



Sr. No.	Date	Orders
		<p style="text-align: right;">b</p> <p>* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ ITA 76/2005</p> <p>THE COMMISSIONER OF INCOME TAX ..... Appellant Through : Mr. R.D. Jolly, Mr. Ajay Jha, Mr. Vishnu Sharma, Advocates</p> <p style="text-align: center;">versus</p> <p>M/S DALMIA RESORTS INTERNATIONAL ..... Respondent Through : Dr. Rakesh Gupta, Advocate</p> <p>+ ITA 69/2005</p> <p>THE COMMISSIONER OF INCOME TAX ..... Appellant Through : Mr. R.D. Jolly, Mr. Ajay Jha, Mr. Vishnu Sharma, Advocates</p> <p style="text-align: center;">versus</p> <p>M/S DALMIA RESORTS INTERNATIONAL ..... Respondent Through : Dr. Rakesh Gupta, Advocate</p> <p>+ ITA 74/2005</p> <p>THE COMMISSIONER OF INCOME TAX ..... Appellant Through : Mr. R.D. Jolly, Mr. Ajay Jha, Mr. Vishnu Sharma, Advocates</p> <p style="text-align: center;">versus</p> <p>M/S DALMIA RESORTS INTERNATIONAL ..... Respondent Through : Dr. Rakesh Gupta, Advocate</p> <p>+ ITA 176/2005</p> <p>THE COMMISSIONER OF INCOME TAX ..... Appellant Through : Mr. R.D. Jolly, Mr. Ajay Jha, Mr. Vishnu Sharma, Advocates</p>



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		<p style="text-align: center;">versus</p> <p style="text-align: center;">M/S DALMIA RESORTS INTERNATIONAL ..... Respondent Through : Dr. Rakesh Gupta, Advocate</p> <p><b>CORAM:</b> HON'BLE MR. JUSTICE T.S. THAKUR HON'BLE MR. JUSTICE B.N.CHATURVEDI</p> <p style="text-align: center;"><b><u>ORDER</u></b> 28.11.2005</p> <p>Since a common question arises for consideration in all these appeals, the same shall stand disposed of by this common order.</p> <p>The Assessee company is engaged in the business of promoting Holiday Resorts. For the assessment years 1988-89, 1989-90, 1990-91 and 1991-92, it filed returns in which it declared loans allegedly borrowed from M/s Pasupati Nath Commercial Pvt. Ltd., a company incorporated in Sikkim. The Assessing Officer called upon the assessee to prove the genuineness of these loans and eventually came to the conclusion that the assessee had failed to prove either the identity of the lender or its capacity to lend the amounts allegedly borrowed by the assessee. The amounts shown to have been borrowed by the assessee, on that finding, were added back to the income of the assessee under Section 68 of the Income Tax Act and brought to tax. Aggrieved by the said orders, the assessee appealed to the Commissioner of Income Tax (Appeals) before whom the certificate of incorporation of the lender company M/s Pasupati Nath Commercial Pvt. Ltd. was produced together with their balance sheets and</p>



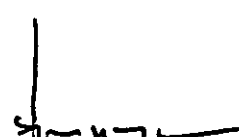

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		<p>confirmation to the effect that loans were in fact advanced to the assessee. One of the directors of the lender company also appeared in person before the Commissioner of Income Tax to get his statement recorded in which he admitted having advanced the loans shown in different years of assessment to the assessee. The Commissioner of Income Tax, on an evaluation of the said evidence, came to the conclusion that the burden of proving the existence of the lender, its genuineness and the capacity to advance the amounts in question had been sufficiently proved. It accordingly deleted the additions made by the Assessing Officer. The Revenue assailed the said order in respect of each assessment year before the Income Tax Appellate Tribunal who has, by common order impugned in these appeals, dismissed the same and upheld the view taken by the Commissioner. The Tribunal has, upon appreciation of the available material, come to the conclusion that the issue regarding the genuineness of the lender company M/s Pasupati Nath Commercial Pvt. Ltd. and some other companies incorporated in Sikkim had been examined by the Tribunal in ITA Nos. 2265 to 2276 for the very same assessment years and the company was held to be genuine. The Tribunal also noted that the copies of balance sheets along with the Profit &amp; Loss Accounts for the assessment years 1987-88, 1988-89 and 1989-90 had been placed on record from which it was clear that the lender company had declared a profit to the tune of Rs.1,33,66,889/- as on 31<sup>st</sup> March, 1987 and a sum of Rs.2,35,14,343/- as on</p>



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		<p>31<sup>st</sup> March, 1988. A sum of Rs.1,59,69,553/- was declared as the profit earned by the lender company as on 31<sup>st</sup> March, 1989. The Tribunal further noted that proceedings under Section 148 of the Income Tax Act had been initiated against the lender company for the assessment years 1987-88, 1989-90 which eventually travelled to the Tribunal who, after discussing the issue at great length, came to the conclusion that there was no material available with the Assessing Officer for re-opening the assessments. The Tribunal has, in the above background, concluded as under :</p> <p style="text-align: center;">“As rightly held by the CIT(Appeals) that all the three ingredients for providing a loan as genuine, have been fulfilled and these findings of the CIT(Appeals) have not been controverted by the learned DR.”</p> <p>The Tribunal relied upon the decision of this court in <u>CIT v. Antartica Investment Pvt. Ltd.</u> 262 ITR 493 where this court had an occasion to examine a similar issue in respect of M/s Antartica Investments Pvt. Ltd. which too was incorporated in Sikkim. The Tribunal held that there was no material difference in the fact situations of the two cases and that since the order passed by the High Court had been upheld by the Apex Court in SLP No. 12130/2000 the view taken therein was applicable to the present case also. It has, in the light of the said finding of fact, dismissed the appeals filed by the Revenue already noticed earlier.</p> <p>We have heard Mr. Jolly counsel for the Revenue and Mr. Gupta on behalf of the respondent company. We have also been taken through the</p>

## H.C.D.-I (a) Continuation Sheet



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		<p>record.</p> <p>As noticed earlier, the question whether the lender company M/s Pasupati Nath Commercial Pvt. Ltd. was a genuine company, had the resources and the capacity to lend money and had actually lent the money shown to have been borrowed by the assessee in the present case are all pure questions of fact which have been concurrently answered in favour of the assessee by the Commissioner of Income Tax (Appeals) and the Tribunal. The authorities below have, on a proper appreciation of the attendant circumstances and the material on record, held that the lender company was genuine, had the resources and the income during the period the loans were advanced and was upon an investigation made for purposes of taxation, found to be a genuine company. In the light of the said finding of fact, the deletion of the income added by the Assessing Officer was perfectly justified. No question of law arises for our consideration in these appeals, much less a substantial question of law. The appeals accordingly fail and are hereby dismissed.</p> <p style="text-align: right;">   T.S. THAKUR, J </p> <p style="text-align: right;">   B.N. CHATURVEDI, J. </p> <p>NOVEMBER 28, 2005 pk.</p>