

Hon'ble ITAT is correct in interpreting the
condition stipulated in the 1st proviso to
Section 158 BFA (2) of the Income Tax Act,

1961 as directory and not mandatory?" 2. C.I.T. by its order dated 15.10.2003 allowed the appeal preferred by the assessee and cancelled the penalty under Section 158BFA(2) of the Income Tax Act. While considering the deletion of penalty, C.I.T. considered, the explanation given by the assessee that tax had been paid on the undisclosed income before the completion of the assessment. Various other reasons have also been rendered. . In the appeal before I.T.A.T., the learned tribunal in Para 3.4 after considering the terminology of the section was pleased to hold that the power conferred is directory and not mandatory and that the word "may" cannot be read as "shall". The learned tribunal also has considered the reasons as to why the penalty should not be invoked. 3. In the present appeal, the findings of fact by I.T.A.T. and C.I.T. regarding reasons for delay in paying tax have not been assailed. The only question raised before us is whether the said provision is directory or mandatory. We have perused the relevant provision which read as under : "158BFA(2) : The Assessing Officer or the Commissioner (Appeals) in the course of any proceedings under this Chapter, may direct that a person shall pay by way of penalty a sum which shall not be less than the amount of tax leviable but which shall not exceed three times the amount of tax so leviable in respect of the undisclosed income determined by the Assessing Officer under clause (c) of section 158BC." . The language used under Section 158BFA(2) is may direct the person shall pay by way of penalty a sum which shall not be less than the amount of tax leviable, but which shall not exceed three times the amount of tax so leviable in respect of the undisclosed income determined by the Assessing Officer under Clause (c) of section 158BC. . The terminology of the said section makes it

clear that there is a discretion in the Assessing
Officer to direct payment of penalty. The proviso
supports this interpretation. Only if the authority
decides to impose penalty then, it will not be less
than the tax leviable but shall not exceed three

times the tax so leviable. It is therefore, not possible to accept the submission on behalf of the

Revenue that once the Assessing Officer comes to the conclusion that there is a breach of the mandate of Section 158BFA(1), then the penalty should be imposed. Merely because the expression used is shall not be less than the amount of tax leviable or not exceeding three times the tax, does not result in reading the first part of the section as mandatory. The proviso to the sub section makes it clear that there is discretion conferred on the Commissioner for the reasons which are set out therein. Whilst considering taxing statute, the Supreme Court has held that it is settled law that the expressions used in a taxing statute would ordinarily be understood in the sense in which it is harmonious with the object of the statute to effectuate the legislative intention. It is equally settled law that, if the language is plain and unambiguous, one can look fairly at the language used and interpret it to give effect to the legislative intention. Tax law, nevertheless, have to be interpreted reasonably and in consonance with justice adopting a purposive approach. See Commissioner of Income tax Vs. Gwalior Rayon Silk Manufacturing Co. Ltd. 196 ITR 149. In the instant case, both C.I.T. and I.T.A.T. have recorded reasons for exercise of their discretion. Before us the Revenue has not challenged the said finding of fact as to the exercise of discretionary power. We, therefore, uphold the view taken by I.T.A.T. that the section is directory and not mandatory. 4. In the light of that, the question as framed would not arise. Consequently, appeal disposed of. (K.U.CHANDIWAL, J.) (F.I.REBELLO, J.)