

IN THE HIGH COURT OF DELHI AT NEW DELHI

4.

ITA No. 966 of 2007

COMMISSIONER OF INCOME TAX Appellant
Through Ms. Sonia Mathur, Advocate.

Versus

DELHI CROCKERY HOUSE Respondent
Through

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE DR. JUSTICE S. MURALIDHAR

O R D E R

09.10.2007

1. In this appeal under s. 260A of the IT Act, 1961 ('Act'), the Revenue is aggrieved by an order dt. 13th Nov., 2006 passed by the Income-tax Appellate Tribunal ('Tribunal') Delhi Bench 'E', New Delhi in ITA No. 1036/Del/2005 for the asst. yr. 1995-96 concerning penalty proceedings under s. 271(1)(c) of the Act.

2. The Assessing Officer ('AO') while finalising the assessment for the asst. yr. 1995-96 stated towards the end of the order dt. 20th March, 1998 as follows :
"Assessed at Rs. 20,80,216. Issue necessary forms. Give credit of prepaid taxes. Charge interest as per rules-penalty proceedings under s. 271(1)(c) of the IT Act have been initiated separately."

3. Thereafter the AO passed an order on 27th May, 2004 under s. 271(1)(c) of the Act imposing a penalty of Rs. 1,95,800 on the assessee. This was confirmed by the Commissioner of Income-tax (A) ['CIT(A)'] by his order dt. 29th Dec., 2004.

4. The appeal preferred by the assessee was allowed by the Tribunal on the ground that the AO had not recorded his satisfaction in the assessment order that there was either concealment of facts or furnishing of inaccurate particulars by the assessee and that in view of the decision of this Court in CIT vs. Ram Commercial Enterprises Ltd. (2001) 167 CTR (Del) 321 : (2000) 246 ITR 568 (Del) the penalty proceedings cannot be sustained.

5. We may note at the outset that the decision of this Court in Ram Commercial Enterprises Limited has been approved by the Supreme Court in Dilip N. Shroff vs. Joint 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)

6. While not contesting the proposition laid down by this Court in Ram Commercial Enterprises Limited, Ms. Sonia Mathur, learned standing counsel for the Revenue nevertheless urges that another Bench of this Court has in CIT vs. Rampur Engg. Co. 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. :

"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.

7. 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.

8. Having examined the assessment order ourselves, we are unable to discern therein any satisfaction recorded by the AO that penalty proceedings should be initiated. While it is true that the assessee could not file confirmation from the parties from whom the amounts were received, that by itself does not indicate that there was furnishing of incorrect particulars. In fact we do not find that the assessment order was so much about concealment of particulars as about the interpretation of the information furnished by the assessee.

9. In the circumstance we find no substantial question of law arises in the present appeal. Dismissed.

MADAN B. LOKUR, J

S. MURALIDHAR, J

OCTOBER 09, 2007