



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision : September 14, 2007

+ **ITA NO 1074/2006**

COMMISSIONER OF INCOME TAXPETITIONER
Through : Ms. P.L. Bansal, Advocate

versus

M/S. BHARAT HOTELS LIMITEDRESPONDENT
Through: Mr. C.S. Aggarwal, Senior Advocate
with Mr. Prakash Kumar, Advocate

+ **ITA NO 935/2006**

COMMISSIONER OF INCOME TAXPETITIONER
Through : Ms. P.L. Bansal, Advocate

versus

M/S. BHARAT HOTELS LIMITEDRESPONDENT
Through: Mr. C.S. Aggarwal, Senior Advocate
with Mr. Prakash Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed
to see the judgment? YES
2. To be referred to the Reporter or not? YES
3. Whether the judgment should be reported in Digest? YES

ORDER

1. These appeals under Section 260(A) of the Income Tax Act, 1961 ('Act') are directed against the common order dated 30th November, 2005 passed by the Income Tax Appellate Tribunal ('Tribunal') Delhi Bench "A", New Delhi in ITA No. 3673 and 3674/Del/01 for the Assessment Years 1995-96 and 1996-97 respectively.



Commissioner of Income Tax ['CIT(A)'] deleting the penalty levied on tl Assessee by the Assessing Officer under Section 271 (1)(c) of the Act for the assessment years in question.

3. The Tribunal has dismissed the appeals on two grounds. The first is that the assessment order indicates no satisfaction by the Assessing Officer that the penalty proceedings should be initiated against the Assessee. Following the judgment of this Court in *Commissioner of Income Tax v. Ram Commercial Enterprises Limited* [2000] 246 ITR 568 which has been since approved by the Supreme Court in *Dilip N. Shroff v. Joint Commissioner of Income Tax* [2007] 291 ITR 519 (SC) and *T.Ashok Pai v. Commissioner of Income Tax* [2007] 292 ITR 11 (SC), the Tribunal held against the Revenue on this ground and upheld the order of the CIT(A).

4. The Tribunal considered the case on merits and found that for both the assessment years, the Assessing Officer had disallowed certain claims and made certain additions. It found that the Revenue had been unable to demonstrate that the Assessee had concealed any income or furnished inaccurate particulars of income. Accordingly, even on merits, the Tribunal held against the Revenue and dismissed both the appeals.

5. Learned senior standing counsel for the Revenue urges an alternative submission that the satisfaction of the Assessing Officer for initiation of penalty proceedings can be discerned from the Assessment Order itself and that this question is pending consideration before the Larger Bench of this Court in *Commissioner of Income Tax, Delhi-IV v. Indus Valley Promoters Limited*. The substantial question of law that has been referred to the larger Bench of this Court in the said case reported in [2006] 155



“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?”

6. She accordingly urged that this Court should await the decision of the Larger Bench.

7. 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.

8. At the foot of the assessment orders, the Assessing Officer had observed:

“Issue necessary forms. Penalty proceedings 271 (1)(c) have been initiated separately.”



Enterprises Limited. Further even on a detailed perusal of the assessme
order no satisfaction of the Assessing Officer that penalty proceedings are
required to be initiated against the Assessee is discernible. None has also
been pointed out to us. Since the penalty proceedings cannot be sustained
on this basis we did not go into the merits of the matter.

10. In addition it has been pointed out by Mr. C.S. Aggarwal, learned
senior counsel for the Assessee that in view of the subsequent developments
appeal effect has been given for the relevant assessment years 1995-96 and
1996-97, and by orders dated 29th March, 2000 passed by the Joint
Commissioner of Income Tax, income of the Assessee for both the years
has been assessed as Nil after adjusting unabsorbed depreciation of certain
previous assessment years. He accordingly submits that by virtue of the
decision of the Supreme Court in ***Virtual Soft Systems Limited v.***
Commissioner of Income Tax [2007] 289 ITR 83 no penalty can be levied.

11. No substantial question of law arises in these appeals. These appeals
are dismissed.

MADAN B. LOKUR, J

S. MURALIDHAR, J

SEPTEMBER 14, 2007

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