

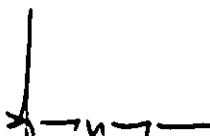



Sr. No.	Date	Orders
	% + *	<p>30-01-2006 Present: Mr.J.R.Goel with Mr.S.C.Sharma for appellant. Mr.Deepak Chopra for respondent.</p> <p><u>ITA.78/06</u></p> <p>Admit.</p> <p>The following two substantial questions of law arise for consideration and are hereby formulated:</p> <ol style="list-style-type: none"> 1. 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? 2. Whether the Ld. ITAT was justified in holding that the judgments in Prithipal 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? <p>Similar questions were examined by a Division Bench of this Court in "<u>CIT vs. Aditya Chemicals Ltd. & Ors.</u>" (ITA 205/2001) and connected matters and answered in favour of the</p> <p><u>ITA.78/06</u></p>



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		<p>Revenue in the following words :</p> <p>“18. Hence, answering question 1 in favour of the revenue, we hold that the ITAT was <u>not</u> 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.</p> <p>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 <u>loss</u> and a reduced <u>loss</u> 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.”</p> <p>In the light of the above and for the reasons stated in the judgment in Aditya Chemicals(supra), the questions stand answered similarly in the present case also and the matter remanded to the Tribunal for fresh hearing and disposal on merits in accordance with law.</p> <p><u>ITA.78/06</u> <u>Page 2 of 3</u></p>



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	January 30, 2006 RS/	The Tribunal shall issue fresh notice to the parties before hearing the matter. DASTI to counsel for both the parties. <p style="text-align: right;"> (T.S. THAKUR) JUDGE</p> <p style="text-align: right;"> (B.N. CHATURVEDI) JUDGE</p>