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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 618/2016

PR.COMMISSIONER OF INCOME TAX-6 ..... Appellant
Through: Mr. Rahul Chaudhary, Advocate.

versus

NIRMAN OVERSEAS PVT LTD ..... Respondent
Through: Mr. Arta Trana Panda, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R
% **22.08.2016**

The Revenue is aggrieved by an order of the Income Tax Appellate Tribunal ("ITAT") dated 09.03.2016 dismissing its appeal.

For the relevant assessment year, AY 2006-07, the Assessing Officer ("AO") had issued notice and brought to tax an amount of ₹4,80,71,518/- holding that it was repaid otherwise than by crossed cheque/bank draft, which is in violation of the provisions of Section 269T of the Act.

The assessee had appealed to the Commissioner of Income Tax (Appeals) who accepted its contentions. The assessee had at the relevant time entered into agreements to sell its land to Ansal Properties and Infrastructures Ltd. ("APIL") through intermediaries. The agreement shows *inter alia* acceptance of a lump sum financing for land acquisition. The amounts received were treated as deposit. After the booking of the developed land by APIL (which acquired all development rights), the amount payable in accordance with the agreement was adjusted with the deposits so retained at two stages. This was sought to be treated as violative of Section 269T. The ITAT affirmed the CIT (A)'s decision firstly by referring to the Division Bench's decision of this Court in *Commissioner of Income Tax. v. Worldwide Township Projects Ltd.* (2014) 367 ITR 433 (Delhi) and observed as follows:-

> *"6. We have perused the orders passed by the authorities below and the paper book filed before us. It is observed that the ld. AO has not disputed the transactions, and has not observed any part of the amount to be unexplained money. It has nowhere been recorded in the penalty order that the transactions were undertaken with a view to avoid or evade payment of tax. Further there is nothing on record to suggest that the amount advanced by the APIL to the assessee represented unaccounted money of APIL or the assessee. The assessee has tendered explanation in regard to the transactions and the circumstances in which the transactions were entered into.*
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> *6.1 The ld. CIT (A) has considered the submissions viz-a-viz the agreements entered into by the assessee with APIL and has come to the conclusion that the provisions of section 269T were not attracted to the facts of the present case. The ld. CIT (A) has also observed that even on the basis of the nature of genuineness of transaction, circumstances of the case and the explanations provided by the assessee, penalty u/s 271E cannot be imposed.*
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> *11. The ld. AO levied penalty u/s 271E of the Act for alleged violation of provisions of section 269T of the Act only on the basis that the books of the assessee reflected the payment to APIL. Respectfully following the decision of Jurisdictional High Court in the case of CIT vs. World Wide Township Ltd. (supra), we hold that the provisions of section 269T were not attracted to the facts of the present case. We, therefore, do not find any infirmity in the order of the ld. CIT (A). Accordingly, the grounds raised by the Revenue stands dismissed."*

The Revenue contends that a question of law arises and relies upon the judgment of the Division Bench of the Bombay High Court in *Commissioner of Income Tax v. Triumph International Finance (I.) Ltd.* (2012) 345 ITR 270 (Bom). In *Triumph International*, the Bombay High Court adopted the strict and literal interpretation of Section 269T rejecting the argument that treatment of adjustment through book entries, carried out in the ordinary course of business would fall within the mischief of the provision.

We are not persuaded with the said view and are of the opinion that *Worldwide Township* has propounded an appropriate interpretation to the provision consistent with appropriate business targets in the commercial world. Undoubtedly Section 269T is meant to discourage cash transactions and has penal consequences - evident from Section 271E. Whilst, strict construction is the norm, at the same time, we are not persuaded that the interpretation in *Worldwide Township* in any manner deviated from the text of the Statute.

For the above reasons, no question of law arises; the appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 22, 2016
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