



Sr. No.	Date	Orders
		<p>* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ ITA 66/2005</p> <p>COMMISSIONER OF INCOME TAX ..... Appellant Through Mr.Sanjeev Sabharwal</p> <p>versus</p> <p>M/S STANDARD BRANDS LTD. .... Respondent Through Dr.Rakesh Gupta with Mr.Pankaj Dhaudiyal</p> <p>CORAM: HON'BLE MR. JUSTICE MADAN B. LOKUR HON'BLE MR. JUSTICE VIPIN SANGHI</p> <p><b><u>ORDER</u></b> % 04.07.2006</p> <p>The Revenue is aggrieved by an order dated 26<sup>th</sup> July, 2004 passed by the Income Tax Appellate Tribunal in ITA No.24 (Del)/2001.</p> <p>The impugned order has been passed in respect of the block period 1<sup>st</sup></p>



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		<p data-bbox="375 208 863 248">April, 1986 to 31<sup>st</sup> March, 1997.</p> <p data-bbox="375 315 1477 786">It appears that the Assessee had received an amount of Rs.3 lakhs in cash from M/s. D.S. Imports. According to the Assessing Officer, the amount represented undisclosed income in the hands of the Assessee while according to the Assessee it was a deposit made by M/s. D.S. Imports.</p> <p data-bbox="375 853 1477 1323">Notwithstanding the fact that the Revenue was of the view that the amount was undisclosed income, penalty proceedings were initiated against the Assessee for the violation of provisions of Section 269SS of the Income Tax Act, which provides that loans or deposits in excess of Rs.20,000/- should not be received in cash.</p> <p data-bbox="375 1391 1477 1850">The Assessee approached the Commissioner of Income Tax (Appeals) who passed an order on 6<sup>th</sup> October, 2000 in which it was recorded that the Assessee had received a deposit of Rs.3 lakhs in cash in contravention of Section 269SS of the Act and penalty under Section 271-D of the Act was imposable against the Assessee.</p>



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		<p data-bbox="367 201 1484 358">Feeling aggrieved, the Assessee filed an appeal out of which the impugned order dated 26<sup>th</sup> July, 2004 has arisen.</p> <p data-bbox="367 425 1484 1321">In so far as the quantum issue is concerned, the Commissioner of Income Tax (Appeals) in a separate order dated 6<sup>th</sup> September, 2000 came to the conclusion (in paragraph 7.2 of the said order) that the addition under Section 158BC of the Act could not be sustained and that the Assessing Officer could at best have taken action under Section 147 of the Act. Accordingly, the addition of Rs.3 lakhs was deleted without prejudice to the action that the Assessing Officer may take for taxing this amount in regular assessment proceedings including proceedings under Section 147 of the Act.</p> <p data-bbox="367 1388 1484 1859">Against the order dated 6<sup>th</sup> September, 2000, the Revenue preferred an appeal before the Income Tax Appellate Tribunal. By an order dated 6<sup>th</sup> October, 2004, the Tribunal (in paragraph 9 of the said order) upheld the view taken by the Commissioner of Income Tax (Appeals) in his order dated 6<sup>th</sup> September, 2000. The Tribunal held</p>



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		<p data-bbox="406 235 1516 392">that the receipt was outside the scope of undisclosed income defined under Section 158B(b) of the Act.</p> <p data-bbox="406 448 1516 1041">On these facts, we are of the view that the Revenue could not, on the one hand, contend that the amount of Rs.3 lakhs is undisclosed income in the hands of the Assessee and at the same time seek to initiate proceedings against the Assessee for violation of the provisions of Section 269SS of the Act which deals with cash deposits or loans in excess of Rs.20,000/-.</p> <p data-bbox="406 1097 1516 1467">The Revenue, having taken the stand that the income was undisclosed income in the hands of the Assessee, it could not resort to proceedings under Section 269SS read with Section 271-D of the Act, as held by the Tribunal.</p> <p data-bbox="406 1523 1516 1780">Additionally, we agree with learned counsel for the Assessee that since a block assessment could not be sustained, penal action may be permissible (if at all) only after a regular assessment is made.</p>



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		<p style="text-align: right;">(W)</p> <p>Under these circumstances, in our opinion, no substantial question of law arises in this appeal.</p> <p>Dismissed.</p> <p style="text-align: right;">) <i>Madan Lokur</i> MADAN B. LOKUR, J</p> <p style="text-align: right;"><i>Vipin Sanghi</i> VIPIN SANGHI, J</p> <p>JULY 04, 2006 kapil</p>