



Sr. No.	Date	Orders
		<p data-bbox="376 280 612 320">% 02.08.2004</p> <p data-bbox="376 376 1182 416">Present: Mr. Sanjiv Sabharwal for the Appellant</p> <p data-bbox="376 517 655 560">+ <u>ITA 399/2004</u></p> <p data-bbox="376 568 395 591">*</p> <p data-bbox="376 663 1490 1458">Against the order made by the Income Tax Appellate Tribunal (Delhi Branch "C" New Delhi) in ITA No. 3192/Del/2000 for the assessment year 1995-96 in the matter of DCIT Vs. M/s V M Farms (P) Ltd., the Commissioner of Income Tax has approached this court by preferring this appeal under Section 260A of the Income Tax Act, 1961, inter alia, contending that the Tribunal has committed grave error in recording a finding that the Assessing Officer has not recorded the satisfaction before issuance of notice of penalty under Section 271(1)(c) of the Act.</p> <p data-bbox="376 1514 1490 2101">In paragraph 7 of the order made by the Appellate Tribunal, the Tribunal has concentrated on the issue about finding being recorded by the Assessing officer before commencing penalty proceedings and also tried to find out with regard to the necessity of recording of satisfaction by the AO to the effect that the assessee had concealed any particulars of income or not. The Tribunal after examining the material placed before it arrived at a conclusion that</p>



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		<p>the assessment order does not reveal that the AO had recorded any finding that the assessee had concealed any particulars of income or had furnished inaccurate particulars of income. Our attention was drawn by the counsel for the Revenue to the decision of the Apex Court in the case of <u>Commissioner of Income-Tax Madras & Anr. vs. S V Angidi Chettiar</u> reported in 44 ITR 739 and he submitted that mere mention of issuance of notice in the assessment order is sufficient. We would like to point out what the Apex Court has pointed out at page 745 with regard to Section 28 of the Income Tax Act, 1922 which is in <i>pari materia</i> to Section 271 of the Act:-</p> <p>"The power to impose penalty under section 28 depends upon the satisfaction of the Income Tax Officer in the course of proceedings under the Act; it cannot be exercised if he is not satisfied about the existence of conditions specified in clauses (a), (b) or (c) before the proceedings are concluded. The proceeding to levy penalty has, however, not to be commenced by the Income Tax Officer before the completion of the assessment proceedings by the Income Tax Officer. Satisfaction before conclusion of the proceeding under the Act, and not the issue of a notice or initiation of any step for imposing penalty is a condition for the exercise of the jurisdiction. There is no evidence on the record that the Income Tax Officer was not satisfied in the course of the assessment proceeding that the firm had concealed its income. The assessment order is dated the 10th of November, 1951, and there is an endorsement at the foot of the assessment order by the Income Tax Officer that action under section 28 had been taken for concealment of income indicating clearly that the Income Tax Officer was satisfied in the course of the assessment</p>



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proceeding that the firm had concealed its income.”

Thus, it is very clear that there must be evidence on record that the Income Tax Officer was satisfied in the course of the assessment proceeding that the firm had concealed its income. Tribunal on facts has said that there was no such evidence. The Apex Court also pointed out that in that case action was taken for concealment of income indicating clearly that the Income Tax Officer was satisfied in the course of the assessment proceedings that the firm had concealed its income. Here, the counsel was not in a position to point out any finding recorded by the Assessing Officer in this behalf. Therefore, in our opinion, no question of law arises and the appeal is required to be dismissed.

Belair
CHIEF JUSTICE

Badar Durrez Ahmed
BADAR DURREZ AHMED, J

August 2, 2004
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