

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

SUBJECT : INCOME TAX

Judgment delivered on : 04.12.2008

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 and 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 and 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 and 604/2006.

Mr Sanjeev Sabharwal, Sr. Standing Counsel for the Appellant in ITA Nos.  
105/2006, 177/2006, 213/2006, 252/2006 and 312/2006.

Mr. Jagdish Rai Goel, Advocate for the Appellant in ITA Nos. 1015/2005,  
1155/2005, 1170/2005, 323/2006 and 635/2006.

Mr R.D. Jolly, Advocate for the Appellant in ITA Nos. 417/2006, 647/2006,

660/2006 and 664/2006For the Respondent : Dr Rakesh Gupta and Ms Aarti Saini,  
Advocates for the Respondent in ITA Nos. 1044/2005, 1138/2005, 1155/2005, 562/2006  
and 647/2006 Mr Ajay Vohra, Ms Kavita Jha and 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 and 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 and 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

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 and 664/2006

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.

Sd./-  
BADAR DURREZ AHMED, J  
Sd./-  
RAJIV SHAKDHER, J

December 04, 2008