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Assessee unable to justify excessive premium over face value of shares - Reassessment justified: HC

Summary – The High Court of Delhi in a recent case of Max Ventures Investments Holdings (P.) Ltd., (the Assessee) held that in case the assessee is unable to justify excessive premium over face value of shares, reassessment proceedings are justified

Facts

- The assessee was a private limited company engaged in the business of rendering financial services. The assessee received share application money of Rs. 87 crores from its promoter/founder towards fresh allotment of equity shares.
- The assessee's return was picked up for scrutiny since an amount of Rs. 87 crores of share application money was found outstanding against unalloted shares and the AO added the same to the returned income as unexplained income.
- On appeal, the Commissioner (Appeals) deleted the aforesaid addition.
- Pursuant to the CITA order, the AO issued reassessment notice under section 148 to understand how the assessee charged a huge premium which was 457 times the face value of the shares of Rs. 10 each since the financials of the assessee-company did not support such high valuation. Upon further investigation the AO found that there was contradiction between the submission of the assessee and documents submitted before the income tax department and held that the transaction with respect to credits of Rs. 87 crores was not genuine and, thus, can be basis of reason for formation of belief that the income had been escaped assessment.
- On writ petition to the High Court:

Held

- The HC held that if full disclosure of material facts are not made during the original assessment the Assessing Officer has power to re-open the assessment if there is tangible material to conclude, *prima facie* that there has been escapement of income - the HC held that this finding was also held by the SC in many cases.
- Analysing the instant case, the HC stated that the Revenue had doubts since there was nothing to justify the premium of 457 per cent over the face value of the shares.
- Thus the reassessment notice in this case was clearly warranted. Looking at the transaction (*i.e.* allotment of shares vastly in excess of the authorized capital, in the absence of any SEBI approval and retention of that money by the assessee which did not show any reason for issuing the shares) the other ingredients of section 68 (*i.e.* genuineness of the transaction or credit and the creditworthiness of the individual providing the money) were apparently not established. The HC held that the revenue was justified in issuing the impugned notice.