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% 07.12.2009

Present: Ms. Prem L. Bansal with Ms. Anshul Sharma and Mr. Paras Chaudhry for the appellant.
Mr. R.K. Gupta for the respondent.

+ ITA No. 663/2009

Penalty imposed upon the respondent/assessee herein under Section 271(1)(c) of the Income Tax Act, 1961 has been set aside by following the judgment of the Supreme Court in *Virtual Soft Systems Ltd. v. Commissioner of Income Tax, Delhi-I*, 289 ITR 83. This judgment has since been reversed by the Supreme Court in another matter, i.e. *Commissioner of Income Tax, Allahabad-I v. Gold Coin Health Food Pvt. Ltd.*, 304 ITR 308.

The order of the Tribunal, therefore, is unsustainable and is hereby set aside. Since the Tribunal has not decided the appeal on merits, we remit the case back to the Tribunal for this purpose.

Parties shall appear before the Tribunal on 18th January 2010.

A.K. SIKRI, J.

SIDDHARTH MRIDUL, J.

December 07, 2009
nsk