



Sr. No.	Date	Orders
		<p>* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ ITA 1143/2005</p> <p>COMMISSIONER OF INCOME TAX DEL. .... Petitioner Through : Mr. J.R. Goel, Adv.</p> <p>versus</p> <p>M/S COOLAGE BEVERAGES LTD. .... Respondent Through : None</p> <p>CORAM: HON'BLE MR. JUSTICE T.S. THAKUR HON'BLE MR. JUSTICE B.N.CHATURVEDI</p> <p style="text-align: center;"><u>ORDER</u> 21.11.2005</p> <p>% <u>CM No.16236/2005</u></p> <p>Heard. For the reasons stated in the application, delay in re-filing the appeal is condoned.</p> <p>CM No.16236/2005 is disposed of.</p> <p><u>CM No.16235/2005</u></p> <p>Heard. Exemption is granted subject to just exceptions.</p> <p>CM No.16235/2005 is disposed of.</p> <p><u>ITA No.1143/2005</u></p> <p>The Commissioner of Income Tax (Appeal) deleted the penalty under Section 271 (1c) of the Income Tax Act on the ground that the assessee</p> <p style="text-align: center;">ITA No.1143/2005                      page 1 of 3</p>

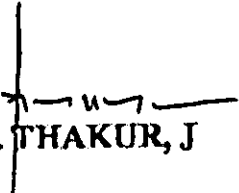



## H.C.D.-I (a) Continuation Sheet

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		<p>had neither concealed the particulars of his income nor furnished inaccurate particulars thereof. The Commissioner was of the view that since the penalty proceedings are quasi criminal in nature a conscious and deliberate attempt by the assessee to evade tax must be established before a penalty can be levied and the orders are upheld. The Commissioner observed:</p> <p>“It is true that making claims for certain declarations which are finally not agreed to and disallowed by the A.O. cannot mean that the appellant has attempted to conceal particulars of his income. In the appellant's case all details have been furnished and it was only a question of how to treat the claim that was being considered. As it can be seen there is no case of appellant furnishing inaccurate of his income. Since, the penalty proceedings are quasi-criminal in nature above or else it is required to consider carefully that before any penalty is imposed, the question of conscious and deliberate attempt by the assessee to evade tax is conclusively proved. Therefore, as discussed in the forgoing paras there is nothing to prove that due to claims being made and disallowances being decided, no guilty mind as to the action of the appellant is traceable. Therefore, in view of the above, I am of the opinion that the penalty order is not really justified.”</p> <p>The Tribunal has, in an appeal filed by the Revenue upheld the above reasoning and conclusion with the following observations :</p> <p>“On consideration of the matter, we do not see any reasons to interfere in the impugned order of the learned CIT (A). She has rightly held that there is no concealment or manipulation of any primary facts on the part of the assessee. Once full facts are correctly stated, merely because of a view taken by the assessee on these facts concealment cannot be imputed or alleged. We, therefore, uphold the impugned orders of the learned CIT (A) and dismiss these appeals filed by the Revenue.”</p> <p>ITA No.1143/2005</p>



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

Sr. N <sup>o</sup> .	Date	Orders
		<p>There is thus a concurrent finding of fact recorded by the authorities below that there was no concealment of income by the assessee nor were the particulars furnished by the assessee inaccurate to call for the levy of penalty. No substantial question of law arises on the said finding for our consideration. This appeal fails and accordingly dismissed.</p> <p style="text-align: right;"> T.S. THAKUR, J</p> <p style="text-align: right;"> B.N. CHATURVEDI, J</p> <p>NOVEMBER 21, 2005</p> <p>sa</p> <p style="text-align: center;">ITA No.1143/2005</p> <p style="text-align: right;">page 3 of 3</p>