

**(2009) 07 P&H CK 0101**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

The Commissioner of Income  
Tax

APPELLANT

Vs

Nuware India Ltd.

RESPONDENT

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**Date of Decision:** July 31, 2009

**Acts Referred:**

- Income Tax Act, 1961 - Section 260A, 268A, 271

**Citation:** (2009) 319 ITR 165

**Hon'ble Judges:** Daya Chaudhary, J; Adarsh Kumar Goel, J

**Bench:** Division Bench

**Final Decision:** Allowed

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### **Judgement**

Adarsh Kumar Goel, J.

The revenue has preferred this appeal u/s 260A of the Income Tax Act, 1961 (for short, "the Act") against the order dated 7.12.2007 passed by the Income Tax Appellate Tribunal, Delhi Bench "H" Delhi in ITA No. 1960 (DEL) of 2007 for the assessment year 1995-96, proposing to raise the following substantial questions of law:

A Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal is justified in holding that the judgment in Virtual Soft Systems Ltd v. CIT 290 ITR 83 will apply eve after insertion of Explanation 4 to Section 271(1)(c) of the Income Tax Act, 1961 with effect from 1.4.1976?

B Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal is right in deleting the penalty imposed 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 loss figure?

C Whether, on the facts and in the circumstances of the case, the Hon'ble ITAT is right in confirming the deletion of penalty u/s 271(1)(c) by relying on the Apex Court

decision in the case of Virtual Soft Systems Ltd., 189 ITR 83 as the issue has now been finally resolved by the larger bench of the Hon"ble Supreme Court in the decision dated 18.8.2008 in the case of [Commnr. of Income Tax-I, Ahmedabad Vs. Gold Coin Health Food Pvt. Ltd.,](#)

D That the tax effect involved in this case is Rs. 10,70,000/-, which is more than the monetary limits prescribed by the DBDT in instruction No. 5 of 2008 dated 15.5.2008 issued u/s 268A of the Income Tax Act for filing appeal before the Hon"ble High Court.

2. The assessee declared loss but during assessment, the Assessing Officer did not accept the extent of loss claimed and addition was made to the income. Proceedings were also initiated for penalty. Finally, penalty was levied. On appeal, CIT(A) deleted the penalty while upholding the addition. The Tribunal dismissed the appeal of the revenue following the judgment of the Hon"ble Supreme Court in [Virtual Soft Systems Ltd. Vs. Commissioner of Income Tax, Delhi-I,](#) . It is stated that the judgment relied upon by the Tribunal has been overruled by the Hon"ble Supreme Court in [Commnr. of Income Tax-I, Ahmedabad Vs. Gold Coin Health Food Pvt. Ltd.,](#) . This is not disputed by learned Counsel for the assessee.

3. In view of the above, this appeal is allowed. The order of the Tribunal is set aside and the matter is remanded to the Tribunal for fresh decision in accordance with law.

4. Parties are directed to appear before the Tribunal for further proceedings on 7.12.2009.