



I.C.D.-1 (a) Continuation Sheet

Sr. No.	Date	Orders
		<p><b>*IN THE HIGH COURT OF DELHI AT NEW DELHI</b></p> <p>+ I/A 560/2004</p> <p>COMMISSIONER OF INCOME TAX DEL ...Petitioner Through Mr.Sanjiv Khanna, Adv.</p> <p>versus</p> <p>PAWAN KUMAR JAIN ..... Respondent Through</p> <p><b>CORAM:</b> <b>HON'BLE MR. JUSTICE SWATANTER KUMAR</b> <b>HON'BLE MR. JUSTICE MADAN B. LOKUR</b></p> <p><b><u>ORDER</u></b> % <b>21.02.2005</b></p> <p>Challenge in the present appeal under Section 260A of the Income Tax Act is to the order passed by the Income Tax Appellate Tribunal dated 15.12.2003. The contention raised is that the findings recorded by the First Appellate Authority as well as the Income Tax Appellate Tribunal are not in consonance with the settled principles of law and proceedings for penalty under Section 271 (1)(c) of the Act were liable to be initiated against the assessee.</p> <p>This argument is without any merit as the explanation rendered by the assessee was treated to be bona fide as</p>

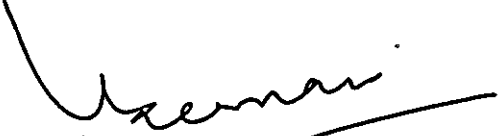



## H.C.D.-I (a) Continuation Sheet

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		<p>contemplated under the relevant provisions. The Commissioner of Income Tax (Appeals) held in his order as under :</p> <p>"The certificate is a statutory requirement and it becomes binding on the assessee. Since the mistake in claiming deductions u/s 80-HHC occurred due to the mistakes of the Chartered Accountants, in my opinion, no penalty u/s 271(1)(c) can be imposed upon the assessee. The explanation of the assessee that he claimed deduction as per the report of the auditor is substantiated by the report of the auditor and in my opinion, is bonafide. Besides in the reports of the auditor this fact of exclusion of scrap sale from total turnover has been mentioned at both the pages of the report. Thus, nothing has been concealed and all the facts have been disclosed to the department. In view of these facts, I hold that the assessee is not liable for penalty u/s 271(1)(c) of the I.T.Act. The orders of penalty passed by the Assessing Officer are, therefore, cancelled for both the years."</p> <p>The above findings were affirmed by the Income Tax Appellate Tribunal as such initiation of penalty proceedings against the assessee were not justified.</p> <p>It is further conceded before us that the appeal preferred by the department in relation to the same assessee, for the assessment year 1995-96 has already been</p>



## H.C.D.-I (a) Continuation Sheet

Sr. No.	Date	Orders
		<p data-bbox="459 264 1576 398">dismissed by a Division Bench of this Court in IIA No.447/2004 on 16.8.2004.</p> <p data-bbox="459 454 1576 589">We see no reason to issue notice in this appeal and the same is dismissed.</p> <p data-bbox="970 651 1501 853"> SWATANTER KUMAR, J</p> <p data-bbox="1027 891 1449 1014"> MADAN B. LOKUR, J</p> <p data-bbox="459 1021 871 1104">FEBRUARY 21, 2005 m</p>