

IN THE HIGH COURT OF DELHI AT NEW DELHI

6

ITA 1110/2007

**COMMISSIONER OF INCOME TAX Appellant
Through Mrs. P.L. Bansal, Advocate**

versus

**WISEC GLOBAL LIMITED Respondent
Through : None.**

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE DR. JUSTICE S. MURALIDHAR

**O R D E R
19.11.2007**

1. The Revenue is aggrieved by an order dt. 27th Nov., 2006 passed by the Income-tax Appellate Tribunal ('Tribunal'), Delhi Bench 'H', New Delhi in ITA No. 161/Del/2006 relevant for the asst. yr. 1998-99.

**2. The AO sought to initiate penalty proceedings under s. 271(1)(c) of the IT Act, 1961 ('Act') by his assessment order dt. 16th March, 2001 where at the foot of the order, he observed as under :
"Penalty proceedings under s. 271(1)(c) have been initiated separately. Assessed as above. Issue necessary forms."
Following this, by a separate order dt. 24th March, 2005 under s. 271(1)(c) of the Act, the AO levied a**

penalty of Rs. 32,98,708.

The appeal against the said order filed by the assessee was allowed by the Commissioner of Income-tax (Appeals) ['CIT(A)'].

3. Dismissing the appeal of the Revenue, the Tribunal followed the decision of this Court in CIT vs. Ram Commercial Enterprises Ltd. (2001) 167 CTR (Del) 321 : (2000) 246 ITR 568 (Del) and held that since there was no recording of satisfaction of the AO in the order of assessment that penalty

proceedings must be initiated, the penalty proceedings are illegal.

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

(supra) has been approved by the Supreme Court in Dilip N. Shroff vs. Jt. CIT (2007) 210 CTR (SC)

228 : (2007) 291 ITR 519 (SC) and T. Ashok Pai vs. CIT (2007) 210 CTR (SC) 259 : (2007) 292 ITR 11 (SC).

4. Learned counsel for the Revenue states that another Bench of this Court has in CIT vs. Indus Valley

Promoters Ltd. (2006) 204 CTR (Del) 149 : (2006) 155 Taxman 223 (Del) referred the following

substantial question of law to a larger Bench which according to the referring Bench was not

considered in Ram Commercial Enterprises Ltd.'s case (supra) :

"Whether satisfaction of the officer initiating the proceedings under s. 271 of the IT 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.

5. 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 AO for initiating penalty proceedings against an assessee under s. 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 AO 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 AO that penalty proceedings should be initiated against the assessee under s. 271(1)(c) of the Act is discernible therefrom.

6. Having gone through the assessment order, we find that it is not possible to discern any satisfaction of the AO that penalty proceedings must be initiated against the assessee under s. 271(1)(c) of the Act. We may mention that we have adopted this procedure in large number of cases, some of which are CIT

vs. O.K. Hosiery Mills (P) Ltd. (IT Appeal No. 12 of 2007, dt. 14th Sept., 2007), CIT vs. Bharat Hotels Ltd. (IT Appeal Nos. 935 and 1074 of 2006, dt. 14th Sept., 2007), CIT vs. Fibro Tech Chemicals (IT Appeal No. 954 of 2006, dt. 14th Sept., 2007), CIT vs. Preeti Aggarwala (IT Appeal No. 850 of 2006, dt. 15th Sept., 2007) and CIT vs. Smt. Santosh Sharma (IT Appeal No. 1088 of 2006).

7. There is yet another ground on which this appeal should be dismissed. The assessee's return was finalised at a loss for the assessment year in question. In view of the decision of the Supreme Court in Virtual Soft Systems Ltd. vs. CIT (2007) 207 CTR (SC) 733 : (2007) 159 Taxman 155 (SC) no penalty can be levied.

No substantial question of law arises.

Dismissed.

MADAN B. LOKUR, J

S. MURALIDHAR, J

November 19, 2007