

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 1041/2007

**COMMISSIONER OF INCOME TAX Appellant
Through Mr. Mohit Jolly, Advocate.**

versus

**MAHABALESHWAR GAS and CHEMICAL (PVT)
LTD. Respondent**

Through

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE DR. JUSTICE S.MURALIDHAR

O R D E R

31.10.2007

The Revenue is aggrieved by an order dated 14th December, 2006 passed by the Income Tax Appellate Tribunal ('Tribunal'), Delhi Bench `H', New Delhi in

ITA No. 2072/Del/2006 relevant for the Assessment Year 2000-2001.

The Assessing Officer sought to initiate penalty proceedings under Section 271(1) (c) of the Income Tax Act, 1961 ('Act') by his assessment

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order dated 31st March, 2003 where at the end of the order, he observed as under

:-

Assessed at Rs.23,86,713/-. Issued demand notice and challan. Charged interest under section 234 BandC upto date of assessment as per ITNS 150.

Initiated penalty proceedings Under Section 271(i)(c) separately.

Following this, by a separate order dated 30th December, 2004, the Assessing Officer levied a penalty of Rs.9,20,100/-. The appeal against the said order filed by the Assessee was allowed by the Commissioner of Income Tax

(Appeals) on the ground that even though the Assessing Officer has recorded

satisfaction but on merits of the case the disallowance and addition made do not

amount to concealment of income. Against the said order, both the Assessee and

the Revenue filed appeals before the Income Tax Appellate Tribunal.

The Tribunal upheld the order of the CIT (A) on merits. Additionally,

the Tribunal followed the decision of this Court in Commissioner of Income Tax

Vs. Ram Commercial Enterprises Ltd., [2000] 246 ITR 568 and held

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that since there was no recording of satisfaction of the Assessing Officer in

the order of assessment that penalty proceedings must be initiated, the appeal

preferred by the Revenue should be dismissed.

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

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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

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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

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Sharma (ITA No. 1088/2006 decided on 17th September, 2007).

Apart from the above, we also find that the Revenue's appeal has been dismissed on merits by the Tribunal. It has been held that the claim of the Assessee for depreciation was based on a bonafide belief and that the disallowance of the said claim during assessment proceedings on a difference of

opinion could not be treated as concealment of income by the Assessee, particularly when all the particulars in respect of the said claim were fully furnished by the Assessee in its return of income.

Having examined the matter on merits ourselves, we find no infirmity in the view taken by the Tribunal in this regard. Therefore on merits as well no

case for interference is made out.

No substantial question of law arises.

Dismissed.

MADAN B. LOKUR, J

OCTOBER 31, 2007 S.MURALIDHAR, J

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