

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH**  
**(VIRTUAL COURT)**

**श्री एन.के.सैनी, उपाध्यक्ष एवं श्री राजपाल यादव, उपाध्यक्ष**  
**BEFORE: SHRI. N.K.SAINI, VP & SHRI , RAJPAL YADAV, VP**

आयकर अपील सं./ ITA Nos. 1304 to 1306/Chd/2019  
निर्धारण वर्ष / Assessment Years : 2005-06, 2010-11 & 2011-12

M/s Emsons Organics Ltd. H.No. 1-F, Adjoining Municipal House, Model Town, Patiala-147001 Punjab	बनाम	The DCIT CC-1, Chandigarh
स्थायी लेखा सं./PAN NO: AABCE0631K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Prem Chand Goyal, I.P.  
राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Addl. CIT &  
Shri J.S. Kahlon, CIT

सुनवाई की तारीख/Date of Hearing : 23/06/2021  
उद्घोषणा की तारीख/Date of Pronouncement : 23/06/2021

**आदेश/Order**

**PER N.K. SAINI, VICE PRESIDENT**

These three appeals by the Assessee are directed against the separate orders of the Ld. CIT(A)-3, Gurgaon each dt. 29/07/2019.

2. Since the appeals were heard together, so these are being disposed off by this consolidated order for the sake of convenience and brevity.
3. First we will deal with the appeal in ITA No. 1304/Chd/2019 for the A.Y. 2005-06 wherein Assessee has raised the following grounds:

1. *That the Ld. Commissioner of Income Tax(Appeals) has erred in passing an ex-parte order which is against the Principals of natural justice and as such the order passed is illegal, arbitrary and unjustified.*

2. *Without prejudice to the above, the Ld. Commissioner of Income Tax( Appeals) erred in law and facts in failing to adjudicate the specific ground of appeal wherein it was challenged that the assessing officer did not record the mandatory satisfaction in the assessment order before initiation of penalty whether for concealment of income or for*

*furnishing inaccurate particulars of income and as such the penalty order is illegal, arbitrary and unjustified.*

3. *That the Ld. Commissioner of Income Tax(Appeals) has further erred in law and facts in failing to adjudicate the specific ground of appeal wherein it was challenged that the Ld. Assessing Officer has erred in law in failing to mention whether notice under section 271(l)(c) issued was for concealment of income or for furnishing inaccurate particulars of income and as such penalty imposed in pursuance of an invalid notice is illegal, arbitrary and unjustified.*

4. *That the Ld. Commissioner of Income Tax(Appeals) has further erred in law and facts in failing to adjudicate the specific ground of appeal wherein it was challenged that the Ld. Assessing Officer has further erred in imposing penalty under section 271(l)(c) of the Act without mentioning the charge as to whether the penalty is levied for furnishing inaccurate particulars or for concealment of income and as such the order passed is illegal, arbitrary and unjustified.*

5. *Without prejudice to the above, the Ld. Commissioner of Income Tax(Appeals) has erred in law as well as on facts in upholding the imposition of penalty of Rs.27,36,405/- under section 271(l)(c) of the Act which is illegal, arbitrary and unjustified.*

6. *That the penalty imposed under section 271(l)(c) of the Act is not imposable in as much as there is neither any concealment of income nor furnishing of any inaccurate particulars of income and as such the order passed under section 271(l)(c) of the Act is illegal, arbitrary and unjustified.*

7. *That the order of the Ld. Commissioner of Income Tax(Appeals) passed under section 271(l)(c) of the Act is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable.*

4. From the aforesaid ground it is clear that the main grievance of the assessee vide ground no. 1 relates to the passing of the impugned order ex-parte without giving proper and reasonable opportunity of being heard to the assessee.

5. Facts of the case in brief are that a search operation was conducted on 17/09/2010 under section 132(1) of the Income Tax Act, 1961 (hereinafter referred to as 'Act') at business premises of concerns belonging to Surya group and the residence of directors and employees of Surya Group including the business premises of the assessee. The jurisdiction of the assessee was transferred to the ACIT, CC-II, Chandigarh vide the worthy CIT, Paiala's order no. 45 dated 04.04.2011. Accordingly, statutory notices u/s 153A of the Income Tax Act, 1961 were issued on 05.05.2011 for the assessment years 2005-06 to 2010-11, falling within six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted. The assessee had filed its return under section 139 of the Act on 31/08/2005 showing nil income. In response to the notice under section 153A the assessee filed a letter dated 27.02.2013 stating therein that the return filed under section 139(1) may be

treated as sufficient compliance towards return filed in response to notice under section 153A. Statutory notice under section 143(2) of the Act was issued on 01/03/2013 and duly served on the assessee and detailed questionnaires dt. 28/02/2012 for A.Y. 2005-06 to 2011-12 in terms of section 142(1) of the Act were also issued and duly served upon the assessee but no compliance was made to the notice dt. 28/02/2012. Meanwhile the assessee filed an application in terms of section 245C(1) before the Hon'ble Income Tax Settlement Commission, New Delhi for A.Y. 2005-06 to A.Y. 2012-13 on 21/03/2013 which was rejected vide order dt. 02/04/2013. Thereafter a letter dt. 13/05/2013 was issued and duly served upon the assessee and the hearing was scheduled on 17/05/2013 but no compliance was made. A.O made the addition of Rs. 73,00,000/- to the total income of the assessee by stating that the assessee had failed to prove the genuineness of the share capital received and creditworthiness of the share applicants. The A.O. levied the penalty of Rs. 27,36,405/- under section 271(1)(c) of the Act vide the ex-parte order dt. 23/03/2018.

6. Being aggrieved the assessee carried the matter to the Ld. CIT(A) who confirmed the action of the Assessing Officer by passing the impugned order ex-parte. The Ld. CIT(A) observed that notices for hearing were issued on various dates to the assessee but nobody appeared in response to the said notices.

7. Now the assessee is in appeal.

8. The Ld. Counsel appearing on behalf of the assessee submitted that he had been appointed as the Resolution Professional of the assessee vide order dt. 18/11/2019 passed by the NCLT , Chandigarh Bench. It was further submitted that no notice for hearing was served upon the assessee therefore the ex-parte order passed by the Ld. CIT(A) without giving opportunity of being heard was not justified.

9. In her rival submissions Ld. Sr. DR strongly supported the impugned order passed by the Ld.CIT(A).

10. We have considered the submissions of both the parties and carefully gone through the material available on record. In the present case, it is noticed that the Ld. CIT(A) decided the appeal ex-parte, he simply stated that notices of hearing on 20/02/2019, 23/04/2019, 26/06/2019 and 15/07/2019 were issued but none attended.

However, nothing is brought on record to substantiate that the notices of hearing were served upon the assessee. It is well settled that nobody should be condemned, unheard as per the maxim, "audi alteram partem".

11. We therefore keeping in view the principle of natural justice, deem it appropriate to set aside this case back to the file of Ld. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

12. In other appeals i.e; ITA No. 1305 & 1306 /Chd/2019 for the A.Y 2010-11 & 2011-12 respectively the facts are similar as were involved in ITA No. 1304/Chd/2019 for the A.Y. 2005-06, even the rival contentions were similar, therefore, our findings given in the former part of this order shall apply mutatis mutandis for these appeals also.

13. In the result, all the above appeals of the assessee are allowed for statistical purposes.

(Order pronounced in the open Court on 23/06/2021 )

**Sd/-**

**राजपाल यादव  
(RAJPAL YADAV)**

**उपाध्यक्ष / VICE PRESIDENT**

**AG**

**Date: 23/06/2021**

**Sd/-**

**एन.के.सैनी,  
( N.K. SAINI)**

**उपाध्यक्ष / VICE PRESIDENT**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File