

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

**I.T.A .No.-856/Del/2014
(ASSESSMENT YEAR-2006-07)**

Global Realty Heritage Venture (Cochin) (P.) Ltd., 12-Ring Road, Lajpat Nagar, IV, New Delhi. PAN-AAACU4841Q (APPELLANT)	vs	Addl. CIT, Range-3, New Delhi (RESPONDENT)
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**I.T.A .No.-857/Del/2014
(ASSESSMENT YEAR-2007-08)**

Shree Kaila Devi Real Estate Ltd., 12-Ring Road, Lajpat Nagar, IV, New Delhi. PAN-AAGCS7312D (APPELLANT)	vs	Addl. CIT, Range-3, New Delhi (RESPONDENT)
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**I.T.A .No.-785 & 786/Del/2014
(ASSESSMENT YEAR-2005-06 & 2006-07)**

Gagan Buildwell (P.) Ltd., 12-Ring Road, Lajpat Nagar, IV, New Delhi. PAN-AAACCG2542C (APPELLANT)	vs	Addl. CIT, Range-3, New Delhi (RESPONDENT)
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**I.T.A .No.-855/Del/2014
(ASSESSMENT YEAR-2009-10)**

Fortune Developers International (P.) Ltd., 12-Ring Road, Lajpat Nagar, IV, New Delhi. PAN-AAACF9838Q (APPELLANT)	vs	Addl. CIT, Range-3, New Delhi (RESPONDENT)
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Appellant by	Sh.Pankaj Gargh, Adv.
Respondent by	Dr.Anjula Jain, Sr.DR

Date of Hearing	03.08.2015
Date of Pronouncement	16.10.2015

ORDER

These five appeals of the assessee's for the sake of convenience are being decided by a common order. It was a common stand of the parties before the Bench that the arguments on facts and law in these five appeals are more or less identical as in all these appeals except in ITA No.855/Del/2014 the prayer of the assessee is that penalty imposed u/s 271D of the Act by the AO on

facts has wrongly been confirmed in appeal by the CIT(A). In ITA No.855/Del/2014 the prayer is that penalty wrongly imposed u/s 271E by the AO upheld by the CIT(A) in appeal may be quashed.

2. In the said background referring to the facts as found recorded in ITA No.856/Del/2014 and referring to the legal position therein it was canvassed that the penalty order may be quashed.

3. The Ld.Sr.DR relying upon the impugned orders stated that the departmental stand is supported by the decision of the Hon'ble Jharkhand High Court in Bhalotia Engineering Works (P.) Ltd. vs CIT (2005) 275 ITR 399 relied upon by the CIT(A) canvassed that the appeals of the assessee may be dismissed as on facts violations of the relevant provisions stands demonstrated on facts. It was also her stand addressing the case law relied upon by the Ld.AR that facts in each case are different and in the peculiar facts of the present case the decision of the Hon'ble Jharkhand High Court is fully applicable.

4. Accordingly in view of the above stated stand of the parties, it is considered appropriate to first bring out the facts and the arguments thereon briefly in each of these appeals:-

ITA No.856/Del/2014

5. The assessee in ITA No.856/Del/2014 assails the correctness of the order dated 19.12.2013 of CIT(A)-XXXI, New Delhi pertaining to 2006-07 assessment year wherein the penalty imposed by the Assessing Officer u/s 271D of the Income tax Act, 1961 has been upheld in appeal by the CIT(A).

5.1. The common fact in each of these appeal is that search proceedings u/s 132 of the Income Tax Act, 1961 were carried out in Rajdarbar Group of Companies and its associates on 31.07.2008 thereafter notice u/s 153C of the Act was issued and served upon the assessee and the assessment was completed u/s 153C/143(3) of the Act.

5.2. A perusal of the assessment order in the present appeal shows that NIL income was declared by the assessee in its return and it was accepted by the AO vide his order dated 29.11.2010. However, the AO held that the assessee had accepted Rs.50,000/- in cash as share application from M/s Gagan Buildwell Private Limited in violation of section 269SS. Accordingly penalty u/s 271D was imposed relying upon the decision of the Hon'ble Jharkhand High Court in the case of Bhalotia Engineering Works (P.) Ltd. vs CIT (2005) 275 ITR 399. The

explanation offered by the assessee in the penalty proceedings was not accepted by the AO.

5.3. The assessee carried the issue unsuccessfully before the CIT(A) who confirmed the penalty order.

6. Aggrieved by this the assessee has come up in appeal in the present proceedings. The Ld. AR inviting attention to the record submitted that the Assessing officer in the order u/s 143(3) has not made any addition u/s 68 on facts and the receipt of the amount in cash from a sister concern received as share application money has been accepted by the AO. In these facts, it was stated that the genuineness and the bonafide of the assessee stand explained and addressed. Thus the penalty it was submitted has wrongly been invoked by the AO and confirmed by the CIT(A). Reliance was placed on the following decisions:-

1. *ITO vs M/s Avadh Rubber Ltd. [ITA no.-1853/Kol/2008] Order dated 28.05.2010 (ITAT, Kolkata Bench);*
2. *CIT vs I.P.India Ltd. 343 ITR 353 (Delhi High Court);*
3. *CIT vs Samora Hotels (P.) Ltd. [ITA No.313/2006] order dated 23.02.2012 (Delhi High Court);*
4. *ITO vs M/s Homeland City Projects Ltd.[ITA No.-2043/Del/2012] order dated 08.10.2012 (ITAT, Delhi Bench);*
5. *JCIT vs M/s Ellora Mercantile (P.) Ltd.[ITA No.1664/Kol/2012] order dated 18.04.2013 (ITAT, Kolkata Bench);*
6. *ITO vs M/s Goldman Properties (P.) Ltd, New Delhi [ITA No.724/Del/2012] order dated 24.01.2013 (ITAT, Delhi Bench);*
7. *ITO vs M/s Nandlala Securities (P.) Ltd. [ITA no.3043/Del/2013] order dated 07.01.2015 (ITAT, Delhi Bench);;*
8. *CIT vs Raugmini Ram Raghav Spinners (P.) Ltd 304 ITR 417 (2008) (Mad.);*
9. *CIT vs Speedways Rubber (P.) Ltd. 326 ITR 31 (Punjab & Haryana High Court);*
10. *CIT vs Kardah Lexoplast (P.) Ltd. [ITA No.-184/99] (Allahabad High Court)*

6.1. Accordingly relying upon the aforesaid decisions it was submitted that if for a moment it is considered that there is a decision of the Hon'ble Jurisdictional High Court in the case of Bhalotia Engineers Works (P.) Ltd. (cited supra) than considering the plethora of decisions cited before the AO and the CIT(A) there was a difference of opinion which stood established thus relying upon the judgement of the Apex Court in the case of CIT vs Vegetables Products Ltd. 88 ITR 192 (SC) the benefit of decisions in favour of the assessee should have been given by the tax authorities. The said proposition it was submitted

had been upheld by the Hon'ble Delhi High Court in the case of CIT vs I.P.India P.Ltd. 343 ITR 353 (Del.) and it was cited before the CIT(A) and in judicial propriety it should have been followed as being the decision of the Jurisdictional High Court it was binding on the tax authorities. The CIT(A) it was submitted by not following the said decision had committed a judicial impropriety. In support of the said submission reliance was placed on the case Agarwal Warehousing Leasing Ltd. vs CIT (2002) 124 Taxman 440 (M.P). It was further submitted that the Ld. Commissioner has committed judicial indiscipline in terms of the decision of the Apex Court in the case of Union of India vs Kamlakshi Finance Corpn. Ltd. [1992] 7 AIR S.C. 11. Reliance was placed upon K.N.Agarwal vs CIT 189 ITR 769.

6.2. Addressing the facts, attention was invited to the submissions made before the CIT(A) found recorded in para 3 of the impugned order. Relying on the same it was submitted that the nature of the assessee's business was such that a sudden requirement of cash arose due to the business/commercial expediency of the peculiar nature of assessee's work for which purposes the amount was received in cash from a sister concern and was proposed to be adjusted as share application. The money it was submitted was utilized for making payment of stamp duty and court fee and had to be deposited in cash. On account of these peculiar facts and circumstances and the business compulsions of the Company the amount was necessarily accepted from the sister concern in cash. It was submitted that due to the business compulsions the amount was received in cash under a bonafide belief that available funds from sister concern could be so utilized to tide over the emergency. The said belief based on these facts it was argued constitutes a reasonable cause thus the penalty may kindly be quashed.

6.3. Even otherwise it was submitted the decision of the Jurisdictional High Court decision supports the view including the decisions of the Punjab & Haryana High Court and the Madras High Court in the case of CIT vs Speedways rubber Limited [2010] 326 ITR 0031 (P&H) which have considered the claim of the assessee as a bonafide claim and while holding the default to be technical in nature decided the issue in favour of the assessee. The view so taken it was submitted was despite the availability of the decision of the Hon'ble Jharkhand High Court in Bhalotia Engineering Works Ltd. (cited supra) and

was cited before the Hon'ble High Court by the Revenue. For similar reasons, the decisions of the Madras High Court in the case of Rugmini Ram Ragav Spinners P.Ltd. [2008] 304 ITR 0417 (Madras) which was again on similar facts and circumstances was relied upon. In these circumstances, it was his submission that on facts where the assessee was under bonafide belief that borrowing of cash from a sister concern to tide over the financial urgency which at that point of time was contemplated would be adjusted by allotting share application money and ultimately it was repaid by cheque on 22.06.2007. In these circumstances, it was his submission that the penalty deserves to be quashed.

6.4. It was further submitted that on facts the decision of the Hon'ble Jharkhand High Court in Bhalotia Engineering Works Ltd. (cited supra) was distinguishable.

ITA No.785/Del/2014

7. In ITA No.785/Del/2014 the assessee assails the correctness of the order dated 19.12.2013 of CIT(A)-XXXI, New Delhi pertaining to 2005-06 assessment year again wherein as a result of the same search proceedings u/s 132 in the Rajdarbar Group of companies, the assessee was required to file a return. The AO vide order dated 31.11.2010 u/s 153 r.w.s 143(3) accepted the NIL return filed by the assessee. However, in regard to the receipt of cash as share application money from a sister concern M/s Gagan Buildwell Pvt. Ltd for similar reasons penalty u/s 271D was imposed rejecting similar arguments of the assessee. The said order was confirmed in appeal by the CIT(A) on an identical reasoning.

7.1. Herein also, Ld.AR invited attention to para 3 of the impugned order to canvass the facts in regard to the commercial expediency. Herein also it was submitted that there was a deadline for registering and execution of sale deed for a land at village Jhatedi, Sonapat. The agreement to purchase the land had been entered into with agriculturists and since the deadline was approaching finances in cash were required in order to meet the costs of stamp duty etc. It was submitted that ultimately herein also the amount was repaid by cheque on 31.03.2007.

ITA No.-786/Del/2014

8. In ITA No.786/Del/2014, it was submitted the assessee has assailed the order dated 19.12.2013 of the CIT(A)-XXXI, New Delhi in upholding the penalty imposed by the AO u/s 271D in 2006-07 assessment year. In the facts of the present case also pursuant to the search on Rajdarbar Group of Companies, return disclosing an income of Rs.4,45,500/- was declared by the assessee. However on account of the receipt of share application money from M/s Adharshila Buildwell Pvt. Ltd. of Rs.2,50,000/- for similar reasons, penalty u/s 271D was imposed and upheld in appeal. Herein also it was submitted no addition on the said amount has been made by the AO. The amount has been accepted as a genuine receipt from the sister concern. Inviting attention to para 3 of the impugned order, it was submitted by the Ld. AR that the urgent need of cash arose to meet the various expenses and when it was noticed that the assessee did not have sufficient funds to meet the routine necessary expenses. Herein also the assessee was under a bonafide belief that the payment received in cash from a sister concern to keep it functional was in accordance with law. The amount was also finally repaid back on 15.05.2006 by cheque as soon as the financial position improved thus ultimately the amount was not adjusted by the transfer of shares which was the original intention to adjust the receipt of cash. The fact remains that borrowing money from a sister concern to tide over a financial crunch under a bonafide belief it was submitted can be termed as a technical breach not justifying penalty as per settled legal opinions cited.

ITA No.857/Del/2014

9. In ITA No.857/Del/2014, the assessee assails the order dated 19.12.2013 of CIT(A)-XXXI, New Delhi pertaining to 2007-08 assessment year wherein also it was pleaded that the AO has accepted the transaction as genuine as no addition u/s 68 has been made. This fact it was submitted is found recorded at page 2 of the impugned order. The receipt of Rs.4 lacs cash as share application money from M/s. Fortune Buildwell Pvt. Ltd. a sister concern was accepted due to a peculiar position. Inviting attention to para 3 of the impugned order it was pleaded that the need arose due to commercial expediency as there was a deadline for registering and execution of sale deed for land at Nadri Sonari. Herein also it was submitted the agreement had been entered into for purchase of land with the agriculturists and the amount was

utilized for making payments towards court fee and stamp duty etc. Herein also originally the intention was to adjust the receipt in cash by way of share application however, the amount as per record it was submitted was returned by cheque on 16.06.2010. Accordingly it was his submission the penalty has wrongly been imposed and upheld.

ITA No.-855/Del/2014

10. In ITA No.-855/Del/2014, the assessee assails the correctness of the order dated 19.12.2013 of CIT(A)-XXXI, New Delhi pertaining to 2009-10 assessment year wherein the penalty imposed by the AO u/s 271E had been upheld in appeal by the CIT(A).

10.1. The relevant facts herein also are that pursuant to the notice issued to the assessee after the search on the Rajdarbar Group of cases on 31.07.2008 the assessee was required to file its return. The return e-filed u/s 139 was again filed on 19.09.2009 in response to the notice received. The record shows that the AO in the course of the assessment proceedings considering the fact that the assessee was engaged in the business of real estate development observed that in the year under consideration no business activity had taken place and the assessee had only received interest income of Rs.56,094/- on FDR. Thus the income returned under the head of "income from business" was considered under the head income from "other sources". He also took note of the fact that the assessee had repaid the amount of Rs.3 lacs in cash to M/s V.K.Fiscal Services Pvt.Ltd. in violation of the limit prescribed u/s 269T. Thus after recording his satisfaction he initiated penalty proceedings. The explanation offered by the assessee was not accepted and penalty was imposed therein u/s 271E of the Act. The said action was challenged in appeal unsuccessfully before the CIT(A).

10.2. Aggrieved by this the assessee is in appeal before the Tribunal.

11. Herein also the Ld. AR relying on similar legal arguments and arguments on facts canvassed that the repayment in cash was made under a bonafide belief that the repayment to a sister concern did not constitute a violation.

12. Thus having addressed the facts of the case in the context of the stand of the parties thereon where the Ld. Sr. DR has heavily relied upon the decision of the Hon'ble Jharkhand High Court in Bhalotia Engineering Works Ltd. (cited supra) and the Ld.AR has relied upon I.P. India Ltd. amongst others of the

Jurisdictional High Court (cited supra); CIT vs Raugmini Ram Raghav Spinners (P.) Ltd. (cited supra) and CIT vs Speedways Rubber (P.) Ltd. (cited supra) of the Hon'ble Allahabad High Court. On a consideration of the aforesaid decisions in the facts and considering the view expressed by the Hon'ble Delhi High Court in the case of CIT vs I.P. India Ltd. (cited supra). I find that there is no doubt that there is a cleavage of judicial opinion on the point of reasonable cause u/s 273B thus following the judicial precedent by applying the judgement of the Hon'ble Supreme Court in the case of CIT vs Vegetables Products Ltd. (cited supra), I am of the view that the penalty imposed in each of these cases deserves to be quashed. Nothing has been brought on record by the Revenue to show that the assessee as a result of his business and interactions with the department in the earlier years had been made aware that accepting and repaying in cash to sister concerns in order to tide over financial emergencies were in violation of the provision of the Act. In the absence of any such evidence the plea of bonafide belief in the peculiar circumstances cannot be discarded. It is seen that the assessee has consistently canvassed that there was a bonafide belief that the amount taken from the sister concern in cash is not a violation of any provision. Similarly for the purposes of ITA No.855/Del/2014 the return of loan by cash to the sister concern under a bonafide belief that the transaction with sister concerns is not in violation for similar reasons in the absence of any evidence to the contrary cannot be disbelieved. It is seen that the genuineness of the transactions have not been questioned despite the fact that the group company has been searched accordingly since nothing has been brought on record to canvass that reasonable cause is not constituted and considering the judicial precedent cited the appeals of the assessee, I find have to be allowed. Before parting it is necessary to address the decision of the Hon'ble Jharkhand High Court relied upon by the Revenue. On consideration thereof it is seen that on facts the said decision is entirely distinguishable as the cash in the facts therein had been obtained from 10 persons and not from identified assessee's like sister concerns of the assessee as is a fact in the present proceedings.

13. Accordingly considering the judicial precedent cited in the absence of any rebuttal on reasonable cause argued by the assessee in each of these appeals consistently and finding that the decision rendered in Bhalota Engineering

Works (cited supra) is entirely distinguishable on facts the impugned orders are set aside and the penalties imposed in each of these appeal is quashed.

14. In the result, the appeals of the assessee are allowed.

The order is pronounced in the open court on 16th of October, 2015.

**Sd/-
(DIVA SINGH)
JUDICIAL MEMBER**

Dated: 16/10/2015

Amit Kumar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI