

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'A', BANGALORE

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T.A No.1142/Bang/2014
(Assessment Year : 2007- 08)

Shri. T. Subbaramaiah,
Subbaiah Hospital, Hail Road,
Shimoga
PAN : ARPPS8381N

.. Appellant

v.

Income-tax Officer,
Ward -1, Shimoga

.. Respondent

Assessee by : Shri. A. R. Vivek, Adovate
Revenue by : Dr. P. K. Sreehari, Addl. CIT

Heard on : 17.12.2015
Pronounced on : 06.01.2015

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by assessee it has altogether taken seven grounds of which grounds 1, 2, 6 and 7 are general and do not need specific adjudication. Ground 5 is on levy of interest u/s.234B of the Income-tax Act, 1961 ('the Act' in short).

02. Vide its ground 3 assessee assails the reopening done for the impugned assessment year and vide ground 4 assessee assails an addition of Rs.62,466/-.

03. Facts apropos are that assessee, running a medical shop and also having rental income declared income of Rs.71,510/- and agricultural income of Rs.9 lakhs. Return was processed u/s.143(1) of the Act. There was a survey conducted in one M/s. Subbaiah Hospital, where assessee was a partner, on 27.08.2008. During the course of survey it was found that assessee had constructed part of Subbaiah Hospital complex building on Jail Road, Shimoga. In the return of income filed for the impugned assessment year however investment in construction of building was not shown by the assessee. AO proceeded to issue a notice u/s.148 on 04.06.2009. Assessee in reply to the said notice stated that earlier return filed by him could be treated as one filed in pursuance to the said notice.

04. During the course of reassessment proceedings AO required the assessee to produce evidence for the agricultural income of Rs.9 lakhs shown by him. Gross receipts from sale of agricultural produce was Rs.12,56,476/- including sale of coconuts worth Rs.80,000/-. Assessee was required to furnish bills and vouchers in support of sale of agricultural

produce since there was a substantial increase in agricultural income from what was shown by the assessee in earlier years. In response assessee produced sale bill of arecanut for Rs.3,76,476/-. Assessee could not produce any bill in support of sale of balance of agricultural produce. AO recomputed the agricultural income of the assessee as under :

Areca sales and stock of areca as shown	Rs. 11,76,476/-
Add: Sale proceeds of coconut - as discussed	<u>Rs. 20,000/-</u>
	Rs. 11,96,476/-
Less: 30% of Expenses on Agrl. operations	<u>Rs. 3,58,942/-</u>
Net agricultural Income	Rs. 8,37,534/-
Less: Agricultural Income declared by the assessee	<u>Rs. 9,00,000/-</u>
Difference in agricultural declaration	<u><u>Rs. 62,466/-</u></u>

Assessment was completed by making addition of Rs.62,466/- under the head 'income from other sources', apart from an addition of Rs.46,743/- for difference in interest returned by the assessee.

05. Aggrieved assessee moved in appeal before the CIT (A). Assessee assailed the reopening of the assessment stating that reasons were not recorded for such reopening. As per the assessee, investment in construction of the building once it stood explained by the assessee, could not been considered as a reason for reopening the assessment. With regard to the merits of the addition assessee stated that 30% expenditure reckoned

by the AO was a pure estimate. As per the assessee, there was no standard rule for estimating expenditure for agricultural earnings and without bringing in any comparative cases assessing officer ought not have adopted a percentage rate of 30% for estimating the expenditure.

06. However CIT (A) was not appreciative of the above contentions. According to him reopening was valid since assessee had not furnished investment details for construction of Subbaiah Hospital complex and this came to the knowledge of the Department only a through a survey conducted on 27.08.2008 in Subbaiah Hospital, Shimoga. Reliance was placed on the judgment of Hon'ble Apex Court in the case of Raymond Woollen Mills Ltd v. ITO [(1999) 236 ITR 34]. As for the agricultural expenditure estimated at 30% of gross receipt, CIT (A) was of the opinion that assessee could not produce any bills in support of sale of coconuts and the expenditure of 30% estimated on gross sales was justified.

07. Now before me, Ld. AR strongly assailing the order of lower authorities submitted that the reopening done for the year was invalid. According to him, investment in the construction of building cited by the AO as a reason for reopening, was completed by the assessee by the end of previous year relevant to A. Y. 2006-07. According to him, income

computation statement filed along with returns for A. Ys. 2006-07 and 2007-08 clearly proved that the construction of Subbaiah Hospital Complex was over. AO had considered the enhanced rent returned by the assessee for A. Y. 2007-08 as proof of construction having been carried out during relevant previous year. According to him, the reason recorded was not cogent nor valid. Ld. AR submitted that the reopening was simply made on a change of opinion since the AO at the time of processing the return originally was aware of the construction of Subbaiah Hospital Complex. Reliance was placed on the judgment of Hon'ble Apex Court in the case of CIT v. Kelvinator of India Ltd (320 ITR 56).

08. In so far as the merits of the issue was concerned Ld. AR submitted that if agricultural expenditure estimated at 30% only resulted in disallowance of a part of agricultural income. Nature of income still very much remained agricultural. According to him, agricultural income returned by the assessee was Rs.9 lakhs. AO had assessed a lesser amount as agricultural income due to estimation of expenditure for agricultural operation at 30% of the sale proceeds. Ld. AR submitted that this would not render the difference income other than agricultural income. Thus

according to him, addition made under the head 'income from other sources' was not warranted.

09. Per contra, Ld. DR supported the orders of authorities below.

10. I have heard the rival contentions and perused the orders. In so far as the issue of reopening is concerned it is an admitted position that original return was only subject to a processing u/s.143(1) of the Act. When original return was only a subject of processing u/s.143(1) of the Act, there is no question of any opinion being formed at that stage. Hence assessee cannot say that a reopening was based on a change of opinion. Judgment of Hon'ble Apex Court in the case of Kelvinator of India Ltd (supra), was based on a different set of facts not comparable to that of the assessee. Information regarding construction of Subbaiah Hospital Complex, by the assessee had come to the notice of the AO only on 27.08.2008 when a survey was conducted in the premises of Subbaiah Hospital, Shimoga, where the assessee was a partner. There is no case for the assessee that when the original return was processed u/s.143(1) of the Act, this information was available with the AO. In any case I find that a similar reopening was done for A. Y. 2006-07 also. For that year also assessee had

moved in appeal and when the matter reached the Tribunal in ITA No.1141/Bang/2014, dt.31.08.2015, Tribunal had upheld the reopening.

11. Coming to the merits of the addition, in my opinion, when assessee had shown agricultural income in excess of what it actually earned, the difference cannot be considered as agricultural income. Assessee was unable to produce sale bills in support of the sale of crops except for a sum of Rs.3,76,476/-. Sale of agricultural produce was taken at the gross amount by the assessee. AO has observed that there was substantial increase in sale of produce shown by the assessee compared to the earlier years. He had therefore restricted the realisation from sale of coconuts from Rs.20,000/- and also estimated 30% of the receipts as expenditure incurred for agricultural operation. Estimated expenditure of 30% in my opinion was not on a higher side. Thus in my opinion, the net agricultural income of Rs.8,37,530/- arrived at by the AO was justified considering the circumstances of the case. Difference of Rs.62,466/- was rightly added under the head 'income from other sources'. I do not find any reason to interfere with the orders of lower authorities.

12. In the result appeal of the assessee stands dismissed.

Order pronounced in the open court on 6th day of January, 2016.

Sd/-

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order
Assistant Registrar