment Years 2006-07 and 2007-08 have been confirmed.

2. The question raised in the present appeal relates to the findings recorded by the Assessing Officer after the respondent-assessee was called upon to explain investments from the receipt of share application money. The Assessing Officer noticed that the assessee had made investment in some companies, which were shown partly in cash and partly by cheque. The Assessing Officer has given details of investments, which were made by the petitioner in cash. He has recorded that Rs. 26 lacs invested by cheques was in real estate companies. Total amount for which cheques were issued was Rs. 1,08,05,000/- and total investment in cash was Rs. 1,05,00,000/- making a total of Rs. 2,13,05,000/-. No explanation was offered on the nature of these cheques. The Assessing Officer thereafter made a separate addition of Rs. 2,13,05,000/- on account of unexplained investment u/s 69 of the Act.

3. Commissioner of Income Tax (Appeals) deleted the said addition u/s 69 after recording that the investment had been squared up and had not been shown as investment on the last date of the assessment year. He, however, recorded that more importantly the source of making the investment was not made subject matter or point of dispute in the assessment order. To this extent, the order of the Commissioner (Appeals) is incorrect as the tribunal has upheld the order of the Assessing Officer making addition on account of share application money. The Commissioner (Appeals) order deleting addition in respect of the share application money has been set aside and order of the Assessing Officer restored.

4. In the impugned order passed by the tribunal dated 2nd March, 2012, they have referred to the addition made by the Assessing Officer u/s 69 of the Act and the order of the Commissioner (Appeals) and thereafter given the following directions:-

20. As regards ground No. 2, the AO will verify the fact regarding squaring of account during the year and if the same is found to be correct no addition is called for: In the result this ground is allowed for statistical purposes.

Learned counsel for the appellant is right in his submission that the aforesaid observations while issuing an order of remand would put fetters and restraint the Assessing Officer even if he finds that the investment entries were bogus and not genuine. This is not a straight forward and simple case but money laundering may be involved. There may be third party players who may be the real beneficiaries of the transactions including addition towards share application money. It is submitted that the respondent assessee does not appear to be indulging in genuine transactions or was probably being used as a conduit. These are all issues and aspects, which can be examined by the Assessing Officer. We, therefore, feel that the tribunal should not have tied or put fetters on the discretion of the Assessing Officer. We clarify that the Assessing Officer while examining the said question on remand shall take into consideration all the facts and circumstances and it will be open to the Assessing Officer to consider whether any addition on this account is required to be made and the respondent-assessee will be also entitled to show that no addition is justified and Section 69 should not be invoked. The effect of the

addition made by the tribunal will be also examined by the Assessing Officer and it will be open to the assessee to contend and show that in view of the said enhancement, no separate addition is required or can be justified. We further clarify that the Assessing Officer can also examine that if Section 69 is not applicable, whether any addition can be justified and can be made under any other provision of the Act. The question of law is accordingly answered in favour of the revenue and against the assessee.

The appeal is disposed of.