



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

+ **ITA 910/2006**

COMMISSIONER OF INCOME TAX DELHI Appellant
Through **Mr.R.D.Jolly, Adv.**

versus

M/S MESCO LABORATORIES LTD. Respondent
Through **Mr. Salil Aggarwal with**
Mr. Prakash Kumar, Adv.

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

ORDER
10.07.2006

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The Revenue is aggrieved by an order dated 9th September, 2005 passed by the Income Tax Appellate Tribunal Delhi Bench F for the assessment year 1995-96 arising out of ITA No. 93/Del/2002.

The only question that has arisen in this case is whether the Assessing Officer recorded reasons for issuance of a notice for initiation of reassessment proceedings.

The "reasons" recorded by the Assessing Officer are quoted in the order of the Tribunal and are as follows:-

"Recording of reasons u/s 147

In this case the Assessee has moved an application before Settlement Commission for A.Y.89-90 to 94-95. The Settlement Commission has passed an order u/s 245D(1) of the Income Tax Act on 17.07.1996 allowing the application to be proceeded with for A.Y. 1989-90 to 1994-95.



In view of this fact, I have reason to believe that the taxable of the Assessee for the F.Y. 1994-95 relevant to A.Y. 1995-96 has escaped assessment.

Issue notice u/s 148 of the Income Tax Act."

A perusal of the order shows that sole basis for issuance of the notice was that the Settlement Commission has passed an order under Section 245D(1) of the Income Tax Act in respect of an application moved by the Assessee for the assessment years 1989-90 to 1994-95.

The assessment year that we are concerned with is 1995-96. This was not the subject matter of any application before the Settlement Commission. The application was moved by the Assessee in respect of assessment years other than 1995-96, while the Assessing Officer sought to initiate re-assessment proceedings for the assessment year 1995-96.

The Tribunal while allowing the appeal filed by the Assessee came to the conclusion that first of all the nature of the Income that has escaped assessment ought to have been indicated and in any case there was no rational or intelligible nexus between the "reasons" given by the Assessing Officer and the action taken by him.

Admittedly, no application was filed by the Assessee before the Settlement Commission with regard to the Assessment year 1995-96. Merely because an application was filed in respect of some other years cannot be a rational or intelligible ground for initiating re-assessment



proceedings for the assessment year 1995-96.

The Tribunal relied upon **Ganga Saran & Sons (P) Ltd. vs. Income Tax Officer & Others, [1981] 130 ITR 1** wherein the Supreme Court observed as follows:-

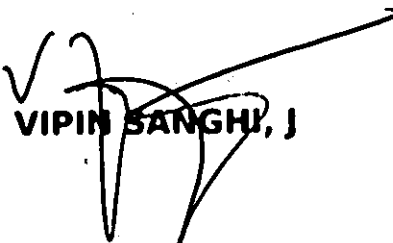
"If there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the ITO could not have reason to believe that any part of the income of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts and the notice issued by him would be liable to be struck down as invalid."

In our view, no substantial question of law arises.

Dismissed.

The Assessee will be entitled to costs of Rs. 1,500/-.


MADAN B. LOKUR, J


VIPIN SANGHI, J

JULY 10, 2006
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