IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.234 OF 2014

Commissioner of Income Tax 10 .... Appellant
Vs.
ITD Cementation India Ltd. .... Respondent

Mr. Arvind Pinto for the Appellant.
Mr. R.S. Padvekar with Mr. S.G. Dalal for the Respondent.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : MARCH 06, 2017

P.C:

Having heard Mr. Pinto at some length and perusing the order of the Tribunal, we are unable to make out any substantial question of law and arising from the impugned order. The Tribunal has clearly held by applying the correct legal principles in the instant case that the Assessing Officer by his own failure or default cannot reopen the proceedings like this and in the manner done. The failure on the part of the Assessing

Officer to consider the materials placed before him at the time of making assessment after re-looking at the same material is not enough to exercise the power and conferred by the proviso to Section 147 of the Income Tax Act, 1961. It is not an opportunity provided to the Assessing Officer. He has to take care and in specific cases of income escaping assessment that the power conferred under the Act is to be exercised and in terms of the said proviso. When on facts and as noticed in the impugned order, the exercise undertaken does not fit into the scheme of this proviso, then, the Tribunal's order cannot be termed as perverse. The Tribunal has rightly held that there is a complete misconception on the part of the Revenue in taking recourse to this power. The assessee's appeal was allowed on a factual conclusion noted in the above terms. In such circumstances, we do not see any merit in this appeal. It is dismissed.

(B.P. COLABAWALLA, J.) (S.C. DHARMADHIKARI, J.)