

**HIGH COURT OF DELHI : NEW DELHI****ITA No.1058/2007**Date of order: 20<sup>th</sup> February, 2008

The Commissioner of Income Tax-V  
Central Revenue Building  
New Delhi.

..... Petitioner

Through: Ms. Rashmi Chopra, Adv.

Versus.

Narain Jewels International Ltd.  
M-10, Greater Kailash Part-I,  
New Delhi.

..... Respondent

Through :

Coram:

**HON'BLE MR. JUSTICE MADAN B. LOKUR****HON'BLE MR. JUSTICE V.B. GUPTA**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

**V.B. GUPTA, J.(Oral)**

Present appeal has been filed by the Revenue against the order dated 22<sup>nd</sup> December, 2006 passed by Income Tax Appellate Tribunal, Delhi Bench 'A' in ITA



No.617/D/2003 relevant for the assessment year 1996-1997.

2. The short question in this appeal is as to whether the Tribunal was right in law in holding that the levy of penalty under Section 271(1)(C) of Income Tax Act, 1961 (for short as `Act') is unjustified.

3. The brief facts of this case are that the Assessee filed a return of income on 29<sup>th</sup> November, 1996 at a total income of Rs. 'Nil' after adjusting the brought forward unabsorbed depreciation of Rs.13,68,089/- for assessment year 1994-1995. The Assessing Officer vide assessment order dated 19<sup>th</sup> March, 1999 assessed the total income at Rs.23,78,397/- after disallowing and adding a sum of Rs. 70,308/- under Section 35 D of the Act and a sum of Rs.10,40,000/- under Section 68 of the Act.

4. As the Assessee expressed his inability to substantiate the genuineness of the transactions or furnish any proof regarding credit worthiness of the persons responsible for raising the share application money, the



Assessing Officer added a sum of Rs.10,40,000/- to the total income of the Assessee under Section 68 of the Act and proceedings under Section 271(1)(C) of the Act for filing inaccurate particulars and concealment of income were initiated against the Assessee.

5. In appeal filed by the Assessee, it was submitted before Commissioner of Income Tax (Appeals) that the identity, genuineness and creditworthiness of the share applicants had been proved from the fact that transactions were made through account payee cheque and share had been allotted to the applicants. The distinctive number of shares allotted had been filed before the Assessing officer and thus, there was no material with the Assessing Officer to say that Assessee filed inaccurate particulars.

6. The CIT (Appeals) dismissed the appeal of the Assessee holding that it was not correct to say that no concealment penalty could be imposed in respect of addition into section 68 of the Act. It was also observed by CIT(Appeals) that in terms of Explanation 1 to Section



271(1)(C) of the Act, the onus was on the Assessee to prove that he has not furnished inaccurate particulars and as such CIT(A) confirmed the order of Assessing Officer imposing the penalty.

7. Aggrieved against the decision of CIT(Appeals), the Assessee filed an appeal before the Tribunal and vide impugned order the Tribunal allowed the appeal.

8. It has been contended by learned counsel for the Revenue that the Assessee was required to prove the identity and creditworthiness of the share applicants and the Assessee has not even filed confirmation which was specifically asked for by the Assessing Officer and under these circumstances, imposition of penalty upon the Assessee by the Assessing Officer was justified.

9. The present case has to be decided as per provisions of Explanation 1 to Section 271(1)(C) of the Act, as per which the concealment penalty is attracted in case the Assessee is unable to offer any explanation is not substantiated and is not found to be bona fide.



10. The Tribunal has given a finding that

“the Assessee in respect of share capital had submitted all the information available in its possession, that is, copy of share application forms signed by the shareholders which is nothing but a sort of confirmation and also evidence of receipt of money by cheque. The Assessing Officer has not made any enquiry to prove that the explanation given by the Assessee that the money had been received as share capital was false. It is also not a case that Assessee did not substantiate the explanation. The Assessee did file the details and evidence as mentioned earlier which was in its possession. In the absence of any adverse material collected by the Assessing Officer, the explanation given by the Assessee has to be taken as bona fide. On the basis of material available, it is not possible to arrive at a definite conclusion that the Assessee has concealed any income in respect of share application money. The other addition made is only on the ground of disallowance of certain expenses which the Assessee had claimed under bona fide belief. It had not concealed particulars of any such income. In our view, on the facts of the case, it will not be appropriate to impose penalty for concealment.”

11. Under these circumstances, since the Assessee has not concealed any income nor he has given any false application, so we hold that the Tribunal was justified in



cancelling the penalty imposed by the Assessing Officer and it is a finding of fact given by the Tribunal.

12. The above being the position, no fault can be found with the view taken by the Tribunal. Thus, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260-A of the Act, which is confined to entertaining only such appeals against the order which involves a substantial question of law.

13. Accordingly, the present appeal filed by the Revenue is, hereby, dismissed.

V.B.GUPTA, J.

February 20, 2008  
Bisht

MADAN B.LOKUR, J.