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

+ ITA 1417/2010

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

versus

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

% Reserved on: 14<sup>th</sup> September, 2010  
Date of Decision: 20<sup>th</sup> September, 2010

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

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| 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.16524/2010**

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 1417/2010**

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 27<sup>th</sup> November, 2009 passed by the Income Tax Appellate Tribunal (in short “Tribunal”) in ITA No. 783/Del/2009 for the Assessment Year 2003-2004.

2. In the present appeal, the revenue has raised a large number of questions of law which are reproduced hereinbelow:-

*“(i) Whether in view of the specific defects pointed out by the Special Auditor appointed u/s 142(2A) of the Act with regard to negative cash balances, could there be any further onus on the part of the AO to prove negative balances for purposes of addition under Section 68 of the Act?”*

*“(ii) Whether the addition on account of replacement of keyboards, mouse, modem etc. can be held to be upgradation of computers and be treated as revenue expenditure?”*

*“(iii) Whether in view of Section 145 of the Income-tax Act, 1961, where hybrid system of accounting has been dispensed with, could the expenses pertaining to earlier assessment year be allowed in current year by resorting to principle of consistency?”*

*“(iv) Whether expenditure on account of composite advertisement of group companies should not be bifurcated between the two companies especially when bills are received in the name of the principal and, as such, 50% of the expenses should not be disallowed in the hands of assessee company?”*

*“(v) Whether expenditure on account of telephone, electricity, stationery, general repairs, maintenance etc. incurred at places where offices of the group companies are situated can be allowed in between companies and should not be proportionately bifurcated in both companies?”*



*(vi) Whether ITAT is correct in holding that estimation of unvouched expenses cannot be resorted to particularly when it is not the case of the assessee that all expenses are vouched?*

*(vii) Whether AO could not resort to fair market value of property in absence of transfer documents?*

*(viii) Whether the order of the learned ITAT is perverse as it has ignored the relevant facts on record?"*

3. However, we are of the view that the aforesaid questions No. (i), (ii), (iv), (v), (vi) and (viii) are essentially questions of fact, on which both the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] and the Tribunal have given concurrent findings of fact against the revenue. We are also of the view that both the CIT(A) and the Tribunal have given cogent reasons for arriving at their factual conclusions. Consequently, questions No. (i), (ii), (iv), (v), (vi) and (viii) do not arise for consideration in the present proceedings.

4. As far as question No. (vii) with regard to DVO's report is concerned, we have already taken a view in the assessee's own case in ITA No. 1387/2010 for the assessment year 2004-2005 that the said question does not arise for consideration. Consequently, the same is also rejected.

5. Accordingly, the present appeal is admitted only with regard to question No.(iii) which reads as under:-

*(iii) Whether in view of Section 145 of the Income-tax Act, 1961, where hybrid system of accounting has been dispensed with, could the expenses pertaining to*



*earlier assessment year be allowed in current year by resorting to principle of consistency?*

6. Issue notice to the respondent, limited to question No.(iii), returnable for 6<sup>th</sup> December, 2010.

**MANMOHAN, J**

**CHIEF JUSTICE**

**SEPTEMBER 20, 2010**

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