

**IN THE INCOME TAX APPELLATE TRIBUNAL,
NEW DELHI, BENCH ' F'**

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND SHRI A K GARODIA, ACCOUNTANT MEMBER

ITA No. 1355 /Del/2010
(Assessment Year 2006-07)

Nehsel Exports Pvt. Ltd.
C/o Naveen Jain & Co.,
Chartered Accountants
G-73, 2nd Floor,
Lajpat Nagar-I,
New Delhi-24

Vs.

Addl CIT,
Range 13,
New Delhi

(Appellants)

(Respondents)

PAN / GIR No. AABCN 9651J

Appellant by: Shri Kapil Goel, CA

Respondent by: Miss Anusha Khurana, Sr. DR

ORDER

PER A. K. GARODIA, AM:

1. This appeal by the assessee is directed against the order of Ld. CIT(A) XVI, New Delhi dated 18.01.2010 for Assessment Year 2006-07. The grounds of appeal raised by the assessee are as under:

1) That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and facts in initiating the proceedings for imposition of penalty for accepting the share application money

- Rs.50,000/- in cash and the Ld. CIT(A) has erred in confirming the same.*
- 2) That having regard to the facts and circumstances of the case, Ld. Addl. CIT has erred in law and facts in imposing the penalty of Rs.50,000/- for treating the share application money of Rs.50,000/- as loan and the Ld. CIT(A) has erred in confirming the same.*
 - 3) That having regard to the facts and circumstances of the case, Ld. Addl. CIT has erred in law and facts in imposing the penalty of Rs.50,000/- for violation of section 269SS of the I. T. Act, 1961 and the Ld. CIT(A) has erred in confirming the same.*
 - 4) That the Ld. CIT(A) has erred in holdings that ratio of case law CIT V Speedways Rubber Pvt. Ltd. (I.T.A. No. 361/2009 (P & H) dated 22.10.2009 and CIT V. Vegetable Products Ltd. (1973) 88 ITR 192(S.C.) are not applicable to the appellant's case.*
 - 5) That in any case and in any view of the matter, action of Ld. Addl. CIT in imposing the penalty of Rs.50,000/- and action of the Ld. CIT(A) in confirming the same are contrary to law and facts and void ab initio."*

2. The brief facts of the case are that it is observed by the A.O. in the penalty order that in the course of assessment proceeding, it was noted that the assessee company within this year has received share application money amounting to Rs.50,000/- admittedly in cash from M/s. Asahi Travel Services Pvt. Ltd. It is further noted by the A.O. that the amount is received in cash on 30.07.2005 against which, 834 shares were allotted (for Rs.10 each at a premium of Rs.50/- per share) on



12.02.2008. It is noticed by the A.O. that in the course of assessment proceedings, the assessee had furnished confirmation of parties and it was also submitted by the assessee that share application money is neither loan nor deposit. In the penalty proceedings also, it was submitted by the assessee before the A.O. that the provisions of Section 269SS are not applicable to share application money received in cash for an amount exceeding Rs.20,000/-. The A.O. was not satisfied. He followed the judgement of Hon'ble Jharkhand High Court rendered in the case of Bhalotia Engineering Works vs CIT reported in 275 ITR 399 and imposed penalty of Rs.50,000/- for this alleged violation of Section 269SS and this penalty was imposed u/s 271D. Being aggrieved, the assessee carried the matter in appeal before CIT(A) but without success and now the assessee is in further appeal before us.

3. It is submitted by the Ld. A.R. before us that admittedly, the judgement of Hon'ble Jharkhand High Court rendered in the case of Bhalotia Engineering Works (supra) is against the assessee but this is not the jurisdictional high court in the present case. It is also submitted that three other High Courts are in favour of



the assessee and reliance was placed by him on the following judgements of various High Courts:

- a) CIT Vs Rugmini Ram Ragav Spinners Pvt. Ltd. 304 ITR 417 (Md.)
 - b) CIT Vs Speedways Rubber Pvt. Ltd. I.T.A. No. 361 of 2009 dated 22.10.2009 (Punjab & Haryana)
 - c) CIT Vs Kardah Lexoplast Pvt. Ltd. I.T.A. No. 184/99 (Alld.) dated 16.01.2008.
4. An alternative submission was also made that even if it is held that provisions of Section 269SS are applicable with regard to receipt of share application money, the assessee's case falls within the ambit of reasonable case as provided in Section 273B and for this reason also, the penalty imposed by the A.O. should be deleted. In support of this contention that there was reasonable cause for receiving this amount of share application money in cash, he submitted extract of the cash book of the assessee for the relevant date i.e. 30.07.2005 and it is pointed out that on this date the opening cash balance in the hands of the assessee was only Rs.654/- and after receipt of this amount of Rs.50,000/- in cash toward share application money, the assessee had to make payment in cash of Rs.26650/- on this very date and hence such receipt in cash was for reasonable cause. It is also submitted that shares were actually allotted and



the receipt of share application money was bona fide and hence no penalty is justified.

5. As against this, the Ld. D.R. for the revenue supported the orders of authorities below and reliance was placed by her on the judgement of Hon'ble Jharkhand High Court rendered in the case of Bhalotia Engineering Works (supra).
6. We have considered the rival submissions, perused the material on record and have gone through the orders of authorities below and the judgements cited by both the sides. We finds that this is admitted position that the judgement of Hon'ble Jharkhand High court rendered in the case of Bhalotia Engineering Works (supra) is against the assessee on this very issue but Ld. A.R. for the assessee has cited three more judgements of various High Courts on this very issue which are in favour of the assessee:-

- The first judgement is of Hon'ble Madras High Court rendered in the case of CIT Vs Rugmini Ram Ragav Spinners Pvt. Ltd.(supra) wherein it was held that there is no material or evidence relating to compelling circumstances produced by the revenue to prove that the money received is a deposit of loan. In this case also, the money was received as share application money.
- 2nd judgement is of Hon'ble Punjab & Haryana High Court rendered in the case of Speedways Rubber Pvt. Ltd. (supra). In his case, Hon'ble Punjab & Haryana

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High Court has also considered the judgement of Jharkhand High court rendered in the case of Bhalotia Engineering Works (supra). In that case also share application money was received in cash and penalty was imposed by the A.O. u/s 271D and this issue was decided in favour of the assessee on the basis of transaction being bona fide and also on this basis that default was of technical nature, which did not justify levy of penalty.

- 3rd judgement relied upon is the judgement of Hon'ble Allahabad High Court rendered in the case of Kardah Laxo Pvt. Ltd. (supra). In that case also the issue was the same regarding receipt of share application money in cash and in that case also the tribunal did not accept the contention of the department that the share application money is loan and deposit. This tribunal decision was confirmed by the Hon'ble High Court of Allahabad.

7. In the present case also, the facts are identical. None of these four High Court is a jurisdictional High Court in the present case. In our considered opinion, as per the judgment of Hon'ble Apex court in the case of Vegetable Products Ltd. as reported in 88 ITR 192 (S.C.), when two views are possible, the view favorable to the assessee should be adopted. As per the above discussion, we find that on this issue, there are two views. One view is against the assessee i.e. of Hon'ble Jharkhand High Court whereas other view is in favour of the assessee and this view is taken by three different



High Courts i.e. Madras, Punjab & Haryana & Allahabad High Court and under these circumstances, as per the decision of Hon'ble Apex court rendered in the case of Vegetable Products (supra), we adopt the view which is in favour of the assessee and hence by respectfully following three judgments of various High Courts cited by the Ld. A.R. of the assessee, we decide this issue in favour of the assessee. In view of this, other contentions raised by the Ld. A.R. of the assessee regarding reasonable cause etc. do not call for any adjudication.

8. In the result the appeal of the assessee is allowed.
9. This decision was pronounced in the open court on 18.06.2010.

(RAJPAL YADAV)
JUDICIAL MEMBER

Dated: 18/06/2010

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1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

(A K GARODIA)
ACCOUNTANT MEMBER

True copy: By order

Dy. Registrar, ITAT, New Delhi