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**(2005) 08 DEL CK 0063**  
**In the Delhi High Court**  
**Case No : IT Appeal No. 482 of 2005**

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| Commissioner of Income Tax | Vs | APPELLANT  |
| Benda Amtek Ltd.           |    | RESPONDENT |

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**Date of Decision :** 02-08-2005

**Acts Referred:**

Income Tax Act, 1961 — Section 271, 271(1)

**Citation :** (2006) 201 CTR 344 : (2006) 154 TAXMAN 540

**Hon'ble Judges :** T.S. Thakur, J;Badar Durrez Ahmed, J

**Bench :** Division Bench

**Advocate :** P.L. Bansal, for the Appellant; S.K. Agarwal, for the Respondent

**Final Decision :** Allowed

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## Judgement

1. Mr. Agarwal accepts notice for the respondent-assessed. With consent, we have heard learned Counsel for the parties at this stage for final disposal of the appeal.

2. The present appeal arises out of an order passed by the Tribunal whereby the appeal preferred by the Revenue against the deletion of penalty by the CIT(A) has been dismissed. The following two issues are raised by the appellant before us for determination :

1. Whether the CIT(A) as also the Tribunal were right in deleting the penalty imposed by the AO u/s 271(I)(c) of the IT Act, 1961, on the ground that the total income of the assessed has been assessed at a minus figure/loss.

2. Whether the CIT(A) and Tribunal were justified in holding that the judgments in Commissioner of Income Tax Vs. Prithipal Singh and Co., and Commissioner of Income Tax Vs. Prithipal Singh and Co., is applicable even after Expln. 4 to Section 271 of IT Act w.e.f. 1st April, 1976.

3. The above questions had been framed in a batch of cases titled CIT v. Aditya Chemicals Ltd and Ors. IT Appeal 205 of 2001 reported at (2005) 197 CTR (Del)

241-Ed, and connected matters and were answered in favor of the Revenue and against the assessed. This Court had, in the said cases, held as under:

18. Hence, answering question No. 1 in favor of the Revenue, we hold that the Tribunal was not right in deleting the penalty imposed u/s 271(l)(c) of the IT Act, 1961, merely on the ground that the total income of the assessed has been assessed at a minus figure/loss. Question 2 has already been answered in the negative by us.

19. In all these appeals the Tribunal decided against the Revenue and in favor of the assessed without going into the merits of the question in each case so as to return a positive finding of fact that the assessed 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 Tribunal decided the appeals before it on the understanding that where there was a returned loss and a reduced loss was assessed there could be no question of imposition of penalty u/s 271(l)(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 Tribunal for disposal on merits. No costs.

4. In the light of the above pronouncement, the questions raised in the present appeal are no longer rest Integra. The questions in fact stand answered in favor of the Revenue. In the circumstances, Therefore, and for the reasons stated in the said decision, we answer question No. 1 framed above in the negative and hold that the CIT(A) and the Tribunal were not right in deleting the penalty merely on the ground that the total income of the assessed had been assessed at a minus figure. We also answer question No. 2 in the negative. Consequently, this appeal is allowed; the impugned order passed by the Tribunal is set aside and the matter remanded back to the Tribunal for a fresh hearing and disposal on merits in accordance with law.