

ITEM NO.25 COURT NO.7 SECTION IIIA

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2008  
(CC 375/2008)

(From the judgement and order dated 16/11/2006 in ITA No.  
53/2005 of The  
HIGH COURT OF DELHI AT N. DELHI)

COMMISSIONER OF INCOME TAX Petitioner(s)

VERSUS

M/S. DIVINE LEASING & FINANCE LTD. Respondent(s)

With I.A.1 (C/delay in filing SLP and office report)

Date: 21/01/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H.KAPADIA

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Petitioner(s)

Mr.G.E.Vahanvati, SG

Mr.Devatatt Kamat, Adv.

Mr. B.V. Balaram Das,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following  
ORDER

Delay condoned.

Can the amount of share money be regarded as undisclosed income  
under

Section 68 of Income Tax Act, 1961? We find no merit in this Special Leave

Petition for the simple reason that if the share application money is received by the

assessee-Company from alleged 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. Hence, we find no infirmity with the impugned judgment.

Subject to the above, Special Leave Petition is dismissed.

( Satish K.Yadav ) ( Madhu Saxena )  
Court Master Court Master

ITEM NO.31 COURT NO.7 SECTION IIIA

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2008  
(CC 451/2008)  
(From the judgement and order dated 06/07/2006 in ITA No.  
576/2004 of The  
HIGH COURT OF CALCUTTA)

COMMR.OF I.T.,KOLKATA Petitioner(s)

VERSUS

M/S SHIPRA RETAILERS(P) LTD. Respondent(s)

With I.A.1 (C/delay in filing SLP)

Date: 21/01/2008 This Petition was called on for hearing today.

CORAM :  
HON'BLE MR. JUSTICE S.H.KAPADIA  
HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Petitioner(s) Mr.G.E.Vahanvati, SG  
Mr.O.P.Srivastava, Adv.  
Mr. B.V. Balaram Das,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following  
ORDER

Delay condoned.

Can the amount of share money be regarded as undisclosed income under

Section 68 of Income Tax Act, 1961? We find no merit in this Special Leave

Petition for the simple reason that if the share application money is received by the

assessee-Company from alleged 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. Hence, we find no infirmity with the impugned judgment.

Subject to the above, Special Leave Petition is dismissed.

( Satish K.Yadav ) ( Madhu Saxena )  
Court Master Court Master

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2007  
CC 11993/2007

(From the judgement and order dated 16/11/2006 in ITA No.953/2006 of the  
HIGH COURT OF  
DELHI AT NEW DELHI)

COMMR.OF INCOME TAX Petitioner(s)

VERSUS

M/S LOVELY EXPORTS(PVT)LTD. Respondent(s)

(With appln(s) for c/delay in filing SLP and office report)

Date: 11/01/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Petitioner(s) Mr. V. Shekhar, Sr.Adv.

Mr. Chinmoy Pradip Sharma, Adv.

Mr. B.V. Balaram Das,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following  
ORDER

Delay condoned.

Can the amount of share money be regarded as undisclosed income  
under Section 68 of Income Tax Act, 1961? We find no merit in this Special  
Leave Petition for the simple reason that if the share application money is

received  
by the assessee-Company from alleged 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. Hence, we find no infirmity with the  
impugned judgment.

Subject to the above, Special Leave Petition is dismissed.

(N. Annapurna) (Madhu Saxena)  
Court Master Court Master

ITEM NO.9 COURT NO.8 SECTION IIIA

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2007  
CC 12860/2007

(From the judgement and order dated 19/02/2007 in ITA  
No.788/2006 of the HIGH COURT OF  
DELHI AT NEW DELHI)

COMMR.OF INCOME TAX,DELHI Petitioner(s)

VERSUS

M/S PONDY METAL & ROLLING MILLS(P) LTD. Respondent(s)

(With appln(s) for c/delay in filing SLP and c/delay in refiling SLP)

Date: 08/01/2008 This Petition was called on for hearing today.

CORAM :  
HON'BLE MR. JUSTICE S.H. KAPADIA  
HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Petitioner(s) Mr. G.E. Vahanvati, S.G.  
Mr. Devadatt Kamat, Adv.  
Mr. B.V. Balaram Das,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following  
ORDER

Delay condoned.

The Special Leave Petition is dismissed.

(N. Annapurna) (Madhu Saxena)  
Court Master Court Master

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

**ITA 788/2006**

**COMMISSIONER OF INCOME TAX DEL ..... Appellant  
Through:Mr.R.D.Jolly with Mr.Ajay K.Jha, Adv.**

versus

**M/S PONDY METAL and ROLLING MILL ..... Respondent  
Through:Mr.C.S.Aggarwal, Sr.Advocate with  
Mr.Prakash Kumar, Adv.**

**CORAM:**

**HON'BLE MR. JUSTICE MADAN B. LOKUR  
HON'BLE MR. JUSTICE V. B. GUPTA**

**O R D E R  
19.02.2007**

**The Revenue is aggrieved by an order dated 31st May, 2005 passed by the  
Income Tax Appellate Tribunal, Delhi Bench ?F? in ITA Nos.4053/DEI/99,  
5316/D/98, 4123 and 4125/D/2000 relevant for the Assessment Year 1994-  
95 to  
1997-98.**

**The Revenue has essentially raised two issues before us. In so far as  
the first issue is concerned, that pertains to an investment of Rs. 60 lacs  
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**made by M/s Gold Mark Enterprises, a company incorporated in  
Mauritius.**

**According to the Revenue, the Tribunal had wrongly not gone into the  
creditworthiness of this company to make the investment.**

**We find from the impugned order that the Tribunal has considered the  
relevant facts of the case and it has come to a conclusion that the said  
company**

**was clearly identified by the Assessee. The Tribunal has placed reliance  
upon**

**the judgments of this Court in CIT vs. Achal Investment Ltd. (2004) 268  
ITR 211**

**and CIT vs. Steller Investment Ltd., (1991) 92 ITR 287 and has taken into  
consideration the fact that once the identity of the investor has been  
manifest**

**and is proved, the investment cannot be said to be the undisclosed**

income of the

Assessee. At best, the amount could be added in the hands of the investor but

it certainly could not be treated as undisclosed income of the Assessee.

The Tribunal has also noted that the Assessee had discharged its initial burden and that share application money of Rs.60 lacs by the same

investor, that is Gold Mark Enterprises Ltd. was received for the

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assessment year 1996-97 and the Assessing Officer made no addition to the

income of the Assessee for that year.

Under these circumstances, we are of the view that no substantial question of law arises in so far as the investment of Rs.60 lacs by M/s Gold

Mark Enterprises Ltd. is concerned.

It may be noted that in so far as the assessment year 1995-96 is concerned, learned counsel for the Assessee pointed out that the amount is Rs.40

lacs and not Rs.60 lacs.

The second issue that has been raised by the Revenue does, in our opinion, raise, a substantial question of law and we admit the appeal to that

extent and frame the following question of law:-

?Whether the Income Tax Appellate Tribunal was correct in law in holding that

the Assessee was entitled to deduction under Section 80-IA of the Income Tax

Act, 1961??

Paper books be filed in accordance with the High Court rules.

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Liberty is granted to the Assessee to file the paper book that was before the Tribunal.

MADAN B. LOKUR, J



Mr. C.P.Sharma,Adv.  
Mr. B.V. Balaram Das,Adv.  
For Respondent(s)  
Ms. Radha Rangaswamy,Adv.  
Mr. R.M.Mehta,Adv.

UPON hearing counsel the Court made the following

ORDER

Can the amount of share money be regarded as undisclosed income under Sec.68 of Income Tax Act, 1961? We find no merit in this special leave petition for the simple reason that if the share application money is received by the assessee-Company from alleged 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. Hence, we find no infirmity with the impugned judgment. Subject to the above, special leave petition is dismissed.

[SUMAN WADHWA]  
[MADHU SAXENA]  
COURT MASTER  
COURT MASTER