



\$~8

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

+ ITA Nos.1276/2011 & 1277/2011

CIT Appellant
Through: Ms. Suruchi Aggarwal,
Advocate

versus

JET LIFE INDIA LTD Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V.EASWAR

ORDER% **13.12.2011**

C.M.No.22399/2011 in ITA 1276/2011
C.M.No.22408/2011 in ITA 1277/2011

These are applications for condonation of delay in refiling of the appeals.

For the reasons stated in the applications, the delay is condoned.

The applications are disposed of.

ITA Nos.1276/2011 & 1277/2011

These appeals by Revenue filed under Section 260A of the Income Tax Act, 1961 (Act, for short) impugn order dated 30th November, 2010 passed by the Income Tax Appellate Tribunal



(tribunal, for short) upholding the order passed by the Commission

Income Tax (Appeals) deleting penalty under Section 271E of the Act.

2. The Assessing Officer had imposed penalty under Section 271E recording that the assessee had repaid amounts under the Golden Bonds Scheme in violation of Section 269T of the Act. He rejected the contention raised by the assessee that the said repayments were made by adjustment of dues outstanding in the books and, therefore, provisions of Section 269T were not attracted. It was held by the Assessing Officer that the auditor's report enclosed with the return clearly stated that the payments were not made by account payee instruments and, therefore, there was violation of Section 269T.

3. Commissioner of Income Tax (Appeals) and the tribunal have held that the payment under the Golden Bonds Scheme was not repayment of any deposit, but was repayment of a loan and there was no violation of Section 269T, as it stood at that time. Section 269T, at that time, only covered deposits and did not include repayment of loans. By an amendment introduced with effect from 1st June, 2002, repayment of loans was covered under Section 269T.

4. Commissioner of Income Tax (Appeals) had further held that in the present case no payment by way of cash was made but book adjustments were made, and accordingly there was no violation of



Section 269T in view of the judgment of this Court in *CIT Vs. Noi*

Toll Bridge Company Ltd. (2003) 260 ITR 262.

5. The nature and character of the Golden Bonds Scheme have been discussed in detail in the order passed by the Commissioner of Income Tax (Appeals). The aforesaid bonds were in nature of optional fully convertible debentures. The subscribers to these bonds had option to redeem them on expiry of 38 months or 58 months from the date of allotment. The subscribers could apply for conversion of two bonds into one fully paid equity share of Rs.10 at a premium of Rs.190/- each, provided that such an option was exercised at appropriate time. The rate of interest was stipulated in the scheme. This is an undisputed position.

6. The Commissioner of Income Tax (Appeals) has referred to the definition of term ‘deposit’ in Section 2(b) of the Companies (Acceptance of Deposits) Rules, 1975, which is as under:-

“2(b) “deposit” means any deposit of money with, and includes any amount borrowed by, a company, but does not include-

.....

“(x) any amount raised by the issue of bonds or debentures secured by the mortgage of any immovable property of the company or with an option to convert them into shares in the company provided that in the case of such bonds or debentures secured by the mortgage of any immovable property the amount of such bonds or debentures shall not exceed the market value of



such immovable property.”

7. Reference was also made to the definition of term “debentures” given in Section 2(12) of the Companies Act, 1956, which reads as under:-

“2(12) “debentures” includes debenture stock, bond and any other securities of a company, whether constituting a charge on the assets of the company or not;”

8. On reading of the two provisions, it has been rightly held by the Commissioner of Income Tax (Appeals) and the tribunal that debentures or bonds were not covered by the term “deposit” and was a loan.

9. Section 269T of the Act has been interpreted by this Court in the case of *Baidya Nath Plastic Industries (P) Ltd. Vs. K.L. Anand, ITO [1998] 230 ITR 522 (Delhi)* and it was held that the said provision before its amendment with effect from 1st June, 2002 would apply only in cases of deposits and not in cases of loans. Madras High Court in the case of *A.M. Shamsudden Vs. Union of India [2000] 244 ITR 266 (Mad.)* and Rajasthan High Court in *CIT Vs. Secure Meters Ltd. (2010) 321 ITR 611* have taken a similar view.

10. In view of the aforesaid decisions, the Legislature by Finance Act had expanded the ambit and scope of Section 269T to cover repayment of loans. This amendment, however, is with effect from 1st



June, 2002. The assessment years in question are 1999-2000 and 2001. The repayments in the present cases, it is admitted, were made before 1st June, 2002.

8. In view of the aforesaid discussion, we do not find any merit in the present appeals and the same are accordingly dismissed without any order as to costs.

SANJIV KHANNA, J.

R.V.EASWAR, J.

DECEMBER 13, 2011
NA