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

+ ITA 1387/2010

COMMISSIONER OF INCOME TAX DELHI-III Appellant
Through: Ms. Suruchii Aggarwal, Advocate

versus

M/S. JAIPUR GOLDEN TRANSPORT
CO. (REGD.) Respondent
Through: None.

% Date of Decision: 09th September, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

MANMOHAN, J:

CM No.16222/2010 (exemption)

Allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

CM No.16223/2010

This is an application for condonation of delay in refiling the appeal.

For the reasons stated in the application, delay in refiling the appeal is condoned.

Accordingly, the application stands disposed of.



ITA 1387/2010

1. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as “Act”) challenging the order dated 27th November, 2003 passed by the Income Tax Appellate Tribunal (in short “Tribunal”) in ITA No. 784/Del/2009 for the Assessment Year 2004-2005.

2. Ms. Suruchii Aggarwal, learned counsel for the revenue submitted that in the absence of transfer documents, Assessing Officer (in short, “AO”) could resort to fair market value of the property for the purpose of Section 50 of the Act.

3. However, we find that the Tribunal has rejected the said argument by observing as under:-

“44. We have heard both the parties and gone through the material available on record. From the order of CIT(A) it is clear that AO has worked out the difference in assets by making a reference to DVO. The AO had not brought any material on record to prove that assessee had received consideration more than what was mentioned in the sale deed. In the absence of any such evidence the value of assets transferred cannot be enhanced by making a reference to DVO. Accordingly in our considered opinion ld. CIT(A) has rightly deleted the addition.....”

4. We are in agreement with the Tribunal as it is settled law that in the absence of any incriminating evidence that anything has been paid over and above than the stated amount, the primary burden of proof is



on the Revenue to show that there has been an under-statement concealment of income. It is only when such burden has been discharged, it would be permissible to rely upon the valuation given by the DVO (See *K.P. Varghese Vs. ITO, (1981) 131 ITR 597 (SC)*, *CIT Vs. Shakuntala Devi, (2009) 316 ITR 46*, *CIT Vs. Ashok Khetrapal, (2007) 294 ITR 143 (Del.)* and *Commissioner of Income Tax Vs. Manoj Jain, (2006) 287 ITR 285 (Del.)*).

5. In any event, the opinion of the DVO, *per se*, is not an information and cannot be relied upon. The Supreme Court in its order dated 19th October, 2009 in Civil Appeal No. 6973/2009 has held as under:-

“Delay condoned.

Leave granted.

In the present case, we find that the Tribunal decided the matter rightly in favour of the assessee inasmuch as the Tribunal came to the conclusion that the Assessing Authority (AO) could not have referred the matter to the Departmental Valuation Officer (DVO) without books of accounts being rejected. In the present case, a categorical finding is recorded by the Tribunal that the books were never rejected. This aspect has not been considered by the High Court. In the circumstances, reliance placed on the report of the DVO was misconceived.

For the above reasons, the impugned judgment of the High Court is set aside and the order passed by the Tribunal stands restored to the file. Accordingly, assessee succeeds.

Civil Appeal is allowed. No order as to costs.”



6. Further the Supreme Court in its order dated 16th February, 2010 in Civil Appeal No. 9468/2003 has held as under:-

“Having examined the record, we find that in this case, the Department sought reopening of the assessment based on the opinion given by the District Valuation Officer (DVO). Opinion of the DVO per se is not an information for the purposes of reopening assessment under Section 147 of the Income Tax Act, 1961. The AO has to apply his mind to the information, if any, collected and must form a belief thereon. In the circumstances, there is no merit in the Civil Appeal. The Department was not entitled to reopen the assessment.

Civil appeal is, accordingly, dismissed. No order as to costs.

7. Consequently, we find that no substantial question of law arises.

In any event, the present appeal being bereft of merit, is dismissed.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 09, 2010

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