



* IN THE HIGH COURT OF DELHI

+ ITA No. 632 of 2004

% Date of Decision : November 1, 2004.

Commissioner of Income Tax, Delhi-II, Delhi

.... Appellant.

Through : Mr. Sanjiv Khanna Advocate.

Versus

M/s Mayar India Limited

.... Respondent

Through None.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

1. Whether the 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?

B.C.PATEL, C.J. (ORAL)

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1. Against concurrent decisions, the present appeal under Section 260A of the Income Tax Act, 1961 is preferred by the Revenue. The decision in the case of

Commissioner of Income Tax v. Ram Commercial

Enterprises Ltd : (2000) 246 ITR 568 and other decisions

have been considered by the Tribunal. At page 571 this

Court made the position of law very clear as under:-

HL



"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."

2. In view of the aforesaid, the appeal is required to be dismissed as no substantial question of law arises.

Ordered accordingly.


CHIEF JUSTICE


BADAR DURREZ AHMED, J

November 1, 2004
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