

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT  
&  
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-6724/Del/2015  
(Assessment Year: 2011-12)**

Hotz Industries 703-707, Chiranjiv Tower, Nehru Place, New Delhi. AAACH0092G	vs	DCIT Circle 12(1) New Delhi.
<b>Assessee by</b>	<b>Sh. Jaspal Singh Sethi, Adv.</b>	
<b>Revenue by</b>	<b>Sh. Arun Kumar Yadav, Sr. DR</b>	

<b>Date of Hearing</b>	<b>21.09.2017</b>
<b>Date of Pronouncement</b>	<b>09.10.2017</b>

**ORDER**

**PER SHRI K.N. CHARY, JUDICIAL MEMBER**

This is an appeal by the assessee challenging the order dated 16.10.2015 in appeal no. 216/14-15/CIT(A)-4 passed by the Ld. Commissioner of Income Tax (Appeals)-4, New Delhi (hereinafter for short called as the "Ld. CIT (A)").

2. Briefly stated facts are that during the scrutiny of assessment of the income of the assessee for the AY 2011-12 AO found that the assessee earned dividend income of Rs. 1,14,43,698/- and Long Term Capital Gain

of Rs. 3,42,23,771/- and while working out the disallowability of the expenses, AO estimated the same at Rs. 8,61,941/-. So also the AO found that the assessee debited a sum of Rs. 15,85,829/- in the profit and loss account on account of land leveling charges which the AO categorized as capital expenses and disallowed the same. Simultaneously AO initiated penalty proceedings u/s 271(1)(c) of the Income Tax Act (for short called as the "Act") and concluded them by way of order dated 30.06.2014 with the levy of the penalty of Rs. 8,31,997/- . In the appeal Ld. CIT (A) confirmed the same on the ground that in spite of the AO granting two opportunities to the assessee as to why the penalty shall not be imposed and also in view of the fact that the assessee did not challenge the additions before the Ld.CIT (A).

3. It is the argument of the Ld. AR that disallowing expenses cannot automatically lead to the conclusion that penalty proceedings have to be initiated. According to the Ld. AR all the particulars were fully and truly furnished to the AO and the Department did not unearth anything which was not furnished by the assessee, during the assessment proceedings. Ld. DR vehemently relied upon the authorities below. The facts in this case are admitted. It is not the case of the Revenue that they found anything new during the assessment proceedings that was not produced

by the assessee along with the return of income. It is only the disallowance of some expenses that prompting the AO to initiate the proceedings u/s 271(1)(c ) of the Act. When once all the particulars are truly and fully furnished and were available before the AO mere disallowance will not lead to the initiation of penalty proceedings. While making the distinction between false claim and wrong claim, we are of the considered opinion that in this matter there is no false claim that was preferred by the assessee and it is only the treatment the AO had given to the expenses that lead to the additions. While respectfully following the ratio of the Hon'ble Supreme Court in CIT vs. Reliance Petro Chemicals 332 ITR 158 (SC), we hold that penalty in this matter cannot be sustained. With this view of the matter, we delete the penalty.

4. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 09.10.2017

Sd/-  
**(G.D. AGRAWAL)**  
**PRESIDENT**

Dated: 09.10.2017

\*Kavita Arora

Sd/-  
**(K.N. CHARY)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR  
ITAT NEW DELHI