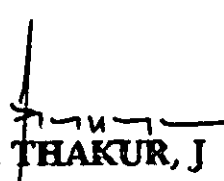





Sr. No.	Date	Orders
		<p>court had formulated the following two questions for determination:-</p> <p>"1) Whether the ITAT was right in deleting the penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 on the ground that the total income of the assessee has been assessed at a minus figure/loss?</p> <p>2) Whether the ITAT was justified in holding that the judgements in Prithipal Singh's case (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>2. The questions were then answered in the following words:-</p> <p>"18. Hence, answering question 1 in favour of the revenue, we hold that the ITAT was <u>not</u> 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.</p> <p>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 <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</p>



H.C.D.-I / Continuation Sheet

Sr. No.	Date	Orders
		<p>merits. No costs.”</p> <p>3. In the light of the above, we have no difficulty in holding that the CIT (Appeals) as also the ITAT were both in error in deleting the penalty imposed on the company 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. We further hold that CIT (Appeals) and the ITAT were not justified in holding that the judgment in Prithipal Singh's case (183 ITR 60 and 249 ITR 670) would 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>4. Consequently, we set aside the order dated 18.04.2000 passed by the tribunal and remand the matter back to it for fresh disposal on merits in accordance with law.</p> <p style="text-align: right;">  T.S. THAKUR, J </p> <p style="text-align: right;">  BADAR DURREZ AHMED, J </p> <p>August 02, 2005 sd</p>