



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 22.09.2008

+ **ITA No. 1332/2006**

**COMMISSIONER OF INCOME TAX
DELHI-XI, NEW DELHI**

... Appellant

- versus -

M/S SOCIETEX

... Respondent

Advocates who appeared in this case:

For the Appellant : Mr J. R. Goel
For the Respondent : Mr Kaanan Kapur

AND

ITA No. 1497/2006

M/S SOCIETEX

... Appellant

- versus -

**COMMISSIONER OF INCOME TAX
DELHI-XI, NEW DELHI**

... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Kaanan Kapur
For the Respondent : Mr J. R. Goel

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?



BADAR DURREZ AHMED, J (ORAL)

1. These appeals have been preferred by the revenue as well as the assessee against the order passed by the Tribunal on 28.10.2005 in ITA 1397/Del/2002 pertaining to the assessment year 1997-1998. The proceedings relate to the imposition of penalty under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as the 'said Act').

2. By virtue of the impugned order the Tribunal has set aside the imposition of penalty on the ground that the satisfaction, which was necessary to be recorded prior to initiation of penalty proceedings, has not been so recorded, following the view taken by this Court in several decisions starting from **CIT v. Ram Commercial Enterprises: 246 ITR 568**. The Tribunal, however, on merits had found in favour of the revenue in respect of the assessee's claim of deduction of Rs 23,50,000/-. According to the assessee the said amount had mistakenly been claimed in the return whereas in the Profit & Loss Account and Balance Sheet it had been appropriately indicated. According to the revenue this was not a *bona fide* mistake but it amounted to the assessee intentionally not furnishing accurate particulars and/ or making a false statement. The Tribunal accepted the submissions of the revenue and held against the assessee on this aspect of the matter. While doing so, we note that the Tribunal was



the income of this magnitude nor did the assessee produce any working to show that such a provision was considered while estimating the advance tax. The learned counsel for the assessee submitted that the assessee did, in fact, pay the advance tax in respect of the deduction which it had claimed in the return for the sum of Rs 23,50,000/-. He pointed out that this fact finds mention in the penalty order passed by the Assessing Officer. He submitted that, therefore, the Tribunal has returned a finding on merits against the assessee on the basis of the understanding that the assessee had not paid any advance tax on the said amount, which is factually incorrect according to the learned counsel for the assessee.

3. In view of the submissions made by the counsel for the parties, we feel that insofar as the plea of validity of proceedings under Section 271 (1)(c) of the said Act are concerned, the revenue's appeal to that extent requires to be allowed inasmuch as the Finance Act, 2008 has introduced sub-section (1B) with retrospective effect from 01.04.1989. However, with regard to the cross-objections filed by the assessee and the assessee's separate appeal, we feel that the decision of the Tribunal on merits requires re-consideration. This is so because the assessee has been able to demonstrate, *prima facie*, that it had taken the plea that it had paid advance tax on the said amount of Rs 23,50,000/-



paid any advance tax on this amount. Since this aspect of the matter was found to be a material consideration by the Tribunal in coming to the conclusion that the so-called mistake on the part of the assessee amounted to intentional non-furnishing of accurate particulars, we feel that it would be appropriate that the matter on this aspect is remanded to the Tribunal for consideration afresh.

4. Consequently, we dispose of the appeals as well as the cross-objections by setting aside the impugned order both on the question of recording of satisfaction as well as on merits. However, insofar as the question on merits is concerned, we remand the matter to the Tribunal for a fresh consideration. The parties shall be allowed to make all submissions as are available to them under law. The Tribunal shall reconsider the matter on all such points which may be raised by the parties with regard to the merits. It is made clear that we have not expressed any view on the merits of the matter.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

September 22, 2008
SR