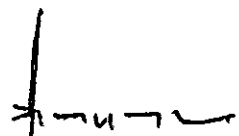





Sr. No.	Date	Orders
		<p>% 05.08.2005</p> <p>Present : Mr. J.R. Goel with Mr. Rajeev Awasthi, Adv. for the appellant. Mr. Pardeep, Adv. for the respondent.</p> <p><b><u>ITA No.451/2005</u></b></p> <p><b>ADMIT.</b></p> <p>Mr. Pardeep accepts notice for the respondent and agrees the final disposal of the appeal at this stage itself.</p> <p>The appeal raises the following two substantial questions of law:</p> <p>(i) Whether the ITAT was right in deleting the penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 on the ground that the total income of the assessee has been assessed at a minus figure/loss?</p> <p>(ii) Whether the ITAT was justified in holding that the judgements in Prithipal Singh's cases (183 ITR 69 and 249 ITR 670) will apply even after insertion of Explanation 4 to section 271(1)(c) of the Income Tax Act, 1961 with effect from 1.4.1976?</p> <p>The above two questions were examined by a divisional Bench of this Court in <u>Commissioner of Income-tax Vs. M/s. Aditya Chemicals Ltd. &amp; Ors.</u> (ITA No.205/2001) and connected matters disposed of by order dated 29<sup>th</sup> July, 2005. This Court answered both the questions in the negative and observed:</p> <p>"Hence, answering question 1 in favour of the revenue, we hold that the ITAT was not right in deleting the penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 merely on the</p>



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		<p>ground that the total income of the assessee has been assessed at a minus figure/loss. Question 2 has already been answered in the negative by us.</p> <p>In all these appeals the ITAT decided against the Revenue and in favour of the assessee without going into the merits of the question in each case so as to return a positive finding of fact that the assessee in each case had "concealed the particulars of his income or furnished inaccurate particulars of such income." Nor did it examine the quantum of penalty in each case. The ITAT decided the appeals before it on the understanding that where there was a returned <u>loss</u> and a reduced <u>loss</u> was assessed there could be no question of imposition of penalty under Section 271(1)(c) of the Act. This understanding, we have indicated above, does not hold good for the period between the said 1976 and 2003 amendments. This being the position, answering the questions as indicated above and allowing all the appeals, we remand all these cases to the ITAT for disposal of merits. No costs."</p> <p>In the light of the above decision and for the reasons recorded therein we have no difficulty in answering the questions raised in the present appeal also in the negative. We, accordingly answer the questions in the negative and remit the matter back to the Tribunal for hearing and disposal of the appeal on merits.</p> <p style="text-align: right;">   <b>T.S. THAKUR, J.</b> </p> <p style="text-align: right;">   <b>BADAR DURREZ AHMED, J.</b> </p> <p>AUGUST 05, 2005 SS</p>