

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : INCOME TAX

Judgment delivered on : 04.12.2008

1. I.T.A. NO. 751/2006

The Commissioner of Income Tax-III Appellant

versus

M/s SIEL Industrial Estate Ltd. Respondent

2. I.T.A. NO. 752/2006

The Commissioner of Income Tax-III Appellant

versus

M/s Siel Industrial Estate Ltd. Respondent

Advocates who appeared in this case:

Present for the Appellant : Mr Sanjeev Sabharwal

Present for the Respondent : Mr. V.P. Gupta and Mr Basant Kumar.

CORAM :-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

BADAR DURREZ AHMED, J (ORAL)

These two appeals arise out of the common order passed by the Income Tax Appellate Tribunal on 08.12.2005. They relate to the question of penalty under Section 271(1)(c) of the Income Tax Act, 1961. The Tribunal had decided in favour of the assessee by holding that in the assessment order the Assessing Officer had not recorded his satisfaction with regard to penalty. The Tribunal followed the decision in the case of CIT v. Ram Commercial; 246 ITR 568 . The said decision has been considered by the Full Bench in CIT v. Rampur Engineering Co. Ltd and other cases being ITA no. 211/06 and other connected matters and a decision was rendered by the Full Bench on 27.11.2008 whereby the view expressed in Ram Commercial (supra) in so far as the period prior to 01.04.1989 is concerned, has been confirmed. With regard to the period post 01.04.1989, the Finance Act, 2008 has introduced sub-section 1B in Section 271. The said provision reads as under:- 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). By virtue of the above provision it is clear that where a direction for initiation of penalty proceedings under clause (c) of sub-section (1) is made in the assessment order, such assessment order is deemed to constitute the satisfaction of the Assessing Officer for initiation of penalty proceedings under the said clause. It is clear that for the deeming provision to apply, there must be a direction for initiation of penalty proceedings. It is an admitted position that in the assessment orders, in these two appeals, there is no such direction for initiation of penalty proceedings. Consequently the deeming provision does not get triggered. The result is that the penalty orders cannot be sustained in the absence of any satisfaction of the Assessing Officer with regard to penalty in the course of the assessment proceedings. Thus, although the Tribunal adopted a different reasoning, since the conclusion is the same, that is, that the penalty proceedings cannot be held to be valid, the Tribunal's order setting aside the penalty order/proceedings does not call for any interference. The appeals are dismissed.

Sd./-

BADAR DURREZ AHMED, J

Sd./-

RAJIV SHAKDHER, J

December 04, 2008/kk