

**आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI**  
**श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं ए. मोहन अलंकामणी, लेखा सदस्य के समक्ष**  
**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND**  
**SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.2725/Chny/2016  
(निर्धारण वर्ष / Assessment Year: 2009-10)

The Asst. Commissioner of Income Tax, Central Circle 1(4), Chennai.	Vs	Shri R. Ravi, 54, Beach Road, Kalakshetra Colony, Chennai – 600090.
		PAN: AAGPR2175R
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Smt. Ruby George, CIT
प्रत्यर्थी की ओर से/Respondent by	:	Shri R. Venkatesh, CA

सुनवाई की तारीख/Date of hearing	:	15.02.2018
घोषणा की तारीख /Date of Pronouncement	:	03.05.2018

**आदेश / ORDER**

**Per A. Mohan Alankamony, AM:-**

This appeal by the Revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-3, Chennai, dated 28.06.2017 in ITA No.40/2011-2/CIT(A)-3 for the assessment year 2009-10 passed U/s.250(6) r.w.s. 143(3) of the Act.

2 The Revenue has raised three grounds in its appeal however the crux of the issue is that the Ld.CIT(A) has erred in directing the Ld.AO to treat 70% of the agricultural income claimed by

the assessee as 'agricultural income' and tax the balance 30% of the claim.

3. The brief facts of the case are that the assessee is holding shares in nine companies and functioning as Director in those companies, filed his return of income for the assessment year 2009-10 on 31.07.2009 admitting total income of Rs.43,45,380/- including agricultural income of Rs.35,49,250/-. Initially the return was processed U/s.143(1) of the Act and subsequently the case was selected for scrutiny under CASS and notice U/s.143(2) of the Act was issued. Finally assessment order was passed U/s.143(3) of the Act on 30.12.2011 wherein the Ld.AO assessed the agricultural income claimed by the assessee as 'income from other sources'. On appeal, the Ld.CIT(A) directed the Ld.AO to treat 30% of the agricultural income claimed by the assessee as non-agricultural income because on the identical issue for the assessment years 2007-08, 2008-09, 2010-11, 2011-12 & 2012-13 the Ld.AO himself had assessed the income of the assessee U/s.143(3) r.w.s. 153A of the Act, in the similar manner.

4. The Ld.DR though could not controvert to the above facts, vehemently argued relying on the order of the Ld.AO whereas the Ld.AR argued in support of the order of the Ld.CIT(A).

5. We have heard the rival submissions and carefully perused the materials available on record. It is an undisputed fact that the Ld.CIT(A) had directed the Ld.AO to treat 30% of the agricultural income claimed by the assessee as non-agricultural income because on the identical issue for the assessment years 2007-08, 2008-09, 2010-11, 2011-12 & 2012-13 the Ld.AO had himself assessed the income of the assessee U/s.143(3) r.w.s. 153A of the Act in the similar manner. The gist of the order of the Ld.CIT(A) is extracted herein below for reference:-

*“ I have considered submissions of Ld. AR and findings of the AO. Before me, Ld. AR has filed assessment orders passed u/s. 143(3) r.w.s 153A for AYrs 2007-08 to 2012-13. Assessment order pertain to AY 2007-08 is reproduced as under:*

*"Search and seizure operation u/s. 132 of the Income Tax Act was conducted on the appellant's case on 11.10.2012. Later on the case was centralized with Central Circle I (4), Chennai on 26.03.2013 vide Notification of the Commissioner of Income Tax-III, Chennai in C. No. 3062/CIT-III/2012-13 dated 26.03.2013.*

*1. Consequently a notice u/s. 153A of the Income Tax Act, 1961 was issued to the assessee on 17.12.2014 for filing the return of income. In response to the said notice, the assessee filed a letter on 29.12.2014 and requested to treat the original return filed on 31.10.2007 as true and correct: in respect of the total assessable income for the relevant AY.*

2. Notice u/s. 143(2) and 142(1) dated 05.01.2015 along with questionnaire was issued and served to the assessee and posted hearing on 09.01.2015. In response to the said notices the authorized representative of the assessee Shri M.K Rangaswamy, Chartered accountant appeared, filed the requisite details and discussed the case from time to time.

3. During the course of the assessment proceedings the assessee was asked to produce supporting documents for earning of the concerned agricultural income. The assessee vide letter 25.02.2015 stated that the assessee entered into Farm Lease agreement on 20.08.2007 with M/s. Raghav Township Private Limited for a lease of .350 acres of agricultural land to the period of 5 years, at the lease rate of Rs. 5,00,000 per annum.

4. The agriculture income was derived from the lands located at Kullampatti, Kallorani, Mandapasalai, Muthuramalingapuram and R.Kallumadam Villages of Aruppukottai Taluk, Viruthunagar District, Tamilnadu. The assessee stated that during the relevant previous year the agricultural income was arrived by cultivating Maize, Black gram and Cowpea. Meanwhile to confirm the agricultural activity a vide letter dated 17.03.2015 has been sent to the Revenue Divisional Officer, Aruppukottai, Collectorate of Viruthunagar District from the below signed office seeking details of the above five villages in relation to Shri Raman Ravi/M/s.Raghav Township Private Limited with regard to,

a) Details of area cultivated

b) Details of crops cultivated

c) Yield of the crops cultivated

5. The report received from Revenue Divisional Officer, Aruppukottai of Viruthunagar District, vide letter dated 3.03.2015 states that "the assessee or M/s.Raghav Township Private Limited does possess only limited lands in their names on the quoted survey, patta, etc on the said five villages during the respective assessment year and the lands were in the names of some individual farmers".

6. On perusal of the above information and documents the assessee was informed about the said facts asking for a valid explanation, and the assessee explained that patta change in only revenue record, whereas proof of ownership is determined by the registered sale deed, which is

*proved by the copy of the registered sale deed, which is in favour of Raghav Township' company and the lease agreement was entered into by the assessee with the company and the lease is unable to provide genuine factors for proving the exact quantum of agricultural income.*

*7. As the assessee was not able to substantiate fully with evidence regarding the agricultural income part of the claim of the agricultural income is disallowed and accordingly, only 70% of the agricultural income is added back to the total income of the assessee as "income from other sources".*

*I have considered findings of the AO and submissions of the Ld.AR. In the instant appeal, the issue arises for my consideration is income returned is treated as agricultural income or non-agricultural income. It is further seen that AO has made assessment for the relevant AY on the basis of certain field enquiries and considered entire agricultural income as non-agricultural income. However, subsequent to this assessment order search and seizure was conducted at the premises of the appellant on 11.10.2012. In consequence of search and seizure AO had completed assessment u/s. 143(3) r.w.s 153A for all the relevant A.Yrs. I have gone through all the assessment orders passed u/s. 143(3) r.w.s 153A and noticed one common finding of accepting appellant's agricultural income up to 70% of returned agricultural income and remaining 30% as non-agricultural income. However, in the instant AY 2009-10, AO had followed the original assessment order passed u/s. 143(3) on 30.12.2011 because same was preferred an appeal before the undersigned. Except for AY 2009-10 AO had accepted appellant's agricultural income at 70% of returned income and 30% as non-agricultural income for all other years in the orders passed u/s. 143(3) r.w.s 153A. Further, the AO who had passed order u/s. 143(3) r.w.s 1.53A had also mentioned in the said order that original assessment made u/s. 143(3) on 30.12.2011 was pending with the CIT(A), therefore no interference in the findings of the then AO was made.*

*I have gone through the facts of the case and findings of the AO. In the appellant's case search u/s. 132 of the Income Tax Act was conducted at the appellant's premises on 11.10.2012 which was after completion of the instant assessment order dt: 30.12.2011. Consequent to the search proceedings in the appellant's case, fresh assessments u/s. 143(3) r.w.s 153A were made for A.Yrs 2007-08 to 2012-13. It is undisputed fact that the assessments u/s.143 (3) r.w.s 153A for the relevant A.Yrs. were completed on the basis of seized material. Therefore, there is no exception for AY 2009- 10. Since, AO had adopted 30% disallowance as non-agricultural income for all the relevant assessment years then same disallowance should have been made for the AY 2009-10 also and there is no reason to take a different stand in this year as search and seizure proceedings had thrown up evidence only 30% as non-agricultural income and*

*70% as agricultural income in the appellant's case. In view of the above facts, I have no hesitation to direct the AO to consider 30% as non-agricultural income for this AY also and allow 70% as agricultural income. The grounds of appeal taken by the appellant are partly allowed.”*

Since the Ld.CIT(A) has only directed the Ld.AO to follow his own findings on the same issue in the assessment years 2007-08, 2008-09, 2010-11, 2011-12 & 2012-13, for the relevant assessment year 2009-10 also, we do not find any infirmity in the order of the Ld.CIT(A). Therefore we hereby uphold the order of the Ld.CIT(A).

6. In the result the appeal of the Revenue is dismissed.

Order pronounced on the 03<sup>rd</sup> May, 2018 at Chennai.

Sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

Sd/-  
(ए. मोहन अलंकामणी)  
(A. Mohan Alankamony)  
लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 03<sup>rd</sup> May, 2018

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT     | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF             |