

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI**

**BEFORE
SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA Nos. 1902 & 1903/Del/2017
Asstt. Years: 2008-09 & 2009-10

Shri Lal Mahal Ltd. B-16, Bhagwan Dass Nagar, New Delhi – 110 002 PAN AAEC5326C	Vs.	DCIT, Circle-8(1) New Delhi.
(Appellant)		(Respondent)

Assessee by:	None
Department by :	Ms. Anupama Singla, Sr. DR
Date of Hearing	29.08.2022
Date of pronouncement	16.11.2022

ORDER

These appeals by the assessee are against two separate orders of learned Commissioner of Income Tax (Appeals) 22, New Delhi confirming penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 pertaining to the assessment years 2008-09 and 2009-10.

2. At the outset, we must observe, when the appeals were called for hearing none appeared on behalf of the assessee to represent the appeals despite service of notice. Even, there is no

application seeking adjournment. On perusal of record, it is observed, on several occasions earlier, when the appeals came up for hearing none appeared on behalf of the assessee. The aforesaid facts clearly reveal that not only the assessee is negligent in its approach in so far as the present appeals are concerned but there is inherent lack of interest. Since sufficient opportunity of being heard has been granted to the assessee which the assessee has failed to avail, we are inclined to proceed with the hearing of the appeals, ex parte, qua the assessee after considering the submissions of learned Departmental Representative and based on material available on record.

3. Briefly, the facts are, the assessee is a resident corporate entity stated to be engaged in the business of trading in foodgrains and other merchandise items. In so far as the assessment year 2008-09 is concerned, the assessee filed its return of income on 30.09.2007 declaring income of Rs. 5,62,40,668/-. In course of assessment proceedings, the Assessing Officer noticed that the assessee has debited an amount of Rs. 60,73,647/- to the profit and loss account towards Swap charges. When called upon to explain, the assessee submitted that the amount was paid through bank towards

difference of cost on closure of forward contracts undertaken to minimise the exchange fluctuation risk associated with the realisation of export proceeds. Being of the view that the transaction relating to forward contracts is a purely speculative transaction having no relation with assessee's trading activity, the Assessing Officer disallowed the claim of loss arising out of closure of forward contacts. Further, the Assessing Officer found that the assessee has claimed agricultural income of Rs. 84,25,785/-. When called upon to furnish supporting evidence to demonstrate the claim of agricultural income, the assessee simply filed a submission without any supporting evidence. The Assessing Officer observed while considering similar claim of the assessee in assessment year 2007-08, the Assessing Officer had disallowed the entire claim. However, in the impugned assessment year, after examining the evidences furnished by the assessee, such as, details of agricultural land and affidavit of agriculturists, the Assessing Officer made an inquiry through the Investigation Wing at Chennai. On perusal of inquiry report of the Investigation wing, the Assessing Officer found that the assessee has earned agricultural income from limited land holding. Accordingly, he disallowed 50% of the agricultural

income claimed by the assessee and treated such amount of Rs. 42,12,893/- as income from undisclosed sources. Though, contesting the aforesaid additions the assessee filed appeal before learned Commissioner (Appeals), however, subsequently the appeals were withdrawn. Based on these additions, the Assessing Officer initiated proceeding for imposition of penalty under section 271(1)(c) of the Act and ultimately passed order imposing penalty of Rs. 34,62,449/- alleging furnishing of inaccurate particulars of income. The penalty so imposed was also confirmed by learned Commissioner (Appeals) in absence of any valid explanation furnished by the assessee.

4. Having considered the submissions of the learned Departmental Representative and perused material on record, it is found that in so far as disallowance of part of agricultural income is concerned, the inquiry conducted by the Assessing Officer clearly revealed that the agricultural activity was carried on only in one village over 22.23 acres of land. Based on such inquiry report, the Assessing Officer disallowed 50% of the agricultural income. It is a fact on record that though the assessee contested the disallowance before learned Commissioner (Appeals) however, subsequently, it withdrew the appeals. Thus, the aforesaid facts

presupposes that the assessee did not have a strong case on merits to contest the disallowance. As regards the disallowance of Swap charges, learned Commissioner (Appeals) has given a categorical finding that the assessee did not furnish any evidence to establish whether the nature of Swap charges were disclosed before detection by the Assessing Officer. Since, the assessee has failed to appear before us and adduce any evidence or submission to demonstrate that no case of furnishing of inaccurate particulars is made out, it can be safely concluded that the assessee does not have much to say in the matter in its defence. That being the factual position, we do not find any valid reason to interfere with the decision of the Departmental Authorities. Therefore, we uphold imposition of penalty.

5. In so far as assessment year 2009-10 is concerned, the assessee filed its return of income on 30.09.2009 declaring loss of Rs. 7,05,37,007/-. In course of assessment proceedings, the Assessing Officer noticed that the assessee has shown agricultural income of Rs. 92,04,639/-. Following the decision taken in assessment year 2008-09, the Assessing Officer disallowed 50% of the agricultural income and treated it as income from undisclosed sources. Further, the Assessing Officer

disallowed assessee's claim of depreciation on land amounting to Rs. 2,46,750/-. Based on aforesaid additions, the Assessing Officer initiated proceeding for imposition of penalty under section 271(1)(c) and ultimately passed an order imposing penalty of Rs. 16,32,196/-, alleging furnishing of inaccurate particulars of income. While deciding assessee's appeal against imposition of penalty, learned Commissioner (Appeals) sustained the penalty imposed on the addition made treating a part of agricultural income as income from undisclosed source. In respect of penalty imposed on the addition of Rs. 2,46,750/-, he directed the Assessing Officer to examine whether the assessee has claimed the deduction in the return of income and in case it is not so, no penalty should be imposed.

6. We have considered the submissions of learned Departmental Representative and perused material on record. In so far as penalty imposed in respect of agricultural income, our decision in assessment year 2008-09 will apply mutatis mutandis. In so far as penalty in respect of addition made on account of claim of depreciation, in view of specific directions of learned Commissioner (Appeals), no interference is called for.

Accordingly, we uphold the decision of learned Commissioner (Appeals).

7. In the result, both the appeals are dismissed.

Order pronounced in the open court on 16th November, 2022.

**sd/-
(G.S. PANNU)
PRESIDENT**

**sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 16/11/2022

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

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