

**(2008) 04 DEL CK 0156**

**Delhi High Court**

**Case No:** None

Commissioner of Income Tax

APPELLANT

Vs

Modi Revlon (P) Ltd.

RESPONDENT

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**Date of Decision:** April 28, 2008

**Citation:** (2008) 174 TAXMAN 192

**Hon'ble Judges:** Manmohan Singh, J; Madan B. Lokur, J

**Bench:** Division Bench

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### **Judgement**

@JUDGMENTTAG-ORDER

1. The revenue is aggrieved by an order dated 14-2-2006 passed by the Income Tax Appellate Tribunal, Delhi Bench A in ITA No. 2090/Delhi/2002 relevant for the assessment year 1998-99.

2. After hearing learned Counsel for the parties, the following substantial question of law is framed for consideration:

Whether the order passed by the Income Tax Appellate Tribunal is vitiated by non-application of mind inasmuch as the Tribunal restored the matter to the file of the assessing officer with a direction to follow the order of the Tribunal which was yet to be pronounced?

3. In this appeal, the Tribunal has passed a rather strange order whereby it has remanded the proceedings to the file of the assessing officer observing as follows:

...we consider it appropriate to set aside the impugned orders of the tax authorities below passed in assessment year 1998-99, under consideration before us, and restore the issue involved therein to the file of the assessing officer for following the orders of A Bench of the ITAT delivered in ITA No. 2107/D/1 and ITA No. 4156/D/01 for assessment years 1996-97 and 1997-98 respectively while considering the issues involved in the assessment year 1998-99 under consideration before us.

4. We find that the order passed by the Tribunal in ITA No. 2107/D/01 and ITA No. 4156/D/01 referred to above was passed on 31-3-2006 while the order under appeal was passed on 14-2-2006. Under the circumstances, the Tribunal could not direct the assessing officer to follow an order which was not yet pronounced. It is clear that there has been a complete non-application of mind in this regard. It is not at all possible to understand how the Tribunal could give a direction to the assessing officer to follow an order which was yet to be pronounced.
5. Under the circumstances, the substantial question of law is answered in the affirmative, in favour of the revenue and against the assessee.
6. The case is remanded back to the file of the Tribunal for reconsideration on merits and in accordance with law.
7. The parties will appear before the Tribunal on 27-5-2008 for directions.