

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).14785/2007

(From the judgement and order dated 07/10/2006 in TA No.597/2006  
of the HIGH COURT OF GUJARAT AT AHMEDABAD)

COMMR.OF INCOME TAX,BARODA

Petitioner(s)

VERSUS

RAMAN LAL C.HATHI

Respondent(s)

Date: 07/04/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Petitioner(s) Mr. Gopal Subramaniam, ASG.  
Mr. Satyakam, Adv.  
Mr. B.V. Balaram Das,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following  
ORDER

An important question of law arose for determination before the Division Bench of this Court in the case of Virtual Soft Systems Ltd. Vs. Commissioner of Income Tax, Delhi I, reported in (2007) 9 SCC 665. That question was, inter alia, whether penalty under Section 271(1)(c) could be levied if the returned income is a loss. It may be noted that an amendment was made by Finance Act, 2002 w.e.f 1.4.2003 in Explanation 4 to Section 271(1)(c)(iii). In the above case of Virtual Soft Systems Ltd., the Department placed reliance on Notes on Clauses relating to the above 2002 Amendment

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and submitted that the said amendment was clarificatory in nature and, consequently, it was applicable retrospectively. This argument of the Department has been rejected by this Court in the above judgment vide para 52, which reads as under:

"52. In the present case, it is only in the Notes on Clauses relating to the 2002 Amendment that it has been stated that the said amendment is clarificatory. There is no such mention of the said amendment being clarificatory, anywhere in the statute itself. Such a statement in the Notes on Clauses cannot possibly bind the Court when even a statement in the statute itself is not regarded as binding

or conclusive. In the present case, the statute expressly states that the amendment would take effect only from 1-4-2003. Consequently, this amendment cannot possibly be applied to or in respect of any period prior to 1-4-2003."

In this S.L.P., the same point arises in respect of Assessment Year 1996-97. The name of the respondent-Assessee is Ramanlal C. Hathi.

We may also quote hereinbelow the clarificatory amendment:

"Clarificatory amendment in Section 271 relating to penalty for concealment of income etc

Section 271 of the Income-tax Act provides that the Assessing Officer or the Commissioner (Appeals) shall levy penalty in cases of failure to comply with certain notices issued in the course of assessment proceedings and cases in which particulars of income have been concealed or inaccurate particulars furnished.

It is proposed to amend the section to include a reference to the Commissioner as being an authority who can initiate and levy penalty under sub-section (1) of the said section. Similar reference is proposed to be made in Explanation 1 and Explanation 7 to the said sub-section.

Amendment on similar lines is proposed to be made in section 18 of the Wealth-tax Act.

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These amendments will take effect from 1st June, 2002.

The existing provisions of clauses (ii) and (iii) of sub-section (1) of the said section provide for levy of the penalty specified therein, in addition to any tax payable.

It is proposed to amend the said clauses to clarify that the penalty specified in them can be levied even if no tax is payable on the total income assessed.

The Bill further proposes to amend Explanation 4 which defines the expression 'the amount of tax sought to be evaded' in different circumstances, to clarify that in cases where the income in respect of which particulars have been concealed or inaccurate particulars have been furnished has the effect of reducing the loss declared in the return or of converting that loss into income, the tax sought to the evaded shall be the tax that would have been chargeable on the amount of such income as if it were the total income.

These amendments will take effect from 1st April, 2003.

Explanation 3 to sub-section (1) of the said section provides that if any persons who has not been assessed earlier, fails to furnish a return under section 139(1), and is found to have taxable income for a year, and no notice under sections 142(1) or 148 calling for return was issued to him till the expiry of the period during which an assessment

could have been made, it will be deemed that the person has concealed the particulars or furnished inaccurate particulars of his income for that year.

It is proposed to amend the said Explanation 3 so as to provide that even if a person who has been assessed earlier, fails to furnish a return till the end of the specified period, he shall be deemed to have concealed the particulars or furnished inaccurate particulars of his income.

Amendment on similar lines is proposed to be made in section 18 of the Wealth-tax Act.

These amendments will take effect from 1st April, 2003.

[Clause 97 and 106]"

Having regard to the nature of the amendment in Section

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271, which has been extensively quoted hereinabove, and having regard to judgment of this Court in the case reported in 1985 (4) SCC 608, we are of the view that the point laid down by the Division Bench of this Court in the case of Virtual Soft Systems Ltd. (supra) needs reconsideration.

Accordingly, the matter is directed to be placed for appropriate directions before the learned Chief Justice.

Mr. Gopal Subramaniam, learned Additional Solicitor General, states that even if the Department were to succeed ultimately before the Larger Bench, they would not demand penalty from the assessee-Ramanlal C. Hathi as the Department is primarily concerned with the authoritative decision on the question of law concerning interpretation of Section 271(1)(c) as amended by Finance Act 2002.

(N. ANNAPURNA)  
COURT MASTER

(MADHU SAXENA)  
COURT MASTER