

IN THE INCOME-TAX APPELLATE TRIBUNAL "A" BENCH MUMBAI
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER
AND SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No.5693/Mum/2015 (Assessment Year 2010-11)

M/s Fact Biodiesel Ltd. 54, Juhu Supreme Shopping Center, Gulmohar Cross Road No.9 , JVPD Scheme, Andheri (W), Mumbai-49. PAN: AABCF1341B	Vs.	DCIT 8(1) 209, Aayakar Bhavan, M.K. Road, Mumbai-20.
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Appellant

Respondent

Appellant by : None
Respondent by : Shri R.P. Meena (CIT-DR)
Date of Hearing : 02.05.2018
Date of Pronouncement : 02.05.2018

ORDER

PER PAWAN SINGH, JUDICIAL MEMBER;

1. The instant appeal by assessee under section 253 of the Income-tax Act (the Act) is directed against the order of Id. Commissioner of Income-tax (Appeals)-16 [Id. CIT(A)], Mumbai dated 10.09.2015 for Assessment Year 2010-11. The assessee has raised the following grounds of appeal:

1) (a) The learned Commissioner of Income tax (Appeals) -16, Mumbai erred in upholding the action of the Deputy Commissioner of Income tax, 8(1), Mumbai (hereinafter referred to as the "Assessing Officer") in making addition of Agricultural Income (which were shown in original income tax return filed) of Rs. 16,99,63,308/- as income from undisclosed sources stating as Bogus Agricultural Income.

(b) Without prejudice to what has been stated above, the appellant submits that the Assessing Officer erred in making an addition of Rs. 16,99,63,308/- as Bogus Agricultural Income as there was no material on record to prove the existence of such undisclosed income in the hands of the appellant. The AO solely relied on the Original Income Tax return which was revised by the appellant within the stipulated time while passing the order.

(c) The Appellant further submits that no incriminating material was found during the course of survey & proceedings and Assessing Officer vehemently made an addition without any material in possession.

(d) (i) The appellant further submits that the learned Commissioner of Income tax (Appeals) -16, Mumbai & the AO erred in not accepting the revised audited financials on the basis of which Income Tax return was revised and submitted.

- (ii) The appellant also submits that the basis of any scrutiny is the audited financial of any person or company, if applicable and not accepting the audited or revised audited financials without giving any reason to reject is against the law and said scrutiny is liable to be quashed.
- (e) The appellant also submits that any order passed without any material in possession that income has escaped assessment and just on the basis of original Income Tax return which was later revised by the appellant with revised audited financials is bad in law and shall be quashed
- 2) The appellant therefore submits that Assessing Officer be directed:-
- (i) to delete the addition made in respect of Bogus Agricultural Income amounting to Rs. 16,99,63,308/- as Income from undisclosed source.
- (ii) Penalty proceedings u/s 271 (1) (c) initiated by the AO shall be dropped. and to modify the assessment as per provisions of law.
2. Brief facts of the case are that the assessee-company filed its return of income for relevant Assessment Year on 12.10.2010 declaring total income of Rs. Nil. The assessee filed revised return of income on 31.03.2011, further a revised return was filed on 20.10.2011 declaring total income at Rs. 6,700/- . The assessment was completed on 15.03.2013 under section 143(3) of the Act. The Assessing Officer while passing the assessment order made the addition of Rs. 16,99,64,306/- on account of bogus agriculture income and Rs. 3,39,74,448/- as bogus agriculture expenses. On appeal before the Id. CIT(A), the action of Assessing Officer was confirmed. Therefore, further aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.
3. None appeared on behalf of assessee despite sending a number of notices though registered post with acknowledgement (RPAD). Perusal of record reveals that assessee has never appeared. The notice sent through RPAD for the hearing on 02.05.2018 returned back with the Remark of Postal Authority "Left". Considering the fact that assessee is not appeared despite sending

notices at the address provided under column-10 of Form No.36. Therefore, we left no option except to hear the submission the Departmental Representative (DR) for the Revenue and to proceed to decide the appeal on the basis of material available on record. The Id. DR for the Revenue supported the order of authorities below. The Id. DR for the Revenue submits that the assessee even not appeared before the Id. CIT(A) despite granting a number of opportunity. The assessee has not substantiated its claim either before the Assessing Officer or before the Id. CIT(A). The assessee has shown agriculture income merely for inflating the capital by way of showing the bogus income in the form of agriculture income. The assessee has no agriculture land for doing agriculture activities for earning such income.

4. We have considered the submission of Id. DR for the Revenue and perused the material available on record. The Assessing Officer during the assessment proceeding noted that in the report in Form No. 3CD, the assessee has shown business of agriculture. The Assessing Officer further noted that in the survey action under section 133A conducted on 01.02.2011 at the office premises of 54, Juhu Supreme Shopping Centre, Gulmohar Cross Road No.9, Juhu, Mumbai, it was found that assessee claimed agriculture income pertaining to the year under scrutiny. The survey team found that the assessee merely inflated its capital by way of showing bogus income in the form of agriculture income, which is claimed as exempted under section 10(1) and also claimed bogus expenses. Further, the Assessing Officer on the basis of assessment

order for the year 2009-10 passed under section 143(3) of the Act on 26.11.2011 wherein the similar income as claimed but assessee failed to produce any evidence in support of its claim of exemption of agriculture income. As the assessee failed to substantiate the claim, the Assessing Officer accordingly, treated the gross receipt of Rs. 16,99,63,308/- as income from undisclosed sources and disallowed the expenses of Rs. 3,39,74, 448/-, claimed for earning such income. On appeal before the Id. CIT(A), the assessee has not produced a single evidence to substantiate its claim despite seeking more than 10 opportunities. Hence, the appeal of the assessee was dismissed by considering the material available on record. Before us neither the representative of the assessee has appeared nor filed any documentary evidence to substantiate its claim. Hence, we do not find any merit in the grounds of appeal raised by assessee.

5. In the result, appeal filed by assessee is dismissed.

Order pronounced in the open court on 02.05.2018.

Sd/-
G.S. PANNU
ACCOUNTANT MEMBER

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Mumbai, Date: 02.05.2018

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Copy of the Order forwarded to :

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| 1. Assessee | 2. Respondent |
| 3. The concerned CIT(A) | 4. The concerned CIT |
| 5. DR "A" Bench, ITAT, Mumbai | |
| 6. Guard File | |

BY ORDER,
Dy./Asst. Registrar
ITAT, Mumbai