

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' C '

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

I.T. A. Nos.75 to 78/Bang/2014
(Assessment Years : 2006-07 to 2009-10)

Asst. Commissioner of Income Tax,
Circle 1(1), Mangalore.

.... Appellant.

Vs.

Shri K. Sathyashankar,
Prop. Praveen Tyres,
Darbe, Puttur.
PAN AELPS 6369D

..... Respondent.

C.O. Nos.77 to 80/Bang/2014
(In I.T. A. Nos.75 to 78/Bang/2014)
(Assessment Years : 2006-07 to 2009-10)
(By Assessee)

Assessee By : Smt. Sheetal, Advocate.
Revenue By : Dr. K. Shankar Prasad, JCIT (D.R).

Date of Hearing : 10.12.2014
Date of Pronouncement : 13.2.2015.

O R D E R

Per Bench :

These appeals by Revenue all are directed against the combined order of the Commissioner of Income Tax (Appeals), Mysore dt.6.9.2013 for Assessment Years 2006-07 to 2009-10. The assessee has also filed Cross Objections ('C.O.') for these assessment years. These appeals and C.O.s were heard together, as common issues were involved, and are being disposed off by way of this common order.

2. The facts of the case, briefly, are as under :-

2.1 The assessee is engaged in the business of trading in automobile spare parts, tyres, etc and as a transport operator and also is into money lending business. The details of the returns of income filed for the Assessment Years 2006-07 to 2009-10 are as under :-

Assessment Year	Return of income filed on	Income declared (Rs.)	Agricultural income declared (Rs.)
2006-07	31.3.2007	4,19,766	30,59,146
2007-08	31.3.2008	18,83,213	40,55,100
2008-09	30.9.2008	13,90,415	52,86,547
2009-10	30.9.2009	21,39,000	45,74,039

2.2 The assessee's case for the above four assessment years were taken up for scrutiny and the assessments were completed under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') wherein the Assessing Officer brought to tax a part of the agricultural income declared as unexplained investment under Section 69 of the Act in three years and as cash credit under Section 68 of the Act in the year 2007-08. The details are extracted hereunder :-

Assessment Year and date of order u/s. 143(3) of the Act	Agricultural income declared (Rs.)	Agricultural income treated as unexplained investment u/s.69 and cash credit u/s.68 for A.Y. 2007-08. (Rs.)	Agricultural income assessed (Rs.)	Assessed Income (Rs.)
2006-07 Dt.24.12.2008	30,59,146	8,21,925	22,37,221	13,15,256
2007-08 Dt.29.12.2009	40,55,100	14,96,000	25,59,000	36,87,758
2008-09 Dt.28.12.2010	52,86,547	15,00,000	28,90,415	37,86,547
2009-10 Dt.21.10.2011	45,74,039	11,00,000	34,74,039	32,39,000

2.3 Aggrieved by the orders of assessment for Assessment Years 2006-07 to 2009-10, as per the dates mentioned in para 2.2 (supra), the assessee preferred appeals before the CIT (Appeals), Mysore. The learned CIT (Appeals) disposed off the assessee's four appeals, by way of a combined order dt.6.9.2013 allowing the assessee partial relief; the details of which are as under :-

Assessment Year	Agricultural income declared (Rs.)	Additions made by the A.O. (Rs.)	Additions confirmed in the appeal	Relief given in the appeal.
2006-07	30,59,146	8,21,925	1,00,000	7,21,925
2007-08	40,55,100	14,96,000	5,00,000	9,96,000
2008-09	52,86,547	15,00,000	5,00,000	10,00,000
2009-10	45,74,039	11,00,000	1,00,000	10,00,000

3. Aggrieved by the orders of the CIT (Appeals), Mysore dt.6.9.2013 for Assessment Years 2006-07 to 2009-10, Revenue has preferred appeals before the Tribunal raising similar grounds of appeal for all the four assessment years. For the sake of convenience, the grounds raised in Assessment Year 2006-07 are extracted hereunder :-

- "1. The order of the learned CIT (Appeals) is opposed to law and facts of the case.*
- 2. The learned CIT (Appeals) ought to have upheld the decision of the Assessing Officer in respect of the addition of Rs.8,21,925 on account of disallowance of part of agricultural income.*
- 3. The learned CIT (Appeals) erred in restricting the addition as the assessee has not maintained separate books of account related to agricultural income and did not furnish any evidence to the satisfaction of the Assessing Officer in support of the claim of expenditure.*
- 4. The learned CIT (Appeals) has erred in restricting the addition on the basis of reasons that are very general in nature.*

5. *The learned CIT (Appeals) has erred in restricting the addition as stated above since the method adopted for the same is found to be inconsistent across different assessment years.*

6. *For these and such other grounds it is urged that the order of the learned CIT (Appeals), on the above points may be set aside and the order of the Assessing Officer be restored.*

7. *The appellant craves leave to add, alter or amend all or any of the grounds of appeal before or at the time of the hearing of the appeal."*

4. The assessee has also preferred cross objections for all the four assessment years raising similar grounds which support the impugned orders of the CIT (Appeals), Mysore. For the sake of convenience, the grounds of C.O. raised for Assessment Year 2006-07 are extracted hereunder :-

"1. The learned CIT (Appeals) has rightly allow the agricultural income declared by the Respondent to the extent of Rs.29,59,146 and thereby only upheld Rs.1,00,000, being disallowance made by the Assessing Officer.

2. The learned CIT (Appeals) has rightly considered the submissions and evidences produced by the Respondent such as, certificates issued by Senior Assistant Director of Horticulture, Zilla Panchayat, Puttur, D.K., valuation reports of Central Plantation Crops Research Institute and Rubber Board, in support of claim of Respondent's claim.

3. The learned CIT (Appeals) has rightly restricted the additions made by the Assessing Officer and correctly adopted method for the same for different assessment years.

4. The learned Assessing Officer has ought to have followed instruction issued by the Central Board of Direct Taxes, New Delhi, Instruction NO.5/2014 (F.No.279/MISC.142/2007-IT(Pt), dated 10th July, 2014, being revision for monetary limits for filing of appeals by the department before the ITAT.

5. For these and such other grounds that may be urged at the time of hearing of the cross-objections of the Respondent and the order of the CIT (Appeals) may be confirmed and that, appeal of the Assessing Officer be dismissed."

Revenue's appeals for Assessment Years 2006-07 to 2009-10

in ITA Nos.75 to 78/Bang/2014.

5.0 The grounds raised at S.Nos.1, 6 & 7 being general in nature, no adjudication is called for thereon.

6.0 Ground Nos. 2 to 5 - Agricultural Income

6.1 In the grounds raised at S.Nos.2 to 5 (supra), Revenue has assailed the impugned order of the learned CIT (Appeals) for Assessment Years 2006-07 to 2009-10 in allowing the assessee relief by restricting the additions made by the Assessing Officer. It is contended that in allowing the assessee partial relief, the basis of reasons given by the learned CIT (Appeals) are very general and inconsistent across the concerned assessment years. It was also contended that the orders of the learned CIT (Appeals) in restricting the additions made was erroneous as the assessee had not mentioned separate books of accounts related to agricultural income and did not furnish any evidence to the satisfaction of the Assessing Officer in support of the claim of expenditure. The learned Departmental Representative was heard in support of the grounds raised and supported the orders of the Assessing Officer in all the assessment years. It was prayed that the impugned orders of the learned CIT (Appeals) for Assessment Years 2006-07 to 2009-10 be reversed on the issue of agricultural income and that of the Assessing Officer be restored.

6.2.1 Per contra, the learned Authorised Representative supported the impugned orders of the learned CIT (Appeals) and prayed that they be upheld. Before us, the learned Authorised Representative reiterated the submissions put forth by the assessee before the authorities below. It was submitted that the orders of the Assessing Officer, concluding that the net agricultural income declared was very high, were erroneous. It was contended that the Assessing Officer overlooked the fact that the increase in agricultural income and crop yields were due to intensive cultivation and even ignored and brushed aside the expert opinion given by

the Sr. Asst. Director of Horticulture, Puttur rendered after inspection of the assessee's lands.

The learned Authorised Representative further contended that the Assessing Officer failed to appreciate the fact that the entire sale of agricultural produce were supported by sale bills; this is in spite of the Assessing Officer having carried out verification of these bills with some vendors to ascertain their authenticity and the price variations from time to time. It was submitted that on the one hand, the Assessing Officer was of the view that the expenses claimed were not substantiated and simultaneously also concluded that the expenditure said to be incurred was on the lower side so that higher agricultural income could be claimed. It was vehemently argued that the Assessing Officer's basis for estimation of 50% increase in agricultural income over the previous year's agricultural income were arbitrary estimates, based on surmises, guess work and not supported by any material evidence or scientific basis.

6.2.2 The learned Authorised Representative submitted that the assessee was holding 16.32 acres of agricultural land with about 1,200 rubber trees in 3 acres of land; and 6,000 arecanut trees in 13.5 acres, along with 2,000 coconut trees planted beside the arecanut trees. Apart from this, the assessee had inter crops like vanilla, pineapple, banana, vegetables, cashew and pepper creepers. It was further submitted by the learned Authorised Representative that the Assessing Officer in his remand report dt.20.8.2013 has clearly stated that in the concerned orders of assessment, the Assessing Officer has estimated the income only in respect of arecanut and coconut and that the income in respect of crops such as pepper, vanilla, cashew, banana and other products were not estimated, since the details regarding these crops did not form part of the reports of the Central Plantation Crops Research Institute, Kerala ('CPCRI') and

Rubber Board, Kottayam. On the contrary, the Assessing Officer ignored the certificate of the Sr. Asst. Director of Horticulture, Puttur dt.10.12.2008 wherein after inspection of the assessee's lands, it was found that there were approximately 6,000 yielding arecanut trees, 2,000 yielding coconut trees and other crops like pepper, vanilla, banana / plantations, cashew, etc. It was argued by the learned Authorised Representative that in view of this, the estimation of agricultural income by the Assessing Officer for all four Assessment Years 2006-07 to 2009-10 was grossly erroneous and factually unsustainable and therefore the estimation of agricultural income by the learned CIT (Appeals) in the impugned orders is more reasonable as it has taken into account all the relevant factors and therefore ought to be upheld.

6.3.1 We have heard both parties and carefully perused and considered the material on record; including the remand reports dt.8.7.2010 and 20.8.2013 furnished by the Assessing Officer to the learned CIT (Appeals) in appellate proceedings and the reports of the CPCRI, Kerala dt.5.7.2010; of the Rubber Board, Kottayam dt.14.7.2010 and of the Sr. Asst. Director of the Horticulture, Puttur, Dakshin Kannada dt.10.12.2008 rendered after inspection of the assessee's agricultural lands at Puttur. On an appreciation of the details on record, the learned CIT (Appeals) and the assessing authority have observed that the total extent of land owned by the assessee is approx. 16.32 acres in the periods under consideration. It is also observed by the learned CIT (Appeals) that in the said agricultural land there were approx. 1,200 rubber trees in about 3 acres of land; 6,000 arecanut trees and 2,000 coconut trees in 13.5 acres of land and inter crops like vanilla, Pepper creepers, vegetables, cashew trees and banana were also grown.

6.3.2 We find from the record that, after examining the agricultural income declared by the assessee, the Assessing Officer has proceeded to estimate the assessee's agricultural income for all the four Assessment Years 2006-07 to 2009-10 only in respect of arecanut and coconut and has ignored the income from rubber and inter crops like vanilla, pepper, vegetables, banana, etc. This fact has been clearly admitted by the Assessing Officer in the remand report dt.20.8.2013. In coming to this view, the Assessing Officer has relied on the valuation reports of the CPCRI, Kerala dt.15.7.2010 and of Rubber Board, Kerala dt.14.7.2010 which are generalized reports pertaining to the estimated cost of cultivation of arecanut and cost of planting and maintenance of rubber and are not made after an inspection of the assessee's agricultural land. No mention is made therein in respect to the inter crops like vanilla, pepper, plantation, etc. the existence of which is not disputed by the Assessing Officer. We also find that these two reports do not consider or controvert the contents of Certificate of the Sr. Asst. Director of Horticulture, Zilla Panchayat, Puttur dt.10.12.2008 which certify that, after inspection of the assessee's agricultural lands situated at Puttur Taluk, in these fertile lands are approx. 6,000 yielding arecanut trees, 2,000 yielding coconut trees and sub-crops like vanilla, pepper, bananas, etc. It is seen that the Assessing Officer has not considered and controverted the contents of this certificate dt.10.12.2008 but has brushed aside and ignored this certificate which pertains to the assessee's agricultural lands without assigning any reason for doing so. In this factual matrix, as laid out above, we are of the view that the Assessing Officer's estimation of agricultural income for all these four Assessment Years 2006-07 to 2008-09 is certainly erroneous, unreliable and factually unsustainable, since the agricultural income of the assessee

as estimated by him was in respect of such income from coconut and arecanut only, to the total exclusion of net income earned by the assessee from the inter crops such as vanilla, pepper, vegetables, banana, etc. In this regard, we find from a perusal of the impugned orders of the learned CIT (Appeals) that in estimating the assessee's agricultural income for the assessment years in question, the learned CIT (Appeals) has considered the Assessing Officer's estimation and also the fact that other commercial inter crops like pepper, vanilla, plantations, etc. have been cultivated. It is in this context we find that the learned CIT (Appeals) has sustained the additions made by the Assessing Officer to Rs.1,00,000, Rs.5,00,000, Rs.5,00,000 and Rs.1,00,000 respectively for Assessment Years 2006-07 to 2009-10. In the factual matrix of the case as discussed above, we find that except for raising the grounds challenging the impugned orders of the learned CIT (Appeals) on the issue of estimation of agricultural income, revenue has neither been able to controvert the estimation made by the learned CIT (Appeals) nor to establish with any material evidence that the orders of the Assessing Officer in estimating the agricultural income were factually correct. In this view of the matter, we uphold the impugned orders of the learned CIT (Appeals) on the issue of estimation of agricultural income in the given facts and circumstances of the case. Consequently, grounds at S.Nos. 2 to 5 of Revenue's appeal are dismissed.

7. In the result, Revenue's appeals for Assessment Years 2006-07 to 2009-10 are dismissed.

Assessee's C.O. Nos.77 to 80/Bang/2014 for Assessment Years 2006-07 to 2009-10.

8. On a perusal of the grounds raised at S.Nos.1 to 4 of the assessee's C.O. (supra), we find that they are raised in support of the orders of the CIT (Appeals), Mysore for Assessment

Years 2006-07 to 2009-10. Since we have upheld these impugned orders of the learned CIT (Appeals) at para 6 & 7 of this order, these C.O's are rendered infructuous and are accordingly dismissed as infructuous.

9. In the result, the assessee's C.O's for Assessment Years 2006-07 to 2009-10 are dismissed.

10. To sum up, both Revenue's appeals and the assessee's Cross Objections for Assessment Years 2006-07 to 2009-10 are dismissed.

Order pronounced in the open court on 13th Feb., 2015.

Sd/-

(P. MADHAVI DEVI)
Judicial Member

Sd/-

(JASON P BOAZ)
Accountant Member

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

(True copy)

By Order

Asst. Registrar, ITAT, Bangalore