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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ITA 500/2014**

CIT-1 ..... Appellant
Through: Mr Dileep Shivpuri, Senior Standing Counsel.

versus

BIRLA ELECTRICALS LTD ..... Respondent
Through: Mr Siddharth, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **09.02.2016**

1. The Revenue has filed the present appeal against an order dated 11th April, 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 5680/Del/2013 for the Assessment Year ('AY') 2006-07. While, admitting this appeal on 9th March, 2015, the following question of law was framed for consideration:

> "Whether in the facts and circumstances the cancellation of the penalty was justified in law?"

2. The Court has been taken through the original assessment order dated 26th December, 2011 of the Assessing Officer in which the gross profit was computed by applying the average rate profit of 2004-05, 2005-06 and 2007-

08 since no explanation was offered for “dismissal trading declared for the relevant previous year”. The explanation offered by the Assessee for the inability to produce books of accounts, stock register, supporting bills, etc. was that they had been misplaced during the shifting of its office from Sion Mumbai to Goregaon (Mumbai).

3. Having heard Mr Dileep Shivpuri, learned Senior Standing counsel for the Revenue, the Court is not persuaded to accept that this was a case of failure by the Assessee to disclose full and true particulars, warranting the levy of penalty under Section 271 (1) (c) of the Act. The Court is not persuaded to hold that the deletion of the penalty by the ITAT is perverse, warranting interference.

4. The question framed is answered in the affirmative i.e. in favour of the Assessee and against the Revenue. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 09, 2016/MK