



* .IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 1087/2007

COMMISSIONER OF INCOME TAX Appellant
Through Mrs. P.L. Bansal, Advocate

versus

SHRIRAM PISTON & RINGS LTD. Respondent

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE DR. JUSTICE S. MURALIDHAR

ORDER

% 14.11.2007

The Revenue is aggrieved by an order dated 14th December, 2006 passed by the Income Tax Appellate Tribunal ('Tribunal'), Delhi Bench 'H', New Delhi in ITA No. 2060/Del/2006 relevant for the Assessment Year 2001-2002.

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 27th February, 2003 where at the foot of the order, he observed as under :-

“Assessed at income of Rs.13,91,68,980 as the same is higher than

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the income assessed u/s 115JA. Issue demand notice and challan. Also issue notice under Section 274 read with Section 271(1)(c) of the I.T. Act, 1961. Charge interest u/s 234B & 234C.”

Following this, by a separate order dated 31st March, 2005 under Section 271(1)(c) of the Act, the Assessing Officer levied a penalty of Rs.13,98,637/-.

The appeal against the said order filed by the Assessee was allowed by the Commissioner of Income Tax (Appeals) [CIT(A)] on the ground that the Assessing Officer (AO) had not recorded his satisfaction in the assessment order that penalty proceedings must be initiated.

Dismissing the appeal of the Revenue, the Tribunal followed the decision of this Court in *Commissioner of Income Tax Vs. Ram Commercial Enterprises Ltd.*, [2000] 246 ITR 568 and 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 penalty proceedings are illegal.

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.A

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 indicated⁴ ii

assessment order. In that 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*

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).

No substantial question of law arises.

Dismissed.


MADAN B. LOKUR, J



S. MURALIDHAR, J

November 14, 2007

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