

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "I" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 3420/MUM/2012  
Assessment Year: 2007-08**

M/s Indage Wines, 82,  
Indage House, Dr. A.B.  
Road, Worli, Mumbai-  
400018.

Vs. Asst. Commissioner of Income  
Tax-18(1)  
Mumbai.

**PAN No. AAAFI2332M  
Appellant**

**Respondent**

Assessee by : Ms. Anjala Parveen, AR  
Revenue by : Mr. Anoop Hiwase, DR

Date of Hearing : 07/05/2018  
Date of pronouncement: 29/06/2018

**ORDER**

**PER N.K. PRADHAN, A.M.**

This is an appeal filed by the assessee. The relevant assessment year is 2007-08. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-29, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeals read as under:

- a) The Commissioner of Income-tax [Appeals] - 29, Mumbai [hereinafter referred to as "CIT(A)"] has erred in ignoring the contention of the appellant and estimating the expenditure, which the appellant ought to have incurred

for earning agricultural income of Rs.103,416,895/- at Rs.27,922,562/- [i.e., 27% of the total agricultural income] on pure guess work basis, without any cogent material or evidence in support of such guesswork.

b) Your appellant submits that the CIT(A) failed to appreciate the fact that the total expenditure in relation to the agricultural income earned during the year under appeal comes to 38.15 % of the total agricultural income.

c) Your appellant, therefore, prays that the submissions/details be considered in proper prospective and additions on account of estimation of expenditure on agricultural income on baseless grounds be deleted in the interest of justice.

d) The CIT(A) has erred in treating expenditure of Rs.20,093,978/-, as incurred out of undisclosed sources and treating the same as "Income from Other Sources" purely based on conjecture, surmises and suspicion.

e) Your appellant respectfully submits that all the expenditure incurred for earning agricultural income have been duly accounted for and explained in detail. There is no expenditure incurred by the appellant out of undisclosed sources for the year under appeal. The CIT(A) has not brought on record any evidence to support his presumption.

f) Your appellant, therefore, prays that the impugned addition of Rs.20,93,978/- made without any basis, be deleted in the interest of justice.

g) The CIT(A) has erred in concluding that the appellant has furnished inaccurate particulars of income and directed the AO to initiate penalty proceedings u/s 271(1)(c) of the Act. Your appellant, therefore, prays that the penalty proceedings u/s 271(1)(c) of the Act be dropped in the interest of justice.

h) your appellant humbly submits that full facts, details and explanation have been furnished by the appellant and the CIT(A) has not found any of them to be false or incorrect.

3. Briefly stated, the facts of the case are that the assessee-firm filed its return of income for the assessment year (AY) 2007-08 on

31.07.2007 declaring total income at Rs. Nil and agricultural income at Rs.10,31,16,895/-. The assessee is primarily into agriculture and lease compensation. During the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee has claimed various expenses of Rs.2,83,708/- against the above amount of agricultural income. The non-agricultural income consisted of separate P&L account disclosing income from insurance of Rs.2,04,977/-. Against the above amount, various expenses of Rs.30,21,184/- was claimed and the assessee claimed it as business expenditure of Rs.28,16,207/-. The AO observed that the claimed expenses against business income had nothing to do with the business income. They are in the nature of interest, appeal fees, audit fees, office expenses, rent and service charges, salary, water charges etc. As the assessee is mainly into agriculture and lease compensation, the AO observed that the so-called insurance receipt disclosed by the assessee can at best be income from other sources and not business income. The AO held that rather than charging the above expenses to the agricultural income, which is the business of the assessee, it has charged its administrative and financial expenses against insurance receipt. The AO also held that all expenditure from the tax-free income has been shifted to the taxable income and carry forward on loss has been claimed. After considering the explanation of the assessee, the AO disallowed the claim of loss of Rs.28,16,207/- and assessed the income at Rs.2,04,980/-. He did not reduce the agricultural income by this amount. The AO took agricultural income of Rs.10,31,16,895/- for rate purposes.

4. Aggrieved by the order of the A, the assessee filed an appeal before the Ld. CIT(A). The first issue before him was whether there were business expenses to the tune of Rs.30,21,185/-. The Ld. CIT(A) held that the business expenses are general and have to be allowed. Therefore, he deleted the disallowance of Rs.30,21,184/-.

The next ground of appeal before the Ld. CIT(A) was against the treatment given by the AO to income from insurance policy of Rs.2,04,977/- as income from other sources. The Ld. CIT(A) held that the said income cannot be taxed as income from other sources, rather it is to be taxed as business income.

4.1 Then the Ld. CIT(A) raised a question whether the income determined by the AO as income from other sources amounting to Rs.2,04,977/- should be enhanced as the assessee has not disclosed adequate amount of agricultural expenditure with regard to earning of agricultural income of Rs.10,31,16,895/-. During the course of appellate proceedings, the Ld. CIT(A) pointed out to the assessee that they are disclosing agricultural land of Rs.63,84,618/- only and other plant and machinery including equipments of Rs.10,00,000/-. The assessee was asked by him to substantiate its ownership of land, existence of enough infrastructure or machinery and also to prove expenses incurred for earning such huge amount of agricultural income. In response to it, the assessee filed a reply which has been extracted by the CIT(A) at page 5-9 of his appellate order dated 28.03.2012.

The Ld. CIT(A) observed that the assessee has basically claimed that they own agricultural land of merely 55 acres in its name and other

450 acres of land in the name of various partners and their family members. It is also claimed that the total holding of land available with the firm and its partners are 505.51 acres. The firm is undertaking cultivation of grapes, which is ultimately sold to its associate concern Champagne Indage Ltd. known as Indage Vintners Ltd. It is stated that the total produce of the grapes amounts to 5170.99 Mt. The details on land holding and sample copies of 7/12 extracts were submitted. It is claimed that there is an average yield of 10.23 Mt. per acre and the certificate production range by All India Wines Producers Association is between 3 MT to 17 MT. Therefore, the assessee submitted before the Ld. CIT(A) that the agricultural operation by the firm and production of grapes cannot be doubted.

The Ld. CIT(A) was not convinced with the above explanation of the assessee for the reason that if the ownership of land and production of grapes are accepted, there is no adequate expenditure in the books of the assessee. Then the Ld. CIT(A) calculated the operational expenses incurred by the assessee as under:

Expenditure in P&L Account	2,83,708
Expenditure netted off against agricultural income apart from interest of Rs.79,79,788/-	17,70,433
Expenditure incurred by Champagne	57,74,433
Total	78,28,584

The Ld. CIT(A) thus held that the operational expenses by the assessee is only Rs.78,28,584/- for earning agricultural income of

Rs.10,34,00,603/-. For this purpose, he excluded the claim of interest expenses of Rs.79,79,788/-. Thus the Ld. CIT(A) held that the agricultural expenses incurred by the assessee are not adequate to earn agricultural income of Rs.10,34,16,895/-. The assessee has claimed production of nearly 5170.99 MT of grapes on a land area of 505.51 acres. Holding that growing of wine in a tropical country like India is itself a challenge, he estimated expenses at 27% of the income disclosed. On that basis he calculated the probable expenses on account of earning agricultural income of Rs.10,34,16,895/- which works out to Rs.2,79,22,562/-. Against this the assessee has disclosed an expenditure of Rs.78,28,584/-. Thus the Ld. CIT(A) directed the AO to bring to tax the difference of Rs.2,00,93,978/- as income from other sources.

5. Before us, the Ld. counsel of the assessee files a copy of the documents which were filed before the AO as well as CIT(A). Also he files a copy of decision in *Pradeep Batra v. Inspecting Assistance Commissioner*, (1991) 39 ITD 406 (Delhi), *Omar Salay Mohamed Sait v. CIT*, AIR 1959 SC 1238, *Saraswati Industrial Syndicate Ltd. v. CIT*, (1993) 3 SCC 141, *Esturi Aswathiah v. CIT*, AIR 1968 SC 36, *Lalchand Bhagat Ambica Ram v. CIT*, AIR 1959 SC 1295, *CIT v. IDI Marketing (P) Ltd.*, MANU/DE/2762/2009, *Paranjay Mercantile Ltd. v. ACIT*, MANU/IB/0111/2009, *Aggarwal Engineering Co. v. CIT*, (2011) 336 ITR 332.

6. On the other hand, the Ld. DR relies on the order passed by the Ld. CIT(A). It is stated by him that the Ld. CIT(A) has rightly estimated the

expenses at 27% of the income disclosed and directed the AO to tax Rs.2,00,93,978/- as income from other sources.

7. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decision are given below.

It is the settled position of law that if accounts are maintained, income has to be computed, normally, in accordance with the method of accounting regularly employed. Section 145(1) requires that business income or other source income shall be, normally, computed in accordance with the method of accounting regularly employed by the assessee, if the assessee has maintained accounts. The section leaves to the assessee to adopt any system of accounting and obliges the AO to compute the income, profits and gains in accordance with such method of accounting regularly employed, as profits of the business can properly be deduced therefrom. In this context, we rely on the decision in *CIT v. A. Krishnaswami Mudaliar* (1964) 53 ITR 122, 127 (SC); *CIT v. McMillan & Co.* (1958) 33 ITR 182, 188 (SC).

It is not only the right but the duty of the AO to consider whether or not the books disclose the true state of accounts and the correct income can be deduced therefrom.

Against the above background of law, now let us examine the direction given by the Ld. CIT(A) to the AO. The Ld. CIT(A) in the concluding para has stated that the probable expenses on account of earning agricultural income of Rs.10,34,16,895/- would work out to

Rs.2,79,22,562/-. Before arriving at the above finding, he has estimated expenses at 27% of the income disclosed.

We find that the estimation made by the Ld. CIT(A) is neither based on evidence nor on principles of accountancy. Rather, it dwells on presumptions. Once the books of accounts of an assessee are rejected, then, profit has to be estimated on the basis of proper material available. It has been held so in *Dabros Industrial Co. (P) Ltd. v. CIT* (1977) 108 ITR 404 (Cal). In the instant case, the Ld. CIT(A) has not rejected the books of accounts. Therefore, following the decision in *A. Krishnaswami Mudaliar, McMillan & Co.* and *Dabros Industrial Co. (P) Ltd.* mentioned hereinbefore, we set aside his direction to the AO to tax Rs.2,00,93,978/- as income from other sources.

8. In the result, the appeal is allowed.

**Order pronounced in the open Court 29/06/2018.**

Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 29/06/2018

*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**