



ITA No.6026/Mum/2016
Satish Waman Wagh
Assessment Year-2011-12

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.6026/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2011-12)

Satish Waman Wagh 207/208, Udyog Bhavan Sonawala Road, Goregaon (E) Mumbai-400 063	बनाम/ Vs.	Joint Commissioner of Income Tax-24(1) Mumbai
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAAPW-7907-N		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Rahul K. Hakani, Ld.AR
Revenue by	:	Ram Tiwari, Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	18/07/2018
घोषणा की तारीख / Date of Pronouncement	:	25/07/2018

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [AY] 2011-12 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-42[CIT(A)], Mumbai, *Appeal No.CIT(A)-42/IT-378/14-15* dated 19/05/2016 *qua* confirmation & enhancement of certain additions on account of agricultural income reflected by the assessee in his return of income. The assessment for impugned AY was framed by *Ld. Joint*



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Commissioner of Income Tax-24(1), Mumbai [AO] u/s 143(3) of the Income Tax Act, 1961 on 03/03/2014 wherein the assessee was assessed at Rs.154.30 Lacs after certain additions / disallowances. The assessee had reflected agricultural income of Rs.36.25 Lacs in the return of income which has been accepted for Rs.10 Lacs and the balance amount of Rs.26.25 Lacs has been added as cash credit u/s 68 in the hands of the assessee. The nature / quantum of agricultural income earned by the assessee is the sole subject matter of this appeal.

2. The assessee being resident individual was engaged in *manufacturing of pharmaceutical drugs and chemicals etc.* during impugned AY. In support of agricultural income earned during the year, the assessee submitted copy of *7/12 extract* and purchase agreement of agricultural land. The income was stated to be earned out of cash sale of *flowers, coconuts, chiku, kaju and vegetables.* The assessee defended the income by submitting that the area of the land was 11 acres approx. and income @3 Lacs per acre was reasonable expected earnings. However, it was noted that no proper books of accounts were being maintained by the assessee and in support of the income, only few sale bill were produced. The assessee failed to furnish complete and specific details regarding agricultural activity carried out by him. Resultantly, for want of adequate details, Ld. AO accepted the agricultural income to the extent of Rs.10 Lacs and added the balance amount as *cash credit u/s 68.*

3. Aggrieved, the assessee contested the same without any success before the Ld. CIT(A) vide impugned order dated 19/05/2016, wherein the Ld. CIT(A) not only confirmed the stand of Ld. AO but also opined



that even the balance income of Rs.10 Lacs was to be assessed as *cash credit*. The matter was concluded in the following manner:

Decision:

The facts of the case, as summarized above, and the relevant orders and written submissions made are all duly considered. The sole ground of appeal is decided as under.

The claim of the assessee concerning his agricultural income is fantastic. The assessee has claimed he has acquired about 11 acres of land for a sum of Rs.23,00,000/- at Village Uplat, Tal. Talasari, Dist. Thane vide an irrevocable general power of attorney dated 31.03.2009. This indicates that F.Y. 2009-10 was the first year in which the assessee owned an agricultural land. The business of the assessee is carried out at Lote Parshuram Indl. Area, MIDC, Tal. Khed, Dist. Ratnagiri. This is quite far from agricultural lands in Dist. Thane. The assessee has claimed that the agricultural land had Orchards of Coconuts, Chikoo, Kaju, Mangoes etc. and the assessee has also cultivated vegetables and flowers on the land. The assessee claimed that during the F.Y. 2010-11 he had spent a sum of Rs. 48,000/- on fertilizer, manure and seeds and the assessee also claimed to have spent Rs.1,08,000/- on wages in respect of the agricultural land. As against these expenses the assessee claimed that he has earned agricultural income of Rs.36,25,000/-. This translates into a 157% return on the total investment in the farmland in one year which is unbelievable. The assessing officer called for the details of the crops cultivated alongwith the details of the produce, the fertilizers purchased, the manure purchased, the labour employed and the details of payments made to the labour in respect of this agricultural income. The assessee claimed that everything was done in cash and the agricultural work is done on 'batai' i.e. the crop is shared with the farm workers who manage the farm and incur expenses on the farmland. This indicates that the gross return from the farm was nearly double the income declared by the assessee as the 'batai' is usually done in the ratio 50:50. Before the AO the assessee was not able to produce any Books of Account or agreements in respect of 'batai'. The assessee was also not able to produce any other details except for a few bills. The assessing officer concluded that the assessee is unable to explain and justify the source of the income and accordingly held that a sum of RS.26,25,000/- represents unexplained income and the same was brought to tax under section 68 of the Act.

In the appellate proceedings, the assessee has not been able to produce any other evidence to substantiate the claim in respect of the agricultural income. Consequently, vide order sheet dated 27.04.2016 the assessee was confronted about the same and a show cause for enhancement of income was given as to why the entire sum of Rs.36,25,000/- should not be treated as unexplained cash credit. The assessee merely reiterated that the agricultural produce was sold in cash to various persons who come to the farm and that these persons pay for the produce and carry the same with them. This is contrary to the claim made before the AO to the effect that the produce is sold in the market (as per letter dated 26.02.2014). In the appellate proceedings vide letter dated 04.05.2016, the assessee admitted that there are no records of the agricultural produce or expenses.



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*The reply of the assessee is duly considered. Under section 68 of the Act, it is not only the source of a cash credit that requires to be proved but also the explanation regarding the cash credit has to be satisfactory. **As held by the Supreme Court in the case of CIT v. Durga Prasad More (1971) 82 ITR 540 SC the test is of human probabilities. The Supreme Court had in that case inter-alia held that the apparent must be considered to be real until it is shown that there are reasons to believe that the apparent is not real and the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities. The same ratio was followed by the Supreme Court in the case of Sumati Dayal v. CIT (1995) 214 ITR 801 (S.C) and it was reaffirmed in the case of CIT v. P. Mohankala (2009) 291 ITR 278 (S.C). Keeping in view the decisions of the Supreme Court it is held that the story of the assessee earning bumper agricultural income is beyond human probabilities.***

The assessee has not been able to explain the following facts: -

- (a) The assessee has not been able to explain as to how an investment of Rs.23,00,000/- in the agricultural land can yield a return of Rs.36,25,000/- in one year besides giving similar return to the share cropper under the 'batai' system.*
- (b) The assessee has not given any evidence of having made investments in orchards or trees or flowers either in F.Y.2009-10 or 2010-11.*
- (c) The assessee is engaged in sensitive business of pharmaceutical and the assessee admittedly did not do the agricultural activities himself but the assessee is also unable to provide the details of the people supposedly engaged by him to carry out the agricultural activities.*
- (d) The assessee has not been able to name or file details of the persons who supplied labour, agricultural inputs or helped sell the product of the assessee. As a result, the assessing officer could not think of examining any such person on oath either under section 131 or under 133(6) of the Act.*
- (e) The assessee has not kept any record of the agricultural receipts or expenses and there is no record of periodicity of the receipts and as a result it cannot be verified as to when the assessee had allegedly received the so called agricultural income.*
- (f) The entire response of the assessee is held to be only oriented towards thwarting the possible enquiries by the AO and the assessee has not given any verifiable evidence in the appellate proceedings also.*

In view of the above, it is held that the assessee has not been able to substantiate his ground of appeal and has not been able to justify the source of the so called agricultural income. The assessee has either given no explanation about the agricultural income/activities or has not satisfactorily explained the nature and source thereof. In view of the above, it is held that the entire sum of Rs.36,25,000/- represents unexplained income in the hands of the assessee and the same is directed to be taxed u/68 of the Act. Thus the ground of appeal of the assessee is dismissed and an enhancement of Rs.10,00,000/- is directed to be made.

In the sum, the appeal of the assessee is dismissed and an enhancement of taxable income is also directed to be made.



Aggrieved, the assessee is in further appeal before us.

4. The Ld. Authorized Representative for assessee *Shri. Rahul K.Hakani* defended the agriculture income reflected by the assessee by drawing our attention to the documents placed in the *paper book*. It was submitted that the assessee reflected similar agricultural income of Rs.21.80 Lacs in AY 2012-13 which has been accepted by the revenue in scrutiny assessment u/s 143(3). The same has been controverted by the Ld. Departmental Represented *Shri Ram Tiwari* by submitting that each year's assessment was independent unit of assessment and even the primary onus of earning of agricultural income has not been discharged by the assessee.

5. We have carefully heard the rival contention and perused the relevant material available on record. Upon due consideration, we find that the assessee has preferred the claim of agricultural income merely on the basis of Land purchase documents and few sale bills. The land was purchased for 23 Lacs against which the assessee reflected agricultural income of Rs.36.25 Lacs, being his share of income and the same translates into whopping return of 157%. The land has been stated to be cultivated on *batai* basis and as per the observations of Ld. CIT(A), the same is done on 50:50 basis which mean the income from the aforesaid land was much more. No evidence could be adduced by the assessee to demonstrate carrying out of any primary & secondary agricultural operations on the said land during impugned AY. No record of income and expenditure was kept by the assessee and further no details about the persons who facilitated carrying out of the agricultural operations could be produced by the assessee. Thus, the primary onus



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of substantiating the income remained un-discharged. However, giving the benefit of the fact that the assessee was in possession of agricultural land and few sale bills were produced by him before lower authorities, we confirm the stand of Ld. AO and delete the enhancement of Rs.10 Lacs as done by Ld. CIT(A). In other words, the addition of Rs.26.25 Lacs as made by Ld. AO u/s 68 stands confirmed. The action of Ld. AO in estimating the agricultural income @ Rs.10 Lacs also stand confirmed.

6. Resultantly, the assessee's appeal stand partly allowed.

Order pronounced in the open court on 25th July, 2018

Sd/-
(Saktijit Dey)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 25.07.2018
Sr.PS:-Thirumalesh

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai