



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

% Judgment delivered on: 21.08.2008

+ **ITA Nos. 1550 & 1553/2006**

**THE COMMISSIONER OF INCOME
TAX DELHI (CENTRAL)-II**

..... Appellant

-versus-

SHRI KAPIL DEV

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr R. D. Jolly
For the Respondent : Mr S. Krishnan

CORAM :-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether the Reporters of local papers may be allowed to see the judgment ?
2. To be referred to Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. These appeals are in respect of the assessment years 1992-93 and 1993-94 and arise out of the order passed by the Income Tax Appellate Tribunal on 15.02.2006 in respect of the ITA



Nos. 4788 to 4789/Del/2003. The impugned order is a common order which also includes the assessment year 1991-92. The appeal against the assessment year 1991-92 being ITA no. 1563/2006 has been dismissed by this Court today itself by a separate order.

2. However, we are taking a different approach in respect of the present appeal because there appears to be a mistake in Tribunal's order with regard to the two years in question in these appeals. In paragraph No. 8 of the impugned order, it has been recorded that:-

“It is not disputed that in all the three assessment years, the assessment had been completed under Section 143 (3) Income Tax Act, 1961, and therefore, in view of the proviso to Section 147, the assessment could be reopened only in case of assessee failed or to disclose the fully and truly all material facts necessary for his assessment...”

3. It is an admitted position before this Court that in so far as the assessment years 1992-93 and 1993-94 are concerned there was no assessment under Section 143 (3) of the Act. The only assessment under Section 143 (3) was in respect of the assessment year 1991-92. The Tribunal seems to have overlooked this fact and has based its decision purely on the ground that the assessment had



been completed under Section 143 (3) of the Act in respect of the assessment years 1992-93 and 1993-94 also. Since this error is apparent and the learned counsel for the parties have fairly stated that no such assessment has been done in respect of the years in question in these appeals, we feel that it would be appropriate that the matter with regard to these years is remitted to the Tribunal for consideration afresh.

4. Consequently, we dispose of these appeals and direct that the Tribunal shall consider the appeals filed by the Revenue for the assessment years 1992-93 and 1993-94 afresh.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

August 21, 2008

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