

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1132/Mds/2013

निर्धारण वर्ष / Assessment Year : 2006-07

The Income Tax Officer,
Business Ward XIII(1),
Chennai - 600 034.

v. Shri T.C. Abraham,
No.1A, Rossy In Place,
No.5, Guruswamy Road,
Chetpet, Chennai - 600 031.

(अपीलार्थी/Appellant)

PAN : AAAPA 8466 C
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. Milind Madhukar Bhusari, CIT
प्रत्यर्थी की ओर से/Respondent by : Sh. Philip George, Advocate

सुनवाई की तारीख/Date of Hearing : 07.09.2015

घोषणा की तारीख/Date of Pronouncement : 18.09.2015

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-XII, Chennai, dated 13.02.2013 and pertains to assessment year 2006-07.

2. Sh. Milind Madhukar Bhusari, the Ld. Departmental Representative, submitted that the first issue arises for

consideration is with regard to addition of ₹36,53,083/- under the head "income from other sources". According to the Ld. D.R., the assessee claimed ₹23,55,490/- as agricultural income from the coffee estate. The Assessing Officer found that the assessee owned coffee estate to the extent of 21.20 hectares. The Assessing Officer found that the possible yield from one hectare of land is 948 kgs for Robusta variety for the financial year 2005-06. In fact, the Kerala Coffee Board estimated the yield at 711 kgs per hectare. Since the estate of the assessee is situated in the State of Kerala, the Assessing Officer estimated the maximum coffee productivity from 21.20 hectares of land at 15073 kgs. The bill produced by the assessee discloses the sale price of ₹28.50 per kg. and the same worked out to ₹4,30,000/- for 15073 kgs. Since there was a difference, the Assessing Officer found that only ₹4,30,000/- has to be treated as income from coffee estate and the balance of ₹31,02,900/- was brought to taxation under the head "income from other sources". By applying Rule 7B of Income-tax Rules, 1962, the Assessing Officer had taken the income from agriculture at ₹3,22,500/- and income from business at ₹1,07,500/- at the ratio of 7.5% and 25% respectively.

3. On the contrary, Sh. Philip George, the Ld.counsel for the assessee, submitted that the claim of the assessee before the Assessing Officer was that the assessee and his family put together own 34.39 hectares of coffee estate and not 21.20 hectares of land. According to the Ld. counsel, it is not the case of the assessee that the assessee was not engaged in any coffee curing activities. Therefore, the fabrication of 25% of income is not applicable. According to the Ld. counsel, the assessee is selling sun dried coffee seeds. The Ld.counsel further clarified that sun dried coffee seeds are subject to the series of processes like pulping, curing, roasting, grinding, etc. before the final coffee powder is packed and marked to final consumer. The Ld.counsel further submitted that the assessee claimed agricultural income of ₹23,55,490/-. However, the Assessing Officer disallowed a sum of ₹49,51,118/-. According to the Ld. counsel, the Assessing Officer disbelieved the claim of entire agricultural income. Referring to the order of the CIT(Appeals), the Ld.counsel submitted that the disallowance made by the Assessing Officer to the extent of ₹49,51,118/- was greater than the sale of agricultural produce claimed by the assessee at ₹40,03,084/-.

4. The Ld.counsel for the assessee further submitted that the Assessing Officer arrived the yield per hectare at 5,849 kgs. and compared the same with the report published by Coffee Board of India and Kerala Coffee Board. According to the Ld. counsel, the CIT(Appeals) found that the probable production of coffee has to be computed for 34.39 hectares and not for 21.20 hectares of land. The Ld.counsel further pointed out that the Coffee Board has taken the final production of coffee powder as yield of the coffee, whereas the assessee is not engaged in the business of coffee powder, The assessee is just selling the raw coffee seeds, after sun drying the same. Therefore, the CIT(Appeals), after examining the entire activities of the assessee, found that the net agricultural income from 34.39 hectares of land at ₹23,55,490/- and found that the claim of the assessee is quite reasonable. Therefore, according to the Ld. counsel, no interference is called for.

5. We have considered the rival submissions on either side and perused the relevant material on record. The assessee claimed agricultural income of ₹23,55,490/- from coffee estate. However, the Assessing Officer estimated the income from agriculture at ₹3,22,500/- and income from business at ₹1,07,500/- by applying

the provisions of Rule 7B of Income-tax Rules, 1962. The CIT(Appeals) found that the assessee is not marketing any coffee product and the assessee is only an agriculturist. We have carefully gone through the provisions of Rule 7B of the Income-tax Rules, 1962, which reads as follows:-

"7B. (1) Income derived from the sale of coffee grown and cured by the seller in India shall be computed as if it were income derived from business, and twenty-five per cent. of such income shall be deemed to be income liable to tax.

(1A) Income derived from the sale of coffee grown, cured, roasted and grounded by the seller in India, with or without mixing chicory or other flavouring ingredients, shall be computed as if it were income derived from business, and forty per cent. of such income shall be deemed to be income liable to tax.

Explanation : For the purposes of sub-rules (1) and (1A) "curing" shall have the same meaning as assigned to it in sub-section (d) of section 3 of the Coffee Act, 1942 (7 of 1942).

(2) In computing the incomes referred to in sub-rules (1) and (1A), an allowance shall be made in respect of the cost of planting coffee plants in replacement of plants that have died or become permanently useless in an area already planted, if such area has not previously been abandoned, and for the purpose of determining such cost, no deduction shall be made in respect of the amount of any subsidy which, under the provisions of clause (31) of section 10, is not includible in the total income."

Rule 7B(1) of the Income-tax Rules, 1962 says that when the assessee derived income on sale of coffee grown and cured by

seller in India, 25% of income shall be treated as from business and 75% shall be treated as income from agriculture. However, if the assessee derives income from sale of coffee grown, cured, roasted and grinded with or without mixing chicory or other flavouring ingredients, then 40% of income shall be treated as from business for the purpose of taxation under the Income-tax Act. The balance 60% has to be treated as income from business. The CIT(Appeals) found that the assessee is not engaged in coffee processing activity and the assessee is only selling the sun dried coffee seeds. In other words, the assessee is selling cured coffee seeds. If the assessee is selling only cured coffee seeds, the provisions of Rule 7B(1) would come into operation. Therefore, the CIT(Appeals) may not be correct in observing that the provisions of Rule 7B are not applicable in case the assessee is selling only the sun dried coffee seeds and not engaged in other processing activity. Therefore, this Tribunal is of the considered opinion that income from coffee estate has to be computed by applying Rule 7B of Income-tax Rules, 1962. Therefore, the order of the CIT(Appeals) is set aside and the entire issue is remitted back to the file of the CIT(Appeals). The CIT(Appeals) shall apply the provisions of Rule 7B and thereafter compute the income from coffee estate.

6. The next ground of appeal is with regard to disallowance of expenditure to the extent of ₹11,90,535/-.

7. We heard the Ld. Departmental Representative and the Ld.counsel for the assessee. The Assessing Officer found that the assessee has not incurred any expenditure for earning interest income from deposits. However, the CIT(Appeals) found that the assessee has incurred expenditure in earning the agricultural income. The interest income was only ₹9,398/-. Accordingly, the CIT(Appeals) found that there is no justification in disallowing the expenditure for earning the agricultural income. It is not known whether the expenditure of ₹ 11,90,535/- was claimed against agricultural income or from income taxable under Income-tax Act. While considering the claim of the assessee for computation of income from coffee estate, this Tribunal remitted back the matter to the file of the CIT(Appeals) to compute the income by applying Rule 7B of the Income-tax Rules, 1962. Therefore, this issue also needs to be reconsidered by the CIT(Appeals). Accordingly, the disallowance made to the extent of ₹11,90,535/- is also set aside and remitted back to the file of the CIT(Appeals). The CIT(Appeals) shall reconsider the issue afresh in the light of the material available

on record and thereafter decide the same, after giving reasonable opportunity to the assessee.

8. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on 18th September, 2015 at Chennai.

sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 18th September, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-XII, Chennai-34
4. आयकर आयुक्त/CIT-X, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.