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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 106/2006

COMMISSIONER OF INCOME TAX Appellant
Through:Mr.J.R.Goel,Advocate.

versus

M/S BREAKOUT OVERSEAS P.LTD. Respondent
Through:None.**CORAM:****HON'BLE MR. JUSTICE VIKRAMAJIT SEN**
HON'BLE DR. JUSTICE S. MURALIDHAR**ORDER**
16.11.2006

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Admit. The Respondent is served but none appears.

After hearing learned counsel for the appellant, the following substantial questions of law are framed for our consideration -

"1. Whether the Tribunal was right in deleting the penalty imposed under Section 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 Tribunal was justified in holding that the judgments in Prithipal Singh's case (1990) 85 CTR (P&H) 26 : (1990) 183 ITR 69 (P&H) and (2001) 166 CTR (SC) 187 : (2001) 249 ITR 670 (SC) will apply even after insertion of Explanation 4 to Section 271 (1) (c) of the IT Act, 1961, w.e.f. 1st April, 1976?"



In view of the decision of this Court in *Commissioner of Income Tax vs. Aditya Chemicals Ltd & Ors. (2005) 197 CTR (Del) 241* the matter is remanded to the Income Tax Appellate Tribunal for a decision on merits in accordance with paragraph 19 of the Judgment delivered by this Court.

The appeal is disposed of accordingly.

A handwritten signature in black ink, appearing to read 'Vikramajit Sen'.

VIKRAMAJIT SEN, J

A handwritten signature in black ink, appearing to read 'S. Muralidhar'.

S. MURALIDHAR, J

NOVEMBER 16, 2006

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