

"The Hon'ble Special Court passed an order in MA 107 of 1993 filed by the I.T. department and held that while it cannot sit in appeal over the orders passed by the I.T. department but can always decide not to release monies to the department towards its demand if they are unjustified to ensure fair distribution amongst creditors."

IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO
TRANSACTIONS IN SECURITIES) \AT BOMBAY

MISC. APPLICATION NO. 107 OF 1993

**The Asst. Commissioner of
Income Tax** .. Applicant

V/s

A. K. Menon & Ors. .. Respondents

Mr. Balasubramanian with Mr. L. K. Chatterjee for
Income Tax.

Mr. G. R. Joshi i/b. M/s. P. M. Mithi & Co for
Respondent No. 1.

Mr. J. D. Mistry i/b. M/s. Kanga & Co. for
Respondents No. 2 and 14.

Affidavits of Respondent Nos. 2, 5, 7, 9 and 11
dated 14th March 1995 taken on record.

CORAM : S. N. VARIAVA J.
JUDGE SPECIAL COURT
21st March 1995.

ORAL ORDER

1. Mr. Balasubramanian states that at this stage in view of the Order dated 20th February 1995 the Applicants are only asking for release of Rs. 80,80,198.35 being Tax dues of the Respondents.

2. Mr. Mistry states that Appeals have been filed by all the Respondents against the Assessment Orders and Demand Notices. He fairly states that subject to the Appeal, monies as per demands can be released for all parties, except in cases of Mr. Harshad Mehta, Mr. Sudhir Mehta, Mrs. Deepika Mehta M/s. Growmore Leasing & Investment Pvt. Ltd. and

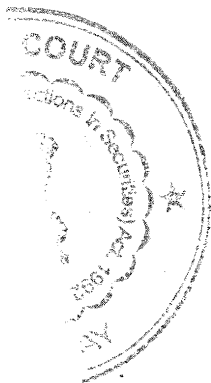


M/s. Growmore Research & Assets Management Ltd.

3. Mr. Mistry submits that in respect of these five parties he wishes to show to Court that the demands are unreasonable and unjustified. He submits that this Court may not sit in Appeal over the Orders passed by Income Tax Authorities but still the Court should not release amounts if it considers the demands unreasonable and unjustified.

4. Mr. Balasubramanian objects. He submits that this Court can't go behind the Orders. He submits that this Court must release amounts once assessment Orders are passed and upheld in Appeal.

5. This question has already been decided by Order dated 20th February 1995. Before this Court, it was the submission of the Income Tax Department that this Court can't sit in Appeal over the Orders passed by them. It was their submission that at the highest this Court may not release the amounts if it considers the demands unjustified. These submissions of the Income Tax Department were accepted in Order dated 20th February 1995. Undoubtedly this Court can't sit in Appeal over Orders passed by the Income Tax Department. However this Court is entrusted with the task of distributing assets in the manner laid down under Section 11 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.



The ^{principles} principles laid down therein have to be observed. The ^{principles} principles and objects of the Act could and would be defeated if the Court can't go into the bona-fide of a claim. In that case a party, like the Income Tax Department, may make a claim in an absurdly large amount. In my view there would be no justification for this Court paying an unjustified and unenforceable claim. Whether a claim is justified or enforceable can only be decided by looking into that claim.

6. Accordingly in my view, Mr. Mistry is entitled to try and show to Court that the claim is unreasonable and unjustified.)

7. In view of this Mr. Balasubramanian asks for 2 weeks time to be able to get all records and to get ready.

8. The matter can be adjourned. However in the meantime the Custodian is directed to release monies for the Tax dues only (not interest/penalty) in respect of all Respondents except Mr. Harshad Mehta, Mr. Sudhir Mehta, Mrs. Deepika Mehta, M/s. Growmore Leasing & Investment Pvt. Ltd. and M/s. Growmore Research & Assets Management Ltd.

9. Adjourned for 2 weeks.

