

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.3311/Del/2018  
Assessment Year: 2014-15

Krishan Vir Singh,  
Rag & Associates, CA,  
209, Jagdamba Tomer,  
13, Preet Vihar Commercial  
Complex,  
New Delhi.

Vs. ITO,  
Ward-3(4),  
Hapur.

PAN: ABIPS5070K

(Appellant)

(Respondent)

Assessee by	:	Shri C.S. Anand, Advocate
Revenue by	:	Shri Amit Jain, Sr.DR
Date of Hearing	:	13.03.2019
Date of Pronouncement	:	05.04.2019

ORDER

This appeal by the assessee is directed against the order dated 9<sup>th</sup> January, 2018 of the CIT(A), Muzaffarnagar, relating to Assessment Year 2006-07.

2. The ground of appeal No.1 raised by the assessee reads as under:-

1. That on the facts of the case and under the law, the Id CIT(A) had erred in sustaining the addition of Rs.48,420/-, which was made by the Id A.O. as deemed income from house property.”

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 22<sup>nd</sup> September, 2014 declaring total income at Rs.3,38,720/- and agricultural income of Rs.1,85,000/-. During the course of assessment proceedings, the Assessing Officer observed that the assessee has shown income from a property situated at Chaudhary Estate for the month of February-March, 2014. For the remaining months since no income was shown, the Assessing Officer estimated the deemed rental income at Rs.69,170/- on the ground that the same has not been used for the self residence or business purpose. After allowing deduction u/s 24 @ 30%, the Assessing Officer made addition of Rs.48,420/-.

4. Before the CIT(A), it was argued that the above property at Chaudhary Estate was used for business purpose of M/s Chaudhary Automobiles in which the assessee is a partner and, therefore, the Assessing Officer was not justified in making addition of deemed rental income for the period of ten months.

5. However, the Id.CIT(A) was not satisfied with the explanation given by the assessee. He observed that the commercial property situated at Chaudhary Estate has not been used by the assessee for any business activity carried on by him. According to him, the assessee and M/s Chaudhary Automobiles in which he is a partner are two different entities. Therefore, the said house property is not exempt merely because the firm in which the assessee is a partner has been doing its business activity from there. He accordingly upheld the action of the Assessing Officer.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

7. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. It is an admitted fact that the assessee is not doing any business from the house property situated at Chaudhary Estate. It is the partnership firm which is doing business as claimed by the assessee. Since the assessee is the owner of the house and is not using the same for his residence or for his own business, therefore, I do not find any infirmity in the order of the CIT(A) in confirming the addition of Rs.48,420/- being the deemed income from house property. The ground raised by the assessee is accordingly dismissed.

8. Ground Nos.2 and 3 raised by the assessee are as under:-

1. That on the facts of the case and under the law, the IdCIT(A) had erred in sustaining the addition of Rs.11,85,260/-, which was made by the Id A.O. by disbelieving the assessee's claim that he had sold Popular trees (which were grown by him few years ago in his agricultural land situated in Village Bhodala, Tehsil Modinagar, Distt. Ghaziabad) , through Krishi Utpadan Mandi Samiti, Hapur and received payment of Rs.11,85,260/- towards the sale proceeds of Popular trees from M/s Singhal Wood Industries (through banking Channel).

2. That on the facts of the case and under the law, the Id CIT(A) had erred in invoking the provision of sec 69A, for confirming the addition of Rs.11,85,260/-

9. Facts of the case, in brief, are that the assessee has declared agricultural income of Rs.1,85,000/- apart from showing total income of Rs.3,38,720/-. The Assessing Officer, during the course of assessment proceedings, observed that the assessee has shown sale of trees Rs.11,85,260/-. He, therefore, asked the assessee

to explain as to why the amount of Rs.11,85,260 should not be added to the total income of the assessee. In absence of any explanation or justification for the same despite sufficient opportunities granted, the Assessing Officer made addition of Rs.11,85,260/- to the total income of the assessee.

10. Before the CIT(A), the assessee argued that he has grown poplar trees in the land situated in Khasra No.36-37, Village Bhodala Tehsil Modinagar about 4-5 years which have been sold through Krishi Utpadan Mandi Samiti, Hapur. The sale proceeds have been received from M/s Singhal wood Industries through banking channel. It was accordingly argued that the addition made by the Assessing Officer is not justified. However, the Id.CIT(A) was not satisfied with the explanation given by the assessee and upheld the addition made by the Assessing Officer by observing as under:-

“The facts of the case, submission of the AR and material on record have been gone through in detail. The appellant has shown agricultural income of Rs.185000/- in the return of income furnished. It is noted that the appellant has not furnished any evidence to show the cultivation of poplar trees on the agricultural land owned by him. This evidence is of vital importance to establish the earning of agricultural income of Rs.1185260/- from the sale of poplar trees as claimed by the appellant because the appellant himself has shown agricultural income of Rs.185000/- in his return of income. These two facts are contradictory to each other. Merely furnishing of receipts from Mandi Samiti for sale of poplar trees and receipt of sale proceeds from M/s Singhal Wood Industries through banking channel does not amount to establish that the appellant has earned agricultural income of Rs. 1185260/-. It does not by itself prove that the appellant has grown the said trees on its agriculture land. Therefore, the appellant has failed to establish that amount of Rs.1185260/- credited in his bank account represent his agricultural income. Thus the appellant has failed to prove the nature and source of the same. Under the facts it is held that the A.O. was justified to make the addition of Rs1185260/- as income of the appellant and the same is hereby confirmed u/s 69A of the Act. Ground of appeal No.5 is dismissed.”

11. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

12. The ld. counsel for the assessee, at the time of hearing, filed an application under Rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963 which reads as under:-

“Sub: Application under rule 29 of Income Tax (Appellate Tribunal) Rules,1963

Respected Sir,

It is respectfully submitted as under:

#### FACTS

1. That one of the issues involved in this matter relates to the addition of Rs.11,85,260/- made by the ld. A.O. on the baseless view that such amount of Rs.11,85,260/- represented the sale proceeds of spontaneously grown trees and also that the sale proceeds of spontaneously grown cannot be treated as 'Agricultural Income'. While doing so, the ld. A.O. had over looked the fact that the assessee had not claimed the receipt of Rs. 11,85,260/- to be his 'Agricultural Income', but had claimed the same as 'Capital Receipt'. However, the ld. A.O. had treated such receipt of Rs.11,85,260/- as the assessee's "Income from Other Sources".

2. That during the course of appellate proceedings the assessee's AR had explained to the ld CIT(A) that (i) the assessee had grown Poplar Trees in his agricultural land situated in Village Bhadola, Tehsil Modinagar, Distt. Ghaziabad about 4-5 years ago; (ii) sold the Poplar Trees in F.Y. 2013-14 through Krishi Utpadan Mandi Samiti, Hapur; and (iii) received the sale consideration of Rs. 11,85,260/- in respect of such Poplar Trees from M/s Singhal Wood Industries via banking channel.

3. That the ld. CIT(A) in last para of Point No.8 (appearing on the page no.15 of his order dt. 09.01.2018) had mentioned "*It is noted that the appellant has not furnished any evidence to show the cultivation of Poplar Tree on the agricultural land owned by him*".

4. That in order to have a documentary evidence to show that the Poplar Trees were standing on his agricultural land at Village Bhadola, Tehsil Modinagar, Distt. Ghaziabad prior to the date of sale of Poplar Trees , the assessee has recently obtained true copy of Khasra Form in respect of his agricultural land situated in village Bhadola, Tehsil Modinagar, Distt. Ghaziabad from the Tehsildar, Modinagar, Distt Ghaziabad. A perusal of the same, reveals that Poplar Trees were standing on the assessee's agricultural land at Village Bhadola, Tehsil Modinagar, Distt. Ghaziabad.

5. That during the course of proceedings, neither the Id. A.O. nor the Id. CIT (A) had ever required the assessee to furnish such document. The Id. CIT(A) had decided the appeal against the assessee, without giving sufficient opportunity to the assessee to adduce evidence of Poplar Trees standing on his agricultural land, by stating *"It is noted that the appellant has not furnished any evidence to show the cultivation of Poplar Tree on the agricultural land owned by him."*

6. That this document establishes that in Fasli 1420 (F.Y. 2012-13), the Poplar Trees were standing on the agricultural land of the assessee situated in Village Bhadola, Tehsil Modinagar, Distt. Ghaziabad.

On the facts of the case this Hon'ble bench is requested to kindly allow this additional evidence to be adduced."

13. Referring to the above, he submitted that given an opportunity, the assessee is in a position to substantiate his case before the Assessing Officer. He accordingly submitted that the matter may be restored to the file of the Assessing Officer in the interest of justice.

14. The Id. DR, on the other hand, heavily relied on the order of the CIT(A). He submitted that the assessee during the course of assessment proceedings failed to substantiate the same despite being given opportunities by the Assessing Officer. Even before the CIT(A) he could not substantiate his claim for which the Id. CIT(A) has confirmed the addition made by the Assessing Officer. He

accordingly submitted that the order of the CIT(A) be upheld and the grounds raised by the assessee on this issue be dismissed.

15. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. I find the Assessing Officer made addition of Rs.11,85,260/- on the ground that the assessee could not substantiate the sale of poplar trees treating the same as capital receipt. I find the Id.CIT(A) upheld the action of the Assessing Officer, the reasons for which have already been reproduced in the preceding paragraphs. It is the submission of the Id. counsel for the assessee that given an opportunity, he is in a position to substantiate his case. Considering the totality of the facts of the case and in the interest of justice, I deem it appropriate to restore the issue to the file of the Assessing Officer with a direction to grant one opportunity to the assessee to substantiate his case. The Assessing Officer, if considered fit, can obtain information from the concerned Tehsildar as per the provision of the Income-tax Act, 1961. Needless to say, the Assessing Officer shall decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

16. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

The decision was pronounced in the open court on 05.04.2019.

Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMFBER

Dated: 05<sup>th</sup> April, 2019

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi