

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.4129/Del./2018
Assessment Year 2014-15

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| Vikas Kumar C/o Raheja & Co., CA, 139, HUDA, Sector-11, Panipat, Haryana BAZPK9070L | vs. | Income Tax Officer, Ward 4(5), Gurgaon |
| (Appellant) | | (Respondent) |

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| For Assessee : | Shri Ramesh Raheja, CA |
| For Revenue : | Dr. Anjula Jain, Sr. DR |

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| Date of Hearing : | 17.10.2018 |
| Date of Pronouncement : | 24.10.2018 |

ORDER

This appeal by assessee has been directed against the order of Ld.CIT(A)-1, Gurgaon dated 15.03.2018 for AY 2014-15.

2. Briefly the facts of the case are that assessee filed return of income declaring total income of Rs. 19,90,960/-. The assessee also declared net agricultural income of Rs.

28,20,828/- in his return of income. The assessee's representative attended the assessment proceedings and filed necessary information and details which were placed on record by the AO. The assessee also filed written submission along with necessary documents. The AO noted that assessee was asked to provide details of agriculture income shown, copy of proof of land holding, proof of agriculture produce in the form of fird, Jamabandi, Form J etc. and details of expenditure supported by the documentary evidence. No communication was received from the side of the assessee. During the course of assessment proceedings, the assessee filed reply stating therein that he was in possession of approximately 20 acres of land taken on lease from S/Sh. Atal Singh, Suresh Kumar, Om Pal all sons of Shri Roop Chand of village Bahrampur, District Panipat. The assessee also submitted copies of Form J amounting to Rs. 28,20,828/- received from different mandis for sale of crops. The AO issued notice u/s 133(6) of the Act to the above three persons for verification but there was no reply received. The assessee was asked to produce all

the above persons along with their IDS and relevant documents in support of the claim of assessee. The assessee also explained that out of ignorance, assessee filed agriculture income of Rs. 28,20,828/- instead of Rs. 8,04,226/-. The assessee filed reply to the show cause notice in which it was submitted that all confirmations from the relevant parties are filed, net agriculture income is Rs. 8,04,226/- and revised computation of income was also filed. The AO, however, noted that no original documents have been produced. The copies are not having back page, where date of stamp paper is mentioned. There is no signature of the witness. The signature appears only of Suresh Kumar. Form J have been produced for the period prior to the execution of the agreement. No reply has been received u/s 133(6) of the Act for the above three persons and none of them have been produced for examination. The AO, accordingly, rejected the explanation of the assessee and treated the agriculture income of Rs. 28,20,828/- as income from other sources and made the addition.

3. The assessee challenged the addition before Ld. CIT(A). The Ld.CIT(A) recorded that twice counsel for assessee appeared before him and requested for adjournment which was granted. On 22.01.2018 again request was made for adjournment which was granted and thereafter, on other dates nobody attended the appellate proceedings. Therefore, appeals of assessee was decided on merits on the basis of the document on record. The findings of the Ld. CIT(A) in para 3.3 of the order is reproduced as under:

“3.3 I have carefully considered the facts recorded in the assessment order. The Assessing Officer in a detailed order has clearly established that the claim of agricultural income was not genuine. The appellant has not been able to controvert any of the findings by the Assessing Officer as reproduced above. The addition made by the Assessing Officer is accordingly confirmed. This ground of appeal is dismissed.”

4. The assessee in the present appeal has challenged the order of Ld. CIT(A) on two grounds that appellate order have

been passed without providing an adequate opportunity of being heard and that addition of Rs. 28,20,828/- is unjustified. The assessee also filed additional grounds of appeal in which jurisdiction of the AO is challenged on the ground that AO, Ward 54(4) Delhi has erred in transferring the case to the ITO, Ward 4(4), Gurgaon without communicating the reasons recorded to transfer the case u/s 127 of the Act. The assessee also raised additional ground that assessment had been framed without serving notice u/s 143(2) of the Act.

5. After considering the rival submission, I am of the view that the matter requires reconsideration at the level of the Ld. CIT(A). The AO records facts in the assessment order that assessee filed required details and documents at assessment stage. However, the explanation of assessee has not been accepted on the finding therein many inconsistencies, that the owner of the agricultural land were not produced for examination, no reply to the notices u/s 133(6) of the Act have been filed by the concerned parties. However, it is a fact that

assessee produced some documents before the AO in support of claim of agricultural income. It was also explained before AO that instead of showing net agricultural income in the return of income assessee has shown gross agricultural income. Revised computation income was also filed. Though the assessee ultimately did not appear before Ld. CIT(A) and Ld.CIT(A) decided the appeal of assessee ex-parte, the Ld.CIT(A) recorded in his findings that appeal is decided on merits on the basis of documents on record. However, the Ld. CIT(A) without considering the documents on record passed the order in summary manner dismissing the appeal of the assessee without giving reasons for decision in the appellate order as required by section 250(6) of the Act. The assessee in the Paper Book has filed copies of the submissions and the documents from pages 6 to 82, which were filed before the AO. It would therefore, reveal that despite the documents were part of the record, the Ld. CIT(A) without giving findings on the same documents dismissed the appeal of the assessee without giving reasons for decision on the same. The assessee also

filed affidavit in the Paper Book in which it is affirmed that for the last date of hearing on 13.03.2018, no notice has been served upon assessee or his Counsel. Therefore, it appears to me that principle of natural justice have been violated in the matter. No findings have also been given by the authorities below as to whether the gross agricultural income is to be taxed or the net agricultural income to be taxed for the purpose of higher rate of tax. Therefore, order of the Ld. CIT(A) cannot be sustained in law. The matter requires reconsideration at the level of the Ld. CIT(A). In this view of the matter, there is no need to adjudicate upon additional grounds of appeal raised by the assessee and assessee would be at liberty to raise such additional grounds before Ld. CIT(A), if so, advised in accordance with law.

6. In this view of the matter, I set aside the impugned order and restore the appeal of the assessee to the file of Ld.CIT(A) with direction to re-decide appeal of the assessee strictly on merits giving reasons for decision in the order by referring to

all documentary evidences on record of assessment. Ld. CIT(A) shall give reasonable sufficient opportunity of being heard to the assessee and the AO.

7. In the result, appeal of assessee is allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi.
Dated 24.10.2018
*Kavita Arora

Copy to

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| 1. | The appellant |
| 2. | The respondent |
| 3. | CIT(A) concerned |
| 4. | CIT concerned |
| 5. | D.R. ITAT 'SMC' Bench, Delhi |
| 6. | Guard File. |

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.

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| Date of dictation | 17.10.2018 |
| Date on which the typed draft is placed before the dictating Member | 24.10.2018 |
| Date on which the typed draft is placed before the Other Member | |
| Date on which the approved draft comes to the Sr. PS/PS | 24.10.18 |
| Date on which the fair order is placed before the Dictating Member for pronouncement | 24.10.18 |
| Date on which the fair order comes back to the Sr. PS/PS | 24.10.18 |
| Date on which the final order is uploaded on the website of ITAT | 24.10.18 |
| Date on which the file goes to the Bench Clerk | 24.10.18 |
| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |