

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3544 OF 2007

COMMISSIONER OF INCOME TAX

APPELLANT

VERSUS

SHREE CHOWATIA TUBES (INDIA)  
PVT.LTD.

RESPONDENT

O R D E R

Heard learned counsel for the appellant.

The question raised in this appeal is when the assessed income is loss, as a result of reduction at the time of final assessment as against the amount of loss declared in the Income Tax Return, the penalty under Section 271 (1) (c) of the Income Tax Act, 1961 can be levied or not?

This Court in the case of Commissioner of Income Tax I, Ahmedabad versus Gold Coin Health Food Private Limited reported in 2008 (9) SCC 622 has held that penalty can be levied even if no tax is payable on the total income assessed and the court has analysed the nature of the amendment to come to a conclusion whether it is in reality a clarificatory or declaratory provision.

In view of the law laid down in the aforesaid decision, the Tribunal was not right in cancellation of the penalty under Section 271 (1) (c) of the Income Tax Act, 1961 merely on the ground that no penalty can be levied if returned

income and the assessed income is a loss under Section 271 (1) (c) of the Income Tax Act, 1961 in as much as this amendment has been held to be retrospective in operation.

In view of the above, the appeal is allowed and the impugned judgment passed by the High Court as also the order of the Tribunal are set aside and the matter is remitted back to the Tribunal to decide on the quantum of the penalty after giving opportunity of hearing to the respondent herein.

.....J.  
(R.K. AGRAWAL)

.....J.  
(ABHAY MANOHAR SAPRE)

NEW DELHI,  
APRIL 06, 2017

ITEM NO.101

COURT NO.9

SECTION IIIA

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.3544/2007

COMMR.OF INCOME TAX

Appellant(s)

VERSUS

SHREE CHOWATIA TUBES (INDIA)  
PVT.LTD.

Respondent(s)

Date : 06/04/2017 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.K. AGRAWAL  
HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Appellant(s) Mr. K. Radhakrishnan, Sr. Adv.  
Ms. Rekha Pandey, Adv.  
Ms. Sadhna Sandhu, Adv.  
Mrs. Anil Katiyar, AOR  
Mr. Arijit Prasad, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

Appeal is allowed in terms of the Signed Order.

(RASHI GUPTA)  
SR.P.A.

(CHANDER BALA)  
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]