

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA No. 1345 of 2007

25.01.2008

Decided on: January 25, 2008

**Commissioner of Income Tax
Delhi-VI, New Delhi ...Appellant
Through Mrs. Prem Lata Bansal, Adv.**

Versus

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

Coram:

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

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

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, 1548 and 1549/Del/2006 relevant for the Assessment Years 2000-

2001, 2001-2002 and 2002-2003.

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 a valid 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.25,25,680/-. Issue demand notice and challans. Charge interest

as per rules. Penalty proceedings u/s 271(1)(c) have been initiated separately.?

7. 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.

8. 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. 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.

9. Against the order imposing penalty, the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] and in his order

dated 27th January, 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.

10. 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.

11. 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).

12. 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.

13. 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.

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

MADAN B. LOKUR, J

JANUARY 25, 2008 V.B. GUPTA, J

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