

67-43  
29/9/06

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G" NEW DELHI

BEFORE SHRI D.R. SINGH, JM & SHRI K.D. RANJAN, AM

I.T.A. No: 1448/D/2006  
Assessment Year : 1997-98

Airport Authority of India,  
Rajiv Gandhi Bhawan,  
Safdarjung Airport,  
New delhi - 110 003.  
(Appellant)

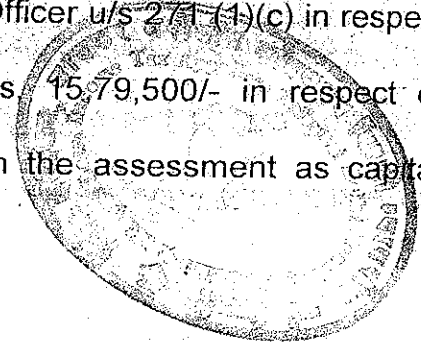
V/s DCIT,  
Company Circle 1 (1),  
New Delhi.  
(Respondent)

Appellant by : Shri Ranu Jain, CA  
Respondent by : Shri Satbir Singh, CIT DR

ORDER

PER D.R. SINGH, JM

The assessee has filed this appeal against the order of CIT (A) passed in appeal no. 251/2005-06 dated 28-2-2006 for sustaining the penalty amount levied by the Assessing Officer u/s 271(1)(c) in respect of addition of Rs. 9,22,30,210/- and Rs. 15,79,500/- in respect of exchange variation amount disallowed in the assessment as capital



expenditure and disallowance on depreciation on cost of radio relay equipment respectively.

2. At the outset of appellate proceedings, Learned AR for the assessee submitted that in the instant case the Assessing Officer has not recorded the satisfaction in terms of section 271 (1)(c) of the act for initiating penalty proceedings against the assessee and so the penalty order passed by the Assessing Officer is liable to be cancelled and the impugned penalty amounts sustained by the CIT (A) are also liable to be deleted. The learned AR for the assessee submitted that the assessee's appeal may be disposed off only on this legal issue.

3. In this legal issue, we are required to decide whether the Assessing Officer has recorded the satisfaction in terms of Section 271(1)(c) of the Act for initiating penalty proceedings against the assessee and if not whether the impugned penalty amounts levied by the Assessing Officer and sustained by the CIT (A) are liable to be deleted/cancelled in view of the non-compliance of this statutory provision by the Assessing Officer.

4. Learned AR for the assessee referring to the assessment order submitted that in this assessment order the Assessing Officer only at the end of his order has merely mentioned, "Penalty proceeding u/s

271(1)(c) have been initiated separately". The learned AR for the assessee further referring to the decisions of jurisdictional High Court of Delhi as well as that of Punjab & Haryana High Court mentioned that since the Assessing Officer has not recorded the satisfaction in terms of Section 271(1)(c) in accordance with the principles laid down in the cases decided by these Hon'ble High Courts so the penalty order passed by the Assessing Officer was liable to be cancelled and the penalty amounts sustained by the CIT (A) are liable to be deleted.

5. Whereas on the other hand, the learned DR for the revenue submitted that since the Assessing Officer in his assessment order has clearly mentioned that penalty proceedings u/s 271(1)(c) are being initiated separately, is a sufficient compliance of the provisions of section 271(1)(c) of IT Act and is a clear indication in the assessment order by the Assessing Officer that the Assessing Officer had satisfied himself in the course of assessment proceedings that the assessee had concealed his particulars of income or has furnished inaccurate particulars of his income and hence the legal issue raised by the assessee is required to be decided against the assessee.

6. We have considered the rival submissions of both the parties, perused the records and carefully gone through the orders of the tax



authorities below for disposing off the legal issue under consideration before us.

7. On considering this submissions of learned DR for the Revenue, we are unable to agree with the same because as we are working under the jurisdictional High Court of Delhi so the decisions of jurisdictional High Court of Delhi are binding on this Tribunal which is working under the jurisdiction of Delhi High Court and so we are bound to follow the orders of jurisdictional High Court of Delhi who have consistently held that in case the satisfaction in the assessment order has not been recorded by the Assessing Officer in terms of section 271(1)(c) of the Act, the initiation of penalty proceedings under section 271(1)(c) of the Act and the order passed thereof under section 271(1)(c) of the Act is nullity and so the same is required to be cancelled. The relevant decisions of the jurisdictional High Court of Delhi and Punjab & Haryana High Court propounding the proposition of law regarding recording satisfaction for initiating penalty proceedings under section 271(1)(c) are stated as under :

(a) *In CIT vs. Ram Commercial Enterprises Ltd., 246 ITR 568 (Del), their Lordships while observing that the satisfaction as to the assessee having concealed the particulars of his income or furnished inaccurate particulars of such income is to be arrived at by the assessing officer*

during the course of any proceedings under the Act which would mean the assessment proceedings without which the very jurisdiction to initiate the penalty proceedings is not conferred on the assessing authority by reference to clause (c) of sub-section (1) of section 271 of the Income Tax Act, 1961. A bare reading of the provisions of Section 271 and the law laid down by the Supreme Court makes it clear that, it is the assessing authority who has to form his own opinion and record his satisfaction before initiating the penalty proceedings. Merely because the penalty proceedings have been initiated it cannot be assumed that such a satisfaction was arrived at: -

Held, dismissing the application to direct reference, that the Tribunal had found that the assessment order did not record the satisfaction as warranted by section 271 for initiating proceedings. The Tribunal was justified in cancelling the penalty. No question of law arose from its order. In its decision their Lordships also referred to 44 ITR 739 (SC), 92 ITR 513 (P&H) and 86 ITR 557 (SC).



(b) *In Diwan Enterprises Vs. CIT and others, 246 ITR 571 (Del), their Lordship held as under:*

*As regards Section 271(1)(c), the Assessing Officer had nowhere recorded till the conclusion of the assessment proceedings his satisfaction that the assessee had concealed the particulars of his income or furnished inaccurate particulars of such income. This was a jurisdictional defect which could not be cured. The initiation of the penalty proceedings was itself bad and consequently all the subsequent proceedings leading up to the passing of the penalty order must fail.*

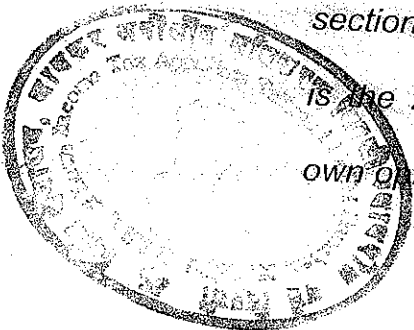
(c) *In Commissioner of Income-tax vs. B. R. Sharma, [2005] 275 ITR 303 (Delhi), their Lordships held, dismissing the appeal, that on the facts it was clear that the proceedings were initiated without recording the requisite satisfaction. Even the order of assessment prima facie did not establish the concealment or furnishing of incorrect particulars. On the contrary, the appellate authority as well as the Tribunal had held that the assessee's action was bona fide. The cancellation of penalty was valid.*

(d) In *CIT vs. Vikas Motors (P) Ltd.*, [2005] 277 ITR 337 (Delhi) : 194 CTR 384 (Del), their Lordships held that it is mandatory for the Assessing Officer to record satisfaction before drawing an inference for the purpose of levying penalty while completing the assessment under section 143(3) of the Income-tax Act, 1961. The provisions of section 271(1)(c) are penal in nature, thus must be strictly construed, and the element of satisfaction should be apparent from the order itself, it is not for the courts to go into the mind of the authorities or trace the reasons from the file of such authorities.

Further held, dismissing the appeal, that the order of the Assessing Officer *ex facie* suffered from the vice of non-application of mind and was liable to be set aside."

(e) In *Commissioner of Income-Tax vs. Auto Lamps Ltd.*, [2005] 278 ITR 32 (Delhi), their Lordships observing that -

"Before initiating penalty proceedings under section 271(1)(c) of the Income-tax Act, 1961, it is the Assessing Officer who has to form his own opinion and record his satisfaction. Merely



because the penalty proceedings have been initiated, it cannot be assumed that such a satisfaction was arrived at.

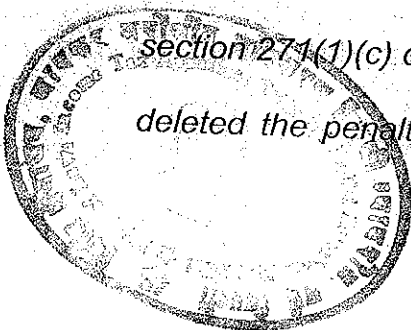
Held, that the Assessing Officer had recorded in his order that penalty proceedings under section 271(1)(c) for furnishing inaccurate particulars of the income had been initiated separately. This itself showed that without even mentioning the essential ingredients which the Assessing Officer is obliged to record for initiation of penalty proceedings, the order was passed to initiate penalty proceedings in a routine manner, an apparent violation of the relevant provisions. The Assessing Officer failed to record the requisite satisfaction in consonance with the settled principles of law. Therefore, the order suffered from the infirmity of non-application of mind. The Commissioner (Appeals) and the Tribunal had rightly deleted the penalty. No question of law arose for consideration of the court."



(f) In *Shri Bhagwant Finance Co. Ltd. vs. Commissioner of Income-Tax and Another*, [2006] 280 ITR 412 (Delhi), their Lordships held as under:

"The satisfaction of the Assessing Officer under section 271 is a condition precedent to initiate a penalty proceeding. The Assessing Officer nowhere recorded till the conclusion of the assessment proceedings his satisfaction that the assessee had concealed the particulars of his income or furnished inaccurate particulars of such income. This was a jurisdictional defect which could not be cured. Thus, the initiation of the penalty proceedings was itself bad and consequently all the subsequent proceedings up to the passing of the penalty order must fail."

(g) In *CIT vs. Munish Iron Store*, 263 ITR 484 (P&H), the Assessing Officer had finalized the assessment under section 143(3) on the basis of revised return filed by the assessee and ordered initiation of proceedings under section 271(1)(c) of the Act for levy of penalty. The Tribunal deleted the penalty on the ground that while finalizing the



*assessment the Assessing Officer did not record satisfaction in terms of Section 271(1)(c). Their Lordships upheld the order of the Tribunal and further observed that the jurisdiction to impose penalty flows from recording of the satisfaction of the Assessing Officer regarding concealment of income. In case there is a defect in the assumption of jurisdiction, it cannot be cured.*

8. We have examined the order of Assessing Officer and find that in the entire assessment order the assessing officer has not recorded his satisfaction regarding the concealment of income or for furnishing inaccurate particulars of his income by the assessee before initiating the penalty proceedings against the assessee under section 271(1)(c) of the Act because in the assessment order the Assessing Officer at the end of the order has merely mentioned "Penalty proceedings u/s 271(1)(c) have been initiated separately" and the same is neither in accordance with the proposition of law laid down by the High Courts in their decisions (Supra) regarding recording of satisfaction for initiating penalty proceedings u/s 271 (1)(c) nor in terms of section 271 (1)(c) and hence the very jurisdiction to initiate penalty proceedings was not conferred on the assessing authority under section 271(1)(c) of the Act as well as in accordance with the principles laid down by the

( jurisdictional High Court in their order (supra) as well as that of the order (supra) of Punjab & Haryana High Court.

9. Hence, respectfully following the decisions (supra) of the jurisdictional High Court of Delhi and the decision (supra) of the High Court of Punjab and Haryana, it is held that the jurisdiction assumed by the Assessing Officer in initiating penalty proceedings against the assessee under section 271(1)(c) without recording such satisfaction as warranted under section 271(1)(c) is bad in law. Accordingly the legal issue is decided in favour of assessee and against the Revenue and consequent upon this finding, the impugned order passed by the Assessing Officer is hereby cancelled and the impugned order of CIT (A) sustaining the same is set aside.

10. Since we have cancelled the penalty order on account of our findings recorded on the legal issue hereinabove in this order we need not decide the other grounds of appeal taken by the assessee relating to merits of the imposition of impugned penalty amount by the Assessing Officer.

11. In the result, the instant appeal filed by the assessee is allowed.



Order announced in the open court today on 26<sup>th</sup> June, 2007 after the conclusion of the hearing.

Sd/-  
[K.D. RANJAN]  
ACCOUNTANT MEMBER

Sd/-  
[D.R. SINGH]  
JUDICIAL MEMBER

NB

Copy forwarded to: -

- 1. Appellant *By home*
- 2. Respondent
- 3. CIT
- 4. CIT(A)
- 5. DR, ITAT

TRUE COPY

By Order,

*[Signature]*

Deputy Registrar,  
ITAT, Delhi Benches

*[Faint text]*  
Deputy Registrar,  
ITAT, Delhi Benches

