

**IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH “G”, MUMBAI**  
**BEFORE SHRI D.KARUNAKARA RAO, ACCOUNTANT MEMBER AND**  
**SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA No.2737/Mum/2014 for Assessment Year: 2009-10**

Mr. Govind Singh, 1303, Runwal Tower, Opp. Veena Nagar, Mulund (West), Mumbai-400080.  <b>PAN: AAGPS6502H</b>	Vs.	ACIT Circle-213(2), Room No.202, 2 <sup>nd</sup> Floor, C-10, Pratyakshkar Bhavan, BKC, Bandra (E), Mumbai-400051.
(Appellant)		(Respondent)

Assessee by : Shri Jayant Bhatt & Sanjiv  
Brahme (AR)

Revenue by : Miss. Ramapriya Raghavan  
(DR)

Date of hearing : 14.06.2016

Date of Pronouncement : 12.08.2016

**ORDER**

**PER PAWAN SINGH, JM:**

1. The present appeal is filed by the assessee against the order of CIT (A)-7, Mumbai dated 15.01.2014 for Assessment Year (AY) 2009-2010. The assessee has raised a solitary ground in the appeal that CIT(A) erred in confirming the addition of Rs. 19,90,116/- on account of income from agriculture activities.
2. The brief facts of the case are that assessee filed return of income 29.09.2009. The return was selected for scrutiny. During the assessment proceeding the Assessing Officer (AO), besides other addition/disallowance, made the addition of Rs 19,90,116/- on account of unproved agriculture produce sale. Aggrieved by the order of AO, assessee filed appeal before the CIT(A), wherein the addition on account of agriculture activity was confirmed. Further aggrieved by the order of CIT (A), the assessee filed the present appeal before us.
3. We have heard Shri Jayant Bhatt and Sh. Sanjiv Brahme Ld. AR of the assessee and Miss Rampriya Raghavan Ld. CIT- DR for Revenue. Ld AR for assessee argued

that the assessee has shown gross receipt from agriculture activities of Rs. 19,82,900/-. And earned net agriculture income of Rs 11, 00957/-. The assessee maintained separate income and expenditure account for agriculture activities. The assessee also maintained invoices in support of sales, fertilizers, seeds expenses. The assessee owns 25 acres of Agricultural land at Shahpur District Thane since 1990. The assessee has been offering the agriculture income consistently in the return of income over the years. As per the assessee he grows vegetables, fruits including Mangoes, Chicoo, Guava. During the assessment assessee submitted the invoices evidencing the sale of the said produce to various parties, the details of which have been mentioned by AO in the assessment order itself. However, the AO insisted for producing the parties for examination. Assessee could not produce the same. The assessee contended that the agriculture sector is an unorganized one and the petty businessmen visited the Farm where the agriculture yields are grown, purchased the produce and paid the amount. Thus, there was no question of knowing the people and maintaining their current addresses. The assessee had submitted all invoices. However, the AO did not appreciate the invoices and concluded that the sale invoices are not genuine. The assessee had submitted record of 7/12, and extract of the agricultural land to the AO. Ld AR for assessee further argued that the assessee is showing agriculture income from last so many years and the revenue and the revenue has accepted the income from agriculture activity without any variation. Ld AR for assessee further submitted that for subsequent year as well the agriculture income was accepted by the revenue. On the other hand Learned DR for revenue argued that principle of *res-judicata* is not applicable in the proceeding before assessment officer. The assessment of each and every year is based on the different facts for the relevant assessment year. The onus was upon the assessee to prove the genuineness of invoices in support of sale of the agriculture produce. The assessee miserably failed to discharge the onus lies upon him. The assessee cannot find fault in the order of authorities below. She further argued that assessee is showing exorbitant agriculture income to conceal the income from other sources. On specific quarries about the area of agricultural land, Ld DR admitted that the area of agricultural land is not in disputed by lower authorities. However, she further argued that for the subsequent AY the assessee has shown different figure of agriculture area.

4. We have considered the rival contention of the parties and gone through the material available on record. During the assessment proceeding, AO observed that

assessee has shown the agriculture income at Rs 11,00,957/-. In support of the claim assessee furnished 7/12, and extract of land, income and expenditure account in respect of agriculture income. As per the details, furnished by the assessee, he has shown gross receipt of Rs.19,82,900/-, commission receipt of Rs. 7,216/-. Total receipt of Rs. 19,90,116/-. In support of its claim the assessee produced 19 sales invoices. Assessee claimed that all consideration of agricultural yield was received in cash. The AO asked assessee to furnish the address of the person's to whom, the sales of agricultural produce have been made. The assessee failed to provide the addressees of the persons. The AO further observed that assessee claimed various expenses such as repairs and maintenance at Rs. 3 lakhs (approx) and some bills are in the name of M/s Neil engineering company. The assessee further showing expenses at Rs. 1,78,286/-which is in the name of Govind B Singh for the property situated at Runawal Tower LBS Marg Muland, Mumbai. Thus, the AO concluded that the entire receipt of Rs. 19,90,116/- was from unexplained source and added to the income of assessee. We have seen that Learned CIT(A) has not given any different finding except for retreating that assessee failed to provide the address of such persons(purchasers) and confirmed the action of assessing officer. No doubt the order of AO and ld CIT(A) is not sustainable in the eyes of law. The AO has not disputed the existence of agricultural land, agriculture activities, agriculture product and the sale of agriculture product. The entire receipt cannot be disallowed without disputing the agriculture produce. We have noticed that assessee has placed on record about the details of Orchard in the agriculture fields of assessee ( page 10 of PB). AO has not taken any notice of this document. Further, the assessee has placed on record assessment of earlier and subsequent years, wherein agriculture income was accepted by revenue. Thus, we may conclude that the order of authorities below is perverse and is declared as such. Now let us examine the various other documents placed on record by the assessee.

5. The assessee filed copy of assessment orders for various years, containing the details of agriculture income claimed. The details of which are summarised as under:

Assessment year	Income as per return/ accepted	order u/s
1999-00	Rs.15,75,463/-	143(1)
2000-01	Rs. 12,52,982/-	143(1)

2001-02	Rs.9,76,980/-	143(1)
2002-03	Rs.8,58,969/-	143(1)
2003-04	Rs.11,74,244/-	143(1)
2004-05	Rs. 9,22,000/-	143(1)
2005-06	Rs. 8,87,422/-	143(1)
2006-07	Rs.932,283/-	143(1)
2007-08	Rs. 10,26,105/-	143(3)
2008-09	Rs. 11,05,410/-	143(3)
2010-11	Rs. 22,95,919/- (Rs.15,00,000/-)	143(3)
2011-12	Rs. 12,50,000/-	143(3)
2012-13	Rs. 9,61,230/-	143(3)
2013-14	Rs.8,80,466/-	-----
2014-15	Rs. 8,10,500/-	-----
2015-16	Rs.6,44,460/-	-----
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6. The assessee also filed a copy of confirmation by Talathi (Certificate from Gram Panchyat) for details of agriculture (page 10 of p/b). The perusal of which shows that the assessee is having 500 Mango tree, 300 Coconut tree, 300 Peru tree, 200 chikoo tree ( total 1300 tree) in agriculture fields of assessee. The assessee disclosed 25 Acre of land at Shahpur District Thane. As agued by Id AR for assessee, which is supported with the statement of fact pleaded before IdCIT(A). On the other hand, on perusal of assessment order for AY 2010-11, we noticed that during the assessment proceeding AO deputed Inspector of Income Tax to conduct inquiry about the agriculture activity of assessee. The extract of report of such enquiry is referred in para 5 of the assessment order for AY 2010-11. As per the contents of para 5 of the assessment order for a Y 2010 – 11, the assessee claimed 30 acres of land. During the enquiry by Income Tax inspector, the Inspector recorded that there is 100 trees of Coconut and Mango each, 60 to 70 trees of

Chikoo, 50 to 60 trees of Guava, 20 to 25 trees of cashew and around 20 trees of lime thus there was maximum 375 total of fruit trees. However, in the year under consideration, the assessee is claiming 1300 trees. The area of agricultural land was claimed 30 acres in assessment year 2010–11 and 25 acre in the year under consideration. The facts available on record create doubt in our mind, about the area and agriculture yields, which requires thorough enquiry. Instead of making any comment on the facts pleaded and argued before us, we deem it appropriate to restore the appeal to the file of AO to make appropriate enquiry/investigation about the real area of the agricultural land and the number of fruit trees in the Orchard of agricultural land of assessee and assess the agriculture income of assessee in accordance with law. With these observations the appeal of the assessee is allowed for statistical purpose.

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

Order pronounced in the open court on this 12<sup>th</sup> August, 2016.

**Sd/-**

**(D.KARUNAKARA RAO)**

**ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated 12/08/2016

S.K.PS

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/  
DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

**Sd/-**

**(PAWAN SINGH)**

**JUDICIAL MEMBER**

**आदेशानुसार/BY ORDER,**

**उप/सहायकपंजीकार**

**(Asstt.Registrar)**

**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai**