

आयकर अपील अाधकरण, "डी" ढायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI
श्री अाहम पी. जॉजलेखा सदय एवं श्री धुवु आर.एल रेडी, ढायक सदय के समु
Before Shri Abraham P. George, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A.No.2746/Chny/2017
ढथाण वष/Assessment Year:2009-10

Shri K. Lakshmanan,
No. 297-B, Chinna Kadai Street,
Salem 636 001.

The Income Tax Officer,
Vs. Ward 1(1),
Salem.

[PAN: ABJPL9703B]

(अपीलाथ /Appellant)

(ढयथ/Respondent)

अपीलाथ क ओर से / Appellant by : Shri T. Vasudevan, Advocate
ढयथ क ओर से/Respondent by : Shri B. Sagadevan, JCIT
सुनवाई क ताराख/ Date of hearing : 11.04.2018
घोषणा क ताराख /Date of Pronouncement : 27.04.2018

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), Salem, dated 12.09.2017 relevant to the assessment year 2009-10. Besides challenging the reopening of assessment under section 147 of the Income Tax Act, 1961 [Act+ in short], the assessee also challenged confirmation of addition towards estimation of commission receipt.

2. Brief facts of the case are that the assessee is engaged in the business of sale of grapes and filed his return admitting income of .6,42,110/- and agricultural income of .4,50,000/-. The return of income filed by the assessee was processed under section 143(1) of the Act. Subsequently, the case of the assessee was reopened by recording the reasons and notice under section 148 of the Act was issued and against the above notice, the assessee submitted that the return of income originally filled by the assessee shall be considered as proper compliance to the notice. Further, notice under section 143 (2) dated 13.06.2014 was also issued to the assessee. In response to the notice, the Authorised Representative of the assessee Sri R. Suresh appeared and filed details. Admittedly, the assessee has not maintained books of accounts for the assessment year 2007-08. The assessee stated during the assessment proceedings that for reopening the assessment there should be live nexus between the material and the income escaping assessment and the reason recorded under section 147 based on National Survey Report are not relevant to the assessee. With regard to cash deposit of .1,84,00,000/- in S.B.A/c, the assessee furnished bank statement and stated that the cash deposits consist of commission sale realizations payable to grape growers at Sangli, Bus collections and Lorry collection. It was also stated that the grapes grown by the agriculturists at Sangli are

distributed by the assessee through sub commission agents in Tamil Nadu and Kerala and gets 3% commission from the growers on the net realized amounts from sub agents and after meeting expenses the income has been admitted which is based on net incremental asset method. In this regard, the assessee furnished his personal statement of affairs for the A.Y. 2006-07 and 2007-08 which were examined by the Assessing Officer.

2.1 After considering the details furnished by the assessee as well as submissions of the assessee, the Assessing Officer adopted the income from grapes sales at 5% of the cash deposits of .1,84,00,000/-, which works out to .9,20,000/-. Further, considering the nature of business, an expenses of .75,000/- was allowed on estimated basis out of the commission and balance amount of .8,45,000/- was treated as income from the grapes sale. Since the assessee has already admitted income of .3,32,962/- from grapes sales in the return of income, balance amount of .5,12,038/- (.8,45,000 . 3,32,962) was added to the total income of the assessee.

3. The assessee carried the matter in appeal before the Id. CIT(A). After considering the submissions as well as facts of the case, the Id. CIT(A) confirmed the addition.

4. On being aggrieved, the assessee is in appeal before the Tribunal challenging reassessment as well as confirmation of estimated addition. During the course of hearing, as per grounds of appeal, the grounds raised in Ground No. 2 to 5 relating to reopening of assessment, the issue was not pressed by making endorsement in the grounds of appeal that %Gr. Nos. 2 to 5 not pressed+. Accordingly, the ground of reopening of assessment under section 147 of the Act is dismissed as not pressed.

4.1 With regard to confirmation of estimated addition towards commission receipt, the Id. Counsel submitted that the cash deposits consist of commission sale realizations payable to grape growers at Sangli, bus collections and lorry collection. It was also stated that the grapes grown by the agriculturists at Sangli are distributed by the assessee through sub commission agents in Tamil Nadu and Kerala and gets 3% commission from the growers on the net realized amounts from sub agents and after meeting expenses the income has been admitted which is based on net incremental asset method. It was also submitted that the Post Harvest Profile of Grapes, issued by the Government of India on 12.11.2010, was a public document and it was clearly stated therein that the commission that could be earned by the commission agent varied between 4 to 7% and moreover, the said profile did not

cover the State of Tamil Nadu. Accordingly, the Id. Counsel prayed that the Id. CIT(A) was not justified in confirming the working out the commission at 5% and 3% commission income returned by the assessee was duly supported by the sale memo given by the grape growers in Sangli should be considered as actual percentage of commission received by the assessee.

5. On the other hand, the Id. DR strongly supported the orders of authorities below.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Since the assessee has not maintained the books of accounts for his business, the estimation of 5% commission income determined by the Assessing Officer was confirmed by the Id. CIT(A). However, on similar facts and circumstances, in the case of ITO v. Shri P. Ramesh in I.T.A. No.1189/Mds/2017 & C.O. No. 100/Mds/ 2017 dated 27.10.2017 relevant to the assessment year 2009-10, after considering the entire facts of the case and in the absence of any books of account, the Tribunal directed the Assessing Officer to consider 4% of the total receipt as commission. Similarly, in the present case also, we are of the opinion that considering the nature of business and in the absence of books of account, the

