



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

+ **ITA 1201/2006 & CM No. 10688/2006**

**COMMISSIONER OF INCOME TAX
Through**

**..... Appellant
Ms. P.L. Bansal, Adv.**

versus

**M/S MAHALAKSHI MILLS CO.LTD.
Through**

**..... Respondent
Mr. S. N. Kapur, Sr.Adv.with
Mr. S.K. Gupta, Adv.**

**CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE VIPIN SANGHI**

**ORDER
24.08.2006**

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The Revenue is aggrieved by an order dated 21st October, 2005 passed by Income Tax Appellate Tribunal, Delhi Bench 'B' in ITA No. 3788, 3798-3800/D/2001 relevant to the assessment years 1996-97 and 1993-94, 1994-95 and 1997-98.

The only issue that has arisen in this case is whether the Assessee was entitled to raise an additional ground before the Commissioner of Income Tax (Appeals) during the pendency of its appeal against the assessment order.

By an order dated 30th March, 2001, the CIT (A) was of the view that the additional ground did not arise out of the assessment



order and therefore rejected the request of the Assessee for raising an additional ground.

Feeling aggrieved, the Assessee preferred an appeal before the Tribunal which allowed the request of the Assessee and that order is impugned in the present appeal.

Apart from the fact that we find that the question of urging an additional ground in appeal does not raise any substantial question of law which warrants consideration by this Court, we are of the view that the Assessee had clearly stated in its return that it had made a representation to the Government of UP not to charge interest on the loan received from the UP Sugar Special Fund Committee in the accounting year 1984-85. The representation was under consideration and the Assessee therefore, bona fide, filed its return assuming that the representation would be accepted. Subsequently, when the representation was not accepted, the Assessee sought to raise an additional ground when a recovery certificate was issued on 15th July, 2000.

It is one thing to allow an additional ground to be urged, and it is another thing for an additional ground to be rejected or allowed on its merits. In view of the subsequent developments that have taken place and the explanation given by the Assessee, there was no reason to deny the Assessee at the threshold at least an opportunity to agitate the additional ground. Thereafter, if the



Commissioner was of the view that there was no merit in the additional ground, he could have rejected it. What is contended is that the Assessee should not even be allowed to urge an additional ground. This view is not warranted on the facts of the case and was rightly rejected by the Tribunal.

We do not find any error in the decision of the Tribunal.

Dismissed.

MADAN B. LOKUR, J

VIPIN SANGHI, J

AUGUST 24, 2006
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