

आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA Nos.1474 to 1477/PUN/2018

निर्धारण वर्ष / Assessment Years : 2010-11 to 2013-14

Mohamed Hanif Rasul Patel,  
Golibar Road,  
Near Railway Crossing,  
Miraj, Sangli

.... अपीलार्थी/Appellant

PAN: ABPPP5778G

Vs.

The Income Tax Officer,  
Wad 1(5), Sangli

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri M.K. Kulkarni

प्रत्यर्थी की ओर से / Respondent by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 14.03.2019	घोषणा की तारीख / Date of Pronouncement: 20.03.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

This bunch of four appeals filed by assessee are against consolidated order of CIT(A)-1, Kolhapur, dated 02.07.2018 relating to assessment years 2010-11 to 2013-14 against respective orders passed under section 143(3) r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act').

2. This bunch of appeals relating to same assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience. However, in order to adjudicate the issues, we are referring to the facts and issues in ITA No.1474/PUN/2018, relating to assessment year 2010-11.

3. The assessee in ITA No.1474/PUN/2018, relating to assessment year 2010-11 has raised the following grounds of appeal:-

1. *On the facts and in the circumstances of the case and in law the A.O. the Assessing Authority and Ld. CIT(A) was not justified in confirming the order of the A.O. when he passed the assessment without granting sufficient opportunity as mentioned in the appeal order of CIT(A) in his common order. The principles of natural justice have been violated. The assessment be quashed.*
2. *On the facts and in the circumstances of the case and in law the appeal order of the Ld. CIT(A) is not legal and is without jurisdiction as he failed to consider the provisions of Rule 7 of I.T. Rules 1962 as he confirmed the addition of Rs.2,40,000/- as unexplained investment as made by the A.O. The assessee explained that this was agricultural income and exempt. It behalf accordingly.*
3. *On the facts and in the circumstances of the case and in law it is an undisputed fact that the assessee is Agricultural and has no other source of income. The Grapes cultivation is part of agricultural production. The Hon'ble Supreme Court in S. S. Rajalinga Raja v. State of Madras (1967) 63 ITR 617 held "Income arises when commodity is disposal of by sale, consumption or use in manufacture and other processes carried on by assessee qua that commodity. Thus the agricultural income in the year when grapes were used for manufacture of Raisins and not when it was deposited into bank account. This vital aspect has not been considered by both the authorities. The addition be quashed.*
4. *On the facts and in the circumstances of the case and in law the Hon'ble Supreme Court (supra) observed the decision of the Supreme Court in Deora Tea Co. Ltd. v. Commr. Agr. I. T. (1962) 44 ITR 6 (SC) is authority for the proposition that the agricultural income to arise, it is not predicated that the agricultural income must be sold: use of agricultural produce for the purpose of business of the assessee may give rise to agricultural income. The principle enunciated applies to this case of the appellant. Since deposits are out of agricultural income the exemption be allowed to the assessee.*
5. *On the facts and in the circumstances of the case and in law and considering ground No.4 above the judgment of the Hon'ble Punjab and Haryana High Court in the case of CIT v. Rana Gurujit Singh (2012) 75 DTR 376 ( P & H) applies to the facts of this case and in view of this both the authorities below have taxed the agricultural income which is exempt under S. 10 of the Act. The addition be quashed.*

6. *On the facts and in the circumstances of the case and in law the Raisins manufactured by the appellant using grapes in its manufacture is an naturally stable food compared of important food elements is considered as healthy snack. In view of this its production is agricultural income and is exempt under the Act.*
  7. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) was not justified in confirming the addition of Rs.8,65,560/- as income from Bedana business (Raisins business). Since it is an undisputed fact now and as per grounds of appeal raised above it is not a business income but agricultural income exempt under the Act. The addition be deleted.*
  8. *On the facts and in the circumstances of the case and in law both the authorities below were not justified in confirming the addition on account interest expenses of Rs.1,10,647/-. The expenses be allowed.*
  9. *On the facts and in the circumstances of the case and in law and in the alternative it was incumbent upon the authorities below while holding the agricultural income as business income they were bound by duly to consider all expenses incurred to earn the said income also considering the provisions of Rule 7 of the I. T. Rules, 1962. The necessary directions are required to be issued to the A.O. to consider this basis aspect of (allowing reasonable expenses to earn business income). Both the authorities in the process have brought under taxation the "green income only" which is impermissible in law.*
  10. *On the facts and in the circumstances of the case and in law while allowing ground of appeal No.1 before CIT(A) the fact has been admitted that the assessee was agriculturist and had no income other then agricultural income. In the circumstances the action of the Act in reopening the assessments under S. 147 r.w.s. 148 is vitiated in law. The A. O. has failed any 'speaking order' in reply to objections raised against the reasons recorded u/s 148 of the Act. This is contrary to the verdict of the Hon'ble Supreme Court in GKN Driveshaft Ltd (supra). Alternatively, the matter may be remanded to A.O. for pursuing the assessment offer a 'speaking order' on the objections raise as decided in Home Finders Housing Ltd. (2018) 404 ITR 611(Mad) in which case the SLP filed by the Department was dismissed.*
  11. *On the facts and in the circumstances of the case and in law the action taken by the A.O. and confirmed by CIT(A) is not sustainable in law as it is an admitted position of law by Ld.CIT(A) that the appellant had only agricultural income and no other income. The action under S. 147 is vitiated in law as the income of the assessee chargeable to tax has escaped assessment. In the absence of proper satisfaction having not recorded the consequent assessment be quashed.*
  12. *On the facts and circumstances of the case and in law the levy of interest u/s 234B and 234C is not justified.*
4. At the outset, it may be pointed out that though the assessee has raised several grounds of appeal but in effect the issues raised are two-fold; first the issue which is raised is against merits of addition and the assessee is aggrieved by the orders of authorities below in not computing income in the

hands of assessee from agricultural activities carried on and thereafter holding part of the income as income from business as they have failed to apply the provisions of Rule 7 of Income Tax Rules, 1962 (in short 'the Rules'). The linked issue to the same is that since the authorities below have not correctly computed income in the hands of assessee and thereafter, confirmed the non-availability of funds from the agricultural activities and held the cash deposits in the bank to be unexplained. Second issue which is raised by the assessee is against invoking of provisions of section 147 of the Act against the assessee.

5. The learned Authorized Representative for the assessee at the outset pointed out that the issue of re-assessment under section 147 of the Act is not being pressed. However, in respect of second issue of computation of income, the learned Authorized Representative for the assessee strongly objected to the method of computation of income from agriculture and business in the hands of assessee. He pointed out that the assessee was an agriculturist who was cultivating grapes and out of those grapes, the assessee was also manufacturing raisins which were sold in the open market. He stressed that for computing agricultural income on cultivation of grapes and income from business on sale of raisins, the provisions of Rule 7 of the Rules have to be strictly followed. However, the same has not been followed. He further pointed out that once the income is correctly computed, the availability of cash in the hands of assessee would stand explained and there would be no reason to make any addition on account of cash deposits in the bank account of the assessee, which in any case was from its agricultural activities carried on.

6. The learned Departmental Representative for the Revenue placed reliance on the orders of authorities below.

7. We have heard the rival contentions and perused the record. First of all, we hold that grounds of appeal raised on initiation of re-assessment proceedings under section 147 of the Act are dismissed as not pressed. Now, coming to the merits of case, the Assessing Officer received AIR information of cash deposits in The Federal Bank, Sangli branch of assessee. The assessee had not filed any return of income. The Assessing Officer was of the view that income chargeable to tax to the extent of cash deposits had escaped assessment, hence reasons were recorded for reopening the assessment and notice under section 148 of the Act was issued to the assessee. The assessee in reply furnished return of income declaring total income of ₹ 2,060/- on account of bank interest. Further, the assessee had shown agricultural income of ₹ 8,65,560/-. The assessee was asked to explain the source of deposits in The Federal Bank amounting to ₹ 24,89,340/-. The Assessing Officer noted that out of deposits on various dates totaling ₹ 24,89,342/-, sum of ₹ 2,40,000/- was deposited in cash on 30.01.2010. The assessee pointed out that cash was deposited out of its savings. The Assessing Officer did not believe the explanation and sum of ₹ 2,40,000/- was added in the hands of assessee. The Assessing Officer further noted that the assessee had shown agricultural income of ₹ 14,00,297/-, against which agricultural expenses of ₹ 4,24,090/- was shown and interest on loan of ₹ 1,10,647/- was claimed. Thus, net agricultural income was computed at ₹ 8,65,560/-. In respect of agricultural income, the Assessing Officer sought copies of sale patties and 7/12 extracts which were submitted. Further information under section 133(6) of the Act was called from traders appearing in the sale patties and since the letter could not be served, the Inspector of the office of Assessing Officer was asked to serve the notice. The Assessing Officer then noted that besides the cultivation of land, the assessee was also engaged in making of raisins from grapes, which

could not be called as agriculture activity. Accordingly, sum of ₹ 8,65,560/- received by the assessee from sale of Bedana (raisins) were treated a non agricultural income. Further, interest expenditure of ₹ 1,10,647/- was also disallowed in the hands of assessee. The CIT(A) has upheld the order of Assessing Officer on all accounts, against which the assessee is in appeal before us.

8. On perusal of record and after hearing both the learned Authorized Representatives, the main issue which arises is the computation of agricultural income from the activity of cultivating grapes and income from business on the manufacture of raisins in the hands of assessee from year to year. The assessee has admittedly, carrying on the said activities and the total receipts of assessee are not to be treated as agricultural income in its hands. However, Rule 7 of the Rules clearly provides the basis for computing income from similar operations, wherein the agricultural income and business income is to be computed. The said Rule 7 of the Rules has not been applied or followed by the authorities below. In all fairness, we deem it fit to restore this issue back to the file of Assessing Officer with direction to apply the provisions of Rule 7 of the Rules in order to compute the income from agricultural activities and the income from manufacture of raisins in the hands of assessee. Further, case of assessee before us is that the income so generated would also explain the availability of cash in the hands of assessee. Accordingly, we direct the Assessing Officer to verify the stand of assessee in this regard including his explanation of availability of cash from past savings. The Assessing Officer shall give reasonable opportunity of hearing to the assessee and compute the income in line with our directions. The learned Authorized Representative for the assessee has not raised any submissions against disallowance of interest

expenses and hence, the same is upheld. The grounds of appeal raised by assessee are thus, partly allowed.

9. The facts and issues in ITA Nos.1475 to 1477/PUN/2018 are identical to the facts and issues in ITA No.1474/PUN/2018 and our decision in ITA No.1474/PUN/2018 shall apply *mutatis mutandis* to ITA Nos.1475 to 1477/PUN/2018.

10. In the result, all the appeals of assessee are partly allowed.

Order pronounced on this 20<sup>th</sup> day of March, 2019.

**Sd/-**  
**(ANIL CHATURVEDI)**  
लेखा सदस्य / **ACCOUNTANT MEMBER**

**Sd/-**  
**(SUSHMA CHOWLA)**  
न्यायिक सदस्य / **JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 20<sup>th</sup> March, 2019.  
GCVSR

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Kolhapur;
4. The Pr.CIT-1, Kolhapur;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य  
मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune