

IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 1182/2007

**COMMISSIONER OF INCOME TAX Petitioner
Through Ms. Prem Lata Bansal, Advocate**

versus

**EICHER GOODEARTH LIMITED Respondent
Through Mr. Ajay Vohra with Ms. Kavita Jha and Mr. Sandeep S. Karhail,
Advocates**

CORAM:

HON BLE DR. JUSTICE S. MURALIDHAR

HON BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

O R D E R

10.12.2007

**This appeal under Section 260-A of the Income Tax Act, 1961 (the Act
) has been filed by the Revenue against an order dated 15th February,
2007**

**passed by the Income Tax Appellate Tribunal, Delhi Bench H New Delhi (
Tribunal) in ITA No. 1421/Del/2005 relevant for the Assessment Year
1996-97.**

**In completing the assessment of the Assessee for the Assessment Year
in question, the Assessing Officer (AO) by an order dated 18th
December, 1998**

observed at the foot of the order as under:

**Assessed at income of Rs.2,23,16,920/-. Issue necessary forms. Penalty
proceeding u/s 271 (1)(c) are separately initiated.**

The AO, while passing the assessment order, disallowed the claim on account of

depreciation and the deduction under Section 80-M of the Act.

Thereafter by a separate order dated 20th September, 2004 under Section 271

(1)(c) of the Act, the AO levied a penalty of Rs.45,41,242/- after concluding that the Assessee had concealed or furnished an inaccurate particulars of income to the extent of Rs.1,69,55,590/-.

The appeal filed by the Assessee before the Commission of Income Tax (Appeals) [CIT(A)] was partly allowed by an order dated 23rd December, 2004

The CIT (A) held that the penalty levied by the AO on excess depreciation claimed by the Assessee was justified and therefore, confirmed a penalty to that

extent. As regards the penalty levied for the excess deduction claimed under

Section 80-M of the Act, the CIT (A) cancelled the penalty.

In the further appeal by the Assessee before the Tribunal, i.e., ITA

No. 1421/Del/2005, the Assessee urged an additional ground that the penalty

order was without jurisdiction since there was no recording by the AO in the

assessment order of his satisfaction that the penalty proceedings should be

initiated. Allowing the Assessee's appeal, the Tribunal concluded that the failure of the AO to record his satisfaction in the assessment order that the

penalty proceedings should be initiated was fatal to the penalty order. The Tribunal followed the decision of this Court in Commissioner of Income Tax v.

Ram Commercial Enterprises Limited 246 ITR 568.

The Tribunal also examined the merits of the penalty order and held that both as regards the claim for depreciation and the deduction under Section 80-M of the Act, the AO had not found fault with the particulars furnished by the Assessee nor had he shown them to be false. The AO had also not

unearthed any material facts or particulars which had not been disclosed by the

Assessee. The Tribunal accordingly found the penalty on both counts to be

unsustainable in law.

At the outset, it requires to be noted that the decision of this Court in Ram Commercial Enterprises Ltd. has been approved by the Supreme Court in

Dilip N. Shroff vs. Joint Commissioner of Income Tax, [2007] 291 ITR 519 (SC)

and T.Ashok Pai Vs. Commissioner of Income Tax, [2007] 292 ITR 11 (SC).

Learned counsel for the Revenue states that another Bench of this Court has in

Commissioner of Income Tax, Delhi IV v. Indus Valley Promoters Limited (2006)

155 Taxman 223 referred the following substantial question of law to a larger

Bench which according to the referring Bench was not considered in Ram Commercial Enterprises Limited:

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

She accordingly submits that this Court should await the decision of the larger

Bench.

Assuming the Revenue were to succeed before the larger Bench, and the question

referred to it is answered in the affirmative, it would mean that it is

sufficient that the satisfaction of the Assessing Officer for initiating penalty

proceedings against an Assessee under Section 271(1)(c) of the Act is discernible from the assessment order itself and that such satisfaction need not be separately or expressly indicated in the assessment order. In that event the assessment order in the present case would have to be examined to find out if the satisfaction of the Assessing Officer is discernible. Therefore, without expressing any view on the issue pending consideration by the larger Bench, and presuming that the question referred to it is answered in the affirmative, we proceed to examine the assessment order in the instant case in order to find out whether the satisfaction of the Assessing Officer that penalty proceedings should be initiated against the Assessee under Section 271 (1) (c) of the Act is discernible therefrom.

Having gone through the assessment order, we find that it is not possible to discern any satisfaction of the Assessing Officer that penalty proceedings must be initiated against the Assessee under Section 271(1)(c) of the Act. We may mention that we have adopted this procedure in large number of cases, some of which are Commissioner of Income Tax Del Vs. O.K. Hosiery Mills P. Ltd. (ITA No. 12/2007 decided on 14th September, 2007), Commissioner of Income Tax Vs. M/s Bharat Hotels Ltd. (ITA NO. 1074/2006 decided on 14th September, 2007), Commissioner of Income Tax Vs. M/s Bharat Hotels Ltd. (ITA No. 935/2006 decided on 14th September, 2007), Commissioner of Income Tax Del Vs. Fibro Tech Chemicals (ITA No. 954/2006 decided on 14th September, 2007), Commissioner of

Income Tax Vs. M/s Preeti Aggarwala (ITA NO. 850/2006 decided on 15th September, 2007) and Commissioner of Income Tax Vs. Smt. Santosh Sharma (ITA No. 1088/2006 decided on 17th September, 2007).

We have also examined the matter on merits. We are unable to find any error or

infirmity in the order dated 15th February, 2007 passed by the Tribunal which

has concluded that there was no justification for the AO to have levied the penalty particularly when the AO has not found that the particulars furnished by

the Assessee were false and where the AO had not also unearthed any material

fact or particulars which the Assessee did not disclose.

No substantial question of law arises in this appeal.

Dismissed.

S. MURALIDHAR, J

SUDERSHAN KUMAR MISRA,

J

DECEMBER 10, 2007

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