



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 1052/2007

COMMISSIONER OF INCOME TAX Appellant

Through Mrs. P.L. Bansal, Advocate

versus

O.P. LOHIA

..... Respondent

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE DR. JUSTICE S.MURALIDHAR

ORDER

% 01.11.2007

The Revenue is aggrieved by an order dated 25th January, 2007 passed by the Income Tax Appellate Tribunal ('Tribunal'), Delhi Bench 'H', New Delhi in ITA No. 4488/Del/2005 relevant for the Assessment Year 2002-2003.

The Assessing Officer sought to initiate penalty proceedings under Section 271(1) (c) of the Income Tax Act, 1961 ('Act') by his



assessment order dated 16th December, 2002 where at the foot of the order

he observed as under :-

“Assessed at Rs.39,54,223/-. Issue necessary documents and challan. Give credit for prepaid taxes.”

“Penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961 have been initiated separately.”

Following this, by a separate order dated 29th March, 2005, the Assessing Officer levied a penalty of Rs.4,22,963/-.

The appeal against the said order filed by the Assessee was dismissed by the Commissioner of Income Tax (Appeals) [CIT(A)] on the ground that the Assessee had not offered any bonafide explanation for claiming deduction in respect of expenditure incurred, in the form of interest on borrowed funds, for investment in shares the income from which did not form part of the total income. The CIT(A) also negatived the plea that the penalty proceedings were bad for the reason that the Assessing Officer had not recorded his satisfaction in the Assessment Order that penalty



proceedings should be initiated against the Assessee.

Allowing the appeal of the Assessee, the Tribunal reversed the order of the CIT(A). The Tribunal followed the decision of this Court in *Commissioner of Income Tax Vs. Ram Commercial Enterprises Ltd.*, [2000] 246 ITR 568. It held that since there was no recording of satisfaction of the Assessing Officer in the order of assessment that penalty proceedings must be initiated, the appeal preferred by the Assessee should be allowed. It also allowed the appeal on merits.

At the outset, it requires to be noted that the decision of this Court in *Ram Commercial Enterprises Ltd.* has been approved by the Supreme Court in *Dilip N. Shroff Vs. Joint Commissioner of Income Tax*, [2007] 291 ITR 519 (SC) and *T.Ashok Pai Vs. Commissioner of Income Tax*, [2007] 292 ITR 11 (SC).

Learned counsel for the Revenue states that another Bench of this Court has in *Commissioner of Income Tax, Delhi IV v. Indus Valley*



Promoters Limited (2006) 155 Taxman 223 referred the following,

substantial question of law to a larger Bench which according to the referring Bench was not considered in *Ram Commercial Enterprises*

Limited:

“Whether satisfaction of the officer initiating the proceedings under section 271 of the Income-tax Act can be said to have been recorded even in cases where satisfaction is not recorded in specific terms but is otherwise discernible from order passed by the authority?”

She accordingly submits that this Court should await the decision of the larger Bench.

Assuming the Revenue were to succeed before the larger Bench, and the question referred to it is answered in the affirmative, it would mean that it is sufficient that the satisfaction of the Assessing Officer for initiating penalty proceedings against an Assessee under Section 271(1)(c) of the Act is discernible from the assessment order itself and that such satisfaction need



not be separately or expressly indicated in the assessment order. In the event the assessment order in the present case would have to be examined to find out if the satisfaction of the Assessing Officer is discernible. Therefore, without expressing any view on the issue pending consideration by the larger Bench, and presuming that the question referred to it is answered in the affirmative, we proceed to examine the assessment order in the instant case in order to find out whether the satisfaction of the Assessing Officer that penalty proceedings should be initiated against the Assessee under Section 271 (1) (c) of the Act is discernible therefrom.

Having gone through the assessment order, we find that it is not possible to discern any satisfaction of the Assessing Officer that penalty proceedings must be initiated against the Assessee under Section 271(1)(c) of the Act. We may mention that we have adopted this procedure in large number of cases, some of which are *Commissioner of Income Tax Del Vs.*

O.K. Hosiery Mills P. Ltd. (ITA No. 12/2007 decided on 14th September,



2007), *Commissioner of Income Tax Vs. M/s Bharat Hotels Ltd. (ITA NO. 1074/2006* decided on 14th September, 2007), *Commissioner of Income Tax Vs. M/s Bharat Hotels Ltd. (ITA No. 935/2006* decided on 14th September, 2007), *Commissioner of Income Tax Del Vs. Fibro Tech Chemicals (ITA No. 954/2006* decided on 14th September, 2007), *Commissioner of Income Tax Vs. M/s Preeti Aggarwala (ITA NO. 850/2006* decided on 15th September, 2007) and *Commissioner of Income Tax Vs. Smt. Santosh Sharma (ITA No. 1088/2006* decided on 17th September, 2007).

Apart from the above, we also find that the Assessee's appeal has been allowed on merits by the Tribunal. It has been held that the claim of the Assessee for expenditure by way of interest on borrowed funds was based on a bonafide belief and that no "contumacious conduct could be attributed" to the Assessee. Having examined the matter on merits ourselves, we find no infirmity in the view taken by the Tribunal in this regard. Therefore on merits as well no case for interference is made out.



No substantial question of law arises.

Dismissed.

Madan Lokur

MADAN B. LOKUR, J

S. Muralidhar

S.MURALIDHAR, J

November 01, 2007

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