

आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष

**BEFORE MS. SUSHMA CHOWLA, JM**

**आयकर अपील सं. / ITA No.2689/PUN/2016**

**निर्धारण वर्ष / Assessment Year : 1999-2000**

Shri Sandeep Sugandhilal Bora,

A/P Miragaon,

Tal – Karjat,

Dist. Ahmednagar

.... अपीलार्थी/Appellant

PAN: ABQPB4652C

Vs.

The Income Tax Officer,

Ward 4, Ahmednagar

.... प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA No.2690/PUN/2016**

**निर्धारण वर्ष / Assessment Year : 1999-2000**

Shri Suhas Sugandhilal Bora,

A/P Miragaon,

Tal – Karjat,

Dist. Ahmednagar

.... अपीलार्थी/Appellant

PAN: AHYPB5398M

Vs.

The Income Tax Officer,

Ward 4, Ahmednagar

.... प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA No.2691/PUN/2016**  
**निर्धारण वर्ष / Assessment Year : 1999-2000**

Shri Sarang Sugandhilal Bora,  
A/P Miragaon,  
Tal – Karjat,  
Dist. Ahmednagar

.... अपीलार्थी/Appellant

PAN: AGRBP1593J

Vs.

The Income Tax Officer,  
Ward 4, Ahmednagar

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Kishore Phadke  
प्रत्यर्थी की ओर से / Respondent by : Shri Mukesh Jha

सुनवाई की तारीख / <b>Date of Hearing : 18.04.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 27.04.2018</b>
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

This bunch of three appeals filed by related assessee are against separate orders of CIT(A)-2, Pune, all dated 30.06.2016 relating to assessment year 1999-2000 against respective orders passed under section 254 r.w.s. 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The three appeals of related persons on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience. The assessee has raised similar grounds of appeal in all the appeals. However, reference is being made to the facts in ITA No.2691/PUN/2016. The assessee in the above said appeal has also raised an

additional issue vide ground of appeal No.4 which is not raised in other two appeals.

3. The assessee in ITA No.2691/PUN/2016 has raised the following grounds of appeal:-

1. *The learned AO as well as learned CIT(A) erred in law and on facts by not giving appropriate credit of agricultural income granted by Honorable ITAT via its order dated 24/09/2014.*
2. *The learned CIT(A) erred in law and on facts by sustaining telescoping effect given by learned AO by allocating agricultural income equally in the hands of the appellant while giving effect to honorable ITAT order dated 24/09/2014 in absence of any such specific direction of honorable ITAT. The learned AO as well as the learned CIT(A) ought to have allocated the agricultural income for past six years in a appropriate manner instead of a pedantic manner.*
3. *The learned AO & CIT(A) erred in law and on facts in reducing Rs.7,00,000 (which was pertaining to period A.Y. 1999-00 to AY 2004-05) from total credit of agricultural income granted by honorable ITAT for the period prior A.Y.1999-00 without appreciating fact that Honorable ITAT has granted relief on totality basis.*
4. *The learned AO & learned CIT(A) ought to have granted telescoping of agricultural income apportioned to Sugandhilal Bora (father of appellant) without appreciating that Honorable ITAT has granted relief on In the totality of the above said facts and circumstances, basis.*

4. First, we shall take up the ground of appeal No.4 raised by the assessee. The assessee is aggrieved by the addition made of ₹ 4,50,000/- on account of loan received by him from his father. The case of assessee is that once the source is explained i.e. out of agricultural income of assessee, then there is no merit in making any addition.

5. The learned Departmental Representative for the Revenue on the other hand, pointed out that the issue raised by the assessee is mis-placed, since this issue has been decided by the Tribunal in the first round at page 46 of its order, against the assessee. There is no merit in the issue raised in the present appeal by the assessee.

6. The present appeal is consequent to the order giving effect to the order of Tribunal under section 254 of the Act. Once an issue has already been decided against the assessee, the same stands and the ground of appeal No.4 raised by the assessee is thus, dismissed.

7. Now, coming to the next issue raised in all the appeals i.e. credit to be allowed on account of agricultural income in the hands of assessee. The issue which arises in the present appeal is availability of funds with the assessee for making investments.

8. Briefly, in the facts of the case, survey under section 133A of the Act was carried out on 02.12.2003. The Assessing Officer in the first round of assessment order passed under section 143(3) of the Act, dated 27.12.2006 made addition on account of opening balances in capital account. The CIT(A) upheld the same. The Tribunal vide order dated 20.08.2010 remitted the issue back to the file of Assessing Officer, who in turn, reduced addition made on account of opening balances in capital account. In the case of assessee Shri Sarang S. Bora, the income which was finally assessed by the Assessing Officer as per order dated 23.12.2011 was at ₹ 19,69,754/-. The CIT(A) allowed relief to the assessee after estimation of agricultural income per acre @ ₹ 10,000/-. The Assessing Officer passed order giving effect to the order of CIT(A), dated 16.04.2013 on 15.05.2013 and reduced income in the hands of assessee at ₹ 14,69,754/-. The Tribunal held that agricultural income per acre was to be estimated @ ₹ 12,000/- and consequently, the Assessing Officer passed order giving effect to the order of Tribunal dated 16.02.2015 and assessed the income in the hands of assessee at ₹ 12,72,734/-.

9. The CIT(A) upheld the same and the assessee is aggrieved by the said order of CIT(A).

10. The contention of assessee is that once the agricultural income is estimated @ ₹ 12,000/- per acre for total landholding of 44 acres, then gross income for six years works out to ₹ 31,68,000/-. He said that 1/4<sup>th</sup> share belongs to Shri Sugandhilal i.e. father of assessee, not before the Tribunal and hence, after excluding 1/4<sup>th</sup> share of father Shri Sugandhilal at ₹ 7,92,000/- then balance which is to be appropriated in the three hands equally is at ₹ 23,76,000/-, credit for which should have been allowed by the Assessing Officer and as against the assessed income in the hands of assessee at ₹ 13,37,754/-, income should be assessed at ₹ 11,77,754/-. Similar plea has been raised with regard to other two persons i.e. in the case of Shri Sandeep S. Bora, his plea is that as against income assessed at ₹ 7,92,389/-, the income emerging after giving effect to the order of Tribunal is ₹ 6,32,389/- and in the case of Shri Suhas S. Bora, as against ₹ 1,89,800/-, balance income at ₹ 29,800/-.

11. After hearing both the learned Authorized Representatives, there is merit in the plea of assessee, wherein the Tribunal had directed the adoption of agricultural income @ ₹ 12,000/- per acre for total agricultural landholding of family for 44 acres. Once this figure is taken at @ ₹ 12,000/- per acre, then the gross income from six years works out at ₹ 31,68,000/-. The father of assessee, the assessee and his two brothers had jointly 1/4<sup>th</sup> share in the said property. So, the agricultural income of past six years as per order of Tribunal had to be appropriated equally in four hands at ₹ 7,92,000/- per person. Once the same is worked out and accepted in hands of each of the assessee, the net

income which is to be finally assessed in the hands of assessee is ₹ 11,77,754/-, ₹ 6,32,389/- in the hands of Shri Sandeep S. Bora and ₹ 29,800/- in the hands of Shri Suhas S. Bora. Accordingly, the claim of assessee is allowed in this regard and the Assessing Officer is directed to compute the tax in the hands of respective assessee accordingly. The grounds of appeal raised by the assessee are thus, partly allowed.

12. In the result, all the appeals of assessee are partly allowed.

Order pronounced on this 27<sup>th</sup> day of April, 2018.

**Sd/-**  
**(SUSHMA CHOWLA)**  
न्यायिक सदस्य / **JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 27<sup>th</sup> April, 2018.  
GCVSR

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-2 Pune;
4. The Pr.CIT-1, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य  
मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune