

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK
'SMC' BENCH, CUTTACK**

BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER

ITA No.205/CTK/2014
Assessment Year : 2009-2010

Bhagaban Nath, Post Office Road, Koraput.	Vs.	ITO, Ward-2, Jeypore
PAN/GIR No. AIMPAN 8511 H		
(Appellant)	..	(Respondent)

Assessee by : Shri P.C.Sethi, AR

Revenue by : Shri D.K.Pradhan, DR

Date of Hearing : 28 /03/ 2017

Date of Pronouncement : 28/03/ 2017

ORDER

This is an appeal filed by the assessee against the order of CIT(A)-Berhampur, dated 24.2.2014 for the assessment year 2009-2010.

2. In Ground No.1 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the action of the Assessing Officer making addition of Rs.1 lakh as investment in the capital of the firm.

3. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. The Assessing Officer observed that the assessee invested Rs.6,00,000/- in the capital of the firm M/s. Sunley Jewellers, in which the assessee is a partner. The assessee

explained the source of the capital in the firm to be out of his earlier year's income for which the assessee filed copies of return of income of last three years before the Assessing Officer, wherein, the assessee has shown returned income of Rs.1,22,290/- and agricultural income of Rs.30,000/- in assessment year 2007-08, returned income of Rs.1,35,750/- and agricultural income of Rs.30,000/- in assessment year 2008-09 and returned income of Rs.5,79,680/- and agricultural income of Rs.60,240/- in assessment year 2009-10. The Assessing Officer did not accept the explanation of the assessee on the ground that all the returns of income were filed by the assessee after survey was conducted in the premises of the firm on 3.3.2009 and added Rs.6,00,000/- to the income of the assessee as unexplained investment of the assessee.

4. On appeal before the CIT(A), the assessee submitted that he has sold his house for Rs.21,00,000/- and paid tax of Rs.91,956/- during the year under appeal. Out of the sale proceeds, he has invested Rs.6,00,000/- during the year in appeal towards his contribution in the capital of the firm. Therefore, the addition of Rs.6,00,000/- made by the Assessing Officer should be deleted.

5. The CIT(A) referred the matter to the Assessing Officer for his verification and comments, in response to which, vide letter dated 17.1.2014, the Assessing Officer stated that the investment in the firm of Rs.6,00,000/- could not be explained by the assessee during the

assessment proceedings. The opening capital shown by the assessee at Rs.5,46,316/- was introduced as capital in the firm. Since no return of income was filed prior to assessment year 2007-08, the opening capital of Rs.5,46,316/- is not acceptable. However, investment in the firm must be restricted to the available source of capital excluding the opening capital .

6. In response to the remand report, the assessee reiterated his submissions and argued that the assessee sold his house on 24.4.2008 for a total consideration of Rs.21,00,000/- which itself can explain the investment made in the firm.

7. The CIT(A) after considering the submission of the assessee as well as the remand report of the Assessing Officer held that he was inclined to agree with the view of the Assessing Officer that the capital contribution of Rs.6,00,000/- in the firm cannot be accepted to be out of capital of Rs.5,46,316/- in absence of corroborative evidence. He held that as argued by the assessee that the assessee has sold house property for Rs.21 lakhs on 20.4.2008 and that this amount was available with the assessee for investment in the firm carries force. He has also observed that in the remand report, the Assessing Officer has not commented on the contention of the assessee that due to availability of the sale proceeds of his house of Rs.21 lacs with him and the same was the source of investment in the capital of the firm. He observed that on consideration of the facts on record and from perusal of the bank account maintained with State Bank of India,

Koraput, where the sale proceeds of Rs.21 lakhs have been deposited in April, 2008, he was inclined to grant the benefit of availability of this amount for the purpose of making investment in the firm. He noted that as per the copy of the bank account available on record, amounts have been withdrawn in cash against deposit of Rs.21 lakhs only on 21.8.2008 onwards and before that the assessee has contributed Rs.50,000/- each on 15.5.2008 and 30.6.2008 towards capital in the firm. These amounts have been invested before any part of the amount of Rs.21 lakhs is available with the assessee and cannot be explained out of investments being made from sale proceeds. Therefore, he deleted the addition of Rs.5,00,000/- and sustained Rs.1 lakh and partly allowed the appeal of the assessee.

8. Being aggrieved, the assessee is in appeal before me.

9. Ld Authorised Representative of the assessee reiterated the submissions made before the lower authorities. He could not file any evidence before me to explain the source of investment of Rs.1,00,000/- in the capital of the firm being Rs.50,000/- each made on 15.5.2008 and 30.6.2008. Therefore, I do not find any good and justifiable reason to interfere with the order of the CIT(A) and hence, this ground of appeal of the assessee is dismissed.

10. In Ground No.2 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the action of the Assessing Officer in disallowing agricultural income of Rs.60,240/-.

11. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. The Assessing Officer observed that the assessee had disclosed agricultural income of Rs.60,240/-. The assessee explained that the assessee had agricultural land of Ac.2.00 from which he has produced sugar cane worth Rs.1,19,400/-. The Assessing Officer made enquiries through Income tax Inspector who reported that the assessee could not produce any details of such landed property and other details relating to agricultural income. Therefore, the Assessing Officer did not accept the claim of the assessee about agricultural income and made addition of Rs.60,240/- as income from other sources.

12. Before the CIT(A), the assessee submitted that he carried out agricultural activity and received income from the same for Rs.60,240/-. He furnished details like ownership of the land, agricultural activity carried out and yield received etc. The Assessing officer rejected the claim and alleged that the assessee has not furnished any details. He relied on the report furnished by the report of the Inspector who confirmed that the assessee did not carry the agricultural activity during the assessment year. Without keeping any material on record to say that the assessee has not carried out the agricultural activity, treating the agricultural income as taxable income and added the same to the returned income was unjust and arbitrary.

13. The CIT(A) called for a remand report from the Assessing Officer who vide letter dated 17.1.2014 stated that the assessee could not furnish the source of agricultural income of Rs.60,240/- and the addition was justified as income from other sources..

14. In response to the remand report, the assessee reiterated the submissions made earlier.

15. The CIT(A) after considering the submissions of the assessee observed that it was a settled principle of law that the burden is on the assessee to prove that the income was agricultural income. He relied on the decision of Hon'ble Supreme Court in the case of CIT vs. Genkateswamy Naidu, 29 ITR 529 (SC), wherein, it has been held that in order to claim an income which the assessee considers as agricultural income, the assessee has to put before the authorities materials which will enable them to come to a conclusion that the income which was sought to be assessed was agricultural income. It was not for the authorities to prove that it was not agricultural income. He observed that from perusal of assessment records, it is seen that the assessee filed a lease deed ostensibly showing that he had taken agricultural land on lease from 1.2.2008 to 31.9.2009 for Rs.4,000/-. The assessee stated that he produced sugar cane on such leased land and the income was derived therefrom. He observed that most of the family members of the assessee, whose appeals are being disposed of namely, Natabar Nath, Smt. Suna Nath, Pradip Kumar Das, Khetrabasi

Nath, Batakrushna Nath and Ranjan Kumar Nath have all claimed that they had derived agricultural income by way of sale of sugar cane out of leased land. If their contentions are accepted then the total sugar cane apparently sold by the family members of the assessee will exceed Rs.8 lakhs. He observed that it was surprising that the assessee was unable to give a shred of evidence in support of his sugar cane cultivation or in support of sale of such sugar cane which will normally be to a sugar mill. In absence of any such evidence, he was not inclined to accept the contention of the assessee regarding its claim of agricultural income. Therefore, he confirmed the order of the Assessing Officer treating the agricultural income shown by the assessee as income from other sources and dismissed the ground of appeal of the assessee.

16. Being aggrieved, the assessee is in appeal before me.

17. Ld Authorised Representative of the assessee reiterated the submissions made before the lower authorities.

18. I find after considering the facts and circumstances of the case in totality that the Assessing Officer has not considered the income of Rs.60,240/- shown by the assessee as agricultural income but treated the same as income from other sources of the assessee on the ground that the assessee failed to produce evidence of sugar cane cultivation and sale of sugar cane. Before me also the assessee has failed to produce any evidence in this regard. Therefore, I find no good and justifiable reason to

interfere with the orders of the lower authorities and dismiss the ground of appeal of the assessee.

19. In Ground No.3 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the action of the Assessing Officer in estimating the interest on term deposit in bank.

20. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. In the instant case, the Assessing Officer observed that the assessee had fixed deposits of Rs.1,05,000/- with Micro Finance. He estimated the interest @ 10% on the deposit on accrual basis and added Rs.10,500/- to the income of the assessee.

21. On appeal before the CIT(A), the assessee argued that the assessee has shown income from fixed deposit on receipt basis as it was following cash system of accounting. The interest income is deemed to accrue only on the date of due date of fixed deposit. The interest income is not calculated year to year. He relied on the decision of Hon'ble Bombay High Court in the case of DIT vs. Credit Suisse First Boston (Cyprus) Ltd., (2012) 23 Taxman 424 and prayed that the addition of Rs.10,500/- should be deleted.

22. The CIT(A) called for a remand report from the Assessing Officer, who vide letter dated 17.1.2014 stated that the addition of accrued interest of Rs.10,500/- was justified and did not offer any comment.

23. The remand report was confronted to the assessee, who reiterated the submissions made earlier.

24. The CIT(A) after considering the submission of the assessee and remand report of the Assessing Officer held that the assessee has invested in fixed deposit during the year and has not shown any interest income from the said deposit in the return. The interest on the fixed deposit accrues by the end of the year and, therefore, the Assessing Officer cannot be faulted for taking such interest on an estimated basis on 10% which is quite reasonable and, accordingly, dismissed the ground of appeal of the assessee.

25. Being aggrieved by the said order, the assessee is in appeal before me.

26. Ld Authorised Representative of the assessee reiterated the submissions made before the lower authorities. He contended that interest income of fixed deposit was offered to tax by consistently following method of offering interest income to tax in the year of receipt. When questioned by the Bench what is the evidence that the assessee has offered to tax the interest income on fixed deposit of Rs.1,05,000/- in the year on receipt, Id

Authorised Representative of the assessee expressed his inability to produce any such evidence. In absence of the same, the argument of the Id A.R. of the assessee cannot be accepted. Therefore, I do not find any good reason to interfere with the order of the CIT(A), which is hereby confirmed and ground of appeal of the assessee is dismissed.

27. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 28/03/2017 in the presence of parties.

Sd/-

(N.S Saini)

ACCOUNTANT MEMBER

Cuttack; Dated 28/03/2017

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Bhagaban Nath, Post Office Road, Koraput
2. The Respondent. ITO, Ward-2, Jeypore
3. The CITA), Berhampur
4. Pr.CIT, Bhubaneswar.
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack