



\* **HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 14.11.2008

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Date of decision: 27<sup>th</sup> November, 2008

+ **ITA NOs. 211/2006, 791, 921, 1015, 1044, 1077, 1094, 1120, 1138, 1155, 1159, 1170 of 2005, 45, 79, 80, 105, 127, 167, 177, 193, 197, 213, 221, 251, 252, 306, 312, 315, 323, 326, 329, 331, 332, 339, 345, 417, 460, 490, 491, 492, 534, 548, 562, 565, 583, 590, 591, 600, 604, 635, 647, 657, 660, 664, 751, 752 and 766 of 2006**

1. **I.T.A. NO. 211/2006**

Commissioner of Income Tax-V .....Appellant

versus

M/s Rampur Engineering Co. Ltd. ....Respondent

2. **I.T.A. NO. 791/2005**

Commissioner of Income Tax .....Appellant

versus

M/s Balka Services (P) Ltd. ....Respondent

3. **I.T.A. NO. 921/2005**

Commissioner of Income Tax .....Appellant

versus

M/s Canyam Constructions P. Ltd. ....Respondent



4. **I.T.A. NO. 1015/2005**  
Commissioner of Income Tax .....Appellant  
versus  
M/s Bharat Cine Co. (P) Ltd. ....Respondent
5. **I.T.A. NO. 1044/2005**  
Commissioner of Income Tax .....Appellant  
versus  
M/s Indus Valley Promoters Ltd. ....Respondent
6. **I.T.A. NO. 1077/2005**  
Commissioner of Income Tax .....Appellant  
versus  
M/s Model Footwear (Pvt.) Ltd. ....Respondent
7. **I.T.A. NO. 1094/2005**  
Commissioner of Income Tax .....Appellant  
versus  
M/s Gama Investments Pvt. Ltd. ....Respondent



8. **I.T.A. NO. 1120/2005**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Baid Credit & Portfolio Pvt. Ltd. ....Respondent
9. **I.T.A. NO. 1138/2005**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Basant Plasto Chemicals Pvt. Ltd. ....Respondent
10. **I.T.A. NO. 1155/2005**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Britika Exports (P) Ltd. ....Respondent
11. **I.T.A. NO. 1159/2005**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Baid Credit Portfolio (P) Ltd. ....Respondent
12. **I.T.A. NO. 1170/2005**  
Commissioner of Income Tax ....Appellant  
versus  
Sh. Francis Wacziarg ....Respondent



13. **I.T.A. NO. 45/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Abhishek Auto Industries Ltd. ....Respondent
14. **I.T.A. NO. 79/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Bora Knitwear (P) Ltd. ....Respondent
15. **I.T.A. NO. 80/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Singh Enterprises ....Respondent
16. **I.T.A. NO. 105/2006**  
The Commissioner of Income Tax-V ....Appellant  
versus  
M/s Narain Jewels International Ltd. ....Respondent
17. **I.T.A. NO. 127/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s COSMO Films Ltd. ....Respondent



18. **I.T.A. NO. 167/2006**  
Commissioner of Income Tax ....Appellant  
versus  
Shri Prakash Chandra Yadav .....Respondent
19. **I.T.A. NO. 177/2006**  
The Commissioner of Income Tax-V ....Appellant  
versus  
M/s Narain Jewels International Ltd. ....Respondent
20. **I.T.A. NO. 193/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Ajay Home Products Pvt. Ltd. ....Respondent
21. **I.T.A. NO. 197/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Ajay Home Products Pvt. Ltd. ....Respondent
22. **I.T.A. NO.213/2006**  
The Commissioner of Income Tax-III ....Appellant  
versus  
M/s Super Plastronics (P) Ltd. ....Respondent



23. **I.T.A. NO. 221/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Dass Trading & Holding (P) Ltd. ....Respondent
24. **I.T.A. NO. 251/2006**  
Commissioner of Income Tax-III ....Appellant  
versus  
M/s S.R. Ice & Cold Storage P. Ltd. ....Respondent
25. **I.T.A. NO. 252/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Shree Joints International P. Ltd. ....Respondent
26. **I.T.A. NO. 306/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Goenka Estates (Delhi) Pvt. Ltd. ....Respondent
27. **I.T.A. NO. 312/2006**  
Commissioner of Income Tax-III ....Appellant  
versus  
M/s Sandeep Ceramics Ltd. ....Respondent



28. **I.T.A. NO. 315/2006**  
Commissioner of Income Tax ....Appellant  
versus  
Francis Wacziarg .....Respondent
29. **I.T.A. NO. 323/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Brahmputra Consortium Ltd. ....Respondent
30. **I.T.A. NO. 326/2006**  
Commissioner of Income Tax ....Appellant  
versus  
Shri Sanjeev Kumar Gupta .....Respondent
31. **I.T.A. NO. 329/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Dalmia Agencies (P) Ltd. ....Respondent
32. **I.T.A. NO. 331/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Great Eastern Energy Corp. Ltd. ....Respondent



33. **I.T.A. NO. 332/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s D.G. Housing Projects Ltd. ....Respondent
34. **I.T.A. NO. 339/2006**  
Commissioner of Income Tax ....Appellant  
versus  
Shri Sanjay Sharma .....Respondent
35. **I.T.A. NO. 345/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Electrolux Kelvinator Limited .....Respondent
36. **I.T.A. NO. 417/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Model Footwear (Pvt.) Ltd. ....Respondent
37. **I.T.A. NO. 460/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Fracht Forwarding & Travels Pvt. Ltd. ....Respondent



38. **I.T.A. NO. 490/2006**  
Commissioner of Income Tax ....Appellant  
versus  
Late Shri A.R. Chadha  
Th. L/H Sh. C. M. Chadha .....Respondent
39. **I.T.A. NO. 491/2006**  
Commissioner of Income Tax ....Appellant  
versus  
Late Sh. A.R. Chadha  
Th. L/H Sh. C.M. Chadha .....Respondent
40. **I.T.A. NO. 492/2006**  
Commissioner of Income Tax ....Appellant  
versus  
Late Sh. A.R. Chadha  
Th. L/H Sh. C.M. Chadha ....Respondent
41. **I.T.A. NO. 534/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Deeksha Holding Ltd. ....Respondent



42. **I.T.A. NO. 548/2006**  
Commissioner of Income Tax ....Appellant  
versus  
Ms. Madhushree Gupta .....Respondent
43. **I.T.A. NO. 562/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Essan Remedies Ltd. ....Respondent
44. **I.T.A. NO. 565/2006**  
Commissioner of Income Tax ....Appellant  
versus  
Mrs. Lata Chauhan .....Respondent
45. **I.T.A. NO. 583/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Goodyear India Limited .....Respondent
46. **I.T.A. NO. 590/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Goodyear India Limited .....Respondent



47. **I.T.A. NO. 591/2006**  
Commissioner of Income Tax .....Appellant  
versus  
M/s Goodyear India Limited .....Respondent
48. **I.T.A. NO. 600/2006**  
Commissioner of Income Tax .....Appellant  
versus  
M/s Eastern Holdings (P) Ltd. ....Respondent
49. **I.T.A. NO. 604/2006**  
Commissioner of Income Tax .....Appellant  
versus  
M/s D.D. Gears Ltd. ....Respondent
50. **I.T.A. NO. 635/2006**  
Commissioner of Income Tax .....Appellant  
versus  
M/s SRJ Securities  
(Now Adinath Capital Pvt. Ltd.) .....Respondent
51. **I.T.A. NO. 647/2006**  
Commissioner of Income Tax .....Appellant  
versus  
M/s Maharani Paints (India) Pvt. Ltd. ....Respondent



52. **I.T.A. NO. 657/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Ambuja Agro Industries Ltd. ....Respondent
53. **I.T.A. NO. 660/2006**  
Commissioner of Income Tax ....Appellant  
versus  
Mr. S. Venkatnarayan .....Respondent
54. **I.T.A. NO. 664/2006**  
Commissioner of Income Tax ....Appellant  
versus  
M/s Utkal Investment Ltd. ....Respondent
55. **I.T.A. NO. 751/2006**  
The Commissioner of Income Tax-III ....Appellant  
versus  
M/s SIEL Industrial Estate Ltd. ....Respondent
56. **I.T.A. NO. 752/2006**  
The Commissioner of Income Tax-III ....Appellant  
versus  
M/s Siel Industrial Estate Ltd. ....Respondent



57.

**I.T.A. NO. 766/2006**

Commissioner of Income Tax

....Appellant

versus

M/s India Crafts

.....Respondent

**Advocates who appeared for the parties****For the Appellant :**

Mr. R.D. Jolly, Mr. Sanjeev Sabharwal,  
Ms. Prem Lata Bansal, Mr. Prakash Chand  
Yadav, Mr. Sanjeev Rajpal, Mr. M.P. Gupta,  
Adv.

**For Respondents :**

Mr. O.P. Bajpai, Adv. for respondent in ITA  
No. 460/2006  
Mr. Gitanju Suraj, Mr. Jatin Zaveri, Adv. for  
respondent in ITA 345/2006  
Mr. Ajay Vohra, Ms. Kavita Jha, Adv. for  
respondents in ITA Nos. 791/05, 583/2006,  
590/2006, 591/2006  
Mr. V.P. Gupta, Mr. Basant Kumar, Adv. for  
respondents in ITA Nos. 1094/2005,  
79/2006, 490/2006, 491/2006, 492/2006,  
604/2006  
Mr. Prakash Kumar, Adv. for respondents in  
ITA Nos. 193/2006, 197/2006, 315/2006,  
534/2006  
Mr. Satyen Sethi, Mr. Johnson Bara, Adv.  
for respondents in ITA Nos. 127/2006,  
323/2006

**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE BADAR DURREZ AHMED****HON'BLE MR. JUSTICE RAJIV SHAKDHER**



1. Whether reporters of the local papers 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 the Digest ? Y

### **AJIT PRAKASH SHAH, CHIEF JUSTICE**

In all these cases, the Income Tax Appellate Tribunal has either deleted or affirmed the deletion of penalty levied upon the assessee under Section 271(1)(c) of the Income Tax Act, 1961. The Tribunal has, while doing so, relied upon the decision of the Division Bench of this Court in **CIT v. Ram Commercial Enterprises Ltd.** (2000) 246 ITR 568 (Delhi) and held that the authority initiating the penalty proceedings had not recorded its satisfaction regarding concealment of income or furnishing of inaccurate particulars thereof by the assessee. The Revenue has assailed the correctness of the said orders in these appeals. According to the Revenue, penalty proceedings initiated by the competent authority should be deemed to be valid so long as the satisfaction of the authority was discernible from the order made by it. The fact that the authority had not used the words “*I am satisfied that the assessee has concealed his income or furnished inaccurate particulars thereof*”, would be of no consequence. The true test is whether a reading of the order demonstrates



application of mind by the authority to the question of concealment and whether satisfaction about such concealment or furnishing of inaccurate particulars is discernible from the order. In the light of these submissions, the Division Bench admitted the appeals for determination of the following substantial question of law:

“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 the order passed by the authority?”

2. Keeping in view the decision of this Court in **CIT v. Ram Commercial Enterprises Ltd.** (supra) and other cases on the subject, the Division Bench felt that it would be more appropriate if the question is authoritatively determined by a Full Bench of this Court and accordingly the matter has been referred to the Full Bench.

3. We hasten to add that pending reference, sub-Section 1B has been inserted in Section 271 of the Income Tax Act by Finance Act, 2008. The said provision purports to create a fiction



by which satisfaction of the assessing officer is deemed to have been recorded in cases where an addition or disallowance is made by the assessing officer and a direction for initiation of penalty proceedings is issued. The said provision is made effective retrospectively with effect from 1<sup>st</sup> April, 1989. In some of the cases forming part of this batch, the assessment orders were passed after 1<sup>st</sup> April, 1989. This reference is being answered only in respect of the cases where assessment orders were made prior to 1<sup>st</sup> April, 1989.

4. Learned counsel appearing for the Revenue strenuously contended that the question whether the authority was or was not satisfied about any concealment or furnishing of inaccurate particulars will depend upon the facts of each case and the order which the authority has made will have to be seen as a whole and so long as a proper reading of the order demonstrates application of mind by the authority and so long as satisfaction is discernible from the finding recorded by the authority initiating the proceeding, the same should suffice. Learned counsel contended that if on the facts available on record a clear case of concealment of income was made out then the Tribunal would



not be justified in deleting the penalty. According to the learned counsel all such relevant facts available on record will have to be kept in view by the Tribunal in deciding the question as to whether the assessing officer has applied his mind to the question of concealment of income or furnishing of inaccurate particulars of any such income.

5. On the other hand, learned counsel appearing for the assessee submitted that the satisfaction as to the assessee having concealed the particulars of his income or furnished inaccurate particulars of such income is to be arrived at by the Assessing Officer during the course of any proceedings under the Act, which would mean the assessment proceedings, without which the very jurisdiction to initiate the penalty proceeding is not conferred on the assessing officer by reference to clause (c) of sub-section (1) of Section 271 of the Income Tax Act. Learned counsel submitted that what actually prevailed with the Tribunal is the absence of any finding recorded by the assessing officer in the order of the assessment conferring jurisdiction for initiation of penalty proceedings. According to the learned counsel the decision of this Court in **Ram Commercial Enterprises** (supra)



laid down the correct position of law.

6. Section 271(1)(c) of the Income Tax Act, 1961 provides:

“271 (1) If the income Tax Officer, or the Appellate Assistant Commissioner in the course of any proceedings under this Act is satisfied that any person-

(c) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty, -

.....”

This is the provision as it stood at the relevant time. This provision fell for consideration of the Supreme Court in **D.M. Manasvi v. Commissioner of Income Tax, Gujarat, II Ahmedabad** (1972) 86 ITR 557 (SC) wherein the Supreme Court held that what is contemplated by sub-section (1) of Section 271 is that the Income Tax Officer or the Appellate Assistant Commissioner should have been satisfied in the course of proceedings under the Act regarding matters mentioned in the clauses of that sub-section. It is, however, not essential that notice to the person proceeded against should have been issued during the course of the assessment proceedings. Satisfaction in



the very nature of things precedes the issue of notice and it would not be correct to equate the satisfaction of the Income Tax Officer or Appellate Assistant Commissioner with the actual issue of notice. The issue of notice is a consequence of the satisfaction of the Income Tax Officer or the Appellate Assistant Commissioner and it would be sufficient compliance with the provisions of the statute if the Income Tax Officer or the Appellate Assistant Commissioner is satisfied about the matters referred to in clauses (a) to (c) of sub-section (1) of Section 271 during the course of proceedings under the Income Tax Act even though notice to the person proceeded against in pursuance of that satisfaction is issued subsequently. The Court referred to the decision of the Constitution Bench in the case of **Commissioner of Income-tax, Madras, and Anr. v. S.V. Angidi Chettiar** (1962) 44 ITR 739 (SC) wherein Shah J. speaking for the Court while dealing with Section 28 of the Indian Income Tax Act, 1922, observed:

“The power to impose penalty under Section 28 depends upon the satisfaction of the Income Tax officer in the course of proceedings under the Act; it cannot be



exercised if he is not satisfied about the existence of conditions specified in clauses (a), (b) or (c) before the proceedings are concluded. The proceeding to levy penalty has, however, not to be commenced by the Income Tax Officer before the completion of the assessment proceedings by the Income Tax Officer. Satisfaction before conclusion of the proceeding under the Act, and not the issue of a notice or initiation of any step for imposing penalty is a condition for the exercise of the jurisdiction.”

7. In **Ram Commercial Enterprises Ltd.** (supra) the argument of the Revenue was that on the facts available on record a clear case of concealment of income was made out and, therefore, the Tribunal was not justified in deleting the penalty. It was argued that all such relevant facts which were available on record were not kept in view by the Tribunal and, therefore, the findings arrived at by it are perverse and not binding on the High Court. The Division Bench following the law laid down in the case of **D.M. Manasvi** (supra) held:

“11. .... The law is clear and explicit. Merely because this court while hearing this application may be inclined to form an



opinion that the material available on record could have enabled the initiation of penalty proceedings that cannot be a substitute for the requisite finding which should have been recorded by the assessing authority in the order of assessment but has not been so recorded.

12. A bare reading of the provisions of Section 271 and the law laid down by the Supreme Court makes it clear that it is the assessing authority which has to form its own opinion and record its satisfaction before initiating the penalty proceedings. Merely because the penalty proceedings have been initiated, it cannot be assumed that such a satisfaction was arrived at in the absence of the same being spelt out by the order of the assessing authority. Even at the risk of repetition we would like to state that the assessment order does not record the satisfaction as warranted by Section 271 for initiating the penalty proceedings....”

8. The view taken in **Ram Commercial Enterprises** (supra) has been followed in **Diwan Enterprises v. Commissioner of Income Tax** (2000) 246 ITR 571 (Delhi) and **Commissioner of**



**Income Tax v. J.K. Synthetics Ltd.** (1996) 219 ITR 267 (Delhi).

Same is the view taken by the Bombay High Court in **Commissioner of Income-tax v. Dajibhai Kanjibhai** (1991) 189 ITR 41 (Bom).

9. In our opinion, the legal position is well settled in view of the Supreme Court decisions in **Commissioner of Income Tax, Madras. and Anr. v. S.V. Angidi Chettiar** (supra) and **D.M. Manasvi v. Commissioner of Income Tax, Gujarat, II Ahmedabad** (supra), that power to impose penalty under Section 271 of the Act depends upon the satisfaction of the Income Tax Officer in the course of the proceedings under the Act. It cannot be exercised if he is not satisfied and has not recorded his satisfaction about the existence of the conditions specified in clauses (a), (b) and (c) before the proceedings are concluded. It is true that mere absence of the words “I am satisfied” may not be fatal but such a satisfaction must be spelt out from the order of the Assessing Authority as to the concealment of income or deliberately furnishing inaccurate particulars. In the absence of a clear finding as to the concealment of income or deliberately furnishing inaccurate



particulars, the initiation of penalty proceedings will be without jurisdiction. In our opinion, the law is correctly laid down in **Ram Commercial Enterprises** (supra) and we are in respectful agreement with the same. The reference is answered accordingly.

10. Let the individual cases be listed before the appropriate Bench on 4<sup>th</sup> December, 2008 for hearing and disposal.

Chief Justice

Badar Durrez Ahmed, J

Rajiv Shakhder, J

27<sup>th</sup> November, 2008  
nm