

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "J", MUMBAI**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER**

**ITA No.7017/M/2012
Assessment Year: 2009-10**

Shri Jyotin J. Doshi, Gem Tours & Travels, Mani Bhavan, Ground Floor, 54, Hughes Road, Mumbai – 400 020 PAN: AEIPD 7823G	Vs.	Office of the Commissioner of Income Tax-8, Range – 4, Aayakar Bhavan, Maharishi Karve Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Dharmesh Shah, A.R.
Revenue by : Shri Jeevanlal Lavidiya, D.R.

Date of Hearing : 14.12.2015
Date of Pronouncement : 22.01.2016

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 08.10.2012 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The main issue taken by the assessee through grounds of appeal is against the rejection of claim of agricultural income and adding of the same u/s. 68 of the Act into the taxable income of the assessee. The facts of the case are that the assessee claimed agricultural income of Rs.55,49,000/- and the same was credited to his personal account in the balance sheet. On enquiry by the Assessing Officer (hereinafter referred to as the AO), the assessee claimed that he owned certain agriculture land which was given for cultivation to Shri Ashok Maruti Rokade and as per agreement, an amount Rs.55,49,000/- was received by the assessee from Shri Rokade for FY 2008-09. Therefore, Shri Rokade was summoned by the AO who

appeared before the AO and orally confirmed the agreement and cultivation of the agricultural land and its produce. However, the AO treated the clam of agricultural income as bogus and the amount credited to the capital account of the assessee was added as unexplained income under section 68 of the Act. Being aggrieved by the said addition, assessee preferred appeal before the CIT(A).

3. During the appellate proceedings before the Ld. CIT(A), the assessee reiterated his submission as were made before the AO during the assessment proceedings and relied on certain case laws. The Ld. CIT(A) however observed that the assessee had failed to prove that the land had been cultivated, seeds had been sown and irrigation and other agricultural operations were carried out. He further observed that in this regard, revenue records for agricultural operations should have been produced as evidence. He further observed that the assessee had not produced the evidence regarding sale of agricultural produce, the relevant documents from market/commission agent through whom the produce was sold. He therefore confirmed the additions so made by the AO. The assessee has, thus, come in appeal before us.

4. We have heard the rival contentions and have also gone through the records. At the outset, the Ld. A.R. of the assessee has brought our attention to the revenue records/7/12 extract relating to the land in question which were also part of the record before the lower authorities. The said documents are prepared by the Land Revenue Officials by visiting the fields/land and further not only the area of the land but also the quality of the land whether irrigated or non irrigated and the standing crops are mentioned in the revenue records. These land revenue records are maintained by government officials in regular course and are per se admissible in evidence. A perusal of the land revenue records shows that various types of crops are grown on the said land. In specific, crops like wheat, jowar, rice, toor daal etc. are grown on these lands. A perusal of the said document shows that not only the two regular crops i.e.

rabi crop and kharif crop are being reaped from the land in question but in the intervening period, certain pulses like toor daal etc. are also grown. The revenue records of the land prepared in the official course proves beyond doubt that the land in question is a cultivable land where the multiple crops are grown by the cultivator. The Ld. A.R. of the assessee has also brought our attention to the agreement dated 12.02.08 entered into between the assessee and Mr. Ashok Maruti Rokade wherein, the said Mr. Ashok Maruti Rokade had taken for cultivation 46.9311 acres (approx 47 acres) of agricultural land from the assessee for which he had agreed to pay Rs.55,59,000/- as compensation/lease rent. The AO had summoned said Mr. Ashok Maruti Rokade and examined him at length. In his cross examination by the AO, Mr. Ashok Maruti Rokade confirmed the taking of the land from the assessee for cultivation by him and has also explained the method of cultivation and the source of irrigation. He has also mentioned the various crops yielded by the assessee such as rice, wheat, toor daal, masoor daal, harbara and jowar in the agricultural land. He also explained that the seeds were taken from the crops grown last year. He has also explained that the produce was sold to various traders by way of auction at his field and that the produces were not carried to Mandi/Grain Market. He has also explained that the fertilizers were purchased by him from small traders in cash. He has also explained that out of the income earned from the crops cultivated on land, he had paid a sum of Rs.55,49,000/- to the assessee and the remaining amount had been used for his household expenses and other agricultural relating activities. Mr. Ashok Maruti Rokade was examined at length by the AO but he remained consistent in his stand and the AO could not bring out any word from his mouth to prove that the land was not taken by him for cultivation or the amount was not paid by him to the assessee. There is another interesting fact on the file. The AO had deputed certain persons/inspectors to verify the revenue records and the standing crops on the land. In his reply to the queries by the AO, the assessee filed a letter dated December 16th, 2011 which was duly received in the office of the AO wherein it has been specifically mentioned by the assessee that Mr.

Ashok Maruti Rokade has informed him that two people from the office of the AO had personally visited the agricultural property of the assessee as well as the land revenue office and verified the documents, met Mr. Ashok Maruti Rokade and had also personally seen the ongoing agricultural activity on the land of the assessee. The AO has also referred to the said letter dated 16.12.11 in the assessment order and has also reproduced the other submissions made by the assessee regarding the agreement in question with Mr. Ashok Maruti Rokade and the other explanations given by Mr. Ashok Maruti Rokade regarding the cultivation and sale of produce of land and payment of lump-sum amount of Rs.55,49,000/- to the assessee. However, the AO has skipped the portion of the letter wherein the assessee has specifically mentioned that two persons from the office of the AO had visited the lands as well as the land revenue officials to verify the records as well as to verify the standing crops. The averments made by the assessee in his letter dated 16.12.11 have neither been denied nor rebutted by the AO. The assessee has a clear cut case that he has received compensation amount in question as per the agreement from Mr. Ashok Maruti Rokade. Mr. Ashok Maruti Rokade has not only confirmed in writing but also confirmed the same by personally appearing before the AO and he was also subjected to the lengthy cross examination. The existence of the land in question is not disputed. The carrying out of agricultural activities on the land is also proved from the revenue records which has not been rebutted by the AO. Hence, the assessee had discharged the primary burden of proof that he had received the agricultural income in question. The assessee had never claimed that he himself had cultivated the land. Under such circumstances, it could not be expected from the assessee to produce the evidence regarding the purchase of seeds, purchase of fertilizers or regarding the sale of produce in the market. It was Mr. Ashok Maruti Rokade who cultivated the land. He was under no duty to preserve these types of evidences. It was not under the control of the assessee to direct Mr. Ashok Maruti Rokade to keep such evidences. Even otherwise, Mr. Ashok Maruti Rokade has thoroughly explained about the cultivation carried out, the yield of the crops

and the manner of the sale of crops reaped. Moreover, the land revenue records which are admissible evidence otherwise have not been rebutted by the AO and under such circumstances nothing more was expected from the assessee to be produced in evidence. The AO has not doubted quantity or the sale price of the expected yield from 47 acres of land. Under such circumstances it is proved beyond doubt by the assessee that the agricultural activity was really carried out by Mr. Ashok Maruti Rokade and the amount in question was received by the assessee as per agreement from Mr. Ashok Maruti Rokade which as per law is to be treated as agricultural income of the assessee. We, therefore, do not find any justification on the part of the lower authorities in rejecting the claim of the assessee of agricultural income. The additions made by the lower authorities on this issue are hereby ordered to be deleted.

5. The next issue raised by the assessee is regarding the non granting of credit for TDS of Rs.75,202/- and self assessment tax of Rs.4 lakhs while determining the tax liability. The payment of TDS or the self assessment tax is a matter of record which can be verified by the AO. We direct the AO to verify the claim of the assessee in this respect and give the credit of the taxes already paid by the assessee.

6. The other issue is relating to the interest under section 234C and under section 234B which is consequential in nature. The AO at the time of verification of taxes paid will consider the same accordingly.

7. In the result, the appeal of the assessee is treated as allowed.

Order pronounced in the open court on 22.01.2016.

Sd/-
(Ashwani Taneja)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 22.01.2016.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.