THE HON'BLE SRI JUSTICE GODA RAGHURAM
AND
THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

I.T.T.A.NOs.29, 31 and 33 OF 2000

%27.08.2012

M/s.Chennakesava Pharmaceuticals, Vijayawada.

...APPELLANT

VERSUS

$The Commissioner of Income Tax,
Vijayawada.

...RESPONDENT

< GIST:

> HEAD NOTE:

!Senior Counsel for the appellant: :Sri AV Krishna Koundinya

^ Senior Standing Counsel for the respondent : Sri J.V.Prasad.

? Cases referred:

[1] (2010) 322 ITR 158 (SC)
2 (2010) 335TR 259 (Delhi)
3 (2008) 300 ITR 40 (AP)
4 (2003) 263 ITR 484 (P & H)
5 (2005) 277 ITR 337 (Delhi)
6 (2000) 246 ITR 568 (Delhi)
7 (2000) 246 ITR 571 (Delhi)
8 (2009) 309 ITR 143 (Delhi) (FB)
9 (2008) 307 ITR 147 (Delhi)
10 (2007) 291 ITR 519(SC)
11 (2000)241 ITR 124 (MP)
12(2001)251 ITR 009 (SC)
13(2010)291ITR 519 (SC)
14AIR 1973 S.C. 22
15(2008)306 ITR 277 (SC)

HONOURABLE SRI JUSTICE GODA RAGHURAM

AND

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

I.T.T.A.Nos.29, 31 & 33 of 2000

COMMON JUDGMENT (per Hon'ble Sri Justice M.S.Ramachandra Rao):

I.T.T.A.Nos.29, 33 and 31 of 2000 are filed under section 260-A of the Income Tax Act, 1961 (for brevity 'the Act) by M/s.Chennakesava Pharmaceuticals, Vijayawada (herein after referred to as 'assessee') against the common orders of the A.P. Income Tax Appellate Tribunal (Hyderabad Bench 'B'), Hyderabad in I.T.A.Nos.181, 182 and 183/Hyd/93 for the assessment years
1982-83, 1983-84 and 1984-85 respectively.

2. The assessee had filed its return of income declaring income of Rs.53,102/-, Rs.69,930/- and Rs.91,890/- for the assessment years 1982-83, 1983-84 and 1984-85 respectively. An intimation under Section 143 (1) of the Act was sent for the assessment years 1982-83 and 1983-84.

3. During November 1985, the Income Tax Department initiated survey operations under Section 133-A of the Act. The assessee filed revised return declaring an income of Rs.1,33,102, Rs.1,64,930 and Rs.1,76,890 for the assessment years 1982-83,1983-84 and 1984-85 respectively. The assessing officer completed assessments under Section 143 (3) read with 148 for the assessment years 1982-83 and 1983-84 vide two separate orders dt.31.3.1989, and for the assessment year 1984-85, he completed assessment on 27-3-1987 under Section 143 (3) of the Act. The assessing officer later passed orders under Section 271 (1) (c) of the Act levying a penalty of Rs.50,000, Rs.62,000 and Rs.70,985/- respectively for each of the above three years.

4. Challenging the same, the assessee filed appeals to the Commissioner of Income Tax (Appeals) and the said appeals were allowed on 12.10.1992 in favour of the assessee setting aside the penalty imposed on it under Section 271 (1) (c) of the Act.

5. Aggrieved thereby, the Revenue preferred appeals to the Income Tax Appellate Tribunal, Hyderabad, Bench-B, being I.T.A.Nos.181, 182 and 183/Hyd/93 for the assessment years 1982-83, 1983-84 and 1984-85 respectively. The Income Tax Tribunal, by a common order dt.6-1-2000, allowed the above appeals and sustained penalty imposed on the assessee by the assessing officer for the three assessment years 1982-83, 1983-84 and 1984-85.

6. Challenging the same, the above I.T.T.A.Nos.29, 33 and 31 of 2000 have been filed by the assessee. These three appeals were admitted on 26-09-2000 to consider the following substantial question of law:

> "Whether in the facts and circumstances of the case, the appellate Tribunal was justified in differing with the view taken by the 1st appellate authority and holding that the penalty was leviable under Section 271 (1) (c) of the Income Tax Act?"

7. Sri A.V. Krishna Koundinya, senior counsel for the assessee in these appeals would submit as follows:

1. The conditions mentioned in Section 271 (1) (c) must exist for levying penalty i.e. unless there is a finding that the details in the return of income are incorrect or false, no penalty can be levied under Section 271 (1) (c) of the Act. In the cases on hand, the return of income had been accepted on the ground that the assessee had made full disclosure of its income. For the assessment year 1984-85, certain expenditure claimed is disallowed and that itself cannot be a

ground for levying a penalty. He relied on **Commissioner of Income Tax Vs. Reliance Petroproducts Pvt. Ltd.**[1] and **Commissioner of Income Tax Vs. SAS Pharmaceuticals**[2].

2. For the levy of penalty under Section 271 (1) (c) of the Act, the assessing officer has to form his own opinion and record satisfaction of concealment or furnishing of inaccurate particulars of income in his proceedings, otherwise it would be a jurisdictional defect. In the present case, no such satisfaction is recorded by the assessing officer in the assessment order. For the assessment year 1984-85, there is merely an endorsement to the effect that penalty proceedings would follow, which is not sufficient. Therefore, levy of penalty is not sustainable. He relied on **V.V.Projects and Investments Pvt. Ltd. Vs. Deputy Commissioner of Income Tax**[3], **Commissioner of Income Tax Vs. Munish Iron Store**[4], **Commissioner of Income Tax Vs. Vikas Promoters Pvt. Ltd.**[5], **Commissioner of Income Tax Vs. Ram Commercial Enterprises Ltd.**[6], **Diwan Enterprises Vs. Commissioner of Income Tax**[7], **Commissioner of Income Tax vs. Rampur Engineering Co. Ltd.**[8] and **Commissioner of Income Tax Vs. M.K. Sharma**[9] (which was confirmed in SLP(Civil) No.17591/2008 dismissed on 18.7.08)

3. When the assessment order merely states “penalty

proceedings had been initiated", it will not satisfy the requirement of Section 271 (1) (c) of the Act. Because no satisfaction of the assessing officer that penalty proceedings required to be initiated against the assessee was discernable. (See 9 supra). He relied on the decision reported in **Dilip N.Shroff Vs. Joint Commissioner of Income Tax**[10], **Commissioner of Income Tax vs. Suresh Chandra Mittal**[11] **and Commissioner of Income Tax vs. Suresh Chandra Mittal**[12]. He also contended that in **Commissioner of Income Tax Vs. Reliance Petroproducts Pvt.Ltd**[13], the Supreme Court had clarified that the decision in **Dilip N.Shroff** (10 supra) to the extent that the court explained the meaning of the terms "conceal" and "inaccurate" in S.271(1)(c) of the Act is not overruled and still holds the field and that it was overruled only to the extent it had held there must be an element of "mens rea" necessary before penalty can be imposed u/s.271(1) (c)of the Act.

8. Per contra, Sri J.V.Prasad, Senior Standing Counsel for the Income Tax Department, contends that there is no necessity for the assessing officer to record in the assessment order that the assessee had filed an incorrect or false return and even if the assessment order does not say anything on the matter, it is open to the assessing officer to impose penalty under Section 271 (1) (c) of the Act. He relied on **D.M. Manasvi Vs. Commissioner of Income Tax, Ahmedabad**[14]. He also contended that the decision of this Court in **V.V.Projects and Investments's case** (3 supra) is contrary to the decision in **D.M. Manasvi's case** (14 supra) and therefore, this Court should not follow

the decision in **V.V.Projects and Investments's case** (3 supra). He therefore contended that the order of the Income Tax Appellate Tribunal is valid in law and is not liable to be interfered by the High Court exercising jurisdiction under Section 260-A of the Act . He also contended that the assessee had not raised the question about need for the assessing officer to mention in the assessment order containing the reasons for imposing the penalty in the grounds of appeal filed in this Court or before the Income Tax Appellate Tribunal and therefore, such a contention cannot be allowed to be raised by the assessee in these appeals.

9. Heard Sri A.V.Krishna Koundinya, learned senior counsel for the appellant-assessee and Sri J.V.Prasad, learned Standing Counsel for the Income Tax.

10. As mentioned above, the question framed by this Court while admitting these appeals is "Whether in the facts and circumstances of the case, the appellate Tribunal was justified in differing with the view taken by the 1st appellate authority and holding that the penalty was leviable under Section 271 (1) (c) of the Income Tax Act?" In our view this question as framed is wide enough to encompass within it also the issue "whether there is a need for the assessing officer to mention in the assessment order ,the reasons for imposing the penalty under Section 271 (1) (c) of the Act?". Therefore, the contention of Sri J.V.Prasad, Senior Standing Counsel of the Income Tax Department that such an issue cannot be considered in these appeals is rejected.

11. Section 271 (1) (c) of the Act states as follows:

> "**Section 271**:-**Failure to furnish returns, comply that notice, concealment of income etc.** (1) If the Assessing officer, or the Commissioner (Appeals) or the Commissioner in the course of any proceedings under this Act, is satisfied that

any person.....

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, ...

he may direct that such person shall pay by way of penalty,..."

12. In **Manasvi's case** (14 supra), relied upon by the Revenue, the assessee was an individual and the issue related to the levy of penalty u/s.271(1)(c) of the Act for the assessment years 1959-60, 1960-61 and 1961-62 and 1962-63. During those years, the assessee derived income from several sources. The assessment for the first year was made under Section 23 (3) of the Indian Income Tax Act, 1922. The Income Tax Officer subsequently found that income from the business in the name of M/s.Kohinoor Grain Mills Sales Depot (hereinafter referred to as "the Kohinoor Mills") was not included in the return filed by the assessee and he had not shown any connection with or interest in the said business. For the subsequent three years the assessee disclosed 20 per cent as his share of the profits from Kohinoor Mills. The Income Tax Officer was of the opinion that Kohinoor Mills was not a genuine partnership but was the sole proprietorship concern of the assessee and the whole of the income from the said concern belonged to the assessee. As the assessment for the first two years had already been completed before the Income Tax Officer got the information regarding the interest in Kohinoor Mills, the Income Tax Officer reopened the assessment for those two years. The income from the Kohinoor Mills was thereafter included in the income of the assessee for the first two years as well as in the assessments relating to the remaining two years. The order of the Income Tax Officer in this respect was upheld by the Appellate Assistant Commissioner as well as by the Income Tax Appellate Tribunal. The non-disclosure of the business profits from Kohinoor Mills was considered by the Income Tax Officer to represent deliberate concealment, and so he initiated penalty proceedings under Section

271 of the Act for the four assessment years in question. As, however, the minimum penalty leviable under Section 271 (1) (*c*) of the Act exceeded the sum of rupees one thousand, the cases were referred under Section 274(2) of the Act to the Inspecting Assistant Commissioner who levied penalty u/s.271(1)(c) . In appeal before the Tribunal it was submitted on behalf of the assessee that there had been no valid levy of the penalties because the penalty proceedings had not been commenced in the course of proceedings under the Act. The Tribunal rejected this contention and observed that, as the Income Tax Officer had given directions in the assessment order for the issue of a notice under Section 271(1)(*c*), the penalty proceedings could be said to have commenced during the course of the assessment proceedings and, therefore, levy of penalty was not invalid. The Tribunal also rejected the submission made on behalf of the assessee that there was no evidence to show that the assessee was the owner of the business of Kohinoor Mills and that there had been concealment of his income on the part of the assessee. The Tribunal, however, gave relief to the assessee in the matter of quantum of penalty. On application made by the assessee, following two questions were referred under Section 256 (1) of the Income Tax Act, 1961 to the High Court:

> "(1) Whether, on the facts and in the circumstances of the case, the proceedings for the imposition of penalty were properly commenced in the course of any proceedings under the Act as required by Section 271 of the Income Tax Act, 1961, for Assessment Years 1959-60 to 1962-63?
>
> (2) Whether, on the facts and in the circumstances of the case, there was any material or evidence before the Tribunal to hold that the assessee had deliberately concealed particulars of his income or deliberately furnished inaccurate particulars of such income as required by Section 271(1)(*c*) of the Act for Assessment Years 1959-60 to 1962-63?"

These questions were answered in the affirmative by the High Court in favour of the Revenue and thereafter, the matter was carried to the Supreme Court. The Supreme Court held at para-8 as follows:

> "The fact that notices were issued subsequent to the making of the assessment orders would not, in our opinion, show that there was no satisfaction of the Income Tax Officer during the assessment proceedings that the assessee had concealed the particulars of his income or had furnished incorrect particulars of such income. What is contemplated by clause (1) of Section 271 is that the Income Tax Officer or the Appellate Assistant Commissioner should have been satisfied in the course of proceedings under the Act regarding matters mentioned in the clauses of that sub-section. It is not, however, essential that notice to the person proceeded against should have also been issued during the course of the assessment proceedings. Satisfaction in the very nature of things precedes the issue of notice and it would not be correct to equate the satisfaction of the Income Tax Officer or Appellate Assistant Commissioner with the actual issue of notice. The issue of notice is a consequence of the satisfaction of the Income Tax Officer or the Appellate Assistant Commissioner and it would, in our opinion, be sufficient compliance with the provisions of the statute if the Income Tax Officer or the Appellate Assistant Commissioner is satisfied about the matters referred to in clauses (*a*) to (*c*) of sub-section (1) of Section 271 during the course of proceedings under the Act even though notice to the person proceeded against in pursuance of that satisfaction is issued subsequently."

It is important to note that in the said case the Income Tax officer while making the assessment orders for the assessment years in question held that Kohinoor Mills had been wrongly shown to be a partnership firm and that the other alleged partners were simply name lenders of the assessee.

13. In **Ram Commercial Enterprises Limited's case** (6 supra), the Delhi High Court held after considering the above judgment in **Manasvi's case** (14 supra) as follows:

> "Merely because this court while hearing" this application may be inclined to form an opinion that the material available on record could have enabled the initiation of penalty proceedings, that cannot be a substitute for the requisite finding which should have been recorded by the assessing authority in the order of assessment but has not been so recorded.

> 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 which has to form its own opinion and record its 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 in the absence of the same being spelt out by the order of the assessing authority. Even at the risk of repetition we would like to state that the assessment order does not record the satisfaction as warranted by Section 271 for initiating the penalty proceedings*."

In that case, there was no finding recorded by the assessing authority in the order of assessment about concealment of particulars of income or furnishing of inaccurate particulars of such income but the assessing officer in the assessment order directed that penalty proceedings u/s.271(1)(C) to be initiated against the assessee. The Delhi High Court confirmed the finding of the Income Tax Appellate Tribunal that levy of penalty was not proper as the requisite satisfaction was not recorded in the order of assessment. It rejected the contention of the Revenue that all the facts available on record coupled with the assessment order itself would show that the assessing authority had chosen to initiate proceedings under Section 271 (1) (c) of the Act and that it is possible to infer that the requisite satisfaction was arrived at by the assessing authority.

14. In **Munish Iron Store's case** (4 supra), an assessment order had been passed by the assessing officer wherein he ordered initiation of proceedings u/s.271(1) (c) of the Act for levy of penalty. The Punjab and Haryana High Court again considered **Manasvi's case** (14 supra) upheld the order of Income Tax Appellate Tribunal in setting aside the penalty on the ground that "*the satisfaction about concealment of income or furnishing inaccurate particulars of income to assume jurisdiction to initiate and levy penalty is clearly not recorded in the assessment order*".

15. In **Vikas Promoters Pvt. Ltd's case** (supra 5), the Delhi High Court considered a situation where the assessing officer at the end of his order u/s.143(3)(i) of the Act stated:

> "Assessed. Charge interest. Issue demand notice and challan accordingly.Penalty proceedings under Section 271 (1) (c) are initiated separately."

The Delhi High Court confirmed the order of Income Tax Appellate Tribunal which set aside the order of the appellate authority confirming the penalty proceedings and held that there was no satisfaction recorded by the concerned authorities and the order was bad in law. It held that the word "satisfaction" is of significance in Section 271 (1) and held as follows:

> "... satisfaction is not to be in the mind of the assessing officer but must be reflected in the record... the authorities performing quasi-judicial or judicial functions must give reasons in support of its order so as to provide in the order itself the ground which weighed with the authorities concerned for passing an order adverse to the interest of the assessee. Further more the provisions of Section 271 (1) (c) are penal in nature thus must be strictly construed, 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 files of such authorities."

It further held that the judgment in **Ram Commercial Enterprises Ltd.'s case** (6 supra) is applicable to the facts of that case.

16. Similar view has been taken in **Diwan Enterprises's case** (7 supra) wherein it was held that when the assessment officer had not recorded till the conclusion of assessment proceedings his satisfaction that the assessee had concealed the particulars of his income or furnished inaccurate particulars of such income, it is a jurisdictional defect which cannot be cured and therefore, the initiation of penalty proceedings was bad.

17. I n **Rampur Engineering Company Limited's case** (8 supra), a Full Bench of Delhi High Court considered the correctness of the decision of the Delhi High Court in **Ram Commercial Enterprises Ltd.'s case** (6 supra) and after considering the decision in **Manasvi's case** (14 supra), held as follows:

> "In our opinion, the legal position is well settled in view of the Supreme Court decisions in CIT Vs. S.V.Angidi Chettiar (1962) 44 ITR 739 (SC) and D.M. Manasvi Vs. CIT (1972) 86 ITR 557 (SC), that power to impose penalty under Section 271 of the Act depends upon the satisfaction of the Income-Tax Officer in the course of the proceedings under the Act. It can not be exercised if he is not satisfied and has not recorded his satisfaction about the existence of the conditions specified in clauses (a), (b) and (c) before the proceedings are concluded. It is true that mere absence of the words "I am satisfied" may not be fatal *but such a satisfaction must be spelt out from the order of the assessing authority as to the concealment of income or deliberately furnishing inaccurate particulars. In the absence of a clear finding as to the concealment of income or deliberately furnishing inaccurate particulars, the initiation of penalty proceedings will be without jurisdiction.* In our opinion, the law is correctly laid down in Ram Commercial Enterprises Ltd. (2000) 246 ITR 568 (Delhi) and we are in respectful agreement with the same. The reference is answered accordingly."

18. In **V.V.Projects and Investments Pvt. Ltd's case** (3 supra), a Division Bench of this Court considered the decisions in **Manasvi's case** (14 supra), **Munish Iron Stores' case** (4 supra), **Vikas Promoters Pvt. Ltd's case** (5 supra), **Ram Commercial Enterprises Ltd.'s case** (6 supra) and held:

> "From the legal position noticed above, it is clear that the assessing officer has to form his own opinion and record his satisfaction of concealment of income or furnishing of inaccurate particulars of income before initiating penalty proceedings under s.271(1)(c) of the Act. It is also clear that such satisfaction of the assessing officer must be spelt out in the order of assessment itself but cannot be assumed from the issuance of notice u/s.271 (1)(c) of the Act. Failure to record such satisfaction amounts to a jurisdictional defect which cannot be cured.....It is relevant to note that whether the assessee has concealed his

> income or has deliberately furnished inaccurate particulars thereof is essentially a finding of fact which has to be spelt out by way of recording the satisfaction of the Assessing Officer as required under Section 271 (1) of the Act. Therefore, in the absence of such a finding in the assessment order no penalty proceedings can be initiated."

It rejected the contention of the Revenue that the penalty proceedings are independent and it is sufficient if the satisfaction is recorded in the order levying penalty. It also referred to **Dilip N.Shroff V. Joint CIT** (10 supra) and noted that the Supreme Court in that case had held that order imposing penalty u/s.271 (1)(c) being penal in nature, the rule of strict construction shall apply.

19. In **Dilip N.Shroff's case** (10 supra), the Supreme approved the judgment in **Ram Commercial Enterprises Ltd.'s case** (supra 6) and also held that Section 271 (1) (c) being a penal provision must be strictly construed and that *mensrea* is necessary ingredient for penalty under Section 271 (1) (c) of the Act.

20. But in **Commissioner of Income Tax vs. Dharmendra Textile Processsors**[15], the Supreme Court held that the penalty u/s.271 (1)(c) is a civil liability and "wilful" concealment is not an essential ingredient for attracting civil liability. It over ruled only that portion of the judgment in **Dilip N.Shroff's case** (10 supra)wherein the Supreme Court had held that the *mensrea* was essential ingredient for imposing penalty under Section 271 (1) (c) of the Act. This was pointed out in **Reliance Petroproducts Pvt. Ltd's case** (1 supra).

21. In **Reliance Petroproducts Pvt. Ltd's case** (1 supra), the Supreme Court also held that imposition of penalty is unwarranted when there is no finding in the assessment order that details supplied by the assessee were found to be false. This indicates that the view taken by the Delhi High Court in **Ram Commercial Enterprises Ltd.'s**

case (6 supra) which has been approved in **Dilip N.Shroff's case** (10 supra) continues to be valid and this part of the judgment in **Dilip N.Shroff's case** (10 supra) has not been over ruled and continues to be good law.

22. Moreover the decision of the Delhi High Court in **Ram Commercial Enterprises** (6 supra) was also followed by the same High Court in **Commissioner of Income Tax v. M.K.Sharma** (9 supra) and **SLP(c) No.17591 of 2008** filed against the said decision was dismissed by the Supreme Court on 18.7.2008.

23. This Court while deciding **V.V.Projects and Investments Pvt. Ltd's case (3 supra)** had followed the decisions reported in **Munish Iron ore** (4 supra), **Vikas Promoters** (5 supra), **Ram Commercial Enterprises** (6 supra) apart from **Dilip N.Shroff** (10 supra) which have considered **Manasvi's case** (14 supra). Moreover the decision in **Ram Commercial Enterprises** (6 supra) was approved by the Full Bench of the Delhi High Court in **Rampur Engineering Company Limited's** case (8 supra).Even in **Reliance Petroproducts**
(1 supra), the Supreme Court had held that imposition of penalty is unwarranted when there is no finding in the assessment order that details supplied by the assessee were found to be false. Therefore, we agree with view taken in **V.V.Projects and Investments Pvt. Ltd's** case (3 supra) and hold that it was correctly decided . We do not agree with the Revenue that the decision in **V.V.Projects and Investments Pvt. Ltd's case** (3 supra) is contrary to the decision of the Supreme Court in **Manasvi's case** (14 supra)**.**

24. Applying the above principle that the assessing officer should record in the assessment order his satisfaction that the assessee had either concealed the income or furnished inaccurate particulars of

income in his return before imposing penalty, we noticed that in the assessment orders passed by the assessing officer for the assessment year 1982-83 (which is the subject matter of I.T.T.A.No.29 of 2000) and for the assessment year 1983-84 (which is subject matter of I.T.T.A.No.33 of 2000), no such satisfaction is recorded.

The assessing officer in the assessment order dt.31.3.1989 relating to the assessment year 1982-83 has merely recorded :

"Hence in view of the facts , the income declared as per the revised return filed on 3.3.1987 at Rs.1,33,102/- has been accepted and the assessee is considered to have made full disclosures of incomes for the assessment year 1982-83".

Again in the assessment order dt.31.3.1989 relating to the assessment year 1983-842-83 has recorded as follows:

"In view of the above facts and circumstances of the case, it has been concluded that the assessee has made its full disclosure of it's income at Rs.1,64,930/- in the revised return filed on 3-3-1987 and the income in the returns at Rs.1,64,930/- is accepted."

Nowhere has the assessing officer noted in the assessment order his satisfaction that there was either concealment of income by the assessee or that the assessee had furnished inaccurate particulars in his return of income and that there is a case made out for initiating proceedings u/s.271 (1) (c).

25. Therefore, we are of the view that initiation of the proceedings u/s.271 (1) (c) against the assessee for the assessment years 1982-83 and 1983-84 are not valid in law and CIT (Appeals) had rightly set

aside the same and that the Income Tax Appellate Tribunal erred in law in sustaining the penalties and reversing the order of CIT (Appeals). Therefore I.T.T.A.Nos.29 and 33 of 2000 are allowed and the substantial question of law framed in these appeals is answered in favour of the assessee.

26. In regard to the assessment year 1984-85, which is the subject matter of I.T.T.A.No.31 of 2000, the assessing officer recorded in the assessment order "penalty proceedings are separately initiated under Section 271 (1) (a), 271 (1) (c) and 273 of the Act." There is no finding in categorical terms in the assessment order that the assessee had furnished inaccurate particulars or has concealed income although the assessing officer added a sum of Rs.11,000/- to the income returned by the assessee as per the revised return.

27. In **M.K.Sharma's case** (9 supra), where the assessment order contained the words "Assessed. Issue necessary forms. Penalty under Sections 271 (1) (a), 271 (1) (b), 271 (1) (c) and 273/274 of the Income Tax Act have been initiated. Charge interest under Sections 139 (8) and 215/217 of the Income Tax Act," the Delhi High Court held that the said statement recorded in the assessment order did not satisfy Section 271 (1) (c) of the Act as held by the Delhi High Court in **Ram Commercial Enterprises Ltd.'s case** (6 supra). Even in **Ram Commercial Enterprises Ltd.'s case** (6 supra), the assessing officer had only stated in the assessment order "Penalty proceedings under Section 271 (1) (c) amongst others to be initiated against the assessee separately." In that case the Delhi High Court held that merely because penalty proceedings have been initiated, it cannot be assumed that such a satisfaction was arrived at in the absence of same being spelt out by the assessing authority.

28. It is to be noted that the Legislature had amended Section 271 of the Act by Finance Act, 2008 and inserted sub-section (1B) with

retrospective effect from 01-04-1989 which provided as follows:

> "Section 271 (1B): Where any amount is added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment and the said order contains a direction for initiation of penalty proceedings under clause (c) of sub Section (1), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the assessing officer for initiation of the penalty proceedings under the said clause (c)."

This provision creates a fiction by which satisfaction of the Assessing Officer is deemed to have been recorded in cases where an addition or disallowance is made by the assessing officer and a direction for initiation of penalty proceedings is issued. The said provision is made effective retrospectively with effect from 01-04-1989. As the assessment order for assessment year 1984-85 has been passed on 27.3.1987, prior to 1.4.89, the revenue cannot rely on sub-section (1B) of s.271. Therefore, in view of the decisions in **M.K.Sharma** (9 supra) and in **Ram Commercial Enterprises Ltd.'s case (6 supra) ,** even for the assessment year 1984-85, the assessing officer was not justified in directing penalty proceedings to be initiated in the absence of any finding recorded by him in the assessment order that there has been concealment of income by the assessee or that the assessee had furnished inaccurate particulars in his return. Therefore, I.T.T.A.No.31 of 2000 is also allowed and the substantial question of law framed in the appeal is answered in favour of the assessee.

29. In the result, all the appeals are allowed setting aside the common orders dated 06-01-2000 of the A.P. Income Tax Appellate Tribunal (Hyderabad Bench 'B'), Hyderabad in I.T.A.Nos.181, 182 and 183/Hyd/93 for the assessment years 1982-83, 1983-84 and 1984-85. No costs.

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JUSTICE GODA RAGHURAM

JUSTICE M.S. RAMACHANDRA RAO

Date :27-08-2012
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[1] (2010) 322 ITR 158 (SC)
[2] (2010) 335TR 259 (Delhi)
[3] (2008) 300 ITR 40 (AP)
[4] (2003) 263 ITR 484 (P & H)
[5] (2005) 277 ITR 337 (Delhi)
[6] (2000) 246 ITR 568 (Delhi)
[7] (2000) 246 ITR 571 (Delhi)
[8] (2009) 309 ITR 143 (Delhi) (FB)
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[11] (2000)241 ITR 124 (MP)
[12] (2001)251 ITR 009 (SC)
[13] (2010)291ITR 519 (SC)
[14] AIR 1973 S.C. 22
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