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

+ ITA 1505/2010

THE COMMISSIONER OF
INCOME TAX (LTU)

..... Appellant

Through: Mr. Sanjeev Sabharwal, , Advocate

versus

NESTLE INDIA LTD.

..... Respondent

Through: Mr. Ajay Vohra, Advocate with
Ms. Kavita Jha, Advocate.

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Date of Decision: 01st October, 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?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

MANMOHAN, J

CM No. 17297/2010 (exemption)

Allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

ITA 1505/2010

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity, "Act") challenging the order dated 06th November, 2009 passed by the Income Tax Appellate Tribunal (in short "Tribunal") in ITA No. 13/Del/2008, for the Assessment Year 1996-1997.



2. The issue involved in this appeal is with regard to deletion of penalty imposed by the Assessing Officer (in short, “AO”) under Section 271(1)(c) of the Act in respect of guest house expenses and club membership fee.

3. From a perusal of the order passed by the Tribunal, it is apparent that the respondent-assessee had filed its return of income for the relevant Assessment Year 1996-1997 i.e. much prior to the issue being finally settled by the Supreme Court vide order dated 24th March, 2006 in the case of *Britannia Industries Ltd. Vs. Commissioner of Income Tax 278 ITR 546*.

4. Consequently, as the said expense was debatable on the date on which the respondent-assessee filed its return, we are of the opinion that no penalty can be levied [*see Malabar Industrial Co. Ltd. Vs. CIT (2000) 243 ITR 83 (SC)*]. Accordingly, the present appeal is dismissed *in limine*.

MANMOHAN, J

CHIEF JUSTICE

OCTOBER 01, 2010

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