1. D.B. INCOME TAX APPEAL NO.61/2002
CIT-II, Jodhpur **Vs.** M/s Lokhpat Film Exchange, (Cinema), Jodhpur.

2. D.B. INCOME TAX APPEAL NO.32/2002
CIT-II, Jodhpur **Vs.** M/s Lokhpat Film Exchange, (Cinema), Jodhpur.

Date : 23.01.2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE CHATRA RAM JAT

Mr. Sangeet Lodha for the appellant.
Mr. Anjay Kothari for the respondent.

BY THE COURT:- (PER HON'BLE RAJESH BALIA, J.)

Learned counsel for the revenue submits that the record of the assessee prior to 1991 is not available and hence, they are unable to produce the same before the Court.

Heard learned counsel for the parties.

These two appeals arise out of two separate orders passed by the Assessing Officer levying penalty under Section 271-B and 271-E in respect of certain transactions between the assessee firm and its partners

described as deposits from the partners. The transaction relates to receipt of deposit during the accounting period relevant to assessment year 1990-91 from its partners Shri Jay P. Motinani and Shri Bhagwati Chandnani by way of deposits. The Assessing Officer considering it to be intra party transactions of deposit otherwise then by way of cheque or bank draft inviting the provisions of Section 266 SS and 267 T and considering these payments and repayments were in violation of Sections 269 SS and 269 T imposed penalty under Sections 271 D and 271 E respectively for receiving the deposit in cash and payment in cash.

The assessee had claimed that in view of the fact that partners and firm are not independent of each other and the firm is not juristic person, these transactions cannot be considered as intra person but were only for the purpose of carrying on partner's own business. The fact that under the Income Tax Act, the firm and partners of the firm are recognised as independent units, the same cannot be treated for all purposes to be separate and independent. The assessee

had contended that in that view of the matter, they had not violated the requirement of Sections 269 SS and 269 T while conducting these transactions. However, the Assessing Officer did not accept this explanation and rejected the plea of the assessee and imposed penalties under Sections 271 B and 271 E.

The penalties were not sustained by the CIT (Appeals).

The Tribunal relying on a decision in CIT, Madras Vs. R.M. Chidambaram Pillai etc. **[1977] 106 I.T.R. 292** wherein the Supreme Court has said that there cannot be a contract of service, in strict law, between a firm and one of its partners so as to consider the salary paid to the partner as income from salary held that for the purpose of Sections 269 SS and 269 T also the firm and partners cannot be considered to be separate entity and deleted the penalty.

Hence, these two appeals are before us raising the common issue in both appeals.

The firm was constituted with a particular object of constructing cinema and is now no more in existence. Section 273 B has mitigated the penalty to be levied under Section 271 D, 271 and E by providing that where assessee is able to establish that there was reasonable cause for failure to comply with Sections 269 SS and 269 T, no penalty is leviable.

By considering the decision of the Supreme Court in the aforesaid decision and considering the facts that under the general provision relating to Partnership Act that partnership firm is not a juristic person and for inter relationship different remedies are provided to enforce the rights arising out of their inter se transactions, the issue about separate entities apart, it cannot be doubted that the assessee has acted bona fide and his plea that inter se transactions between the partners and the firm are not governed by the provisions of Section 269 SS and 269 T was bona fide and reasonable ground existed on which they had not adhered to the requirement of conducting the

transaction through bank only. Therefore, on the facts found by the Assessing Officer as well as the Tribunal, the assessee was otherwise not liable to be subjected to penalty.

In view thereof, we hold that no interference is called for in the order of the Tribunal setting aside the penalty under Sections 271 D and 271 E.

The appeals are, therefore, dismissed. No order as to costs.

[CHATRA RAM JAT], J. [RAJESH BALIA], J.

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