

आयकरअपीलीयअधिकरण , 'सी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 3247 & 3248/Mds/2016

निर्धारण वर्ष/Assessment Years : 2013-14 & 2009-10

Deputy Commissioner of Income Tax,
Non Corporate Circle -4,
Coimbatore.

M/s. R. Mahendran (HUF),
Vs. No. 15, Kamaraj Road,
Mahalingapuram,
Pollachi – 642 002.

[PAN: AAGHR 3032P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri. AsishTripathi, JCIT

प्रत्यर्थीकीओरसे/Respondent by

: Shri. T. Banusekar, CA

सुनवाईकीतारीख/Date of Hearing

: 12.09.2017

घोषणाकीतारीख/Date of Pronouncement

: 29.11.2017

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The Revenue filed these appeals against the orders of the Commissioner of Income Tax (Appeals)-3, in ITA No. 57 & 58/16-17 dated 07.09.2016 for ays 2013-14 & 2009-2010 , respectively.

2. R. Mahendran, Kartha of HUF, a post graduate physician in General Medicine in his individual capacity, is performing organic agricultural operations, besides having passion for sports equestrian, thus maintaining a horse farm also. A survey was undertaken on 22.01.2015 in connection with his agricultural income while completing the assessment for assessment year 2012-13. Based on the survey findings, the reopened assessment for the assessment year 2009-10 and the assessment for assessment year 2013-14 was scrutinised. The assessee claimed agricultural income of Rs. 54,31,200/- & Rs. 78,66,500/- for the assessment years 2009-10 & 2013-14, respectively. It was found that the assessee is having a total land holding of 32 acres in which he has cultivated coconut as a parent crop, Nutmeg and vanilla as the intercrops in ay 2009-10 and coconut as a parent crop, Nutmeg and aricanut as the intercrops in ay 2009-10. During the survey proceedings, the assessee was not able to produce complete books of accounts in connection with its agricultural activities. At the time of scrutiny also it has not produced any bills, vouchers and books of account and details of expenses incurred for earning huge agricultural income of Rs.78,66,500/-in ay 2013-14. The assessee admitted net income from coconut at Rs.40,40,000/, nutmug at Rs.46,36,000/- and from aricanut at Rs.11,31,800/- and claimed a total expenditure of just Rs. 19,05,700/- only for all the crops in the assessment year 2013-14. The AO found that the assessee admitted more income but claimed to have incurred very less expenditure and the expenditure was

also not maintained crop-wise . Hence, the AO thought that finding out the average income and expenditure for each crop is the suitable method for determining the income. In the circumstances, the AO obtained detailed expert report from CARDS, Tamilnadu Agricultural University for cultivation of coconut in Pollachi region and found that fully grown trees (trees which attained 8 years or more) can yield 8400 coconuts per acre per sole crop. The gross income from coconut, as per the report for financial year 2012-13 was , Rs. 1,18,650/- per acre, the average expenditure is about Rs. 46,495/- per acre and hence the net income would be around Rs. 71,705/- per acre per sole crop. The assessee claimed total expenditure of Rs. 19,05,700/- for all the crops in the assessment year 2013-14. Assessee has not maintained proper accounts. Hence , the AO based on the experts report, determined the net income from coconut for 32 acres at Rs.22,94,560 @ Rs. 46,495/- per acre.

2.1 The assessee also admitted income from nutmeg at Rs.46,36,000/-. The AO found that the assessee's admitted income from this crop in the last 4 years as under :

A.Y	Income from nutmeg
2009-10	22,05,000/-
2010-11	21,93,750/-
2011-12	26,50,500/-

2012-13

27,67,500/-

The assessee has not produced any bills/voucher except sale note. Generally, nutmeg sellers are issuing bills but assessee has not produced any bills in this regard. The AO found that the maximum gross income from nutmeg is 27.50 lakhs in the last 4 years whereas this year the assessee claimed a huge income from nutmeg at Rs.46,36,000/- while there is no change in the number of trees. Though there could price be increase, but 180% increase is not reasonable for nutmeg as the crop is seasonal and harvesting once or twice in a year. In such facts and circumstances, the AO comparing the usage of land patterns, considering the land and soil fertility, other crops pattern and all other factors, held that an increase of 10% over the gross income of the previous year i.e Rs.27,67,500 would be reasonable one and accordingly, he restricted the gross income from nutmeg at Rs.30,44,250/- (ie.Rs.27,67,500 +2,76,750) and after allowing the farm expenses of Rs.6,04,266/-, he determined the net income from nutmeg at Rs.24,39,984/-.

2.2 The assessee has admitted income from aricanut at Rs.11,31,800/-. The A O noted that till last year, the assessee cultivated vanilla as intercrop and all of a sudden claimed aricanut as an alternate crop which yielded within a short span of one year. Usually, aricanut takes atleast five years for the first harvest. The grown area is same as 32 acres only. It has not maintained any bills/ voucher except bought note. Due to non availability of bills, the A O

considered that the reasonable net income from aricanut would be 50% of the admitted income at Rs.5,65,900/- and disallowed the rest . Thus, the AO determined the net agriculture income at Rs.53,00,444/- and treated the excess of Rs.25,66,056/- as an income from other sources and assessed it to tax. Further, the AO noticed from the books of account that the assessee had advanced Rs. 78,50,000/- to his grandmother Smt N. Kamatchiammal. When verified with the books of Smt. Kamatchiammal, he found that there was no corresponding liability in her books of account. Therefore, he treated the advances given to Smt N. Kamatchiammal as bogus and added Rs.78,50,000/- in the hands of the assessee.

3. Similarly, in the reassessment made for ay 2009-10, the AO found that out of the gross agricultural income of Rs.77,66,000/-, the assessee admitted a net agricultural income of Rs 54,31,200/- from coconut as a parent crop, Nutmeg and vanilla as the intercrops . For the reasons mentioned in ay 2013-14, adopting the same method, the AO determined the net income from coconut from 32 acres at Rs. 17,60,000/- for assessment year 2009-10 . While doing so , he took into consideration the experts report for the financial year 2012-13 and after considering the period, other factors like price of the coconut in the market and cooly etc for ay 2009-10 , the AO arrived the net income for coconut @ Rs. 55,000/- per acre which is 25% less than the income of fy 2012-13, determined by the experts. From vanilla, the assessee

admitted Rs.43,56,000/- . The AO , after verification, has accepted such receipts. For Nutmeg, the assessee planted in 30 acres of land and admitted Rs. 22,05,000/-, the average income per acre at Rs. 73,500/-. In the absence of bills and vouchers, the AO disallowed 25% of such income and estimated the gross income at Rs. 16,50,000/-. Thus, as against the net agricultural income of Rs. 54,31,200/- returned for the assessment year 2009-10, the AO after allowing the expenditure and loan repayments, determined the net agricultural income at Rs. 36,35,000/- and treated the balance or the excess claim at Rs 17,96,200/ as income from other sources and brought to tax for ay 2009-10 .Further, after verifying the bank accounts, the AO found that the assessee had invested in LIC, Met Life Insurance Company Ltd., VMD Foodex and Bonanza Portfolio Ltd., at Rs. 56,52,040/-, but failed to provide any documents in this regard. The assessee has also not disclosed them in its books of account. Therefore, the AO treated these investments as an unexplained investment u/s. 69A and added to the total income.

4. Aggrieved, the assessee filed appeals before the CIT(A). The CIT(A) restricted the disallowance to 10% each for agricultural income returned from coconut and vanilla(sic) cultivation by the assessee. As regard the addition u/s. 69A, the CIT(A) held that :

"These investments have been made through the banking channel. If all, there has to be an addition, it should have been for the source of these investments. This is not the aspect considered in the assessment

order. The reason stated in paragraph 5 of the assessment order is that the appellant had failed to provide any documents in this regards. Documents are needed to prove the source or the credit side. These are outgoings through the banking channel and addition under section 69A of the Income Tax Act is made without any sustainable reason and is deleted."

4.1 In respect of the money advanced to Smt. N Kamatchianmal, the CIT(A) held that :

" The Assessing Officer has held that the said sum was not included as a liability in the balance sheet of Smt N. Kamatchiammal. Therefore, this was held to be a bogus asset. Had there been a bogus credit, the same would logically have to be treated as income of the appellant. Here, Smt. N Kamacthiammal is a sundry debtor and not a sundry creditor. If it is the case that the appellant had no source initially to make this advance, it should have been assessed in the financial year in which it was shown as outgoing by the appellant as unexplained expenditure. The adequacy of source has not been questioned by the Assessing Officer. In view of this, the addition made for bogus asset is unsustainable and is deleted."

5. Aggrieved, the Revenue filed these appeals with the following common grounds for both the ays:

"1. The order of the Learned CIT(A) is not acceptable on the facts and circumstances of the case.

2. The Learned CIT(A) has erred in law, in restricting the disallowance of agricultural income to 10% when the AO has arrived at the agricultural income based on the TNAU report.

3. The Learned CIT(A) has not considered that it takes five years for harvesting arecanut, but the assessee claimed agricultural income from arecanut in the first year itself.

4. The Learned CIT(A) has erred in not considering the findings of the survey and that the disallowance was made as a result of the findings of the survey.

For ay 2013-14:

5. The CIT(A) has erred in deleting the addition of bogus advance made to the assessee's grandmother, Smt N. Kamatchiammal in whose accounts, the advance does not appear.

For ay 2009-10 :

6. The CIT(A) has erred in deleting the addition made under unexplained investments u/s. 69A as it was not recorded in the books of account and could not be explained."

6. There was a delay of 8 days in filing the appeal in ay 2013-14. The Revenue filed the petition for condonation of delay. We heard the AR and the DR. We find that there was sufficient cause for not filing the appeal before the stipulated time. Therefore, we condone the delay and admit the appeal.

7. The DR submitted that the assessee claimed agricultural income of Rs. 54,31,200/- & Rs. 78,66,500/-for the assessment years 2009-10 & 2013-14 , respectively. It has not produced any bills/ vouchers except bought note and loose sheets. During the survey, it was found that the assessee was not maintaining any books of account for agricultural activity. The A O found that the assessee admitted more income but claimed to have incurred very less expenditure and the expenditure was also not maintained crop-wise . Hence, the A O thought that finding out the average income and expenditure for each crop is the suitable method for determining the income. In the circumstances, the AO obtained detailed expert report from CARDS, Tamilnadu Agricultural University for cultivation of coconut in Pollachi region .

The AO has scientifically arrived at the disallowance based on the report of the TNAU. The average yield of coconuts and for other crops , average expenses per acre estimated by the AO is very reasonable. Assessee admitted agricultural income from aricanut in ay 2013-14. Till the previous year i.e. till A.Y. 2012-13, the assessee had cultivated vanilla as intercrop. All of a sudden, it claimed huge income from aricanut as an alternate crop. It takes atleast five years for the first harvest for the aricanut. The fact that the assessee is claiming huge income from aricanut on the very first year itself clearly shows that its claim is not correct. The CIT(A) has restricted the disallowances to 10% of agricultural income for each crop based on the sole ground that the figures given by TNAU were place wise averages and there are fluctuations in individual yields in all probability. It is clear from the order of the CIT (A) that the assessee has not raised any worthy grounds on the other crops. In spite of it, the CIT(A) has restricted the disallowances on other crops also. The Onus is on the assessee to lay all material to establish its exemption claim but it has not laid any material either to establish its case nor laid any material to dislodge the findings of the AO and hence the decision of the CIT(A) is arbitrary and hence it may be set aside and the orders of the AO be restored for both the ays.

7.1 The DR continued his submissions stating that the AO found from the books of account of ay 2009-10 that the assessee made investments for Rs.

56,52,040/-, but failed to provide any documents and has not disclosed it in the books of accounts. Therefore, the investments were treated as unexplained investment u/s 69A. The CIT(A) has deleted on the ground that these investments have been made through banking channel, documents are needed to prove the source or the credit side and these are outgoings through the banking channel and so addition is made without any sustainable reason and is deleted. The CIT(A)'s decision is not correct as the source for investments could not be produced and it was not included in the books of account and hence pleaded to restore the orders of the A O .

7.2 Further, pleaded that the A O found in ay 2013-14, that the assessee had advanced Rs. 78,50,000/- to his grandmother Smt N. Kamatchiammal. When the A O verified with the books of Smt. Kamatchiammal and found that there was no such claim in her books. Therefore, the advances given to Smt N. Kamatchiammal was treated as bogus and added in the hands of the assessee. The CIT(A) has deleted this addition stating that it should have been added in the financial year in which it was shown as outgoing by the appellant as unexplained expenditure and that the adequacy of source has not been questioned by the AO. The CIT(A)'s decision is not tenable because the sources of funds has not been explained and hence the D R pleaded to restore the orders of the A O .

8. Per contra, the AR submitted that the assessee holds 32 acres of land at the foot hills of Anaimalai, a very fertile area. The soil availability and the rainfall is much adequate for the cropping. Coconut is the parent crop, nutmug, vanilla and aricanut were intercrops. The Pollachi region comprises of two fertile parts on the west and south of Pollachi and dry region in the east and north . In the west and south region, the minimum yield is 150 to 180 nuts per tree while in the east and north, it would be 80 to 90 nuts per tree. The average yield is 150 nuts per tree , the average price is Rs10 per nut and the average expenditure is Rs. 26,000 per acre . There were 2400 coconut trees and 2250 nutmeg trees and these particulars were already submitted in the earlier assessment years . The assessee produced sale notes. The AO did not find any deficiency . However, following the TNAU report which comprises for all the four Regions and without considering that it is only as a guideline , the Assessing Officer adopted it for determining the income for the coconut crop and for others he adopted a 10% incremental allowance over the gross income of the earlier years. Consequently, unreasonably disallowed 33% of net agricultural income. The CIT (A) has adopted a reasonable approach and hence the Revenue's appeals may be dismissed. In respect of the advance given at Rs. 78,50,0000/ to Smt. N. Kamatchiammal the A R submitted that as per the wish of the karta's grandmother, Smt. N. Kamatchiammal , to materialize a property on the occasion of marriage of the great granddaughter of Smt. N. Kamatchiammal.

The assessee is owing a sum of Rs. 110 lacs to Smt. N. Kamatchiammal . Out of the said payable, the assessee paid the said sum. This is only an asset of the assessee . The sources were fully explained as per the balance sheet filed. There is no inadequacy of source to pay the said sum. The said transaction was not accounted in the books of Kamatchiammal for the reason that as far as Smt. N. Kamatchiammal is concerned, it is only a journal entry to be passed in her books which would have no monetary effect neither the receipt nor the payment. Between the two accounts, it needs only reconciliation. Moreover, the advance was paid by the assessee and also accounted in the books, exhibited as current asset in the balance sheet. The character of the transaction is asset and as per the accounting standards it should not be added as income unless for the inadequacy of sources for the said payment. But the Assessing Officer added the asset as income. It is not accorded with the principles of accountancy. Receipts and Income falls under the category of credit and payment and expenditure falls under the category of debit. The Assessing Officer added the debit with credit. This is not an unexplained expenditure. Hence, the AR submitted that the CIT(A) has correctly deleted the addition . In respect of Rs. 56,52,040/- added as an unexplained investments in ay 2009-10 , the AR submitted that the assessee is having two statuses one as an individual and another as HUF. The assessee is the Karta of the HUF. To meet out the obligations in time, the

assessee issued cheques from the HUF status. The details of payments are as under :

Date of payment	Nature of payment	Amount	Investment in the name of	PAN	Heads in Balance sheet
07-05-2008	Metlife	650000	R Mahendran	ADWPM2725R	Investments
28-03-2009	Metlife	650000	R Mahendran	ADWPM2725R	Investments
03-12-2008	Bonanza Portfolio Limited	1995088	R Mahendran	ADWPM2725R	Deposits and Advances
25-08-2008	VMD Foodex	1800000	R Mahendran	AAGHR3032P	Repayment of Advances
29-05-2008	LIC	278476	R Mahendran	ADWPM2725R	Drawings
28-11-2008	LIC	278476	R Mahendran	ADWPM2725R	Drawings
28-11-2008	LIC	150000	R Mahendran	AAGHR3032P	Drawings
Total		5652040			

These payments, though made out of HUF bank accounts, were subsequently reimbursed by the concerned status which could be verified . The said bank accounts are accounted in the books of account maintained in the regular course of business and exhibited in the balance sheet as investments and drawings. The Assessing officer has not unearthed any bank accounts which is not found in the balance sheet, without offering an opportunity and not going through the facts submitted in the original assessment made under Section 143(3), the A O simply added back them as income. The AR submitted that the CIT(A) has correctly deleted the addition .

9. We have considered the rival contentions. The fact remains that the assessee is having a total land holding of 32 acres in which it has cultivated coconut as a parent crop for the impugned assessment years, Nutmeg and vanilla as the intercrops in ay 2009-10 and Nutmeg and aricanut as the intercrops in ay 2013-14. During the survey proceedings, the assessee was not able to produce complete books of account in connection with its agricultural activities. At the time of scrutiny also the assessee has not produced any bills, vouchers and books of account and details of expenses incurred for earning huge agricultural income. The A O found that the assessee admitted more income but claimed to have incurred very less expenditure and it did not maintain crop-wise details also. Hence, the A O considered that determining the average income and expenditure for each crop is the suitable method for determining the correct income. In the circumstances, the AO obtained detailed expert report from CARDS, Tamilnadu Agricultural University for cultivation of coconut in Pollachi region and adopted such income for the coconut crop suitably for the involved years. The assessee challenges such findings based on a plea that Pollachi region comprises of two fertile parts on the west and south of Pollachi and dry region in the east and north. In the west and south region, the minimum yield is 150 to 180 nuts per tree while in the east and north, it would be 80 to 90 nuts per tree. The average yield is 150 nuts per tree, the

average price is Rs10 per nut and the average expenditure is Rs. 26,000 per acre . There were 2400 coconut trees and 2250 nutmeg trees and these particulars were already submitted in the earlier assessment years . However, the assessee has not laid any material to prove such contentions. Neither the AO nor the CIT (A) have indicated the assessee's admitted and assessed income from coconut either in the earlier or subsequent assessment years. Wherever the assessee has laid material, the AO has accepted such income , for example the income from vanilla in ay 2009-10. The AO on due examination of the income admitted by the assessee from nutmeg from ay 2009-10 to 2012-13, has arrived certain income. However, the CIT (A) without any material restricted such income @ 10% of the admitted income. So also , for the income from aricanut . On the other additions viz, the advance given at Rs. 78,50,0000/- to Smt. N. Kamatchiammal and Rs. 56,52,040/- added as an unexplained investments in ay 2009-10, the assessee strongly relies on its books of account and it was pleaded that on due verification , the assessee can prove the merits on its side . Since the sources for these advances and deposits are connected with determination of agricultural income or income from other sources, as the case may be, etc and considering the facts and circumstances that the assessee's admitted and assessed income from each of the impugned agricultural sources in the earlier or subsequent assessment years is not available on record, the orders of the lower authorities are set aside and all the issues are remitted to the AO

for a fresh examination for both the assessment years. The A O shall require the assessee to lay all the materials in support of its contention, duly examine them and after affording adequate opportunity to the assessee would pass speaking orders . The Revenue's appeals for assessment years 2013-14 & 2009-10, respectively, are treated as allowed for statistical purposes.

10. In the result, the Revenue appeals in ITA Nos. 3247 & 3248/Mds/2016 are treated as allowed for statistical purposes.

Order pronounced on Wednesday, the 29th day of November, 2017 at Chennai

Sd/-
(एन.आर.एस .गणेशन)
(N.R.S. GANESAN)
न्यायिकसदस्य/Judicial Member

Sd/-
(एसजयरामन)
(S. JAYARAMAN)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 29th November, 2017

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त) अपील(/CIT(A) |
| 4. आयकरआयुक्त/CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF |