



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

%

Judgment delivered on: 11.12.2008

**+ ITA 1349/08, ITA 1350/08, ITA 1351/08, ITA 1352/08,  
ITA 1353/08 & ITA 1354/08**

**J. P. GUPTA**

... Appellant

- versus -

**COMMISSIONER OF INCOME TAX**

... Respondent

**Advocates who appeared in this case:**

For the Appellant : Mr O. S. Bajpai with Mr Rajiv Saxena

For the Respondent : Mr R. D. Jolly

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE RAJIV SHAKDHER**

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

**BADAR DURREZ AHMED, J (ORAL)**

1. In these appeals the common order dated 22.07.2008 passed by the Income Tax Appellate Tribunal is in question. The issue sought to be raised in these appeals is whether the licence fee payable to the railways for use of land as a depot, could be regarded as an accrued liability or a contingent liability. It was pointed out by the learned counsel for the appellant/ assessee that before the Tribunal he had taken



1995-1996, which had been decided by the Tribunal vide its order dated 25.11.2004, the said licence fee has been construed to be an accrued liability and, therefore, allowable as an expenditure in the year of accrual. Unfortunately, the Tribunal has not returned any finding on this aspect of the matter.

2. Consequently, we feel that the impugned order requires to be set aside and the matters to be remanded to the Tribunal for a consideration on this aspect of the matter. According to the learned counsel for the appellant / assessee the matter stood concluded by virtue of the decision of the Tribunal in respect of the assessment year 1995-1996 and, therefore, there was no occasion for re-entering into the dispute of whether the licence fee payable was a contingent liability or an accrued liability. The learned counsel for the appellant/ assessee submits that the Tribunal ought to have followed its decision in respect of the assessment year 1995-1996 particularly when no appeal therefrom had been preferred by the revenue and the issue had become final.

3. Mr Jolly, who appears on behalf of the revenue, submits that he does not have any instructions whether any appeal has been preferred from the order of the Tribunal pertaining to the assessment



the Tribunal for a consideration on this aspect of the matter, the Tribunal would examine as to whether the revenue had preferred any appeal therefrom or not and the effect thereof.

4. The impugned order is set aside. The appeals are remanded to the Tribunal for a consideration afresh as per the directions given above. The matters be placed before the Tribunal on 15.01.2009 for further directions.

The appeals stand disposed of.

**BADAR DURREZ AHMED, J**

**RAJIV SHAKDHER, J**

**December 11, 2008**  
**SR**