

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA Nos. 1673 to 1678/Bang/2017
Assessment Years :2001-02 to 2006-07

Shri Mahabaleshwar G. Hebbar, C/o. Kamadhenu Medicals, Yellapur. PAN: ABFPH 6477A	Vs.	The Income Tax Officer, Ward – 3[1], Hubli.
APPELLANT		RESPONDENT

Appellant by	:	Shri ShreehariKutsa, CA
Respondent by	:	Shri Vimal Anand, Addl. CIT (DR)

Date of hearing	:	19.01.2018
Date of Pronouncement	:	24.01.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

All these six appeals are filed by the assessee and these are directed against six separate orders of Id. CIT (A), Hubli all dated 25.05.2017 for Assessment Years 2001-02 to 2006-07. All these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The grounds raised by the assessee in all these six appeals are identical except difference in amounts. Hence I reproduce the grounds raised by the assessee in Assessment Year 2001-02 in ITA No. 1673/Bang/2017. The grounds are as under.

“1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] ought to have taken the addition made in the case of M/s. V.V.Shanbhag of Rs.5,02,983/- for reconsideration in the light of the explanation offered at the time of assessment proceedings as well as before the learned CIT[A] that the alleged investment of Rs.5,02,983/- does not belong to the appellant and that the said investment should be assessed in the hands of M/s. V.V.Shanbhag, as

the onus of proving genuineness of investment lies with the entity in whose books the said investment appear and as such, the same should be deleted in the hands of the appellant under the facts and in the circumstances of the appellant's case.

3.1 Without prejudice to the above, the learned A.O. ought to have taken the peak of the bank balances instead of the aggregate of the balance in respect of which source of the agricultural income is accepted by him, as the said bank balances do not figure in the financial statements or balance sheet at the end of the year under the facts and in the circumstances of the appellant's case.

3.2 Without prejudice to the above, the learned A.O. ought to have taken the peak of the amount alleged to have been advanced to M/s. V.V.Shanbhag, by considering the credits available in their account while computing the additions to be made after giving credit to the agricultural income accepted by the learned CIT [A] under the facts and in the circumstances of the appellant's case.

3.3 Without prejudice to the above, the additions made as represented by the agricultural income should be taken as available for making the additions by way of alleged investments in the subsequent years under the facts and in the circumstances of the appellant's case.

4. Without prejudice to the right to seek waiver before the Hon'ble DG/CCIT, the appellant denies himself liable to be charged to interest u/s.234A and 234B of the Act, which requires to be cancelled under the facts and in the circumstances of the appellant's case.

5. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

3. It was submitted by Id. AR of assessee that this is second round in respect of five Assessment Years i.e. Assessment Years 2001-02 to 2005-06. He submitted copy of Tribunal order in ITA Nos. 347 to 351/Bang/2010 dated 26.05.2011 and pointed out that as per Para no. 9.2 of this Tribunal order, the issue regarding addition on account of unexplained investment has been restored back by the Tribunal to the file of AO for fresh decision with the direction that the AO should verify as to whether the land holdings belong to the assessee or to his father and if they are held in the name of his father, then verify the assessee's share in the said land holding and thereafter, attribute the

income from agriculture to the share of the assessee and if it is sufficient to explain the source of cash deposited into the bank and used for investments, then the addition shall be deleted. He further submitted that in Para no. 11.2 of the same Tribunal order, it was held that for Assessment Years 2002-03 and 2003-04 also, the issue is decided in the same manner with the same directions as were given for Assessment Year 2001-02. He further submitted that for Assessment Year 2001-02 as per Para 10 of this Tribunal order, the issue regarding alleged investment in M/s V VShanbhag also was restored back to the file of AO for fresh decision on the same line that the agricultural income should be considered and if the same is sufficient to meet the unexplained investment in M/s V VShanbhag after considering it on account of unexplained cash credit, relief should be allowed to the assessee. Thereafter, he has pointed out that for Assessment Year 2004-05, Para 11.3 of Tribunal order is relevant as per which the issue regarding alleged unexplained investment in share application of M/s Banana County Resorts (P) Ltd. was also restored back to the file of AO with similar directions that if the agricultural income is sufficient to meet the investments after setting off of the unexplained cash credits and investment in the petrol bunk, relief should be allowed to the assessee. Thereafter, he pointed out that for Assessment Year 2005-06, the Para no. 12.1 is relevant as per which it is held by Tribunal that the assessee's grounds of appeal for this year are similar to Assessment Year 2001-02 and therefore, in this year also, the issue is decided on similar line.

4. Regarding Assessment Year 2006-07, he submitted that in this year, this is the first round of appeal and not second round but the issue is similar i.e. regarding investment of a sum of Rs. 28,57,050/- as alleged unexplained investment as share application money in M/s. Banana County Resorts Pvt. Ltd. and giving of a loan of Rs. 5.5 Lakhs to the same company. Both these investments are made by way of cash and the assessee's explanation is that the assessee is having 4 acres 6 guntas of agricultural lands jointly with his 2 brothers and apart from this, the assessee's father was said to be cultivating 13 acres and 19 guntas of agricultural lands and therefore, there is income from agricultural sources to be considered as explanation towards these investments.

5. He drawn my attention to Para no. 10 of order of CIT(A) for Assessment Year 2006-07 and pointed out that CIT(A) has considered the remand report of the AO dated 20.04.2016 as per which it was stated by the AO that the assessee derived substantial amount of income from the agricultural lands belonging to himself and his brother and also his father and accordingly he estimated the agriculture income of the assessee at Rs. 13,15,541/-, Rs. 10,83,970/-, Rs. 11,40,197/-,Rs. 11,03,768/- &Rs. 11,72,138/- for the Assessment Years 2001-02 to 2005-06 respectively and taking the same analogy, the CIT(A) has held that the agriculture income from father's lands is estimated at Rs. 7.50 Lakhs for Assessment Year 2006-07. It was submitted by Id. AR of assessee that in view of the quantum of agriculture income accepted by the AO in the remand report for Assessment Years 2001-02 to 2005-06, in Assessment Year 2006-07 also, the income estimated by the CIT(A) is lesser at Rs. 7.50 Lakhs as against Rs. 11.72 Lakhs in Assessment Year 2005-06 as per the remand report of the AO. Therefore in the facts of the present case, reasonable amount of agriculture amount should be accepted for the purpose of explanation of the assessee's various investments. The Id. DR of revenue submitted that there is no infirmity in the order of CIT(A).
6. I have considered the rival submissions. First of all, I reproduce the relevant paras from the Tribunal order in assessee's own case in the first round for Assessment Years 2001-02 to 2005-06. These paras are 9.2, 10,11.2, 11.3 and 12.These are as under.

“9.2However, we have to accept that the assessee is holding certain part of the land and if the crops grown by the assessee are to be accepted as Banana, Coconut and Arecanut, then the income would definitely arise to the assessee and that should be sufficient to explain the source of cash credits into the bank. However, we feel that the records filed by the assessee needs verification by the AO. In view of the same, we deem it fit and proper to remit this issue to the file of the AO to verify as to whether the land holdings belong to the assessee or to his father and if they are held in the name of his father, then verify the assessee's share in the said land holding and thereafter, attribute the income from agriculture to the share of the assessee and if it is sufficient to explain the source of cash credits into the bank, then the addition shall be deleted.

10.As regards the addition made on account of unexplained investment in M/s V VShanbhag, we find that the partnership was entered into by the family members of the assessee with Mrs Usha Shanbhag and the said firm was dissolved on 1/4/2000 itself but the same cannot be relied upon for the reason that the execution of the partnership deed and the dissolution deed are on the same date and further, the Deed of Commitment and Receipt dated 3.3.2005 is also signed by the family members of the assessee to the effect that the business was carried on from 1/4/2000 to 16/3/2005 and the accounts are settled before handing over the possession to Smt. Usha Shanbhag. Therefore, it is to be held that the family members of the assessee had carried on the business of the petrol bunk and it is evident from the books of account of M/s V VShanbhag that the assessee has advanced certain money to the firm and this has to be treated as investment in V VShanbhag and the assessee is not able to explain the said investment. However, if the AO, on verification of the details filed by the assessee with regard to unexplained cash credits into the bank accounts, finds that the agricultural income is sufficient to meet the unexplained investment in M/s V VShanbhag, he shall give relief to the assessee. Therefore, this ground of appeal is also allowed for statistical purposes with above directions.

11.2For the asst. year 2002-03 and 2003-04, except for the quantum, the issues are the same and therefore, for the reasons given by us for the asst. year 2001-02, the appeals are partly allowed.

11.3For the asst. year 2004-05, in addition to the issues raised in the assessment year 2001-02, there is an additional issue i.e. an addition of Rs.11,60,100/- and Rs.10,58,824/- as unexplained investment in share application of M/s Banana County Resorts (P) Ltd. With regard to this addition also, the learned counsel for the assessee submitted that the agricultural income of the assessee was sufficient to prove the source of this investment. Therefore, in view of our remitting the issue of unexplained cash credits to the file of the AO for verification of the details of agricultural land holdings and the income there from, we deem it fit and proper to remit this ground no.7 also to the file of the AO with a direction to allow the same if it is found that the agricultural income is sufficient to meet these investments after setting off of the unexplained cash credits and investment in the petrol bunk. This ground of appeal is accordingly allowed for statistical purposes.

12.For the asst. year 2005-06, the grounds of appeal raised by the assessee are similar to the assessee's grounds of appeal for the asst. year 2001-02 and therefore, this appeal is also partly allowed for the reasons stated therein. However, in addition thereto, the assessee has also raised a ground of appeal against an addition of Rs.60,000/- in the hands of the assessee."

7. I also reproduce Para no. 10 of the order of CIT(A) in Assessment Year 2006-07.

“10. Similar issue was there before the Hon'ble ITAT Bangalore for the AY 2001-02 to 2005-06. The Assessing Officer negated the agricultural income theory. On appeal, the CIT (A) confirmed the assessment. Before the Hon'ble ITAT, the assessee claimed that, he earned substantial income by way of agricultural income from the lands belonging to his father. The ITAT set-aside the issue to the file of the AO with a direction that, the Assessing Officer should verify whether the father owned agricultural lands and whether the assessee received income from such lands and in case it is found that the father had agricultural lands from which the instant assessee derived his share of income, then the addition will be deleted. During the appellate proceedings the assessee furnished a cash flow statement wherein he accommodated the investments as well as the agricultural Income. The cash flow statements were for the AY 2001-02 to 2005-06 which were forwarded to the AO for enquires regarding the veracity of claim of having derived income from the agricultural lands of his father. Vide the report dtd 20/04/2016, the ITO W-1, Sirsi has stated that, the assessee derived substantial amount of income from the agricultural lands belonging to himself and his brothers and also his father and accordingly, he estimated the agricultural income of the assessee at Rs.13,15,541/-, Rs.10,83,970/-, Rs.11,40,197/-, Rs.11,03,768/- & Rs.11 72 138/- for the AY 2001-02 to 2005-06 respectively. Taking the same analogy, I would hold that, it will meet end of justice if the agricultural income from father's lands is estimated at Rs.7 50 000/- for the assessment year under consideration. Vide my order No.286/CIT(A)/HBL/2013-14 dated 25.05.2017 for the A.Y. 2005-06, I have accepted assessee's claim that, he earned a total agricultural income of Rs.8,27,000/- and I have held that no unexplained investment was assessable in that year, since the unexplained investment in form of cash credit in bank account was of the order of only Rs.3,48,000/-. In other words, the surplus agricultural income of Rs.4,79,000/- (8,27,000 - 3,48,000) which has arisen in the A.Y. 2005-06 is held to be available for making investment in the subject A.Y. of 2006-07. That is, the assessee is eligible to claim credit for the said surplus agricultural income. Accordingly, the Assessing Officer is directed to allow relief to this extent and tax the balance investment of Rs.19,28,050/- (31,57,050 - 7,50,000 - 4,79,000). In other words, addition sustained stands at Rs.19,28,050/-.”

8. I also find that in Para no. 12 of the order of CIT(A) in Assessment Year 2001-02, it is noted by CIT(A) that as per the remand report of the AO, the AO has

estimated that agriculture income of the assessee is Rs. 13,15,542/- for that year but the CIT(A) has accepted only Rs. 8.57 Lakhs on this basis that the assessee had indicated only this much amount in the details furnished by him i.e. in the cash flow statement.

9. Similarly in Assessment Year 2002-03, it is noted by CIT(A) in Para 14 of his order in that year that in the remand report dated 20.01.2016, the AO has estimated the net agriculture income at Rs. 10,83,970/- for that assessment year but in spite of this, CIT(A) has accepted agriculture income of Rs. 7.85 Lakhs in that year on the basis of cash flow statement of assessee submitted before the Id. CIT(A).
10. In the same manner, in Assessment Year 2003-04, it is noted by CIT(A) in Para no. 18 of his order, in that year that the AO vide the remand report dated 26.04.2016 has estimated the agricultural income at Rs. 11,40,197/- but against this, the CIT(A) has accepted only Rs. 8.39 Lakhs as agriculture income on the basis of cash flow statement submitted before him in that year.
11. In Assessment Year 2004-05, it is noted by CIT(A) in Para no. 13 of his order in that year that the AO in remand report dated 20.04.2016 has estimated the agricultural income at Rs. 11,03,768/- but against this, the CIT(A) has accepted agriculture income of Rs. 7.15 Lakhs on the basis of cash flow statement of that year submitted before him.
12. Similarly in Assessment Year 2005-06 in Para no. 13 of the order of CIT(A), it is noted by CIT(A) that as per remand report of AO, he has estimated the agriculture income of the assessee in that year at Rs. 11,72,138/- but the CIT(A) has accepted agriculture income of Rs. 8.27 Lakhs in that year on the basis of cash flow statement submitted before CIT(A) in that year.
13. In Assessment Year 2006-07 in Para no. 10 of the order of CIT(A), it is noted by CIT(A) that details of agriculture income estimated by the AO in the remand report for Assessment Years 2001-02 to 2005-06 are Rs. 13,15,541/-, Rs. 10,83,970/-, Rs. 11,40,197/-, Rs. 11,03,768/- &Rs. 11,72,138/- respectively.

He has stated that taking the same analogy, he has estimated the agriculture income of the assessee at Rs. 7.50 Lakhs. In my considered opinion, when the AO is reporting in the remand report that estimated agriculture income as per him is more, what is the basis for accepting the agriculture income of the assessee at lower amount for Assessment Years 2001-02 to 2005-06 and again in Assessment Year 2006-07, when CIT(A) says that he has applied the same analogy, and when the average income of the earlier 5 years is higher at Rs. 11,63,122.80/-, how he can adopt the figure of only Rs. 7.50 Lacs in that year. Hence I feel it proper to restore the matter back to the file of CIT(A) for fresh decision on this aspect as to how much is the reasonable agricultural income in all these six years which can be considered as source for various investments of the assessee in these years. Accordingly, I set aside the order of CIT(A) in all these years and restore the entire matter back to him for a fresh decision by way of a speaking and reasoned order in the light of above discussion after providing adequate opportunity of being heard to both sides.

14. In the result, all the six appeals filed by the assessee are allowed for statistical purposes in the terms indicated above.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 24th January, 2018.
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.