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W.P.(C) No. 340/2003

• **IN THE HIGH COURT OF DELHI**

+ **ITA NO. 340/2003**

% Judgment reserved on : January 11, 2005
 Judgment decided on : February 03, 2005

COMMISSIONER OF INCOME TAX

..... Petitioner

Through : Ms.Prem Lata Bansal, Adv.
 versus

B.R.SHARMA

..... Respondent

Through : Mr.C.S.Aggarwal, Sr. Advocate
 with Mr. C.R.Prakash, Adv.

CORAM:

HON'BLE MR. JUSTICE SWATANTER KUMAR

HON'BLE MR. JUSTICE MADAN B.LOKUR

(1) Whether reporters of local paper may be
 allowed to see the judgment?

(2) To be referred to the reporter or not? Yes

(3) Whether the judgment should be reported
 in the Digest ?

SWATANTER KUMAR, J.

1. The Commissioner of Income-Tax questions the
 validity and correctness of the Order dated 4.2.2003 in this
 appeal under Section 260A of the Income-Tax Act, 1961



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(hereinafter referred to as the 'Act'). Learned counsel appearing for the appellant contended that the Tribunal has fallen in error of law in coming to the conclusion that the Assessing Officer had not recorded his satisfaction for initiation of penalty as contemplated under Section 271(1)(c) of the Act. It is also contended that the following findings recorded by the Tribunal in the impugned order are perverse and as such should be set aside :

"However, whether the land in question was agricultural land or not is pending adjudication by the Hon'ble High Court. But as the amounts were added by the AO to the total income of the assessee, the penalty proceedings under Section 271(1)(c), were initiated. Hon'ble Delhi High Court in the case of Sri Ram Commercial Enterprises (supra) has held that before initiating the penalty proceedings under Section 271(1)(c), the AO has to be formed an opinion regarding concealment of income or inaccurate particulars of income and he has to also record his satisfaction in the asst.order. In view of the decision of Hon'ble Delhi High Court in the above mentioned case, we have scrutinized the asst. order. From pages 2 to 7 of his order, the AO has dealt with this issue. Nowhere he has pointed out that the added will be created as a concealed income or inaccurate particulars of income attracting penalty



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under sec.271(1)(c) of the act. It is only on the last page of his order the AO has mentioned that the proceedings under sec.271 (1)(c) had been initiated separately. Even such separate initiation is only by way of issue of notice under sec.271(1)(c) read with section 274 of the Act. According to the decision of jurisdictional High Court, the initiation of penalty proceedings under sec.271 (1)(c) will not amount to recording of satisfaction before issue of notice under sec.271 (1)(c) of the Act. Respectfully following the same, we hold that as the initiation of penalty proceedings under sec.271 (1)(c) itself was not valid, the imposition of penalty on the basis of such notice was invalid. Though the CIT (A) has cancelled the penalty on the basis of merits, we are not going into the merits of the case as on preliminary ground itself, the penalty imposed by the AO does not survive. Thus, while affirming the order of CIT (A), we dismiss the ground of appeal raised by the revenue."

2. The necessary facts are that the assessee filed return of his income for the assessment year 1994-95 disclosing the income of Rs.10.13 lacs. The assessment was completed on 31.1.1997 at a total income of Rs.88,74,860/-. An addition was made on account of receipt of compensation of acquisition of agricultural land. The assessee indicated



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that it was credited by an amount of Rs.74,16,406/-. He was called upon to explain this credit entry which was explained during the proceedings. The Assessing Officer vide his order dated 30.1.1997 made an addition of the amount to the payable income and passed the following orders :

"Assessed. Issue necessary forms. Give credit for prepaid taxes. Penalty proceedings u/s 271(1)(c) have been initiated separately.

Sd/-

(ABHAY TAYAL)
Dy. Commissioner of Income-tax,
Spl. Range-29, New Delhi

Dated -30.01.1997

Copy to : The assessee"

3. The assessee being aggrieved from the order of the Assessing Officer preferred an appeal which was allowed by the Commissioner of Income Tax Appeals vide order dated 18.12.1997. The Appellate Authority was of the view that there was neither concealment nor inaccurate particulars have been furnished inasmuch as that the assessee has



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acted bonafidely and if the disclosure has been made before assessment. as such the penalty has been imposed by the Assessing Officer of Rs.27,53,878/- was not sustainable. Against the order of the Appellate Authority, the Deputy Commissioner, Income Tax preferred an appeal before the Income Tax Appellate Tribunal, which as already noticed above, met the same fate with the observations as afore-recorded. We have perused the order of the Assessing Officer initiating the penalty proceedings under Section 271(1)(c). In this order there is no reasoning much less an appropriate reasoning has been given which could in any way demonstrate that the Assessing Officer has recorded its satisfaction at the time of initiation of the penalty proceedings. The provisions of Section 271(1)(c) of the Act contemplates recording of a satisfaction by the Assessing Officer which would form basis of discretion exercisable by such authority under the provisions of that Act. The discretion that is indicated by the Legislature by using the expression 'may' is of wide connotation. It is a settled cannon of interpreted juris-prudence that the exercise



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vested in the authorities performing particularly quasi judicial or judicial functions has to be exercised for just and proper reasons and in consonance with the settled principles of law. A very order initiating the penalty proceedings at the face of it shows that there was no application of mind much less proper application of mind in furtherance to which the Assessing Officer has passed an order imposing penalty of Rs.27,53,878/- under Section 271(1)(c) of the Act. In the order imposing the penalty certain issues have been discussed by the Assessing Officer but they are obviously consequential to the decision already taken by the Assessing Officer to initiate penalty proceedings. To some extent it will amount to pre-determine of issue without recording satisfaction. Even in the order imposing penalty all that has been discussed by the Assessing Officer is that the assessee had disclosed the amount already paid the entire payment raised as a result of addition during the course of assessment proceedings. This fact according to the Officer clearly established that taxability of the same was never in dispute. On these



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premises the Assessing Officer concludes that the case falls under provision of Section 271(1)(c) and imposes penalty of the afore-indicated sum.

4. On the facts of the case, it is clear that the proceedings were initiated without recording requisite satisfaction. Even the order of assessment prima facie does not establish the concealment or furnishing of incorrect particulars. On the contrary, the Appellate Authority as well as the Tribunal have held that the assessee has acted bonafidely and relied upon the judgments of this Court.

5. It will be appropriate to refer to a recent Division Bench judgment of this Court in the case of **Commissioner of Income Tax v. Ram Commercial Enterprises Ltd., (2000) 246 ITR 568** and **Diwan Enterprises v. Commissioner of Income Tax and others, (2000) 246 ITR 571**, where after discussing the matter at some length, the Court held as under: -

"In spite of the abovesaid plea of the



petitioner having been rejected, the penalty imposed under Section 271 (1) (c) has still to be set aside though for a different reason and because the very foundation for initiation of the penalty proceedings is conspicuous by its absence. The opening clause of sub-section (1) of Section 271 itself contemplates a finding as regards satisfaction of availability of grounds under clause (c) being recorded during the assessment proceedings. Recently, in *CIT V. Ram Commercial Enterprises Ltd.* (I.T.C. No.13 of 1996 decided on October 8, 1998 - since reported in [2004] 246 ITR 568 (Delhi), following the law laid down by their Lordships of the Supreme Court in *D.M. Manasul v. CIT* [1972] 86 ITR 557 and *CIT v. S.V. Angidi Chettiar* [1962] 44 ITR 739 (SC), we have held that unless requisite satisfaction was recorded in the proceedings under the Act, which would mean the assessment proceedings, the jurisdiction to initiate the penalty proceedings could not have been exercised. Satisfaction has to be before the issue of notice or initiation of any step for imposing penalty. In the case at hand we find the Assessing Officer having nowhere recorded till the conclusion of the assessment proceedings his satisfaction that the assessee had concealed the particulars of his income or furnished inaccurate particulars of such income. This is a jurisdictional defect which cannot be cured. The initiation of the penalty proceedings was itself bad and, consequently, all the subsequent



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proceedings leading up to the passing of the penalty order must fail. C.W.P. No. 3869 of 1997 is, therefore, liable to be allowed."

6. It is clear from the above referred judgments that consistent view of this Court has been that the Assessing Officer is under an obligation to record satisfaction prior to the initiation of the penalty proceedings in terms of Section 271(1)(c) of the Act. The order of the Assessing Officer should apparently show that there is application of mind. Application of mind can only be gathered by the reasons stated in the order and reference to other records may not be very relevant for this purpose. The satisfaction contemplated under Section 271(1)(c) of the Act may be subjected but it must be arrived at objectively so that the underlining of these provisions which would require a strict construction the provisions being penal in nature, would stand frustrated.

7. In view of the above reasons, we are of the considered opinion that the present appeal does not raises



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any question of law much less a substantial question of law in terms of Section 260A of the Act. The proposed questions have been repeatedly answered by this Court and consistent view as afore-noticed has been taken. Thus, in terms of the judgment of this Court in Commissioner of Income-Tax Vs. S.R.Fragrances Ltd., 270 ITR, 560, we see no reason to proceed with this appeal any further.

8. Argo we find no merit in this appeal and the same is dismissed while leaving the parties to bear their own costs.



(SWATANTER KUMAR)
JUDGE



(MADAN B. LOKUR)
JUDGE

February 03, 2005

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