

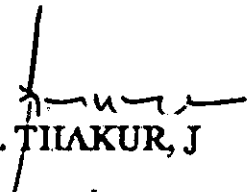



H.C.D.-I (a) Continuation Sheet

Sr.No.	Date	Orders
		<p>* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ ITA 1156/2005</p> <p>COMMISSIONER OF INCOME TAX DELHI Petitioner Through: Mr. J.R. Goel, Mr. S.C. Sharma, Advs.</p> <p>versus</p> <p>M/S CAPARO MARUTI LTD. Respondent Through : Ms. Kavita Jha, Adv.</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> 22.11.2005</p> <p>The Income Tax Appellate Tribunal has deleted the penalty levied upon the assessee for three distinct reasons. Firstly it held that the Assessing Officer had not recorded his satisfaction regarding the alleged concealment of income or furnishing of inaccurate particulars of its income by the assessee in the assessment order. The Tribunal relied upon the the decision of this court in <i>CIT vs. Ram Commercial Enterprises Ltd.</i> 246 ITR 568 and the decision of the Supreme Court in <i>Manasvi vs. CIT</i> 86 ITR 557 to hold that the Assessing Officer was duty bound to record satisfaction regarding concealment or furnishing of inaccurate particulars in the assessment order before penalty proceedings could be validly initiated.</p> <p>Secondly the Tribunal held on the authority of the decision of the Punjab and Haryana High Court in <i>CIT vs. Prithipal Singh & Co.</i> 183 ITR 69 affirmed by the Supreme Court in 249 ITR 670 that penalty was not leviable in cases where the return was a loss return.</p> <p>Thirdly the Tribunal found that the the penalty order was bad because even on merits, no case was made out for levy of any penalty. The Tribunal in this regard observed that the assessee had made a bona fide claim on the basis</p>



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		<p>of a possible view regarding setting-off of interest income against pre-operative expenses. The legal position in that regard having been settled only by the judgment of the Supreme Court in <i>Tuticorin Alkali Chemicals vs. CIT</i> 227 ITR 172 which came to be delivered on 8th July, 1997, after the filing of the return by the assessee. The Tribunal has in this regard summed up the position as under :</p> <p>"It is further observed that the assessee company has a good case to succeed on merits also in this appeal in as much as its claim for setting off interest income against the pre-operative expenses made in the return was a debatable issue with contrary view of the various High Courts available at the relevant time and this controversy was finally settled by Hon'ble Supreme Court vide its judgment in the case of Tuticorin Alkali & Chemicals Ltd. - 227 ITR 172 which came to be delivered only on 08.07.1997, i.e., after the filing of its return of income by the assessee on 28.11.1996. The said claim thus was a bonafide claim made by the assessee company on the basis on a possible view and even though the same was disallowed by the Assessing Officer and even accepted by the assessee in view of the subsequent decision of Hon'ble Supreme Court in the case of Tuticorin Alkali & Chemicals Ltd. (supra), it could not be treated as concealment of income by the assessee or furnishing of inaccurate particulars of such income by it so as to attract the penal provisions of Section 271(1)(c)."</p> <p>In the light of the finding of fact recorded by the Tribunal that the assessee was under a bona fide belief that interest could be set off against pre-operative expenses, the present appeal does not give rise to any substantial question of law for our consideration. The same accordingly fails and is hereby dismissed.</p> <p style="text-align: right;">  T.S. TILAKUR, J  B.N. CHATURVEDI, J. </p> <p>NOVEMBER 22, 2005 dk.</p>