IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F', NEW DELHI

BEFORE SH. O.P. KANT, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.6622/Del/2013
Assessment Year: 2004-05

DCIT, Circle-14(1), New Delhi	**Vs.**	PHI Seeds Private Limited,(Formerly PHI Seeds Ltd.), 6-3-1099/1100, Babukhan's Millennium Centre, 3rd Floor, Raj Bhavan Road, Somajiguda, Hyderabad.
PAN :AACCP3920F		
(Appellant)		**(Respondent)**

And

ITA No.6645/Del/2013
Assessment year: 2006-05

DCIT, Circle-14(1), New Delhi	**Vs.**	PHI Seeds Ltd., B-4, Greater Kailash Enclave, New Delhi
PAN :AACCP3920F		
(Appellant)		**(Respondent)**

And

ITA No. 4366/Del/2015
Assessment year: 2007-08

DCIT, Circle -19(2), Room No. 221, C.R. Building, New Delhi	**Vs.**	PHI Seeds Private Limited, 6-3-1099/1100, Babukhana's Millennium Centre, 3rd Floor, Raj Bhavan Road, Somajiguda, Hyderabad.
PAN :AACCP3920F		
(Appellant)		**(Respondent)**

Department by	Ms. Paramita Tripathi, CIT(DR)
Assessee by	Sh. Ajay Vohra, Sr. Adv. & Sh. Aditya Vohra, Adv.

Date of hearing	25.06.2018
Date of pronouncement	29.06.2018

ORDER

PER O.P. KANT, A.M.:

These three appeals filed by the Revenue are directed against three separate orders dated 30/09/2013; 30/09/2013 and 30/04/2015 passed by the Ld. Commissioner of Income-tax (Appeals), Delhi [in short 'the Ld. CIT(A)'] for assessment year 2004-05; 2006-07 and 2007-08 respectively, in relation to penalty under section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act'). The grounds raised and the facts and circumstances of the case in all the three years are almost identical except change of amount, and thus, all these appeals have been heard together and dispose of by way of this consolidated order for convenience and brevity.

2. First we take up the appeal having ITA No. 6622/Del/2013 for assessment year 2004-05 , wherein the grounds raised are reproduced as under:

1. *"On the facts & in the circumstances of the case, the Ld. CIT(A) has erred in deleting the penalty by Rs. 1,64,80,374/- imposed by the assessing officer u/s 271(1)(C) of the Act on account of false claim of business income as 'agriculture income' and also false claim of deduction u/s 10(1) of the Act.*
2. *On the facts 8b in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the fact that the action of the assessing officer was confirmed by the first appellate authority at the time of quantum appealed by the assessee company.*

3. The appellant craves to be allowed to add any fresh grounds of appeal and/or delete or amend any of the ground of appeal.

3. Briefly stated facts of the case are that the assessee company was established in June, 1998. As in the preceding years, the company procured seeds from farmers. In preceding years, the assessee claimed that it had taken the land on lease from the farmers and paid them advance for fertilizers, chemicals and labour and service charges etc. For the purpose of accounting, it apportioned part of the procurement price towards lend lease charges, fertilizer and chemical charges and labour and service charges etc. In this manner, the activity of procuring seeds from the farmers has been considered by the assessee as agriculture income. For the year under consideration, the assessee filed return of income on 31/10/2004 declaring total loss of Rs.10,94,800/- after claiming exemption under section 10(1) of Act in respect of the agriculture income. In the scrutiny assessment completed under section 143(3) of Act on 28/12/2006, the Assessing Officer rejected the claim of the assessee of agriculture income under section 10(1) of the Act and same was held as business income from sale/purchase of the hybrid seeds, following the finding of the Assessing Officer in earlier years. The Assessing Officer also issued penalty proceedings under section 271(1)(c) of the Act. On further appeal, against the quantum proceedings, the Ld. CIT(A) vide his order dated 20/03/2009 upheld the finding of the Assessing Officer. Consequent to the order of the Ld. CIT(A), the Assessing Officer again issued a notice to the assessee to show cause as why the

penalty under section 271(1)(c) of the Act may not be levied. After considering the submission of the assessee and taking into account various judicial precedents on the issue in dispute, he levied penalty at the rate of 200% of the tax sought to be evaded, which was worked out to Rs.1,64,80,374/-. On further appeal against the said penalty, the Ld. CIT(A) allowed the appeal of the assessee holding that assessee has not concealed particulars of income or not furnished any inaccurate particulars of the income and there was just a difference of opinion as to whether the income returned was agriculture income or non-agriculture income. The Ld. CIT(A) relying on the decision of the Delhi bench of Tribunal in the case of Proagro Seed Company Pvt. Ltd. for AY 1994-95 which was cited by the assessee and observing that the assessee had given a bonafide explanation for making its claim, he held that there is no case of furnishing inaccurate particulars of the income or deliberate attempts to conceal income. Accordingly he deleted the penalty. Aggrieved with the finding of the Ld. CIT(A), the Revenue is in appeal before the Tribunal raising the grounds as reproduced above.

4. Before us, the Ld. DR submitted that in quantum proceedings, the Tribunal has upheld the orders of the lower authorities and the claim of assessee of the activities of purchase and sale of the hybrid seeds has been held as business income. She submitted that in reality, the assessee only procured seeds from the farmers at a particular procurement price, however to claim the activity as agriculture income, it accounted part of the procurement price paid as towards lease charges of land, fertilizers and chemical expenditure, labour and other services

etc. According to her, the assessee by way of employing colourable device attempted to camouflage the business income as agriculture income and thus ,the assessee is liable for penalty under section 271(1)(c) of the Act.

4.1 In support of her contention, she relied on following judicial pronouncements:

> ***"1. Union of India v. Dharamendra Textile Processors f(2007) 295 ITR 2441***
>
> *Where Hon'ble Supreme Court held that Penalty under section 271(1)(c) is a civil liability for which willful concealment is not an essential ingredient for attracting the civil liability as is the case in the matter of proceedings under section 276C*
>
> ***2. CIT Vs Atul Mohan Binal (2009) 225 CTR 248 (SC)***
>
> *Where the Hon'ble Supreme Court held that penalty u/s 271 (1)(c) is neither criminal nor quasi criminal but a civil liability, albeit a strict liability. Such liability being civil in nature, mens rea is not essential - Explanation appended to S. 271(1)(c) indicates element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing the return.*
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> ***3. K.P. Madhusudhanan Vs CIT [2001] 118 Taxman 324 (SC)/[2001] 251 ITR 99 (SC)/[2001] 169 CTR 489 (SC)]***
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> *Where Hon'ble Supreme Court held that the Explanation to section 271(1)(c) is a part of section 271. When AO issues to an assessee a notice under section 271, he makes the assessee aware that the provisions thereof are to be used against him. These provisions include the Explanation. By reason of the Explanation where the total income returned by the assessee is less than 80 per cent of the total income assessed under section 143 or 144 or 147, reduced to the extent therein provided, the assessee is deemed to have*

concealed the particulars of his income or furnished inaccurate particulars thereof, unless he proves that the failure to return the correct income did not arise from any fraud or neglect on his part. The assessee is, therefore, by virtue of the notice under section 271 put to notice that if he does not prove, in the circumstances stated in the Explanation that his fan, to return his correct income was not due to fraud or neglect, he shall be deemed U. have concealed the particulars of his income or furnished inaccurate particulars thereof and, consequently, be liable to the penalty provided by that section. No express invocation of the Explanation to section 271 in the notice under section 271 is necessary before the provisions of the Explanation therein are applied.

4. CIT Vs Zoom Communication (P.) Ltd. T191 Taxman 179 (Delhi)/[20101 327 ITR 510 (Delhi)/r20101 233 CTR 4651

Where Hon'ble Delhi High Court held that If assessee makes a claim which is not only incorrect in law but is also wholly without any basis and explanation furnished by him for making such a claim is not found to be bona fide, Explanation 1 to section 271(1)(c) would come into play and assessee will be liable to penalty.

The Hon'ble Delhi High Court have observed that "The Court cannot overlook the fact that only a small percentage of the Income Tax Return are picked up for scrutiny. If the assessee makes a claim which Is not only incorrect that would give a license to unscrupulous assessee to make wholly untenable and unsustainable claims without there being any basis for making them, In the hope that their return would not be picked for scrutiny and they would be assessed on the basis of self-assessment under section 143(1) of the Act and even if their case is selected for scrutiny, they can get away merely by paying the tax, which in any case, was payable by them. The consequence would be that the persons who make claims of this nature, actuated by a mala-fide intention to evade tax otherwise payable by them would get away without

paying the tax legally payable by them, if their cases are not picked up for scrutiny. This would take away the deterrent effect, which these penalty provisions in the Act have. "

4.2 The Ld. DR further submitted that the assessee is guilty of making false claim by way of defrauding the Revenue and thus the ratio of the decision of the Hon'ble Supreme Court in the case of KP Madhusudan (supra) is squarely applicable out the facts of the instant case.

4.3 In view of the arguments, the Ld. DR submitted that decision of the Ld. CIT(A) might be reversed and the penalty levied by the Assessing Officer might be upheld.

5. The Ld. Senior counsel, Sh Ajay Vohra, appearing on behalf of the assessee submitted that in the instant case fact of land taken on lease from the farmers has not been disputed. He submitted that the farmers carried out the agricultural activity as an agent of the assessee company.

5.1 He further submitted in the instant case assessee has furnished all the material facts truly and fully and furnished bonafide explanation to support its claim of agriculture income. He submitted that merely claim not accepted by the Tribunal, the assessee cannot be held for furnishing inaccurate particulars income or concealment of particular of income unless the claim is found to be false or the explanation is not bona fide. In support of the contention, he relied on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petroproducts (P) Ltd., 322 ITR 158 (SC).

5.2 He submitted that the claim of the assessee that income from sale of hybrid seeds is agriculture income and hence eligible for exemption under section 10(1) of the Act was based on facts, statutory provisions and the rulings of the Hon'ble Supreme Courts including that of CIT Vs Raja Benoy Kumar Sahas Roy (32 ITR 460)(SC).

5.3 The Ld. Senior Counsel further submitted that in the case of Namdhari Seeds P. Ltd ITA No. 75/2007 passed by the Hon'ble Bombay High Court and relied upon by the revenue in quantum proceedings, leasing of the land was prohibited under the Karnataka land reforms Act and therefore income from such land has been held as not agriculture income.

5.4 Further, he submitted that in quantum proceeding before the Tribunal, the assessee has relied on the decision of the Tribunal, Mumbai bench in the case of M/s Monsanto India Ltd. Vs ACIT (in ITA No. 1209 of 2010), which has been subsequently affirmed by the Hon'ble Bombay High Court in ITA No. 633/2010. The Ld. Senior counsel submitted that Special Leave Petition in the case of Namdhari Seeds Private Limited and Monsanto India Ltd are pending before the Hon'ble Supreme Court.

4.5 In view of the above facts, the Ld. Senior counsel submitted that claim of the assessee has been rejected by the Tribunal merely due to difference of opinion and thus assessee cannot be held guilty of furnishing inaccurate particulars or concealment of particulars of income in view of the decisions of the Hon'ble Delhi High Court in the case of CIT Vs Nalwa Sons investment limited reported in 327 ITR 543(Delhi), CIT Vs. Proagro Seeds Ltd., 296 ITR 235 (Delhi), CIT Vs. Mahabaleshwar Gas & Chemicals (P)

Ltd., 170 Taxman 38(Del.). He submitted that SLP filed in the case of Nalwa Sons (supra) has been dismissed by the Hon'ble Supreme Court vide order dated 04/05/2012 in SLP (C) No. 18564/2009.

5.6 The Ld. Senior Counsel also distinguished the decisions relied upon by the Ld DR and submitted that no fraud or neglect while making claim of agriculture income has been established by the lower authorities and thus the ratio of the Hon'ble Supreme Court in the case of KP Madhusudan (supra) would not apply over the facts of the instant case.

5.7 Towards the end of the hearing, the Ld. senior counsel made oral plea for application under rule 27 of the ITAT Rules for raising the ground that in the notice for penalty initiated, charges are not clearly specified. He submitted that in the notice specific charge of concealment of particulars of the income or filing inaccurate particulars of income was not clearly marked. According to him, in view of the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Manjunath Cotton & Ginning Factory, 359 ITR 565 (Kar.), Penalty cannot be sustained in such circumstances.

6. In the rejoinder, the Ld. DR objected to making oral plea for application under Rule 27 of the ITAT Rules. According to her, the Ld. Senior Counsel should have filed a written application with advance notice. She also submitted that said oral plea of application under Rule 27 is not maintainable as no such issue of specific charge of concealment of particles of income or furnishing of inaccurate particulars of income was raised by the assessee before the Ld. CIT(A). She submitted that no ground was decided

by the Ld. CIT(A) against the assessee and therefore no application under Rule 27 could have been filed. Without prejudice to her objections on maintainability of application under Rule 27, she submitted that when the assessee has understood purported import of the notice, no prejudice was caused to the assessee and such circumstances penalty cannot be vitiated. In support of her contention she relied on the decision of the Hon'ble Madras High Court in the case of Sundaram Finance Ltd versus CIT (2018) 403 ITR 407 (Madras). The Ld. DR also placed reliance on the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Smt Kaushlya (1995) 216 ITR 660 (Bombay) and decision of the Tribunal Mumbai bench in the case of DCIT Vs. Shah Rukh Khan (2018) 93 taxmann.com 320.

7. We have heard the rival submissions and perused the relevant material on record. In the instant case the main issue in dispute involved around Explanation-1 of section 271(1)(c) of the Act. For ready reference, said explanation is reproduced as under:

> *"[Explanation 1.—Where in respect of any facts material to the computation of the total income of any person under this Act,—*
> *(A) such person fails to offer an explanation or offers an explanation which is found by the [Assessing] Officer or the [***] [Commissioner (Appeals)] [or the [Principal Commissioner or Commissioner] to be false, or*
> *(B) such person offers an explanation which he is not able to substantiate [and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him],*
> *then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed."*

7.1 In view of the Explanation, penalty under section 27(1)(c) of the Act shall be levied for deemed concealment of particulars of income if,

(A) the person fails to offer an explanation to the Assessing Officer or the explanation given is found to be false

"OR"

(B) person fails to substantiate the explanation and fails to prove that such explanation is bonafide and all material facts have been disclosed by him.

7.2 In the case of the Dharmenrdra Textile processors (supra) , the Hon'ble Supreme Court held that the penalty under section 27(1)(c) of the Act is a civil liability and for which willful concealment is not an essential ingredient. In the case of Atul Mohan Bindal (supra), the Hon'ble Supreme Court held that "*mens rea*" is not essential for levy of civil nature of penalty under section 271(1)(c) of the Act and Explanation appended to section 271(1)(c) indicates element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing return.

7.3 The Hon'ble Supreme Court in the case of Reliance Petro Products Private Limited (supra) analyzed inaccurate particulars of the income and decided that merely rejection of the claim by the Assessing Officer, will not invite penalty in the section 271(1)(c) of the Act. In the said case, the Assessing Officer disallowed expenditure under section 14A of the Act and levied

penalty in respect of the said disallowance. The relevant finding of the Hon'ble Supreme Court on the issue is reproduced as under:

> *"9. We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as:-*
>
> > *"not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript".*
>
> *We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under Section 271(1)(c) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars.*
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> *10. It was tried to be suggested that Section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under Section 271(1)(c). If we accept the contention of the*

Revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under Section 271(1)(c). That is clearly not the intendment of the Legislature."

7.4 In the case of KP Madhusudhanan (supra) the Hon'ble Supreme Court held that if the assessee does not prove, in the circumstances stated in explanation that failure to return his correct income was not due to fraud or neglect, he shall be deemed to have concealed the particulars of income or furnishing inaccurate particulars of income.

7.5 In the case of Nalwa Sons Investment Limited (supra), the Hon'ble High Court of Delhi held that though there was concealment but that had repercussions only when the assessment was done under the normal procedure and if income was assessed under section 115JB of the Act, the aforesaid concealment had no role to play and was totally irrelevant.

7.6 In the case of Proagro Seeds Co. Ltd (supra) also the assessee claimed exemption under section 10(1) of the Act on the ground that income derived by the assessee was from agriculture activities. The Assessing Officer rejected the claim and brought to tax the amount of income disclosed by the assessee and levied penalty under section 271(1)(c) of the Act. The Tribunal held that upon application of the facts and circumstances of the case the department had not alleged any concealment or inaccurate furnishing of particulars of the income. The Tribunal further observed that in the earlier years the department had accepted the same activity as agriculture and granted exemption. In view of the above finding of the Tribunal, the Hon'ble Delhi High Court

held that there was no deliberate concealment of the income nor any accurate furnishing of particular sub income and that the assessee's perception that such activities were agriculture in nature, which had been treated by the Department to be so in previous years, no question of law arises.

7.7 Thus, in the above case Hon'ble High Court found difference of opinion in the view of the Department in current year as compared to earlier years.

7.8 Similarly, the Hon'ble Delhi High Court in the case of Mahableshwar Gas and Chemicals Private Limited(supra) held that no penalty could be levied on the difference of opinion on the issue in dispute. The relevant finding of the Hon'ble High Court is reproduced as under:

> *"10. Apart from the above, we also find that the revenue's appeal has been dismissed on merits by the Tribunal. It has been held that the claim of the assessee for depreciation was based on a bona fide belief and that the disallowance of the said claim during assessment proceedings on a difference of opinion could not be treated as concealment of income by the assessee, particularly when all the particulars in respect of the said claim were fully furnished by the assessee in its return of income."*

7.9 The Ld. Senior Counsel, has argued before us that in quantum proceeding before the Tribunal the assessee claimed that claim of the agriculture income in the case of the assessee was made correctly in view of the decision of the Hon'ble Bombay High Court in the case of CIT Vs Monsanto India Ltd (supra). the Ld. Counsel further submitted that, the Tribunal in quantum

proceeding has relied on the decision of the Karnataka High Court in the case of Namdhari Seeds P Ltd (supra). The Ld. Counsel submitted that, the addition has been sustained by the Tribunal in quantum proceedings mainly due to difference of opinions. According to him, in view of the difference of opinion on the issue of the activity as agriculture income, no penalty under section 271(1)(c) of the Act could be levied.

8. On the contrary, the Ld. DR argued that in reality the assessee provided seeds to the farmers and they have grown the crops in their fields and sold the crops to the assessee. She submitted that the assessee for the purpose of accounting and claiming the agriculture income fraudulently has bifurcated the sale proceeds of crop given to the farmers partly toward lease rent, fertilizers and chemicals, labour and service cost. According to her in the revenue land records maintained by the state government the farmers were recorded as cultivator of the land and the assessee was not recorded as lessee of the land or cultivator of the land and thus the assessee by way of creating certain documents or papers in the form of lease rent agreements (which were also not signed by all the farmers), claimed the activity of purchase of the seeds from the farmers as agriculture activity in fraudulent manner.

9. In view of the arguments of the parties, in the instant case we are required to examine whether there was a difference of opinion on the activities of the assessee as agriculture income. We have observed from the order of the Tribunal dated 18/12/2017 in ITA No. 1988/Del/2006, 4383/Del/2006, 443/Del/2010, 5285/Del/2012, 3670/Del/2013, 1903/Del/2014,

4269/Del/2014 and 2223/Del / 2014, that the Ld. AR relied on the decision of the Hon'ble Bombay High Court in the case of Monsanto India Ltd (supra), however the Tribunal in Para 20 has held that the reliance placed by the Ld. AR is misplaced inasmuch as even in the said judgment the Hon'ble High Bombay Court in para 3 has clearly observed that agriculture operations ought to have been actually carried out by the assessee. Thus, the Tribunal has clearly distinguished the applicability of the decision of the Hon'ble Bombay High Court in the case of Monsanto India Ltd (supra) and rejected the claim of agriculture income, relying on the decision of the Karnataka High Court in the case of Namdhari Seeds P Ltd. (supra). Thus, we do not find any difference of opinion on the issue in dispute.

10. In assessment proceedings, the assessee submitted that income from the activities was claimed agriculture income in view of the decision of the Hon'ble Supreme Court in the case of CIT Vs Raja Benoy Kumar Sahas Roy (supra), but the Tribunal in quantum proceedings held that from the arrangement between the farmers and assessee, it is clear that assessee was not carrying any agriculture operation as required in terms of the test laid in the judgment of the Hon'ble Supreme Court in the case of Raja Benoy Kumar Sahas Roy (supra). The relevant findings of the Tribunal (supra) are reproduced as under:

> *"18. We find from the arrangement between the farmer and the assessee that the assessee is not carrying any agricultural operations required in terms of tests laid in the judgment of the Hon'ble Supreme Court in the case of CIT Vs Raja Benoy Kumar Sahas Roy (supra). The actual cultivation on the land is done by the farmer like tilling, sowing, etc. The mere supervision by the assessee without*

carrying of the basic operations would leave no manner of doubt that no agricultural income arose in the hands of the assessee. The argument of the assessee that the company is an artificial person could not have conducted the agricultural operations by itself and, therefore, required such kind of an arrangement with the farmers for earning agricultural income does not have any merit. The farmers are not the employees of the assessee company. Had it been the case where the actual agricultural operations were carried out by the employees of the assessee company, it would have been a different case altogether.

19. The features of the agreement relied upon by the assessee like composite payment, giving parent seeds free of cost to the farmer,' not carrying out any agricultural operations by itself clearly shows that the assessee company is only earning business income from the activity and not agricultural income. It is the farmer in the present case, who has to ensure the watering of the land, fertility and the suitability of the land. Without carrying out the basic operations along with the subsequent operations on the agricultural field, the assessee cannot claim agricultural income. The facts of the present case though represent a legal business model preferred by the assessee and the farmer but the said arrangement only gives rise to business income in the hands of the assessee and not agricultural income. The leave and license agreement as well as the service provider agreement read along with the statements of the farmers also show that the agricultural operations are carried out by the farmers only."

11. The Assessing Officer in the assessment order based on the relevant extract of the assessment order for assessment year 2001-02, has observed as under:

(i) The lease agreements have not even been filled up completely; they do not mention lease rent to be paid;

they are not signed on behalf of the company.(Page -2 of the Assessment Order)

(ii) There is no single instance when the land claimd to have been taken on lease by the company from a farmer was handed over to another farmer for cultivation. (Pg. -6 of the Assessment Order)

(iii) The assessee settled account of all the farmers on the basis of the procurement price mentioned and payment of lease rent, fertilizer and chemical charges and labour and service charges adjusted by way of a composite rate, which is unusual as labour and service charges have not paid on actual basis. (Pg. 2 of the Assessment order)

(iv) The assessee tried to explain the negative balances in labour and service charges on account of negligence of the farmers, however, it failed to offer any satisfactory explanation to altogether negative balances of some of the farmers in spite of working for the assessee. (pg. -4 of the Assessment Order)

(v) As observed in 6.1.3 (c) above, the assessee has not been able to explain the emergence of impractical and absurd situation where the farmer is supposed to be paying the company for the labour he has put in. It is also pointed out that out of three different charges paid to the farmer, the land lease charges are against the land leased by the farmer, while the fertilizers & chemical charges are supposed to be basically in the nature of reimbursement. Even if the farmer/land owner chose not to toil in the field, there would not have been any impact on these two charges. The question remains, under these circumstances, why would he prefer to work in the field to get a deduction in his income as lease charges/reimbursement. Clearly the assessee's method of accounting is not depicting the true picture and it is put to use only to divide the procurement price of the good seed into these three specific charges so as create impression that it's the assessee who is actually carrying out the agricultural operations. (Pg. -5 of the Assessment Order)

(vi) For the reasons spelled out above, none of the arguments of the assessee is v/ convincing. The assertion that the most critical item, i.e. parent seed belongs to the assessee does not in itself allow the assessee to claim its income to be agricultural in nature. All the basic & subsequent operations are performed by the farmers only and the assessee is in no wav involved with day to day agricultural practices. Further, this is the standard practice of all the corporations dealing in hybrid/HYV seeds. Even the National Seeds Corporation Ltd. (a Government of India Undertaking) supplies its parent seeds to the farmers and buys the produce back if it meets its norms. It also provides supervising facilities to the farmers and charges in lieu thereof. However, no exemption for agricultural income is claimed by or allowed to the corporation. Also the argument that the parent seeds are supplied free of cost to the farmers can also be explained away if it is assumed that the procurement cost is arrived at only after taking into account the impact of the cost incurred of parent seeds in overall business scenario of the assessee. (Pg. -5 of the Assessment Order)

12. On perusal of the above observation of the Assessing Officer, other paragraphs of the assessment order and arguments of the Ld. DR, we are of the opinion that the assessee company has actually purchased seeds from the farmers and claimed the said activity as agriculture income by way of creating a chain of documents or papers of lease agreements etc and thus the explanations furnished by the assessee are not found to be bonafide. The assessee has claimed its activity of purchase of the seeds from the farmers as agriculture income in a fraudulent manner to evade the taxes, which it was liable for carrying its business activity. It is not the simple case of disallowance of

expenditure as in the case of reliance Petro products Private Limited(supra). In the instant case the real activity of purchase of the seeds has been planned and arranged in such a way as it look like the agricultural activity but the assessee has not succeeded in camouflaging its real activity. One of the strange features in the kind of arrangement or documentation of the assessee is that in case of no yield or damage of crop, the expenses on labour or service or fertilizer etc. has to be borne by the farmer because in absence of no crop, there would be no procurement price to the farmer and the farmer will get nothing. In such circumstances, how the assessee could explain that the cultivation has been done by the company. Another strange feature is that how the assessee can claim as cultivator as its name is not appearing in the revenue land records maintained either as lessee of the land or the cultivator.

13. Further, if the logic of the assessee of the claim of agricultural income in the hands of the assessee is accepted as one of the opinion, then every businessman in the India, who buys crops from farmer, would become eligible for earning agriculture income by way of getting same lease agreements signed from the farmers and making accounting entries in their books of account to bifurcate the part of procurement price paid to farmer towards lease rent, fertilizer & chemical, labour & service charges. In our opinion, the assessee has made claim of agricultural income in mala fide manner and in gross abuse of the provisions of the Act.

14. In view of the aforesaid discussion, we hold the assessee liable for concealment of particulars of income. Accordingly, we

reverse the finding of the Ld. CIT(A) and uphold the finding of the Assessing Officer on the issue in dispute. The grounds of the appeal of the Revenue are accordingly allowed.

15. On the issue of oral plea of application under Rule 27 of the ITAT Rules is concerned, we are of the opinion that Ld. Senior Counsel should have filed a written application rather than putting the opposite party at surprise. Even the said oral plea was not made at the beginning of the hearing. It is in the interest of Justice that opposite party should be made aware of the grounds raised by the party. We also observed that before the Ld. CIT(A) the assessee did not raise the issue of defect of specific charge in the notice issued for levying penalty. We also note that Ld. CIT(A) has not decided against the assessee on any point in the impugned order. The assessee can invoke application under rule 27 of the ITAT rules, if the Ld. CIT(A) has decided the appeal against the assessee on any point. But in the instant case, the Ld. CIT(A) has allowed the appeal in favour of the assessee. In view of the above, in our opinion the oral plea of application under Rule 27 of the ITAT Rules, is not maintainable and accordingly, we reject the plea of the Ld. Counsel. Accordingly, we are not adjudicating on the arguments of the Ld. Counsel and the Ld. DR on the merit of application under rule 27 of the ITAT rules.

15. In the result, appeal of the Revenue in ITA No. 6622/Del/2013 is allowed.

16. As the facts and circumstances in other two appeals, i.e., ITA No. 6645/del/2013 for assessment year 2006-07 and ITA No. 4366/del/2015 for assessment a 2007-08, have been admitted by both the parties to be identical to the facts and circumstances in

assessment year 2004-05 in ITA No. 6622/Del/2013, accordingly following our decision in assessment years 2004-05, both the appeals of the Revenue for the assessment year 2006-07 and 2007-08 are accordingly allowed.

17. To sum up, all the three appeals of the Revenue are allowed. Decision is pronounced in the open court on 29th June, 2018.

Sd/-	Sd/-
(SUCHITRA KAMBLE)	**(O.P. KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 29th June, 2018.
RK/-(D.T.D.)
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi