



§-13 & 14

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

+ **ITA 94/2013**

+ **ITA 96/2013**

COMMISSIONER OF INCOME TAX DELHI -IV ..... Appellant

Through : Sh. Sanjeev Sabharwal, Sr. Standing  
Counsel with Sh. Puneet Gupta, Jr. Standing  
Counsel.

versus

DLF COMMERCIAL DEVELOPERS LIMITED ..... Respondent

Through : Sh. Ajay Vohra and Ms. Kavita Jha,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**ORDER**

% **06.05.2013**

**ITA 94/2013**

Heard learned counsel for the parties.

Following question of law arises for consideration:

(1) Did the Income Tax Appellate Tribunal (ITAT) fall into error in not holding that the loss of Rs. 4,92,71,000/- on account of derivative transaction was a speculative loss, and was entitled to the benefit of Section 73, in view of the explanation to Section 73 of the Income Tax Act.

Argument heard. Order reserved.

**ITA 96/2013**

The revenue claims to be aggrieved by an order of the Income Tax Appellate



Tribunal (ITAT) dated 30.11.2011 in ITA 2065/Del/2011 which followed its own previous decision in ITA 2064/Del/2011. The appeal pertained to the Assessment Year 2007-08. Briefly the facts for this purpose of this appeal are that the assessee, which entirely provides access to its Golf Course, collects one-time non-refundable membership fee. This is sought to be brought to taxation and the assessee at the relevant time claimed that the income tax was entitled to be spread-over for the period of membership of the concerned individual. The Assessing Officer (AO), however, declined the relief. On appeal, the appellate commissioner accepted the assessee's contention and granted the relief. The revenue's appeal was rejected by the ITAT.

The revenue contends that the benefit of spreading-over of income could not have been granted in the circumstance of the case. It is contended that the one-time membership fee has to be treated as income at the point of time of its receipt and is consequently not entitled to the benefit of spread-over. This Court notices that the ITAT in its impugned order had relied upon its previous order in another case. The ITAT had relied upon *E.D. Sassoon and Company Ltd. v. CIT*. The discussion in ITA 180/2012, a judgment delivered by another Division Bench in this regard pertinently states as follows:

*“.....As regards the non-refundable upfront payment it was observed and held that it entailed and secured use of facilities for the period specified. The assessee, therefore, had to provide and incur expenses for providing the said facilities. The Tribunal has followed the decision of this Court in CIT v. Dinesh Kumar Goel (2011) 331 ITR 10. In the said case, this High Court has referred to the concept of income, and the principles of accountancy. In the said case, the respondent-assessee was running a coaching institute and was receiving upfront fee for providing coaching, which was spread over one year or two years.*

*Keeping in view the factual position, Tribunal has rightly appreciated and applied the law as elucidated in the case of Dinesh Kumar Goel (supra). We do not think any substantial question of law arises.*

*The appeal is dismissed. No costs.”*

This Court finds no reason to diverge from the view taken by the Division Bench in respect of the same question for 2006-07. The Court also notices that the revenue's appeal by Special Leave was rejected by the Supreme Court on 08.03.2013.



In view of the above discussion, no question of law arises for consideration.  
The appeal is accordingly dismissed.

A handwritten signature in black ink, appearing to read 'S. Ravindra Bhat'.

S. RAVINDRA BHAT, J

A handwritten signature in black ink, appearing to read 'Najmi Waziri'.

NAJMI WAZIRI, J

MAY 06, 2013  
'ajk'