



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

% Judgment delivered on : 04.12.2008

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1. **I.T.A. NO. 490/2006**

Commissioner of Income TaxAppellant

versus

Late Shri A.R. Chadha
Th. L/H Sh. C. M. ChadhaRespondent

2. **I.T.A. NO. 491/2006**

Commissioner of Income TaxAppellant

versus

Late Sh. A.R. Chadha
Th. L/H Sh. C.M. ChadhaRespondent

3. **I.T.A. NO. 492/2006**

Commissioner of Income TaxAppellant

versus

Late Sh. A.R. Chadha
Th. L/H Sh. C.M. ChadhaRespondent

Advocates who appeared in this case:

Present for the Appellant :Ms Prem Lata Bansal & Mr Mohan Prasad Gupta,
Present for the Respondent :Mr. V.P. Gupta & Mr Basant Kumar,.

CORAM :-

HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether the Reporters of local papers may be allowed to see the judgment ?
2. To be referred to Reporters or not ?



BADAR DURREZ AHMED, J (ORAL)

In all these appeals the question relates to imposition of penalty under Section 271(1)(c) of the Income Tax Act, 1961. The assessment orders in these matters were made prior to 01.04.1989 and are, therefore, unaffected by the retrospective amendment brought by the insertion of sub-section (1B) in section 271 of the said Act with effect from 01.04.1989 by virtue of the Finance Act, 2008.

The Full Bench in the case of *CIT v. M/s Rampur Engineering Co. Ltd* being ITA no. 211/2006 and other connected matters decided on 27.11.2008, after considering the question of recording of satisfaction with regard to initiation of penalty proceedings under Section 271(1)(c) of the Income Tax Act, 1961 observed as under:-

“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.”

From the above extract, it is apparent that the Full Bench held that although the mere absence of words “I am satisfied” may not be fatal but such a satisfaction must be spelt out from the orders of the Assessing



inaccurate particulars. The Full Bench held that in the absence of a finding as to the concealment of income or deliberate furnishing of inaccurate particulars, the initiation of penalty proceedings would be without jurisdiction. The Full Bench also held that the law is correctly laid down in *CIT v. Ram Commercial Enterprises; 246 ITR 568*.

In the present appeals arising out of the common order passed by the Tribunal on 22.11.2004 we find that the assessment orders do not pass the test as laid down by the Full Bench. Apart from merely recording that penalty proceedings under Section 271(1)(c) have been initiated separately, there is no finding in the assessment order as to concealment of income or deliberate furnishing of inaccurate particulars in the assessment order itself. Thus even though penalty proceedings have been initiated, it cannot be said that the Assessing Officer was satisfied about the existence of conditions specified in clause (c) before the assessment proceedings were concluded. We also note that the Income Tax Appellate Tribunal had also held that the satisfaction had not been recorded by the Assessing Officer at the time of initiation of penalty proceedings. The Tribunal also observed that, all that had been mentioned in the assessment order, was that the penalty proceedings were being initiated separately.

In the light of the Full Bench decision in *CIT v. Rampur Engineering Co. Ltd (supra)*, the conclusion arrived at by the Tribunal cannot be faulted.

The appeals are dismissed.

BADAR DURREZ AHMED, J