

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH : CHENNAI

श्री अब्राहम पी.जॉर्ज, लेखा सदस्य एवं  
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष।  
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER  
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. Nos.1512 to 1514/CHNY/2003  
निर्धारण वर्ष /Assessment years : 1995-96 to 1997-98

Assistant Commissioner of  
Income Tax,  
Salary Circle-II  
Chennai-600 034.

**Vs.** Mrs.B.Jayalakshmi,  
Flat No.195, 15<sup>th</sup> Street,  
III Avenue Anna Nagar West  
Extn.  
Chennai-600 101.

**[PAN: 827-J]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

पीलार्थी की ओर से/ Appellant by : Shri N. Devanathan, Advocate  
प्रत्यर्थी की ओर से /Respondent by : Shri AR.V. Sreenivasan, JCIT.

सुनवाई की तारीख/Date of Hearing : 01.11.2018  
घोषणा की तारीख /Date of Pronouncement : 08.11.2018

**आदेश / O R D E R**

**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER:**

These three appeals cover issues remitted back to this Tribunal by Hon'ble jurisdictional High Court through a judgement dated 30.07.2018 in Review Application Nos. 88 to 90 of 2014 in TCA Nos.819 to 821 of 2010, by which their Lordships reviewed and recalled its own judgement in TCA Nos.819 to 821 of 2010 dated 30.09.2013. The issues remitted relate to disallowance of

agricultural income made by the learned Assessing Officer, subsequently allowed by the learned CIT(A) and later reinstated by a co-ordinate Bench of this Tribunal.

2. Learned Counsel for the Revenue submitted that Hon'ble Jurisdictional High Court through the judgement referred supra primarily requires this Tribunal to decide on the question of jurisdiction to entertain the appeals filed by the Revenue against the orders of the Commissioner of Income Tax(Appeals) for the impugned assessment years. As per the learned DR, their Lordships had clearly observed that the Tribunal had to consider all other issues in the appeals, if the question of jurisdiction was decided in favour of the Revenue.

3. Continuing his submissions, the learned DR stated that the Tribunal had in the earlier round overruled the decisions of the Commissioner of Income Tax(Appeals) for the impugned assessment years and reinstated the disallowance of agricultural income claimed by the assessee. As per the learned DR, Commissioner of Income Tax(Appeals) had relied on a remand report dated 25.11.2002 of the learned Assessing Officer for giving

relief to the assessee. Contention of the learned DR was that the remand report given by the learned Assessing Officer was for assessment years 1991-92, 1992-93, 1993-94, 1994-95, 1995-96, 1996-97 and 1997-98. As per the learned DR, for the impugned assessment years 1995-96, 1996-97 and 1997-98, there were additions and disallowances apart from those for agricultural income. According to him, in the very same remand report, the learned Assessing Officer had specifically requested the Learned CIT(A) to decide those issues other than that of agricultural income on merits.

4. Adverting to the merits of the disallowances, Ld, DR submitted that this Tribunal in the earlier round had given a clear finding that claim of agricultural income was rightly disallowed by the Ld. Assessing Officer . According to him, assessee had not furnished any details of the crop cultivated, area of cultivation, agricultural income tax paid and sale bills for agriculture produce. As per the learned DR, though it was true that Tribunal had not considered the remand report such report perse would not be sufficient to accept the claim of agricultural income made by the assessee for the impugned assessment years.

5. On the other additions made by the Assessing Officer, the Learned DR submitted that for the assessment year 1995-96, there was an addition of ₹4,32,921/- for gifts claimed to have been received by the assessee from her daughters, and an addition of ₹2,00,000/- for a loan claimed to have been received by the assessee from her aunt Smt.S.Saraswathi. According to the learned DR, for the assessment year 1996-97 there was an addition of ₹30,500/- again claimed as gifts received from assessee's daughters and an addition of Rs.1,50,000/- for unproved loan again claimed to have been received from Smt.Saraswathi. Similarly, according to him, for the assessment year 1997-98, there was an addition of ₹3,01,693/-, again claimed as gifts received from assessee's daughters, and an addition of ₹30,00,000/- found in the bank locker of the assessee which was not properly explained. As per the learned DR, since the cases have been remitted back to this Tribunal by the Hon'ble Jurisdictional High Court through the judgement in Review Application Nos. 88 to 90 of 2014 dated 30.07.2018, all these issues had to be re-considered by the Tribunal.

6. Per contra, learned AR submitted that appeals of the Revenue, against the orders of the Commissioner of Income Tax(Appeals) for the impugned assessment years, as well as that for assessment year 1994-95, were originally disposed of by this Tribunal through a common order dated 21.08.2009 in ITA Nos.1511 to 1514/Mds/2003. As per the learned AR, against this order of the Tribunal, Revenue had not filed any appeal before the Hon'ble Jurisdictional High Court. Contention of the learned AR was that assessee alone had filed an appeal before the Hon'ble jurisdictional High Court, that too on the issue of disallowance of agricultural income. As per the learned AR, Hon'ble Jurisdictional High Court had admitted the appeals of the assessee numbering them as TCA Nos.819 to 821 of 2010 and the substantial following question of law framed for adjudication was as under:-

*"Whether the Income Tax Appellate Tribunal is right in disallowing the claim of agricultural income of the assessee, which having failed to appreciate the evidence available on record by traversing beyond the scope of the records and against the findings given by the various statutory and judicial authorities as also the admissions made in the remand report by the Assessing Officer himself?"*

According to him, a reading of the above would clearly indicate that assessee was aggrieved only on the disallowance of its claim for agricultural income and nothing else. As per the learned AR, though these were initially dismissed by the Hon'ble Jurisdictional High Court, through its judgement dated 30.09.2013 in TCA Nos.819 to 821 of 2010, their Lordships through the judgement in the review application mentioned supra, had recalled the earlier judgement and remanded the matter back to the Tribunal. Thus, according to him, the only question that could be considered by this Tribunal was on the disallowance of the agricultural income and nothing else. All the other issues, as per the learned AR, stood decided by the Tribunal through its earlier order and had become final.

7. Continuing his submissions, the learned AR stated that the remand report placed at page 168 of the paper book clearly accepted the claim of agricultural income made by the assessee. According to him, such agricultural income was accepted by the Assessing Officer after considering discreet enquiries through the Inspector of the Income tax. As per the Learned AR, there could be no appeal against an item accepted by the Assessing Officer in

remand proceedings. Reliance was placed on the judgement of Hon'ble Jurisdictional High Court in the case of Raman Lal Kamdar Vs.CIT (108 ITR 73). Further according to him, appeals on issues where the remand report went in favour of the assessee, went against the spirit of the National Litigation Policy, presented by the Hon'ble Union Minister for Law & Justice, and adopted at the National Consultation for strengthening judiciary towards reducing pendency and delays, held on 24/25 of October, 2009. Reliance was also placed on a judgement of Hon'ble Apex Court in the case of Director of Income-tax Vs. M/s. SRMB Dairy Farming (P)Ltd. (Civil Appeal Nos.19651 of 2017 dated 23,11.2017. Sum and substance of his argument was that the Assessing Officer having accepted the agricultural income in the remand report, the Revenue ought not have filed the appeal challenging the order of the Ld. Commissioner of Income Tax(Appeals), accepting the agricultural income.

8. We have heard the rival submissions and perused the orders available on record. Original order of this Tribunal, in the appeals filed by the Revenue, in ITA Nos. 1511 to 1514/Mds/2003 dated 21.08.2009 for the impugned assessment years are placed at page

217 to 232 of the paper book. This Tribunal had considered and adjudicated all the grounds taken by the revenue in the said order. Grounds raised by the Revenue on the question of agricultural income was accepted by the Tribunal and it had reversed the order of the Commissioner of Income Tax(Appeals), effectively reinstating the additions made by the Assessing Officer. Relevant para 4.3.5 of the said order is reproduced hereunder:

*"4.3.5 : We have heard the rival sides and considered the material on record and find that firstly the assessee has not registered the lease deed agreement for taking 30 acres of land on lease and the lease deed not find a place in the panchnama and the seizure mahazar furnished by the CBI authorities. Secondly the particulars of agricultural productivity, sale bills pertaining to agricultural produce and expenditure incurred towards cultivation in the agricultural land are not at all furnished before the Assessing Officer. Had the assessee cultivated coconut and paddy in such a large area of 17 acres and 13 acres respectively, it could not be possible being against probabilities that the coconut and paddy so produced were disposed off in a village itself. Moreover, cultivation in an area of 30 acres land would definitely incur expenditure on labour, purchase of seed, irrigation, pesticides, weedicides etc. for which no details were furnished before the Assessing Officer. Therefore, we find that the AO has rightly made the addition and the Id.CIT(A) has not looked into the factual aspect pertaining in the agricultural operation other relevant details or material but just deleted the addition made by the AO. Considering the facts, circumstances, material on record, we do not approve the basis and reasoning given by first appellate authority and while accepting the appeal of the Revenue, we reverse the order of the Id.CIT(A) and restore that of the Assessing Officer on this point."*

9. Assessee had moved in appeal before the Hon'ble Jurisdictional High Court against the Tribunal's direction. These appeals were numbered as TCA 819 to 821 of 2010 and their Lordships had passed their judgement in the said appeals on 30.09.2013, a copy of which has been placed at page 259 of the paper book. The question of law raised by the assessee before their Lordship has been reproduced by us at para 6 above. It is clear that assessee had assailed only the treatment of agricultural income before the Hon'ble Jurisdictional High Court. Revenue had filed no appeals against the Tribunal order in ITA Nos.1511 to 1514/Mds/2003 dated 21.08.2009. Thus on all other aspects the Tribunal order had reached finality. What has been ruled by their Lordships in Review Application No.88 to 90 of 2014 filed by the assessee challenging the judgement in TCA Nos.819 to 821 of 2010, is reproduced hereunder:-

*" 24. In the result, the review petitions are allowed and the judgement dated 30.09.2013, Tax Case (appeal) Nos.819 to 821 of 2010 is reviewed and recalled and the appeals stand disposed of by remanding the matter to the Tribunal to decide the question of its jurisdiction to entertain the appeals filed by the Revenue against the orders of CIT(A). In the event, the Tribunal decides the question in favour of the Revenue, it shall reconsider the other issues after opportunity to the Revenue and assessee."*

Judgement in the Review Applications has extracted the substantial question of law on which the appeals were originally admitted and this appears at para 1 which is reproduced hereunder:-

*"Whether the Income Tax Appellate tribunal is right in disallowing the claim of agricultural income of the assessee, which having failed to appreciate the evidence available on record by traversing beyond the scope of the records and against the findings given by the various statutory and judicial authorities as also the admissions made in the remand report by the Assessing Officer himself?"*

10. Considering the flow of events recited above, we are unable to accept the contention of the learned DR that Hon'ble jurisdictional High Court had remitted the issues other than those related to agricultural income also, to this Tribunal. No doubt, their Lordships has mentioned that the Tribunal was to reconsider other issues. However, in our opinion, the words "other issues" mentioned in paragraph 24 of the judgement dated 30.07.2018 only indicate those issues relating to the claim of agricultural income and nothing else. According to us, on issues other than those relating to agricultural income, the findings of the Tribunal in its earlier order, having not been questioned by any party has reached finality.

11. Coming to the question of agricultural income without doubt there is a remand report obtained during the course of the appellate proceedings before the Commissioner of Income Tax(Appeals) . In the said remand report what has been stated by the Learned Assessing Officer, in relation to agricultural income is reproduced hereunder:-

*"A.Y: 1995-96: For the A.Y.1995-96 the assessee admitted an income of ₹3,09,280/- and agricultural income of ₹40,05,840/-. The Assessing Officer determined the income of ₹13,36,540/-. The following additions were made:*

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|--|----------|-----------------|
| <i>1. claim of agricultural income treated as non- agricultural income</i> | <i>:</i> | <i>4,08,840</i> |
| <i>2. Gift in the capital account in the name of self and daughters:</i>   | <i>:</i> | <i>4,32,921</i> |
| <i>3. Loan from Saraswathi</i>   | <i>:</i> | <i>2,00,000</i> |

*Regarding treatment of income as non-agricultural , it is seen that the enquiries were made by the ITOM, Virudhunagar through the inspector of income tax, sworn statement was also appeared to have been recorded from one Shri Bose who has stated to have been looking after the agricultural lands. From the above statement, it is seen that agricultural activity had been carried out in land exceeding nearly 30 acres. Shri Bose appears to be an agent and not active participant in agricultural activity. He appears to be basically a former mechanic in fire services. It is also seen from the copy of the certificate issued by Village Administrative Officer of North Devadanam village that the income from the agricultural lease is likely to be around ₹7 lakhs per annum. He has also given the details of land survey no. etc. In view of this treating the entire income as non- agricultural does not appear be in order. The CIT(A) may consider the income as agricultural to the extent he is satisfied. The other issues may be decided on merits."*

Said remand report also requests the learned Commissioner of Income Tax(Appeals) to follow the above for other years also. The remand report given by the Assessing Officer is in turn, based on an enquiry report dated 30.03.1999 of Shri .Sudalaimuthu, Inspector of Income-tax deputed by the Learned Assessing Officer . A copy of the said enquiry report is available at page 43 of the paper book. This report is reproduced hereunder:-

"ENQUIRY REPORT:

*As directed by ITO, Wd-I(3), Virudhunagar, I had been to Devadanam village of Rajapalayam Taluk, Virudhunagar dist. In connection with the case of Smt.B.Jayalakshmi , w/o. Balasankaralingam, Plot No,859, 11<sup>th</sup> street, Syndicate Bank colony, Annanagar West Extension, Chennai-101.*

*I made discreet enquiries in and around Devadanam village with regard to ownership of the agricultural lands to the extent of 36 acres and agricultural operations thereon. I also made direct enquires with some of the villagers of Devadanam village. I went round the entire field area consisting of coconut farm, mango grove and fields in which paddy, /banana/sugarcane is cultivated. All the 36 acres are Nanjai lands and fertile in nature.*

*These lands are actually owned by Sri K.Dhanuskodi, s/o.Shri Kottamadan, South Devadanam village, Rajapalayam Taluk, Virudhunagar Dist and his son Muthukumar of the above village. These lands have been leased out to Smt.B.Jayalakshmi for five years term commencing from 23.9.94. Statement obtained from Sri K.Dhanuskodi owner of the land for himself and his son (Shri Muthukumar S/o. Shri K.Dhanuskodi is studying in PSG College at Coimbatore) along with the lease agreement deed copies and a statement from Shri A.Muthumanickam S/o.Shri Aavel 16/1, South Devadanam village, watchman of the land in question are enclosed.*

*I also contacted the VAO of North Devadanam village to ascertain the information regarding the ownership of the land and the person from whom these lands were leased out. The VAO after verification of the Adangal Register has issued a certificate to the effect that the lands belong to Shri K.Dhanuskodi and his son Sri D.Muthukumar and the same has been leased out to Smt.B.Jayalakshmi of Chennai. Certificate from the Village Administrative Officer is also enclosed."*

In our opinion, it is clear from the remand report and the underlying enquiry report that the claim of the assessee with regard to agricultural income was accepted by the Learned Assessing Officer and therefore the claim rightly allowed by the Commissioner of Income Tax(Appeals). Apart from this, in our opinion, there is much strength in the argument of the learned AR that on issues where a remand report is in favour of the assessee, Revenue could not be considered as an aggrieved party. Hon'ble Apex Court in its judgement in the case of SRMB Dairy Farming (P) Ltd.(supra) has highlighted the need to scrupulously follow the National Litigation Policy. It would be appropriate to reproduce a part of such policy here:

*"3. The purpose underlying this policy is also to reduce the Government litigation in courts so that the valuable court time would be spent in resolving other pending cases so as to achieve the goal in the principles incorporated in the National mission for judicial reforms which includes identifying bottlenecks which the Government and its agencies may be concerned with*

*and also removing unnecessary Government cases. Prioritization in litigation has to be achieved with particular emphasis on welfare legislation, social reform, weaker sections and senior citizens and other categories requiring assistance must be given utmost priority.*

*In respect of filing of appeals in revenue matters it is stated as under:*

*(G) Appeals in revenue matters will not be filed:*

- (a) if the stakes are not high and are less than that amount to be fixed by the Revenue authorities:*
- (b) if the matter is covered by a series of judgements of the Tribunal or of the High Court which have held the field and which have not been challenged in the Supreme Court:*
- (c) where the assessee has acted in accordance with long standing industry practice:*
- (d) merely because of change of opinion on the part of the jurisdictional officers."*

In these circumstances, we do not find any merit in these appeals filed by the Revenue, insofar as it relates to the issue relating to agricultural income claimed by the assessee for the impugned assessment years.

12. In the result, all these three appeals filed by the Revenue are dismissed.

Order pronounced on Thursday, the 8<sup>th</sup> of November, 2018, at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी.जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:- 08<sup>th</sup> November, 2018.

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

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