

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E" NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.3324/Del/2019

निर्धारणवर्ष/Assessment Year: 2012-13

Layog Properties Pvt. Ltd., 703, Pragati Tower, 26, Rajendra Place, New Delhi.	बनाम Vs.	Addl. CIT, Range-15, New Delhi.
PAN No. AABCL9997R		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	None
राजस्वकीओरसे /Revenue by	Shri Jeetendra Chand, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	26.12.2022
उद्घोषणाकीतारीख/Pronouncement on	10.02.2023

**आदेश /O R D E R**

**PER C.N. PRASAD, J.M.**

This appeal is filed by the Assessee against the order of learned Commissioner of Income Tax (Appeals)-5, New Delhi dated 15.02.2019 in sustaining the penalty levied u/s 271D of the Act. Assessee raised the following grounds of appeal:

1. "Aggrieved by the passed order of Ld. Commissioner of Income Tax (Appeals)-5 Room No. D-107, D-Block, Vikas Bhawan, New Delhi dated 15.03.2019 and received to the appellant on 07.03.2019 for AY 2012-13 by made a prime addition of penalty of Rs.3,60,000/- u/s 271D of the Income Tax Act, 1961 the appellant has preferred this appeal before the Hon'ble Income Tax Appellate Tribunal "ITAT" raising the following grounds of appeal:
2. That the facts and circumstances of the case, the penalty order passed by the Ld. Commissioner of Income Tax (Appeals) hereinafter referred as Ld. CIT(A) is bad in law being against the principles of natural justice.

3. *The Ld. AO has grossly erred on facts as well as in law by imposing the penalty of Rs.36,00,000/- u/s 271D of the Income Tax Act, 1961 in effect of amount received as share application money as cash credit u/s 68 of the Income Tax Act, 1961.*
4. *The Ld.CIT(A) erred in considering the fact that the addition made by the Ld. AO has neither been classified as Loan or Deposit.*
5. *That the Ld.CIT(A) also erred in considering the fact that the Ld. AO have raised the objection on identity, genuineness and creditworthiness of the shareholders, the Ld. AO did not object on the nature of transaction as Share Application money.*
6. *The appellant craves leave to add, alter, modify and withdraw any ground of appeal before or during the appellate proceedings.”*

2. The Ld. Counsel for the assessee at the outset submits that the short point for consideration is as to whether the share application money received by the assessee in cash is amounting to loan or deposit within the meaning of provisions of Section 269SS of the Act so as to attract the penalty u/s 271D of the Act. The Ld. Counsel for the assessee submits that the Assessing Officer while completing the assessment u/s 143(3) of the Act made addition in respect of share application money received by the assessee in cash of Rs.22,00,000/- and RS.14,00,000/- from Late Shri Arvind Mittal and Awdesh Mittal respectively u/s 68 of the Act. Ld. Counsel submits that the Assessing Officer initiated penalty proceedings u/s 271D of the Act and imposed penalty of Rs.36,00,000/- for contravention of the provisions of Section 269SS of the Act. The Ld.

Counsel for the assessee submits that when the share application money is received in cash whether it amounts to loan or deposit has been considered by the Jurisdictional High Court in the case of CIT Vs. I.P. India Pvt. Ltd. [343 ITR 353], wherein the High Court held that share application money received by the assessee company in cash for allotment of shares would not amount either to a loan or deposit within the meaning of Section 269SS of the Act. Ld. Counsel also placed reliance on the decision of the Delhi Tribunal of ITAT in the case of ITO Vs. Ugant Travels Pvt. Ltd. [83 Taxmann.com 258], wherein the Tribunal following the decision of the Jurisdictional High Court in the case of CIT Vs. I.P. India Pvt. Ltd. held that penalty cannot be imposed u/s 271D for receiving share application money in cash.

3. On the other hand, the Ld. DR supported the orders of the authorities below. Ld. DR also placed reliance on the decision of Delhi Bench of the Tribunal in the case of MG Estate Pvt. Ltd. Vs. Addl. CIT [148 ITD 77], wherein it was held that the share application money received in cash attracts the provisions of Section 269SS of the Act.

4. Heard rival submissions, perused the orders of the authorities below.

5. The short point for consideration before us is as to whether the share application money received by the assessee in cash can be treated as loan or deposit within the meaning of provisions of Section 269SS and

consequently whether penalty can be levied u/s 271D for contravention of provisions of Section 269SS of the Act. The Assessing Officer while completing the assessment u/s 143(3) of the Act made addition u/s 68 of the Act in respect of share application money received in cash of Rs.22,00,000/- and Rs.14,00,000/- from Late Shri Arvind Mittal and Shri Awdesh Mittal respectively amounting to Rs.33,00,000/-. The Assessing Officer also initiated penalty proceedings u/s 271D of the Act for violation of the provisions of Section 269SS of the Act and levied penalty u/s 271D of the Act as the assessee received share application money in cash.

6. On appeal the Ld. CIT(A) sustained the penalty relying on the decision of Hon'ble Delhi High Court in the case of CIT Vs. Samora Hotels Pvt. Ltd. [19 Taxman.com 285].

7. We observed that identical issue came up for consideration before the Jurisdictional High Court in the case of CIT Vs. I.P. India Pvt. Ltd. (supra) and the Hon'ble Jurisdictional High Court while holding that share application money received in cash for allotment of shares would not amount either to a loan or deposit within the meaning of Section 269SS of the Act held as under:

*“7. Section 269SS prohibits any person from accepting a loan or deposit in cash exceeding Rs. 20,000 in the aggregate in a year from a third person. If there is any violation, the person receiving the loan or deposit will be liable to penalty u/s.271D in an amount equal to the amount of the loan or deposit. A loan or deposit is defined in the Explanation below Sec.269SS as*

a "loan or deposit of money". The assessee's contention, accepted both by the CIT(A) and the Tribunal, is that share application monies received by a company, pending allotment of shares, do not amount to loan or deposit.

8. On a careful consideration of the matter, we find that the AO has relied on the judgment of the Jharkhand High Court (*supra*) and referred the issue of levying penalty to the Additional CIT. He did not examine whether the share application monies can be treated as "loan" or "deposit" within the meaning of Section 269SS. The Additional CIT has merely endorsed the view of the AO in passing the penalty order. The CIT(A) has found as a fact that the shares were subsequently allotted to the applicant-companies as shown by the form filed before the Registrar of Companies. Neither the AO nor the Additional CIT has taken the trouble to examine this aspect while imposing the penalty. They have merely relied on the judgment of the Jharkhand High Court (*supra*). The reliance on this judgment appears to us to be misplaced. In *Baidya Nath Plastic Industries (P) Ltd. v. K.L. Anand*, ITO [1998] 230 ITR 522 / [2000] 113 Taxman 412 (Delhi) a learned Single Judge of this court pointed out that the distinction between a loan and a deposit is that in the case of the former it is ordinarily the duty of the debtor to seek out the creditor and to repay the money according to the agreement while in the case of a deposit it is generally the duty of the depositor to go to the banker or to the depositor, as the case may be, and make a demand for it. This judgment was approvingly cited by a Division Bench of this court in *DIT (Exemption) v. Acme Educational Society* [2010] 326 ITR 146. In this decision, 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. If these tests are applied to the facts of the case before us, it may be seen that the receipt of share application monies from the three private limited companies for allotment of shares in the assessee-company cannot be treated as receipt of loan or deposit. In any case, the Tribunal has rightly noticed the cleavage of judicial opinion on the point and held that in that situation there was reasonable cause u/s.273B, applying the judgment of the Supreme Court in *Vegetable Products Ltd.* (*supra*)."

8. Ratio of this decision squarely applies to the facts of the assessee's case. The decision relied on by the Ld. CIT(Appeals) in the case of CIT Vs. Samora Hotels Pvt. Ltd. (supra) has no application to the facts of the assessee's case. In that case though the assessee initially contended that the cash was received towards share application money later on the assessee changed its stand and stated that it had received cash loans from Directors/Shareholders. In such circumstances, the Hon'ble High Court held that as the assessee accepted that it had received loans from Directors/Shareholders the provisions of Section 269SS are attracted. The facts on hand in the case of the assessee before us are different. The decision relied on by the Ld. DR in the case of MG Estates Pvt. Ltd. Vs. Addl. CIT (supra) has been over ruled by the Jurisdictional High Court in the case of CIT Vs. I.P. India Pvt. Ltd. (supra). Thus, respectfully following the decision of the Jurisdictional High Court in the case of CIT Vs. I.P. India Pvt. Ltd., we set aside the order of the Ld. CIT(Appeals) and direct the Assessing Officer to delete the penalty levied u/s 271D of the Act. Grounds raised by the assessee are allowed.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 10/02/2023

**Sd/-**  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

Dated: 10/02/2023

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard  
file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**