



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 1183/2005

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

versus

M/S SWAN FISHERIES P.LTD. Respondent
Through : Mr. Rishi Bhatnagar, Adv.

CORAM:

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MR. JUSTICE B.N. CHATURVEDI

ORDER

20.12.2005

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ADMIT.

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

3. 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?
4. Whether the Ld. ITAT was justified in holding that the judgments in Prithpal 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



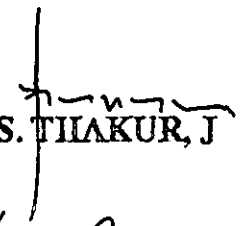
Income Tax Act, 1961 merely on the ground that the total income of the assessee has been assessed at a minus figure/loss. Question 2 has already been answered in the negative by us.

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. Bhatnagar 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. THAKUR, J


B.N. CHATURVEDI, J

DECEMBER 20, 2005
pk.