



## HIGH COURT OF DELHI : NEW DELHI

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ITA No.252/2003

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Date of Hearing &amp; Decision : 29 September 2003

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COMMISSIONER OF INCOME TAX .....Appellant.

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Through: Mr.Sanjiv Khanna,  
Advocate.

Vs.

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M/s.SUPER METAL RE-ROLLERS(P) ...Respondent

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Through: *NEMO*.**CORAM:**

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THE HON'BLE MR.JUSTICE D.K. JAIN

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THE HON'BLE MR.JUSTICE MADAN B. LOKUR

1. Whether reporters of local papers may be allowed to see the judgment.?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

° D.K. JAIN, J.(Oral)

This appeal by the Revenue under Section 260A of the Income-tax Act, 1961 is directed against order, dated 4 October 2002, passed by the Income-tax Appellate Tribunal, Delhi Bench 'SMC-II', New Delhi (for short 'the Tribunal') in ITA No.998/Del of



1998. By the impugned order the Tribunal has deleted the penalty levied on the respondent-assessee under Section 271(1)(c) of the Act, in respect of assessment year 1993-94, on the ground that in the assessment order the Assessing Officer has not recorded his satisfaction, as contemplated under Section 271(1)(c).

While coming to the said conclusion, the Tribunal has placed reliance on the decision of this Court in Commissioner of Income-tax Vs. Ram Commercial Enterprises Ltd., (2000) 248 ITR 568.

We have heard Mr.Sanjiv Khanna, learned senior standing counsel for the revenue.

Assailing the order passed by the Tribunal Mr.Khanna has submitted that during the course of assessment proceedings the assessee was required to furnish the details of the searches conducted by the Central Excise Department with the other relevant information and it was on account of detection of concealed income by him that the assessee, vide their letter dated 26 March 1996, had surrendered an income of Rs.4.25 lacs. Thus, the submission is that the satisfaction of the Assessing Officer, as contemplated in Section 271(1)(c) of the Act was inherent in the queries raised by him during the course of assessment proceedings. It is urged that the Assessing Officer



had directed issue of notice for levy of penalty under the said Section after being satisfied that the assessee had concealed particulars of its income and therefore, the Tribunal was not correct in deleting the penalty on a technical ground.

We do not agree. From the order sheets for the proceedings held before the Assessing Officer, placed on record by learned counsel for the Revenue, and the order of assessment, where Assessing Officer had noted " penalty notice under Section 271(1)(c) of the Act have been issued separately"; we find that there is no significant difference in the facts of the present case and Ram Commercial Enterprises Ltd. (supra).

In Ram Commercial Enterprises Ltd (supra), wherein R.C. Lahoti, J (as his Lordship then was), speaking for the Court, while placing reliance on the decisions of the Supreme Court in D.M. Manasvi Vs. CIT, (1972) 86 ITR 557, 562 and CIT Vs. S.V. Angidi Chettiar, (1962) 44 ITR 739, 745 (SC) had observed thus:

"A bare reading of the provisions of section 271 and the law laid down by the Supreme Court makes it clear that it is the assessing authority which has to form its own opinion and record its satisfaction before initiating the penalty proceedings. Merely because the penalty proceedings have been initiated, it cannot be assumed that such a satisfaction was arrived at in the absence of the same being spelt out by the order of the assessing authority. Even at the risk of repetition we



would like to state that the assessment order does not record the satisfaction as warranted by section 271 for initiating the penalty proceedings."

In view of the said decision, which is on all fours to the facts in hand, no question of law, much less a substantial question of law survives for our consideration. We accordingly decline to entertain the appeal.

Dismissed.

  
D.K. JAIN, J

  
MADAN B. LOKUR, J

SEPTEMBER 29, 2003

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