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

\+ ITA 941/2010

THE COMMISSIONER OF INCOME TAX-IV ..... Appellant
Through: Mr. Sanjeev Sabharwal, Advocate

versus

GIVO LTD. ..... Respondent
Through: Ms. Bhakti Pasrija, Advocate

% Date of Decision: 27th July, 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?Yes
3. Whether the judgment should be reported in the Digest?Yes

J U D G M E N T

MANMOHAN, J

CM 12666/2010

This is an application for condonation of delay of 100 days in re-filing the appeal.

For the reasons stated in the application, delay of 100 days in re-filing the appeal is condoned.

Accordingly, application stands disposed of.

ITA 941/2010

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity "Act, 1961") challenging the order dated 19th June, 2009 passed by the Income Tax Appellate Tribunal (in short "ITAT") in ITA No. 3070/Del/2004, for the Assessment Year 1997-1998.

2. Mr. Sanjeev Sabharwal, learned counsel for Revenue submitted that the ITAT had erred in law in deleting the addition of interest of Rs. 4,00,320/- on account of advance given to Mr. V.K. Chabra. He also submitted that ITAT had erroneously deleted Rs. 10,00,000/- on account of foreign traveling expenses.

3. The ITAT while deleting the addition of Rs. 4,00,320/- on account of interest has observed as under :-

> *"3.1 We have considered the rival submissions. At the outset, it is noticed from the assessment order and the order of the CIT(A) that this amount of Rs. 22.24 lacs as imprest paid Shri V.K. Chabra was paid over a period of time. It is also noticed that during the earlier Assessment Years there has been no disallowance on account of this imprest account of Shri V.K. Chabra. It is also noticed that the assessee company is having substantial share capital and reserves and surplus par in excess of the amount given by the assessee to Shri V. K. Chabra. It is also noticed that the amount given to Shri V.K. Chabra has not been claimed as expenditure either. It is also noticed that similar disallowance has not been made out of the interest for the earlier years, when the money had been advanced to Shri V.K. Chabra. In these circumstances, respectfully following the decision of Hon'ble High Court of Karnataka in the case of Sridev Enterprises, we are of the view that no disallowance of estimated interest can be made during the relevant Assessment Year also. In these circumstances, the Assessing Authority is directed to delete the said disallowance. In the circumstances, the ground No. 4 of the assessee's appeal stands allowed."*

4. We are of the opinion that as in past assessment years, the interest expenditure had been allowed, it was not open to the Assessing Officer to disallow the said expenditure in the year under consideration. The Karnataka High Court in ***Commissioner of Income Tax Vs. Sridev Enterprises, (1991) 192 ITR 165*** has held that a departure from a finding in respect of deductions permitted during the past years would result in a contradictory finding.

5. We are also of the view that it would not be equitable to permit the Revenue to take a different stand in respect of expenses which were the subject matter of previous years' assessments. In our opinion, consistency and definiteness of approach by the Revenue is necessary in the matter of recognizing the nature of an account maintained by the assessee so that the basis of a concluded assessment is not ignored without actually reopening the assessment.

6. As far as the issue of foreign travelling expense is concerned, we find that ITAT has observed as under :-

> *"4.1…… A perusal of the assessment order shows that the disallowance had been made by the Assessing Authority on account of non-filing of the details of travel. A perusal of the order of the Ld. CIT(A) shows that he has verified the assessment record and has found that substantial details had been filed. However, it is noticed that the Ld. CIT(A) drew a conclusion that the travel of the Managing Director to Paris, London, Amsterdam and Hong Kong had apparently no connection with the business of the assessee. It is noticed that the assessee is in the business of textile and garment manufacturing. The disallowance has been made on presumption and the disallowance is an ad-hoc disallowance. The details of the expenditure have been found to have been produced before the Assessing Authority. Ld. CIT(A) not found any defect in the claim of expenses, could not now make a*

change in the stand of the Assessing Authority to say that apparently the travel to Paris, London, Amsterdam and Hong Kong was not for business purposes. Further, as the revenue has not been able to point out as to which expenses of foreign travel as claimed by the assessee is not for the business purpose and as the assessee has produced the evidences in relation to the foreign travel before the Assessing Authority and the same has also been accepted by the Ld. CIT(A), the addition on this account more so on ad-hoc basis, is unjustified and the same is deleted. In these circumstances, ground No. 5 of the assessee's appeal stands allowed."

7. Keeping in view the aforesaid conclusion on facts by ITAT, which is the final fact finding authority, we are of the view that no substantial question of law arises in the present case. Consequently, present appeal is dismissed *in limine* but with no order as to costs.

MANMOHAN, J

CHIEF JUSTICE

JULY 27th, 2010
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