Delhi High Court Commissioner Of Income-Tax vs M/S. Ram Commercial Enterprises ... on 8 October, 1998 Equivalent citations: 1998 VIAD Delhi 322, 1998 (47) DRJ 259 Author: R Lahoti Bench: R Lahoti, C Mahajan ORDER R.C. Lahoti, J. 1. By this petition under Section 256(2) of the Income-tax Act, 1961 the Revenue seeks a mandamus to the Income-tax Appellate Tribunal for drawing up the statement of case and referring the following question of law for the opinion of the High Court : "Whether, on the facts and in the circumstances of the case, the ITAT was correct in law in having failed to appreciate that assessee company had furnished inaccurate particulars of income in its return and also in deleting the penalty u/s 271(1)(c) imposed by the Assessing Officer." 2. The Assessment Year in question is 1986-87. The assessee filed a return declaring an income of Rs.15,700/-. During the course of survey it was found that the assessee had additional income. On 9.12.87 the assessee filed a revised return surrendering an income of Rs.5,50,000/- over and above what was declared earlier. On 29.12.97 the assessee made yet another communication to the Assessing Officer stating it to be in continuation of his earlier revised voluntary return of income surrendering yet another amount of Rs.8,99,000/- as income. There was another figure of Rs.1,000/- which was not explained by the assessee and therefore added as income. Thus, in all there was an addition made to the income of the assessee by the figure of Rs.24,50,000/- over and above the income already returned. 3. The assessment was finalised on 17.2.1981. By the Assessment Order the Assessing Officer also directed penalty proceedings under Section 271(1)(c), amongst others, to be initiated against the assessee separately. 4. After affording the assessee an opportunity of hearing, by order dated 22.3.90 the Assessing Authority imposed a penalty of Rs.9,77,100/- on the assessee forming an opinion that the assessee had deliberately concealed its income by filing inaccurate particulars of income to the tune of Rs.15,51,000/-. The penalty was confirmed in appeal by CIT(A) but has been set aside by the Income-tax Appellate Tribunal. 5. The Revenue sought for the question referred to hereinabove being referred to the High Court by moving a petition under Section 256(1) of the Income-tax Act which has been rejected by the Tribunal. 6. It was submitted by the learned Senior Standing Counsel for the Revenue that on the facts available on record and briefly set out hereinabove, a clear case of concealment of income was made out and, therefore, the Tribunal was not justified in deleting the penalty. The learned counsel also submitted that all such relevant facts though available on record were not kept in view by the Tribunal and, therefore, the findings arrived at by it are perverse and not binding on this court and hence a referable question of law does arise from the order of the Tribunal. Reliance has been placed on Mahavir Metal Works Vs. Commissioner of Income Tax, Punjab; 1973 (92) ITR 513 a Division Bench judgment of the Punjab & Haryana High Court. 7. The learned Senior Counsel for the assessee has submitted 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 Act. Reliance has been placed on the Supreme Court decision in D.M. Manasvi Vs. Commissioner of Income Tax, Gujarat II. 1972(86) ITR 557 wherein their Lordships have reiterated the view of the law taken in Commissioner of Income-Tax, Madras and Another Vs. S.V. Angidi Chettiar; 1962 (44) ITR 739, 745 stated in the following terms : "The power to impose penalty under section 28 depends upon the satisfaction of the Income-tax Officer in the course of proceedings under the Act; it cannot be exercised if he is not satisfied about the existence of conditions specified in clause (a),(b) or (c) before the proceedings are concluded. The proceeding to levy penalty has, however, not to be commenced by the Income-Tax Officer before the completion of the assessment proceedings by the Income-tax Officer. Satisfaction before conclusion of the proceeding under the act, and not the issue of a notice or initiation of any step for imposing penalty is a condition for the exercise of the jurisdiction." 7.1 The learned counsel further pointed by reading the appellate order of the ITAT that the findings of fact arrived at by any of the authorities below were not a subject matter of challenge before the Tribunal; what was contented before and what actually prevailed with the tribunal is the absence of any finding recorded by the assessing authority in the order of assessment conferring jurisdiction for initiation of penalty proceedings. The Supreme Court judgment in D.M. Manasvi case (supra) was relied on by the Tribunal while setting aside the penalty. 7.2 The learned counsel also carried the court through the order of assessment dated 17.2.1988 to demonstrate that the requisite satisfaction is not to be found arrived at in the order of the assessment. 8. The learned Senior Standing Counsel for the Revenue on the other hand submitted that all the facts available on record and as pointed out by him coupled with the fact that by the Assessment Order itself the Assessing Authority has chosen to initiate proceedings under Section 271(1)(c) of the Act leads to an inference that the requisite satisfaction was arrived at by the Assessing Authority. Therefore, the initiation of penalty proceedings cannot be found fault with and hence a question of law does arise. 9. Having heard the learned counsel for the parties and having given our anxious considerations to the material available on the record, in the light of the law laid down by their Lordships of the Supreme Court, we are of the opinion that no fault can be found with the judgment of the Tribunal and, therefore, the question suggested by the Revenue does not arise as a question of law from the order of the Tribunal. The law is clear and explicit. 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. 10. 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 initi- ating 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 spelled out by the order of the Assessing Au-

thority. 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. 11. As we have already held that the question suggested by the Revenue does not arise as a question of law from the order of the Tribunal, no fault can be found with the Tribunal rejecting the Department's application under Section 256(1) of the Act. 12. The present petition under Section 256(2) is rejected though without any order as to costs.