

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL (L) NO.1564 OF 2008

WITH

INCOME TAX APPEAL (L) NO.1590 OF 2008

WITH

INCOME TAX APPEAL (L) NO.1599 OF 2008

The Commissioner of Income Tax ..Appellant.

V/s.

The Industrial Credit and Investment Corporation of India Ltd. (ICICI) ..Respondent.

Mr.P.S.Sahadevan for appellant in all the appeals.

Mr.S.J.Mehta for respondent in all the appeals.

CORAM : V.C.DAGA AND
J.P.DEVADHAR, JJ.

DATED : 24TH JUNE, 2009.

P.C. :-

1. Heard learned counsel for the revenue and learned counsel appearing for the respondent. Perused appeal. Office objections are overruled. Registry is directed to register the appeals.

2. All the appeals are taken up for hearing by

consent of the parties. In all these three appeals since the parties are common, the question of law sought to be raised is common. The three appeals are for the A.Y. 1994-95, 1995-96 and 1996-97.

3. So far as A.Y. 1994-95 is concerned, while considering the reasons for reopening of the assessment, the Tribunal has categorically recorded the findings of fact based on the appreciation of evidence that there was no failure on the part of the assessee in furnishing details and material facts truly and fully necessary for the assessment. In this view of the matter, no substantial question of law is involved so far as the appeal relating to A.Y. 1994-95 is concerned.

4. With regard to the next two assessment years i.e. 1995-96 and 1996-97 are concerned, the assessment has been re-opened within the period of 4 years from the date of the assessment orders, therefore, the benefit of exception under proviso to 147 is not available to the assessee for these two assessment years. However, the assessee can conveniently take advantage of the findings of fact based on appreciation of evidence recorded by the Tribunal that the reasons to hold escapement of interest has not been borne out from the material available on record. It was further recorded by finding of fact that

the assessing officer who passed the earlier assessment orders had applied his mind to the question raised in the earlier proceeding relating to the assessment in question.

5. In the above circumstances, we see no substantial question of law involved in these appeals and all these three appeals are dismissed in limini with no order as to costs.

(J.P.DEVADHAR, J.)

(V.C.DAGA, J.)