

Case on reopening

2009-TIOL-282-ITAT-MUM.pdf

Lokpriya Housing Development Pvt. Ltd Vs ITO (Dated: February 11, 2009)

Income Tax - Section-147 and penalty u/s 271(1)(c) - Assessee engaged in the business of Real Estate development - follows project completion method of accounting - declares nil income - AO reopens assessment beyond the statutory time limit - CIT(A) confirms the order and also confirms the penalty u/s 271(1)(c) - Held, , for the A.Y 1990-91 and 1991-92 the reopening is bad in law because the revenue could not produce the exact reasons for reopening despite repeated opportunity given by the bench and has ultimately come out with a letter stating that the records for AY. 1989-90 are not traceable, for the A.Y 1990-91 and 1991-92 the reasons recorded are not available on record. No permission as required is stated to have been obtained by the AO prior to issue of notice u/s. 148 for the A.Y 1990-91 and 1991-92 in terms of section 151 and the addition itself is made on protective basis, so the question of coming to conclusion that income escaped assessment does not arise, for permitting reopening .

For assessment year 1989-90, The AO cannot frame an opinion that the income chargeable to tax has escaped assessment as he had not information of the return filed by the assessee. It is well settled that there should be reasonable belief and it should be based on record, for coming to a conclusion that income has escaped assessment when the reason cannot be produced, there is no other alternative but to draw adverse inference and agree with the contention of the assessee. Assessments of all the A.Y under appeals is bad in law .Contention of the assessee upheld. The penalties levied based on those assessments have no leg to stand. Assessee Appeal allowed.