



* HIGH COURT OF DELHI : NEW DELHI

(C)

+ ITA No. 1332 of 2007

% Decided on: January 23, 2008

Commissioner of Income Tax
Delhi-VI, New Delhi ...Appellant
Through Mrs. P.L. Bansal, Adv.

Versus

Virgo Marketing (P) Limited,
A-9, Gulmohar Park,
New Delhi. ...Respondent
Through

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

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

MADAN B. LOKUR, J. (ORAL)

1. The Revenue is aggrieved by an order dated 26th April,



2007 passed by the Income Tax Appellate Tribunal, Delhi Bench 'C', New Delhi ('the Tribunal') in ITA Nos. 1547 to 1549/Del/2006 relevant for the Assessment Years 2000-01 to 2002-03.

2. The sole question that has arisen for consideration in this appeal under Section 260A of the Income Tax Act, 1961 ('the Act') is whether the Assessing Officer had recorded his satisfaction for initiating penalty proceedings under Section 271(1)(c) of the Act.

3. Learned counsel for the Revenue accepted the fact that this Court has taken the view in *Commissioner of Income Tax v. Ram Commercial Enterprises Ltd.*, [2000] 246 ITR 571 (Delhi) that the Assessing Officer must record his satisfaction in specific terms for initiating penalty proceedings under Section 271(1)(c) of the Act. She also accepted the fact that the view taken by this Court in *Ram Commercial Enterprises Ltd.* has been approved by the Supreme Court in *Dalip 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).



4. Nevertheless, it was contended that the matter should be referred to a larger Bench because the following issue has been referred to a larger Bench in *Commissioner of Income Tax, Delhi v. Indus Valley Promoters Limited, (2006) 155 Taxman 223* on the ground that one aspect of the contention of the Revenue was not considered in *Ram Commercial Enterprises*:

“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?”

5. In view of above submission of learned counsel for the Revenue we have proceeded on the basis that the question will be answered in the affirmative in favour of the Revenue by the larger Bench of this Court and have considered and decided the matter in that light.

6. From a perusal of the assessment order, it is found that for the purpose of initiating penalty proceedings, the Assessing Officer has stated as follows:



“Assessed at Rs.6,51,830/- Charge interest u/s 234B and 234C. Penalty proceedings u/s 271(1)(c) have been initiated separately.”

7. Learned counsel for the Assessee drew our attention to the view of the Assessing Officer that the Assessee had adopted an illegal device to avoid its tax liability as mentioned in paragraph 2.6 of the assessment order.

8. It is now settled that penalty proceedings are penal in nature. Section 271(1)(c) of the Act postulates penalty being imposed either for furnishing inaccurate particulars of income or for concealing the income.

9. There is nothing to suggest that the Assessing Officer had applied his mind to the question about which facet of Section 271(1)(c) of the Act is applicable to the case and for what act of omission or commission by the Assessee. Merely to say that the Assessee had adopted an illegal device to avoid his tax liability is neither here nor there. The Assessee had filed its returns and had disclosed all material facts of the case and had concealed nothing in its returns. If the Assessing Officer takes a view contrary to that expressed by the Assessee, it does not per se mean that the



Assessee has adopted an illegal device for reducing its tax liability.

10. Against the order imposing penalty, the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals) ['CIT(A)'] and in her order dated 27th February, 2006, the CIT(A) was of the view that the Assessing Officer had not properly recorded his satisfaction before initiation of penalty proceedings. This view was upheld by the Tribunal.

11. We are unable to discern from a reading of the assessment order why the Assessing Officer chose to initiate penalty proceedings against the Assessee and under which part of Section 271(1)(c) of the Act. In other words, we are unable to discern from the assessment order the reason for initiating penalty proceedings. Therefore, the concurrent view held by both the authorities below must be accepted.

12. The procedure that we have adopted has been consistently followed by us in a large number of cases, some of which are *Commissioner of Income Tax Del v. O.K. Hosiery Mills P. Ltd.* (ITA No.12/2007 decided on 14th September, 2007),



Commissioner of Income Tax v. M/s Bharat Hotels Ltd. (ITA No.1074/2006 decided on 14th September, 2007), Commissioner of Income Tax v. M/s Bharat Hotels Ltd. (ITA No.935/2006 decided on 14th September, 2007), Commissioner of Income Tax v. Fibro Tech Chemicals (ITA No.954/2006 decided on 14th September, 2007), Commissioner of Income Tax v. M/s Preeti Aggarwala (ITA No.850/2006 decided on 15th September, 2007), Commissioner of Income Tax v. Smt. Santosh Sharma (ITA No.1088/2006 decided on 17th September, 2007) and Commissioner of Income Tax v. O.P. Lohia (ITA No.1052/2007 decided on 1st November, 2007).

13. Even though the law has been settled by this Court in a very large number of cases, apart from *Ram Commercial Enterprises* such as *Diwan Enterprises v. Commercial of Income*, [2000] 246 ITR 571 (Delhi) and *Commissioner of Income Tax v. B.R. Sharma*, [2005] 275 ITR 303, the Revenue is still filing these sort of appeals for no apparent reason. By this casual attitude of the Revenue, the Registry (apart from this Court) has been put under severe pressure in dealing with a large influx of appeals, which prima facie do not have any merit. By this flood of




litigation, the Revenue is ensuring that more important cases, where stakes are much higher and where perhaps the Revenue has a better case, get receded into the background and their turn cannot come up in the near future. We have been repeatedly observing this but to no effect.

14. Under the circumstances, we are constrained to dismiss this appeal with costs of Rs.5,000/- , which will be deposited by the Revenue by way of a cheque in favour of the Registrar General of this Court within four weeks from today to be utilized for juvenile justice.

15. List on 14th March, 2008 for compliance.


MADAN B. LOKUR, J


V.B. GUPTA, J

JANUARY 23, 2008
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Costs not paid