



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA No. 482/2005**

CIT Appellant
! Through Mrs. P.L. Bansal, Adv.

versus

\$ M/S BENDA AMTEK LIMITED Respondent
^ Through Mr. S.K. Agarwal, Adv.

%

CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE BADAR DURREZ AHMED

%

ORDER
02.08.2005

Admit.

Mr. Agarwal accepts notice for the respondent assessee.

With consent, we have heard learned counsel for the parties at this stage for final disposal of the appeal.

The present appeal arises out of an order passed by the Income Tax Appellate Tribunal whereby the appeal preferred by the Revenue against the deletion of penalty by the CIT has been dismissed. The following two issues are raised by the appellant before us for determination :

1. Whether the CIT as also the ITAT were right in deleting the penalty imposed by the Assessing Officer 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.

2. Whether the CIT and ITAT were justified in holding that the judgments in Prithipal Singh' case 249 ITR 670 been applying even after explanation 4 to Section 271 of Income Tax Act with effect from 01.04.1976.

The above questions had been framed in a batch of cases titled CIT vs. M/s Aditya Chemical Ltd. & Ors. ITA 205/2001 and connected matters and were answered in favour of the Revenue and against the assessee. This Court had, in the said cases, held as under :

"18. 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 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.

19. 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 loss and a reduced loss 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."

In the light of the above pronouncement, the questions raised in the present appeal are no longer res integra. The questions in fact stand answered in favour of the Revenue. In the circumstances, therefore and for the reasons stated in the said decision, we answer question No. 1 framed above in the negative and hold that the CIT (Appeal) and the ITAT were not right in deleting the penalty merely on the ground that the total income of the assessee had been assessed at a minus figure. We also answer question No. 2 in the negative. Consequently, this appeal is allowed; the impugned order passed by the the ITAT set aside and the matter remanded back to the Tribunal for a fresh hearing and disposal on merits in accordance with law.


T.S. THAKUR, J


BADAR DURREZ AHMED, J

AUGUST 02, 2005
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