

DHC in JAL HOTELS LTD. & SUDHIR ENGG. CO LIMITED:

In context of reopening after earlier 143(3) assessment, where assessee with original return filed certain agreements, based on which AO now formed reasons for income escaping assessment, allowing assessee's WRIT petition and quashing 148 notices, DHC has concluded that: **(reopening within four years etc)**

1. No doubt, the Assessment Orders are remarkable for their brevity but it is well established that the Assessing Officer is not obligated to mention and discuss each and every argument or issue which has arisen in the course of Assessment.

CIT vs Kelvinator of India Ltd., [2002] 256 ITR 1 Relied

2. We think it appropriate to advert to M/s. Kishan chand Chellaram vs CIT, Bombay City II, Bombay, AIR 1980 SC 2117 which lays down that once the basic or primary facts have been disclosed, the burden to prove that amounts represents undisclosed income of the assessee is on the Revenue. Applying all these precedents to the case before us, we find it difficult to come to any conclusion other than that the case in hand represents those genre of cases in which there has been a change of opinion. One of the tests prescribed in **Techspan** was to investigate whether any new material had come to the notice of the officer concerned which material would constitute "reason to believe". **This new material is wholly missing in the case in hand. Our study would become more comprehensive with the mention of CIT vs P.V.S. Beedies Pvt. Ltd., [1999] 237 ITR 13.**

Further in connected appeal, DHC has held that **(AFFIRMED Delhi ITAT order since reported at 115 TTJ 766) :**

"This Appeal under Section 268 of the Act concerns the legal propriety of action taken under Section 147 of the Act in respect of interest amount to Rupees 12,99,917/- earned on Vikas Cash Certificate. After referring to KLM Royal Dutch Airlines vs ACIT, (2007) 208 CTR (Del) 3 the ITAT had applied **Kelvinator** and ITA No.309/2006 entitled CIT vs Eicher Ltd. decided on 22.5.2007. The Tribunal had declined to apply **Consolidated Photo**. It has not been controverted that, as

recorded in the impugned Order, copies of the statement of income, trading account, profit and loss account, audit report etc. were appended to the Return filed by the Assessee. *This being the factual position, the Tribunal has rightly concluded that taking resort to Sections 147/148 of the Act was unwarranted, as it constituted a change of opinion since the material acted upon had been made available along with the Return.*"