

## US based private investment group making Investment with Govt. approval cannot be treated as a sham transaction

**Summary – The High Court of Bombay in a recent case of Aditya Birla Telecom Ltd., (the Assessee) held that where a US based private investment group has made Investment with Govt. approval it cannot be treated as a sham transaction**

### Facts

- The assessee-company was engaged in telecommunication services. Investment was made by a US based global private investment group through P5AHIML, a specially constituted Mauritius based company and shares of the assessee of face value Rs. 10 were issued at a premium of Rs. 10,890 per share and the assessee-company received Rs 19.25 lacs as the share amount and a total premium of Rs. 20.96 crores.
- Out of the invested amount, the assessee company used a sum of Rs. 7.31 crores for its own operation and transferred the balance to its holding company for the purpose of other investment. The assessing officer held that the transaction was a colourable device and not genuine transaction and under section 68, made addition in hands of the assessee.
- On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer.
- On further appeal, the Tribunal concluded that P5AHIML was a company registered as a Foreign Venture Capital Investor (FVCI) with SEBI and the investment in holding company was made by assessee after necessary approvals were obtained from the Foreign Investment Promotion Board. The Tribunal held that all the three ingredients of section 68, *i.e.*, identity, genuineness and creditworthiness of investor were duly established, thus deleted the addition made by the Assessing Officer.
- On the Revenue's appeal to the High Court:

### Held

- The HC on examination of the inquiry of source of funds and other relevant factors in relation to the investment and held that the Tribunal had also pointed out that all necessary permissions and clearances were granted by the Government of India and other government authorities for such investment.
- The Tribunal noticed no suspicious movement of the funds. Merely because the investment was considerably large and as noted, several corporate structures were either created or came into play in routing the investment in the assessee through P5AHIML would not be sufficient to brand the transaction as colourable device.