

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D' NEW DELHI**

**BEFORE SH.G.D.AGRAWAL, HON'BLE PRESIDENT
AND
SH.K.N.CHARY, JUDICIAL MEMBER**

**ITA No. 509/Del/2011
(ASSESSMENT YEAR: 2004-05)**

DCIT Circle 17(1), C.R. Building New Delhi	vs	VIP Forex Pvt. Ltd. 4/35, Majestic Place, W.E.A., Saraswati Marg, Karol Bagh New Delhi PAN:AABCV6909M
(Appellant)		(Respondent)
Department by	Sh. Amit Jain, Sr. DR	
Respondent by	Sh. Sunil Arora & Sh. Akash Chugh, CA	
Date of Hearing	16.11.2017	
Date of Pronouncement	20.11.2017	

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ORDER

PER K.N. CHARY, JUDICIAL MEMBER

Aggrieved by the order dated 12.11.2010 in Appeal No. 79/2009-10 passed by the learned Commissioner of Income Tax (Appeals) XIX, New Delhi [in short hereinafter called as the "CIT(A)"], the Revenue is in appeal before us challenging the deletion of the penalty levied under Section 271D read with section 269SS, stating that such deletion is the result of ignoring the decision of Hon'ble Jharkhand High Court in the case of M/s Bhalotia Engineering Private Works vs. CIT 275 ITR 279 whereunder the share

application money was also considered as part taking the character as deposit.

2. Facts relevant for disposal of this appeal are that on 16.6.2003 one Mr. Rajesh Thakur and his brother Rajendra Thakur were found possessing a cash of Rs. 30,00,000/- and basing on such fact notice under Section 153(C) was issued. Such money of Rs. 30,00,000/- was added as income in the hands of Rajendra Thakur. However, the assessee claimed the seized amount stating that it was given by them as advance to Rajendra Thakur for purchase of property at Jalandhar. On a consideration of a material before him the Assessing Officer added the said amount of Rs. 30,00,000/- in the income of the assessee and simultaneously initiated penalty proceedings. During the penalty proceedings, on being questioned, it was replied on behalf of the assessee that the amounts were received by way of share application money in advance and not loan or deposit. By way of order dated 29.6.2009, the Assessing Officer levied a penalty of Rs. 30,00,000/- under Section 271D of the Act.

3. In appeal learned CIT(A) deleted the same on the ground that there is no finding that the amount of Rs. 30,00,000/- was received as loan or deposit in cash to invoke the provision under Section 269 SS read with Section 271 D of the Act. Hence the Revenue is in appeal before us.

4. Learned DR placed a reliance on the orders of the authorities below whereas at the outset it is the argument of the learned AR that, in the appeal against the quantum addition preferred by the assessee, the learned Commissioner of Income Tax (Appeals), on

examination of the books of accounts of the assessee, reached a finding that the amount of Rs. 30,00,000/- was given by the assessee for purchase of property in Jalandhar. Ld. CIT(A) also considered the observations made by the learned CIT(A) in the appeal preferred by Sh. Rajesh Kumar. After the considering the same, in the case on hand, learned CIT(A)-3 Delhi deleted the quantum addition. Second limb of arguments of the learned counsel is that the AO relied upon the decision of Jharkhand High Court in the case of M/s Bhalotia Engineering Works Pvt. Ltd vs. CIT 275 ITR 279. The Hon'ble Jurisdictional High Court in the case of CIT vs. I.P. India Pvt Ltd. 2011 16 taxmann.com 407 (Delhi) noted the above decision but while referring to the decision reported in DIT (Exemption) v. Acme Educational Society [2010] 326 ITR 146 it was held that a loan grants temporary use of money, or temporary accommodation, and that the essence of a deposit is that there must be a liability to return it to the party by whom or on whose behalf it has been made, on fulfillment of certain conditions. While placing reliance on these two decisions, viz., I.P. India Pvt Ltd (supra) and Acme Educational Society (supra), learned AR prayed to dismiss the appeal preferred by the Revenue.

4. Having heard the arguments on the either side, we have perused the materials and papers on record. Learned AO placed reliance on the decision of Bhalotia Engineering Works Pvt. Ltd. (Supra) to conclude that the share application money partakes the character of deposit. However, in view of the decision of the Hon'ble jurisdictional High Court in the case of I.P. India Pvt. Ltd. case and while respectfully following the same we hold that the receipt of

share application money for allotment of shares cannot be treated as receipt of loan or deposit and as a consequence thereof provisions under Section 299SS and Section 2741D have no application to the facts of the case. With this view of the matter, we do not find any illegality or irregularity in the conclusion reached by the learned CIT(A) in the impugned order and there is no need to interfere with the same. We accordingly hold that the appeal of the Revenue is devoid of any merits and is liable to be dismissed.

5. In the result, appeal of the Revenue is dismissed.

The order is pronounced in the open court on 20th, 2017.

**Sd/-
(G.D.AGRAWAL)
PRESIDENT**

**Sd/-
(K.N.CHARY)
JUDICIAL MEMBER**

Date:- 20th Nov, 2017
SH

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

		Date	
1.	Draft dictated on	16.11.2017	PS
2.	Draft placed before author	16 .11.2017	PS
3.	Draft proposed & placed before the second member		JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	.11.2017	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	.11.2017	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		