

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. KULDIP SINGH, JUDICIAL MEMBER  
(THROUGH VIDEO CONFERENCING)**

ITA No.4948/Del/2017  
Assessment Year: 2012-13

<b>Jai Prakash Agri Initiatives Co. Ltd. 63, JA House, Basant Lok, Vasant Vihar, New Delhi PAN No. AACCCJ2246C (APPELLANT)</b>	<b>Vs</b>	<b>DCIT Circle – 13 (1) New Delhi (RESPONDENT)</b>
--	-----------	--

Appellant by	Sh. Praveen Kumar, CA
Respondent by	Sh. Umesh Takyar, Sr. DR

Date of hearing:	11/11/2021
Date of Pronouncement:	11/11/2021

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal filed by the assessee is preferred against the order of the CIT(A)-5, Delhi dated 17.04.2017 pertaining to A.Y. 2012-13.

2. The grounds raised by the assessee read as under :-

1. *That the learned assessing officer [AO] and the Commissioner of Income Tax (Appeals) [CIT(A)] has erred to disallow Rs.*

2,599,450 on account of depreciation (& additional depreciation) allegedly claimed in respect of land whereas factually no such depreciation was claimed in computing the declared total income.

2. That in making the said disallowance the learned officers below have failed to notice that assessee's balance sheet shows cost of land as Rs.45,27,755/- at start of the year and as Rs.54,16,005/- at close of the year after addition of Rs.8,88,250/- during the year. No depreciation in respect of land was provisioned or claimed.
3. That the Ld. A.O. and CIT(A) have failed to appreciate inter-alia the following:
  - 1) The assessee is running a Soya Processing Unit. The Unit was initially partly installed by the associate company Jaiprakash Associates Ltd. It was transferred before completion to the assessee by way of slump sale with all its assets & liabilities at book value. The transfer took place in the preceding assessment year.
  - 2) The land for the Unit had earlier been acquired by the transferor associate company in two parcels. One parcel of 10 acres was acquired at a cost of Rs.21,50,435/- while the other of 8 acres was acquired at a cost of Rs.23,77,320/-. Thus the total cost of Unit's land was Rs.45,27,755/-.
  - 3) On slump sale to the assessee, the Unit's land came to be owned by the assessee even though no separate instrument of transfer of land was executed. The land was reflected in the

assessee's books at the aforesaid book value of Rs.45,27,755/-.

- 4) Subsequently for availing a secured loan the assessee needed at least one parcel of the land registered in its name. It was for this purpose that the 10 acre piece of land was got registered in its name in the year 2011.
- 5) During registration the value of the land for stamp duty purposes was taken at Rs.1,25,84,000/-. The consideration, which actually was the book value at which the said land was transferred, was hypothetically mentioned in the deed as Rs.69,90,000/-. The registration deed therefore showed as if the cost of the 10 acre parcel of land to the assessee (including stamp duty) was Rs.74,27,000/- whereas the actual cost thereof remained Rs.21,50,435/-.
- 6) No accounting cognizance was taken of the hypothetical amount of Rs.69,90,000/- mentioned in the registration deed. However, the stamp duty cost actually incurred of Rs.4,37,000/- was duly debited to Misc. Expenses in the books of the assessee.
- 7) The learned assessing officer, having directly received information about the aforesaid registration and in the absence of debit of Rs.74,27,000 in the land account of the assessee, assumed that the same would have been debited to depreciable Plant & Machinery. It disallowance of Rs.25,99,450 (35% of 74,27,000).
- 8) The above facts are verifiable. Even assuming without prejudice that the assessee failed to adequately explain the

*circumstances of the impugned registration during assessment and first appeal, yet no disallowance as made can be sustained because the same is based on a demonstrably wrong and counterfactual presumption.*

**DISALLOWANCE OF INTEREST**

4. *That the learned A.O. and CIT(A) have erred in adding Rs.1,09,085/- to assessee's total income on account of alleged difference in the interest receipt as per 26AS statement of Rs.12,46,061 / - and interest receipt as per Profit & Loss A/c of Rs.11,36,976/-.*
  5. *That in making the said addition the assessing officer failed to notice that interest to the extent of Rs. 122,148 pertained to pre-operative period which was offset against the preoperative expenditure. The interest as per 26AS, therefore, did not exceed the interest credited in the accounts and no addition on this account was called for.*
3. At the very outset the counsel for the assessee stated that the CIT(A) dismissed the appeal exparte. It is the say of the Counsel that if one more opportunity is given then the assessee would be in a position to explain the facts of the case and has a very good chance of convincing the CIT(A) to delete the impugned additions/disallowance made by the AO. Though the DR strongly supported the findings of the lower authorities, but agreed to restore the appeal to the files of the CIT(A).

4. We have carefully perused the order of the CIT(A). We find that the CIT(A) did give notice of hearing but on each occasion for some reason the Counsel took adjournment. There is no mention of any final notice of hearing nor there any mention of final opportunity given to the assessee.

5. In the interest of justice and fair play we deem it fit to restore this appeal to the files of the CIT(A). The CIT(A) is directed to decide the appeal on merits after giving a reasonable opportunity of being heard to the assessee. The assessee is directed to avail this fresh opportunity given to it.

6. In the result, the appeal filed by the assessee is allowed for statistical purpose.

7. Decision announced in the open court in the presence of both representatives on 11.11.2021.

Sd/-  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

\*NEHA\*

Date:-11.11.2021

Copy forwarded to:

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

Sd/-  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	11.11.2021
Date on which the typed draft is placed before the dictating Member	11.11.2021
Date on which the typed draft is placed before the Other member	11.11.2021
Date on which the approved draft comes to the Sr.PS/PS	11.11.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	11.11.2021
Date on which the fair order comes back to the Sr. PS/ PS	11.11.2021
Date on which the final order is uploaded on the website of ITAT	11.11.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	