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

Date of Decision: 18th August, 2026
Date of Uploading :20th August, 2026

\# **CNR No. DLHC011107072025**

\+ ITA 669/2026

PR. COMMISSIONER OF INCOME TAX 4 NEW DELHI .....Appellant

Through: Mr. Shlok Chandra, SSC with Ms. Naincy Jain, and Ms. Madhavi Shukla, JSCs with Mr. Udit Dad, Adv.

versus

M/S J D EXIM PVT LTD .....Respondent

Through: Ms. Ananya Kapoor, Adv.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

J U D G M E N T

***Per* DINESH MEHTA, J. (*Oral*)**

CM APPL. 54952/2026 (delay of 454 days in re-filing)

1. The present application has been filed by the appellant seeking condonation of 454 days delay in re-filing the appeal.

2. For the reasons stated in the application, the same is allowed and the delay of 454 days in re-filing the appeal stands condoned.

3. The application stands disposed of, accordingly.

CM APPL. 54953/2026 (Exemption)

4. Allowed, subject to just exceptions.

5. Application stands disposed of.

CM APPL. 54951/2026 (delay of 21 days in filing)

6. The present application has been filed by the appellant seeking condonation of 21 days delay in filing the appeal.

7. For the reasons stated in the application, the same is allowed and the delay of 21 days in filing the appeal stands condoned.

8. The application stands disposed of, accordingly.

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9. By way of the present appeal under Section 260A of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act of 1961'*), the appellanthas challenged the order dated 28.11.2024 passed by the Income Tax Appellate Tribunal (*hereinafter referred to as 'ITAT'*) in Appeal No. 8765/DEL/2019 for Assessment Year (AY) 2016-17, whereby the appeal filed by the Revenue against the order dated 26.08.2019 passed by the Commissioner of Income Tax (Appeals)-5, New Delhi [*hereinafter referred to as 'CIT(A)'],* allowing the assessee's appeal was rejected.

10. The facts, shorn of unnecessary details are that the Assessing Officer (AO)while framing the assessment for AY 2016-17, made an addition of Rs. 10 crores under Section 68 of the Act of 1961, considering the amount of advance received by the assessee to be a colourable device.

11. The backdrop facts were, that in the year 2006-07 the assessee had shown a sum of Rs. 10 crores to have been received as an advance as consideration for sale of his land, claiming that the transaction had not culminated.

12. As the facts have come on record, a sale deed was executed by his power of attorney holder in Financial Year (FY) 2013-14, which according to the assessee, came to his knowledge in FY 2015-16 (i.e., Assessment Year

2016-17) because his power of attorney holder did not inform the assessee about the factum of execution of the sale deed. The assessee, therefore, reflected the transaction of his return of income and showed capital gain, but since there was a capital loss, the long term capital gain arising on the land was set off.

13. During the course of assessment proceedings,when the AO questioned the purchaser about the factum of the sale deed and the transaction, then he learnt that the sale deed had been executed in FY 2013-14 and that the purchaser had booked the transaction in his books of accounts in FY 2013-14.The AO therefore took a view that the assessee had adopted a device to show the aforesaid gain in the AY 2016-17, being the year in which he had suffered a capital loss of Rs. 16 crores so as to get a set-off of this capital gain, which had accrued on account of sale of the land and the transaction *qua* which he had entered into an agreement to sell in the FY 2006-07.

14. In the backdrop of this factual scenario, the AO was of the view that the advance of Rs. 10 crores which the assessee had taken was unexplained advance and thus he added such amount in the year under consideration (2016-17) under Section 68 of the Act of 1961. The said addition was disallowed by the Appellate Authority and said view has been affirmed by the Tribunal by holding that the AO was not justified in making addition of the amount of Rs. 10 crores in the year under consideration, as said amount was received by the assessee in the FY 2006-07.

15. Mr. Shlok Chandra, learned Senior Standing Counsel for the Department vehemently argued that the assessee had adopted a device or a ploy to structure his transaction in a way to get set-off of the capital gain against a capital loss. He added that the assessee waited for two years and

intentionally did not disclose the transaction of sale of the land for two years. And, therefore, the AO was justified in making addition of Rs. 10 crores under Section 68 of the Act of 1961.

16. Having heard learned counsel for the appellant and upon perusal of the record, we are of the view that maybe the assessee had adopted a device to avoid or to circuitously availing set-off of capital loss against the capital gain, which he had earned two years earlier. But for dealing with such situation or case, there were other and better modes or measures available with the AO. For the purported avoidance or colourable device, taking recourse to Section 68 of the Act of 1961, within the statutory framework was not permissible, more particularly, when the assessee had admittedly received the amount of Rs. 10 crores way back in the FY 2006-07.

17. Admittedly, the amount of Rs. 10 crores was received by the respondent/assessee in the FY 2006-07 and, therefore, adding that amount in the year under consideration (2016-17) is against anybody's comprehension. Such addition cannot be sustained.

18. We do not find any error or infirmity in the order(s) passed by both the Appellate Authorities.The present appeal is, therefore, rejected.

DINESH MEHTA
(JUDGE)

RAJNEESH KUMAR GUPTA
(JUDGE)

AUGUST 18, 2026/*sds*