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**(2012) 03 DEL CK 0017**

**In the Delhi High Court**

**Case No :** ITA 857 of 2011

CIT — APPELLANT

Vs

Numero UNO Financial Services Pvt. Ltd. — RESPONDENT

**Date of Decision :** 05-03-2012

**Acts Referred:**
Income Tax Act, 1961 — Section 271D

**Citation :** (2012) 345 ITR 84 : (2012) 206 TAXMAN 96

**Hon'ble Judges :** Sanjiv Khanna, J;R.V. Easwar, J

**Bench :** Division Bench

**Advocate :** N.P. Sahni, Ms. Rashmi Chopra, for the Appellant; Seema Jain, Ajay K. Jain and Mr. Dushyant K. Mahant, for the Respondent

## Judgement

1. Admit. The following substantial question of law is framed: Whether the Income Tax Appellate Tribunal was justified and right in allowing the appeal filed by the respondent-assessee and deleting the penalty u/s 271D of the Income Tax Act, 1961?

As we have heard Learned Counsel for the parties, we proceed to pronounce our decision on the aforesaid question. 2. For the assessment year 2006-07, the Assessing Officer vide order dated 23rd March, 2009 had imposed penalty of Rs. 10,70,000/- u/s 271D of the Income Tax Act, 1961 (Act, for short). This penalty was levied on account of Rs. 21,97,500/- received in cash by the respondent-assessee from Pradeep Aggarwal and Kaveri Aggarwal. The Assessing Officer, in this connection, has referred to the assessment order in the quantum proceedings wherein the nature and character of the aforesaid deposit/ transaction has been discussed in detail and the terms loan and deposit were examined. The Assessing Officer has recorded that the authorized share capital of the respondent assessee company was Rs. 1,00,000/- only.

3. The CIT (Appeals) confirmed the order of penalty u/s 271D. He has also referred to the fact that the authorized share capital of the respondent-assessee was only Rs. 1,00,000/-. He has referred to other factual aspects in paragraph

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2.5.0. We may record that as per the findings recorded by the CIT (Appeals), the respondent company did not have any intention/desire to issue shares and the amount was received to meet urgent business needs. CIT (Appeals) had observed that the amount received was loan. He further held that the entries in books of account were not determinative of true character of the transaction.

4. The tribunal in the impugned order has not referred to the factual matrix or given any finding either affirming or contrary to the finding recorded by the Assessing Officer/CIT (Appeals). The tribunal referred to the decision of the Jaipur Bench in the case of Jagvijay Auto Finance Pvt. Ltd. Vs. ACIT 52 ITD 504 and held as under:-

4. We have considered the facts of the case and submissions made before us. A coordinate bench of the Tribunal has already taken the decision in the matter that at the time of receipt, there is no liability on the assessee to return the money. Such a liability arises only in case shares are not allotted to the depositor. Thus, it has been held that penalty is not leviable in such circumstances. Relying on this order, the penalty confirmed by the ld. CIT(A) is deleted.

5. The aforesaid finding is cryptic and does not deal with the factual matrix of the present case. There are specific findings recorded by the Assessing Officer and the CIT (Appeals). The findings given by the Assessing Officer and the CIT (Appeals) have to be examined by the tribunal and thereafter it has to be examined whether the amount received was loan/deposit and penalty u/s 271D of the Act should be imposed.

6. This Bench had occasion to deal with Section 271D of the Act in ITA No. 1192/2011 decided on 21st November, 2011. We had examined the decision of Jharkhand High Court in Bhalotia Engineering Works Pvt. Ltd. Vs. Commissioner of Income Tax, and reference was made to the decisions in Baidya Nath Plastic Industries (P) Ltd. and Others Vs. K.L. Anand, Income Tax Officer, and Director of Income Tax (Exemption) vs ACME Educational Society (2010) 326 ITR 146 (Del). Decision of Madras High Court in Commissioner of Income Tax Vs. Rugmini Ram Ragav Spinners P. Ltd., was also considered and examined.

7. Thus, the first and the foremost aspect, which has to be considered and examined is whether the amount received was loan or deposit. This aspect has not been considered and examined by the tribunal in spite of the specific findings recorded by the Assessing Officer and the CIT (Appeals). In these circumstances, we answer the aforesaid question of law in favour of the appellant and against the respondent-assessee. However, an order of remit is passed to the tribunal to decide the appeal afresh after recording factual findings and thereafter apply the decision of this Court in ITA No. 1192/2011. This order will not be construed as an order which decides the factual issue/question whichever arises for consideration on merits. The appeal is accordingly disposed of. No costs.

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