(2007) 09 DEL CK 0263

In the Delhi High Court

Case No : Income Tax A. No. 114 of 2007

Commissioner of Income Tax — APPELLANT

Vs

Krishna Maruti Ltd. — RESPONDENT

Date of Decision : 14-09-2007

Acts Referred:
Income Tax Act, 1961 — Section 260A, 271, 271(1)

Citation : (2009) 309 ITR 138

Hon'ble Judges : Madan B. Lokur, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : P.L. Bansal, for the Appellant; Kavita Jha, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal u/s 260A of the Income Tax Act, 1961 ("the Act") is directed against the order dated April 18, 2006, passed by the Income Tax Appellate Tribunal ("the Tribunal") Delhi Bench "E", New Delhi, in I.T.A. No. 3551/Del./2002 for the assessment year 1995-96. By the impugned order, the Tribunal allowed the appeal filed by the assessee challenging the levy of penalty u/s 271(1)(c) of the Act. The penalty was set aside by the Tribunal on the ground that the Assessing Officer had not recorded any satisfaction in the assessment order that there was either concealment of income or inaccurate particulars furnished by the assessee.

2. Ms. Prem Lata Bansal, learned senior standing counsel for the Revenue submits that in Commissioner of Income Tax Vs. Ram Commercial Enterprises Ltd., this Court has taken the view that if the Assessing Officer does not record his satisfaction in the assessment order that penalty proceedings should be initiated against the assessee the subsequent order levying penalty would be bad in law. However, she says that another Bench of this Court has in Commissioner of Income Tax Vs. Indus Valley Promoters Ltd., , referred the following substantial question of law to a larger Bench which according to the referring Bench was not considered in Commissioner of Income Tax Vs. Ram Commercial

Enterprises Ltd., :

Whether satisfaction of the officer initiating the proceedings u/s 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?

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

4. We find that the decision of this Court in Commissioner of Income Tax Vs. Ram Commercial Enterprises Ltd., has been approved by the Supreme Court in Dilip N. Shroff Karta of N.D. Shroff Vs. Joint Commissioner of Income Tax, Special Range Mumbai and Another, and Sri T. Ashok Pai Vs. Commissioner of Income Tax, Bangalore, .

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 Assessing Officer for initiating penalty proceedings against an assessee u/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 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 u/s 271(1)(c) of the Act is discernible therefrom.

6. On a perusal of the assessment order, we find that the Assessing Officer has, in regard to initiation of penalty proceedings, observed as follows:

Penalty proceedings u/s 271(1)(c) have been initiated separately. Assessed. Issue necessary forms to the assessee.

7. The above recording does not satisfy the requirement of Section 271(1)(c) of the Act as explained by this Court in Commissioner of Income Tax Vs. Ram Commercial Enterprises Ltd., . Further, even on a detailed perusal of the assessment order no satisfaction of the Assessing Officer that penalty proceedings are required to be initiated against the assessee is discernible. None has also been pointed out to us.

8. No substantial question of law arises.

9. Dismissed.

