

* **HIGH COURT OF DELHI : NEW DELHI**

+ **ITA No.931 of 2006**

Judgment reserved on: April 25, 2007

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2007 Judgment delivered on: April 30,

M/s Bharti Telecom Finance Ltd.
Qutab Ambience
H-5/12, Mehrauli Road
New Delhi

...Appellant
Through Mr. Y.K. Kapur, Adv.

Versus

Assistant Commissioner of Income Tax
Company Circle 2(1)
New Delhi

...Respondent
Through Mrs. P.L. Bansal, Adv.

Coram:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MADAN B. LOKUR

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MADAN B. LOKUR, J.

The assessee is aggrieved by an order dated 27th January, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'D',

New Delhi (the Tribunal) in ITA No.1069/Del/2002.

2. The accounts of the assessee showed a credit balance of Rs. 80 lakhs in the name of Ms. Devina Mehra. According to the assessee, this was an advance received for the purchase of shares. The Assessing Officer asked for a confirmation to be filed and the assessee filed a confirmation from M/s First Global Finance Pvt. Ltd. but not from Ms. Devina Mehra. The Assessing Officer then asked Ms. Devina Mehra to confirm the transaction but she did not respond.

3. On these facts, the Assessing Officer asked the assessee to show cause why the amount be not added to its income since the transaction did not appear to be genuine. The assessee did not respond but a letter was received by the Assessing Officer from M/s Khanna & Co. claiming to be the Chartered Accountant of Ms. Devina Mehra in which it was stated that she had given a loan to the assessee on behalf of M/s First Global Finance Pvt. Ltd. in which she was a Director. Since the letter sent by the Chartered Accountant did not have any authority from Ms. Devina Mehra, the Assessing Officer took no note of it and added the amount of Rs. 80 lakhs to the income of the assessee being an

unexplained credit in its accounts.

4. It would be noticed that according to the assessee, it was an advance received by the assessee towards purchase of shares from Ms. Devina Mehra while according to M/s. First Global Finance Pvt. Ltd. and the Chartered Accountant of Ms. Devina Mehra the amount was a loan given by M/s First Global Finance Pvt. Ltd. to the assessee.

5. Feeling aggrieved by the assessment order, the assessee filed an appeal and the Commissioner of Income Tax (Appeals) [CIT (A)] who remanded the matter to the file of the Assessing Officer to examine whether the amount in fact pertains to Ms. Devina Mehra or to M/s First Global Finance Pvt. Ltd.

6. The Assessing Officer took up the issue again on remand and this time the material placed by the assessee was to the effect that M/s First Global Finance Pvt. Ltd. had authorized Ms. Devina Mehra, one of its Directors to advance the amount to the assessee by way of a loan. This transaction was confirmed by Ms. Devina Mehra also. However, quite strangely, it transpired that the assessee actually received the amount by way of three demand drafts, of which two demand drafts

were issued by Ms/ Growell Capital services Pvt. Ltd. for a total of Rs. 39 lakhs. In view of these varying versions on record, the Assessing Officer was not satisfied about the genuineness of the transaction and, therefore, concluded that the amount of Rs. 80 lakhs credited in the accounts of the assessee was the unexplained income of the assessee.

7. On appeal by the assessee, the CIT (A) concluded that in the absence of a clear cut explanation with regard to the source of Rs. 80 lakhs, the nature of the transaction between the assessee, M/s First Global Finance Pvt. Ltd. and Ms. Devina Mehra and the failure of the assessee to show the genuineness of the transaction, the addition of Rs. 80 lakhs was quite justified.

8. The assessee then preferred a further appeal before the Tribunal but that appeal was dismissed with the result that the assessee has approached us under Section 260A of the Income Tax Act, 1961 (the Act) for framing a substantial question of law arising out of the order of the Tribunal.

9. Having heard learned counsel for the assessee, we find that

there are several versions that have been given to explain the amount of Rs. 80 lakhs in the hands of the assessee. The amount was initially said to be an advance received by the assessee from Ms.Devina Mehra for purchase of shares, then it was said to be a loan given by M/s First Global Finance Pvt. Ltd., then it was said that Ms. Devina Mehra was authorized by M/s First Global Finance Pvt. Ltd. to advance the amount to the assessee and finally, it appears that two of the three demand drafts were not even issued by M/s First Global Finance Pvt. Ltd. or by Ms. Devina Mehra but by a third party, namely, M/s Growell Capital Services Pvt. Ltd.

10. In view of the shifting stands and the varying explanations given for the source of Rs. 80 lakhs in the account of the assessee, the authorities under the Act took the view (and were fully justified in doing so) in not accepting the nature of the transaction or the source of the funds or for that matter the genuineness of the transaction itself.

11. The Tribunal has also noted that the assessee's case was that the amount was received from M/s First Global Finance Pvt. Ltd. but that the Accountant of the assessee had wrongly shown that the amount

was received from Ms. Devina Mehra. The Tribunal noted that even this explanation is contradictory and unsubstantiated because subsequent repayment of the amount was not made to M/s First Global Finance Pvt. Ltd. but to Ms. Devina Mehra who had herself stated that the amount was given to the assessee by M/s First Global Finance Pvt. Ltd..

12. The explanations for the amount are riddled with serious doubts. All the authorities under the Act have found against the assessee in view of the discrepancies. There are concurrent findings given by all the authorities below.

13. We are of the opinion that the facts of the case reveal that the decision taken by the authorities under the Act cannot be faulted with. No substantial question of law arises for our consideration.

14. The appeal is dismissed.

Madan B. Lokur, J

April 30, 2007

V.B. Gupta, J

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Certified that the corrected copy of the judgment has been transmitted in the main Server.