

\$~R-58, 59, 60, 60A & 60B

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

+ **ITA 215/2009**

+ **ITA 233/2009**

+ **ITA 234/2009**

+ **ITA 263/2009**

+ **ITA 291/2009**

THE COMMISSIONER OF INCOME TAX-IV Appellant

versus

DLF LTD. Respondent

Through : Sh. Sanjay Kumar, Jr. Standing
Counsel, for Sh. Rahul Chaudhary, Sr. Standing
Counsel, for appellant.

Ms. Kavita Jha and Ms. Devika Jain, Advocates,
for respondents.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **22.02.2018**

1. These matters are taken up by consent. The common question of law which arises for consideration is as follows:

“Whether the Income Tax Appellate Tribunal was correct in law in setting aside the reassessment proceedings under Section 147 read with Section 150(1) of the Income Tax Act, 1961 which were initiated on the basis of the findings recorded by the Commissioner of Income Tax (Appeals) in respect of the assessment year 1994-95 in the case of the assessee?”

2. The facts briefly are that for AY 1994-95, the assessment was completed by the Assessing Officer (AO) based upon certain additions

rejecting the method of accounting, i.e. project completion.

3. The assessee is a developer/coloniser who reported income on the basis of completed elements of the project, i.e. as and when the conveyance of individual units were done. The AO's initial order for AY 1994-95 was appealed against. The CIT(A) at that stage remitted the matter for fresh consideration to the AO. At that stage, the AO proceeded to reopen the assessment not only for the year concerned but also for the previous years, i.e. AYs 1987-88, 1988-89, 1989-90, 1990-91, 1992-93 and 1993-94.

4. The solitary ground for reopening the assessment was the adoption of method of accounting and the reporting of income consequent thereto.

5. In the meanwhile, the AO's findings after the remand for AY 1994-95, became the subject matter of appeal to the CIT(A) who accepted the assessee's contentions. The resultant appeal by the Revenue was rejected. The assessment for AY 1994-95 became the subject matter of appeal to this Court in ITA 159/2010 and ITA 326/2010 (the first appeal concerning the order of the ITAT passed at the stage of remand and the second, the ITAT order after remand). In the meanwhile, the reopening of assessment and the consequent additions became the subject matter of yet another appeal to CIT(A). The CIT(A) concurred with AO's order. The assessee thereafter appealed to ITAT.

6. The ITAT held that the reopening of assessment, having regard to the adoption of method of accounting amounted to a second opinion or review and amounted to an impermissible exercise of power under Section 147.

7. This Court notices, at the outset, that since the merits of the income reported consequent upon the method of accounting followed by the

assessee was gone into, especially in ITA 326/2010 and ITA 159/2010 in the judgment reported as *CIT v. DLF Universal Ltd.* 2017 (9) ITR-OL 13 (Del), the question of law urged in this case at the behest of the Revenue has to be answered against it. It is, therefore, held against the Revenue; the reopening of the assessment was not justified.

8. The “reasons to believe” in all these cases is a reappreciation of the existing material and the reopening is not based upon any concealment of material circumstance but rather a fresh opinion or review thereto. Such notices under Section 147 are contrary to the decision of the Supreme Court in *CIT v. Kelvinator of India Ltd.* 320 ITR 561. The question of law is answered against the Revenue and in favour of assessee. The appeals are dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 22, 2018/AJK