



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 1178/2005

COMMISSIONER OF INCOME TAX DEL Appellant
Through : Mr. J.R. Goel, Mr. Subhash Sharma,
Ms. Rashmi Chopra, Adv.

versus

M/S BLUE BIRD ENTERPRISES P.LT Respondent
Through : Mr. Ram Avtar Bansal, Adv.

CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE B.N. CHATURVEDI

ORDER
20.12.2005

ADMIT.

The following two substantial questions of law arise for consideration and are hereby formulated :

1. Whether the Ld. ITAT was right in deleting penalty u/s 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 Ld. ITAT was justified in holding that the judgments 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) with effect from 1.4.1976?

Similar questions were examined by a Division Bench of this Court in CIT vs. Aditya Chemicals Ltd. & Ors. (ITA 205/2001) and connected



matters and answered in the following words :

“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.”

Mr. Bansal at this stage submits that although similar other matters have been remanded by this court to the Tribunal for fresh disposal on merits, the remand in the present case may be made to the Commissioner of Income Tax (Appeals) keeping in view the fact that the Commissioner has not examined the question regarding concealment on merits. He submits that even if the matter is remanded to the Tribunal, the Tribunal may have to eventually send it to the Commissioner for recording a finding on facts. He, therefore, submits that the remand directly to the Commissioner (Appeals) would be more



appropriate. Mr.Goel does not seriously oppose that submission. In the circumstances, therefore, we remand the matter back to the Commissioner of Income Tax (Appeals) for a fresh disposal of the matter on merits in the light of the judgment of this court in Aditya Chemicals Ltd. case (supra) and the observations made hereinabove. The assessee is directed to appear before the Commissioner (Appeals) on 15th February, 2006.



T.S. TILAKUR, J



B.N. CHATURVEDI, J.

DECEMBER 20, 2005

pk.