$~3 & 4

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

\+ ITA 689/2016 & C.M.36846/2016

THE PR. COMMISSIONER OF INCOME TAX-9 ..... Appellant

versus

TATA POWER DELHI DISTRIBUTION LTD.

..... Respondent

\+ ITA 690/2016 & C.M.Nos.36848-36849/2016

THE PR.COMMISSIONER OF INCOME TAX-9 ..... Appellant

versus

TATA POWER DELHI DISTRIBUTION LTD. ..... Respondent

Present: Mr.Ruchir Bhatia, Sr.Standing Counsel and Mr.Puneet Rai, Jr.Standing Counsel for the appellants/revenue.
Mr.Mayank Nagi, Advocate for the respondents.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% 04.11.2016

C.M.36846/2016 (for delay) in ITA 689/2016
C.M.36848/2016 (for delay) in ITA 690/2016

For the reasons mentioned in the applications, the delay in filing the appeals is condoned.

Applications stand disposed of.

C.M.36849/2016 in ITA 690/2016

Exemption is allowed subject to just exceptions.

Application stands disposed of.

ITA 689/2016 & ITA 690/2016

1. The revenue is aggrieved by the common order of the ITAT

whereby the cross appeals – by the assessee and by the revenue were disposed of. The ITAT held that the additions made on the basis of reassessment notice were not sustainable in law.

2. The original assessment was completed under Section 143 (3) during the course of which claims for provision of bad and doubtful debts have been made, which were gone into by the assessing officer. The reopening of the assessment was based upon an appreciation – by the AO who issued notice on 20.02.2009, reappraising the existing material. The ITAT felt that the reopening was unwarranted and took note of the several decisions including previous judgment of this court. The ITAT relies on ***Commissioner of Income Tax vs. Kelvinator of India Limited*** **(2010) 320 ITR 561 (SC)**.

3. It is urged by the revenue that the impugned judgment is incorrect and has to be set aside. Learned counsel submitted that the judgment in ***Kelvinator of India Limited's*** case (*supra*) is an authority on the question that the change of opinion is impermissible but does not decisively rule that the opinion on the basis of which the reopening is permissible has to be outside the record. He sought to place reliance upon previous judgment of ***ALA Firm vs. Commissioner of Income Tax*** **(1991) 189 ITR 285 (SC)** and a reasoned order in ***Giri Lal and Company vs. Income Tax Officer Bombay and Others (*****2016) TIOL 129 (SC)**.

4. The expression "reason to believe", was the subject matter of extensive discussion by full bench of this court reported as ***Commissioner of Income Tax vs. Kelvinator of India Limited*** **256 ITR 1 (Delhi)**. The full bench laid down by reasoning prepositions as

to what can constitute valid “reason to believe”. The Supreme Court considered the correctness of that judgment. The court held that the information received by the assessing officer after completion of assessment alone is “the sound foundation for exercising the power under Section 147 read with Section 148”. In these circumstances, the arguments of the revenue that the previous contrary ruling in ***ALA Firm’s*** case (*supra*) continues to govern the field cannot be countenanced.

5. The judgment in ***ALA Firm’s*** case (*supra*) concerned an assessment for the year 1961-62. Section 147 was amended in 1989. Consequently, the declaration of law in ***ALA Firm’s*** case (*supra*) was of the pre-existing law. The law as exists was dealt with in ***Kelvinator of India Limited’s*** case (*supra*) which has pronounced the correct position decisively. So far as the judgment in ***Giri Lal’s*** case (*supra*) goes, the court notices that the assessee had challenged the reopening – which was rejected by the High Court. The order as it were is a mere confirming one and has not discussed or dealt with the previous authority in ***Kelvinator of India Limited’s*** case (*supra*) which is a judgment in terms of Article 141 of the Constitution and per se binding having regard to the larger bench composition.

6. For the above reasons, the court holds that there no substantial question of law. The appeal is therefore dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

NOVEMBER 04, 2016/rb