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**IN THE HIGH COURT OF DELHI****I.T.A. No. 04/2005****Judgment reserved on : February 16, 2005**  
**Date of Pronouncement : March 2<sup>nd</sup>, 2005**

The Commissioner of Income Tax  
Delhi-X  
Drum Shape Building, I.P. Estate,  
New Delhi.

....Appellant  
through: Mr. R.D. Jolly,  
Advocate.

Versus

M/s. Rajan & Co.  
645, G.B. Road,  
Shradanand Marg,  
Delhi.

....Respondent  
through : NEMO.

**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?
3. Whether the judgment should be referred in the Digest?



(5)

**SWATANTER KUMAR, J.**

1. On 30<sup>th</sup> November, 1990 the assessee filed a return showing an income of Rs.2,29,280/- which was subsequently revised to Rs.2,29,960/- during the period of assessment. Notice under Section 143 (2) and 140 (2) (i) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was issued to the assessee in response to which the partner of the assessee attended and produced the books of accounts. Besides that, the Assessing Officer added back profit on the undisclosed sales of Rs.28,195/-. It was also detected during a survey under Section 133 A at the assessee's premises on 25<sup>th</sup> September, 1992 that certain loose slips showing sale to different parties and pertaining to the assessment years 1992-93 and 1993-94. Thereupon, the assessee surrendered the amount in the assessment years to the tune of Rs.38.37 lacs. Finally, besides making certain additions in the account of the assessee, the Assessing Officer added a sum of Rs.3,20,868/- to the total income of the assessee while observing as under:-

"This would mean addition of Rs.3,20,868/- to the total income of the assessee on account of suppression of sales. Penalty proceedings u/s 271 (1) (c) are accordingly initiated. Further it



may be mentioned that the assessee has given the closing stock figures on estimate in the trading account filed. The assessee no doubt has tendered closing stock inventory but this inventory cannot be said to be complete as the assessee has not taken into account the incentive received on purchase and other incidental expenses incurred for the procurement of purchases. All the credit notes are debited at the end of the year and a number of items on which discount has been received cannot be co-related and accordingly the valuation as shown is beyond verification, this would further substantiate the departments action to estimate the g.p.”

2. In regard to commission paid to Ms. Archana Gupta @

Meena Gupta, the Assessing Officer held as under:-

“On perusal of statement of M/s. Attraction of proprietary concern of Mrs. Archana Gupta alias Meena Gupta it transpired that the commission paid at Rs.40,630/- to her is not genuine as she had no experience in this line of business. Merely because she is the wife of a hardware merchant does not mean that people will come to her and ask for purchase of motor pumps of Crompton make and the whereabouts from where it is available. Besides as per statement it appears she is doing the business under the name and style of M/s. Attraction. This business relates to trading in gift items and does not in any way connected with the business of the assessee. She has never been in this line and she knew nothing about pumps. Under the circumstances, it is held that the commission paid to the extent of Rs.40,630/- is not genuine



but only is an accommodatory entry in the name of Smt. Archana Gupta, prop. Attraction for giving a colour of genuineness to the commission paid or otherwise no services were actually rendered by her. Hence, this amount is disallowed and added to the income of the assessee."

3. This order of the Assessing Officer dated 26<sup>th</sup> March, 1993, where he also directed penalty proceedings to be initiated under Section 271 (1) (c) of the Act, the assessee preferred an appeal which was partially accepted by the Commissioner, Income Tax (Appeals). wherein relying upon the earlier order passed by the Income Tax Appellate Tribunal dated 12<sup>th</sup> November, 1999, he held that no penalty could be levied on the basis of an assessment which had been set aside and as such recorded the finding that sum of Rs.3,20,868/- relating to suppression of sale was not or could not be taken on record for the purposes of levying penalty. In regard to the other entry of Rs.40,630/-, it held that the AO was justified in initiating the proceedings for levy of penalty under Section 271 (1) (c) of the Act. This order of the First Appellate Authority dated 4<sup>th</sup> April, 2002 was challenged before the Income Tax Appellate Tribunal which vide its order dated 6<sup>th</sup> April, 2004 allowed the appeal of



the assessee by giving to the assessee further relief in regard to the sum of Rs.40,630/- by recording the following findings:-

"After considering the submissions of both sides and perusing other material on record, we find substance in the argument of the learned AR that no satisfaction has been recorded in regard to addition on account of disallowance of commission of Rs.40,630/-. In the case of Ram Commercial Enterprises Ltd. (supra), the Hon'ble Delhi High Court has held that before forming an opinion in regard to concealment, a satisfaction has to be recorded by the Assessing Officer as contemplated under the provisions of section 271 (1) (c). This decision was taken by the Hon'ble Delhi High Court by placing reliance on the decision of Hon'ble Supreme Court in the case of CIT vs. S.V. Angdi Chettiar 44 ITR 739 (SC). We have seen the facts of the present case and found that no such satisfaction he has recorded there that penalty proceedings on this amount are accordingly initiated. On the amount of addition of Rs.3,20,868/- made in trading account, the Assessing Officer in the body of the order has specifically mentioned that penalty on this amount is initiated, as he was satisfied that the assessee has not disclosed the true profits. However, we noted that while making disallowance of commission of Rs.40,630/-, no such satisfaction has been recorded. Even it is not mentioned that penalty proceedings u/s 271 (1) (c) are initiated separately. Therefore, in view of these facts and circumstances, and in view of the decision of the jurisdictional High Court in the case of Ram Commercial enterprises (supra), we hold that without recording satisfaction as contemplated u/s 271 (1) (c), penalty levied and confirmed by



the lower authorities was not justified. Therefore, the same is cancelled.

In the result, the appeal of the assessee is allowed."


4. The Tribunal while granting this relief to the appellant had relied upon the judgment of the Supreme Court in the case of CIT vs. S.V. Angidi Chettiar 44 ITR 739 (SC). It is a settled principle of law and the provisions of Section 271 (1) (c) on their plain reading would require proper application of mind and recording of at least bare minimum opinion on the part of the Assessing Officer that a case for initiation of penalty proceedings was made as there was concealment of income, or that incorrect particulars had been furnished by the assessee, with intention to avoid payment of tax. In the present case the Assessing Officer had recorded satisfaction with regard to one sum while with regard to the other he made no such indication, as is clear from the above reproduced relevant portion of the order of the Assessing Officer.

5. We find no merit in this appeal as it raises no question of law, much less a substantial question of law, as such an



interpretation is clear from the bare reading of the provisions and it has already been the subject matter of pronouncements by various courts. The view consistently is in the above terms. Thus, in view of the judgment of this Court in Commissioner of Income Tax vs. S.R. Fragnances Ltd. 2004 ITR Vol. 270 page 560 , this appeal is dismissed, while leaving the parties to bear their own costs.

  
SWATANTER KUMAR  
(JUDGE)

  
MADAN B. LOKUR  
(JUDGE)

March 27<sup>th</sup>, 2005  
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