



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 629/2007

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

versus

GKN DRIVELINE INDIA LTD. Respondent
Through Mr. V.P. Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE DR. JUSTICE S.MURALIDHAR

ORDER

% 15.11.2007

The Revenue is aggrieved by an order dated 7th December, 2006 passed by the Income Tax Appellate Tribunal ('Tribunal'), Delhi Bench 'E', New Delhi in ITA No. 1760/Del/2006 relevant for the Assessment Year 1995-1996.

The Assessing Officer sought to initiate penalty proceedings under Section 271(1)(c) of the Income Tax Act, 1961 ('Act') by his re-assessment order dated 28th March, 2002 where at the foot of the order, he observed as under :-

“Assessed as above. Issue demand notice and challan. Charge



interest as per law. Penalty proceedings under section 271(1)(c) have been separately initiated.”

Following this, by a separate order dated 29th July, 2005 under Section 271(1)(c) of the Act, the Assessing Officer levied a penalty of Rs.53,88,695/-.

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 furnished inaccurate particulars and, therefore, penalty was leviable. Further it was held that the satisfaction of the Assessing Officer (AO) was evident from the assessment order.

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 and held that since there was no recording of satisfaction of the Assessing Officer in the order of assessment, 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 indicated in the 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 15, 2007

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