

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

% Judgment delivered on : 04.12.2008

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1. I.T.A. NO. 766/2006

Commissioner of Income Tax Appellant

versus

M/s India Crafts Respondent

2. I.T.A. NO. 1015/2005

Commissioner of Income Tax Appellant

versus

M/s Bharat Cine Co. (P) Ltd. Respondent

3. I.T.A. NO. 1044/2005

Commissioner of Income Tax Appellant

versus

M/s Indus Valley Promoters Ltd. Respondent

4. I.T.A. NO. 1077/2005

Commissioner of Income Tax Appellant

versus

M/s Model Footwear (Pvt.) Ltd. Respondent

5. I.T.A. NO. 1138/2005

Commissioner of Income Tax Appellant

versus

M/s Basant Plasto Chemicals Pvt. Ltd. Respondent

6. **I.T.A. NO. 1155/2005**
Commissioner of Income Tax Appellant
versus
M/s Britika Exports (P) Ltd. Respondent
7. **I.T.A. NO. 1170/2005**
Commissioner of Income Tax Appellant
versus
Sh. Francis Wacziarg Respondent
8. **I.T.A. NO. 45/2006**
Commissioner of Income Tax Appellant
versus
M/s Abhishek Auto Industries Ltd. Respondent
9. **I.T.A. NO. 105/2006**
The Commissioner of Income Tax-V Appellant
versus
M/s Narain Jewels International Ltd. Respondent
10. **I.T.A. NO. 177/2006**
The Commissioner of Income Tax-V Appellant
versus
M/s Narain Jewels International Ltd. Respondent
11. **I.T.A. NO.213/2006**
The Commissioner of Income Tax-III Appellant
versus

M/s Super Plastronics (P) Ltd. Respondent

12. **I.T.A. NO. 252/2006**

Commissioner of Income Tax Appellant

versus

M/s Shree Joints International P. Ltd. Respondent

13. **I.T.A. NO. 306/2006**

Commissioner of Income Tax Appellant

versus

M/s Goenka Estates (Delhi) Pvt. Ltd. Respondent

14. **I.T.A. NO. 312/2006**

Commissioner of Income Tax-III Appellant

versus

M/s Sandeep Ceramics Ltd. Respondent

15. **I.T.A. NO. 323/2006**

Commissioner of Income Tax Appellant

versus

M/s Brahmputra Consortium Ltd. Respondent

16. **I.T.A. NO. 326/2006**

Commissioner of Income Tax Appellant

versus

Shri Sanjeev Kumar Gupta Respondent

17. **I.T.A. NO. 331/2006**
- Commissioner of Income Tax Appellant
- versus
- M/s Great Eastern Energy Corp. Ltd. Respondent
18. **I.T.A. NO. 332/2006**
- Commissioner of Income Tax Appellant
- versus
- M/s D.G. Housing Projects Ltd. Respondent
19. **I.T.A. NO. 339/2006**
- Commissioner of Income Tax Appellant
- versus
- Shri Sanjay Sharma Respondent
20. **I.T.A. NO. 345/2006**
- Commissioner of Income Tax Appellant
- versus
- M/s Electrolux Kelvinator Limited Respondent
21. **I.T.A. NO. 417/2006**
- Commissioner of Income Tax Appellant
- versus
- M/s Model Footwear (Pvt.) Ltd. Respondent

22. **I.T.A. NO. 460/2006**
Commissioner of Income Tax Appellant
versus
M/s Fracht Forwarding & Travels Pvt. Ltd. Respondent
23. **I.T.A. NO. 562/2006**
Commissioner of Income Tax Appellant
versus
M/s Essan Remedies Ltd. Respondent
24. **I.T.A. NO. 565/2006**
Commissioner of Income Tax Appellant
versus
Mrs. Lata Chauhan Respondent
25. **I.T.A. NO. 583/2006**
Commissioner of Income Tax Appellant
versus
M/s Goodyear India Limited Respondent
26. **I.T.A. NO. 600/2006**
Commissioner of Income Tax Appellant
versus
M/s Eastern Holdings (P) Ltd. Respondent

27. **I.T.A. NO. 604/2006**
Commissioner of Income Tax Appellant
versus
M/s D.D. Gears Ltd. Respondent
28. **I.T.A. NO. 635/2006**
Commissioner of Income Tax Appellant
versus
M/s SRJ Securities
(Now Adinath Capital Pvt. Ltd.) Respondent
29. **I.T.A. NO. 647/2006**
Commissioner of Income Tax Appellant
versus
M/s Maharani Paints (India) Pvt. Ltd. Respondent
30. **I.T.A. NO. 660/2006**
Commissioner of Income Tax Appellant
versus
Mr. S. Venkatnarayan Respondent
31. **I.T.A. NO. 664/2006**
Commissioner of Income Tax Appellant
versus
M/s Utkal Investment Ltd. Respondent

Advocates who appeared in this case:

For the Appellant :Ms Prem Lata Bansal & Mr Mohan Prasad Gupta, Advocates for the Appellant in ITA Nos. 766/2005, 1044/2005, 1077/2005, 1138/2005, 306/2006, 326/2006, 331/2006, 332/2006, 339/2006, 345/2006, 460/2006, 562/2006, 565/2006, 583/2006, 600/2006 & 604/2006.
Mr Sanjeev Sabharwal, Sr. Standing Counsel for the Appellant in ITA Nos. 105/2006, 177/2006, 213/2006, 252/2006 & 312/2006.
Mr. Jagdish Rai Goel, Advocate for the Appellant in ITA Nos. 1015/2005, 1155/2005, 1170/2005, 323/2006 & 635/2006.
Mr R.D. Jolly, Advocate for the Appellant in ITA Nos. 417/2006, 647/2006, 660/2006 & 664/2006

For the Respondent : Dr Rakesh Gupta & Ms Aarti Saini, Advocates for the Respondent in ITA Nos. 1044/2005, 1138/2005, 1155/2005, 562/2006 & 647/2006
Mr Ajay Vohra, Ms Kavita Jha & Mr Sriram Krishna, Advocates for the Respondent in ITA No. 583/2006.
Mr O.P. Bhadani, Advocate for the Respondent in ITA No. 460/2006.
Mr R.M. Mehta, Advocate for the Respondent in ITA No. 664/2006.
Mr Prakash Kumar, Advocate for the Respondent in ITA No. 1170/2005.
Mr Ramanand Roy, Advocate for the Respondent in ITA No. 326/2006.
Mr Pankaj Jain & Mr R.K. Chauhan, Advocates for the Respondent in ITA No. 332/2006.
Mr Jatin Zaveri, Advocate for the Respondent in ITA No. 345/2006.
Mr Satyen Sethi & Mr Johnson Bara, Advocates for the Respondent in ITA No. 323/2006.
Mr Mahua Kalra, Advocate for the Respondent in ITA No. 345/2006.

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)

+ITA 766/2006, 1015/2005, 1044/2005, 1077/2005, 1138/2005, 1155/2005, 1170/2005, 45/2006, 105/2006, 177/2006, 213/2006, 252/2006, 306/2006, 312/2006, 323/2006, 326/2006, 331/2006, 332/2006, 339/2006, 345/2006, 417/2006, 460/2006, 562/2006,

**565/2006, 583/2006, 600/2006, 604/2006, 635/2006, 647/2006,
660/2006 & 664/2006**

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These appeals were referred to the Full bench by the Division Bench on the following substantial question of law:-

“Whether satisfaction of the officer, initiating the proceedings under Section 271 of the Income Tax Act can be said to have been recorded even in cases where satisfaction is not recorded in specific terms but not otherwise discernable from the order passed by the authority?”

The Full Bench has considered the same and by virtue of its judgment dated 27.11.2008 in *CIT v. M/s Rampur Engineering Co. Ltd* (ITA no. 211/2006) and other connected matters, directed that the individual cases be listed before the appropriate Bench for hearing and disposal. The Full bench, in its judgment has noted that, pending the reference, sub-section 1B has been inserted in Section 271 of the Income Tax Act, 1961 by the Finance Act, 2008. It was also observed that the said provision creates a fiction by which satisfaction of the Assessing Officer is deemed to have been recorded in cases where an addition or disallowance is made by the Assessing Officer and a direction for initiation of penalty proceeding is issued. The said provision has been made effective retrospectively w.e.f 01.04.1989. The Full Bench observed that in some of the cases forming part of the batch, the assessment orders were passed after 01.04.1989 and that the reference was being answered only in respect of the cases where the assessment orders were made prior to 01.04.1989.

In so far as the present batch of cases is concerned, they all relate to assessment orders made after 01.04.1989 and, therefore, are not covered by the reference, as answered by the Full Bench. They would be covered by the amendment brought about in Section 271 by the insertion of sub-section 1B. Since all these appeals arise out of the orders passed by the Income Tax Appellate Tribunal which limited itself only to the question of recording of satisfaction and did not go into the question on merits, in view of the amendment brought about in Section 271 by virtue

of Finance Act, 2008, these matters would have to be remitted to the Tribunal for consideration on merits. Consequently the impugned orders, passed by the Tribunal, in each of these appeals is set aside and the appeals are remitted to the Tribunal for hearing on merits. All these matters be listed before the Tribunal on 21.1.2009 for directions, with regard to further listing.

These appeals stand disposed of.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

December 04, 2008/kk