

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'B'**

**BEFORE SHRI A.K GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.374/Bang/2014
Assessment years : 2009-10

Smt. G Sridevi, #1B, 1st Floor, No.15, 1st Cross, Pampa Layout, Kempapura, Hebbal, Bengaluru-560 024.	Vs.	The Dy. Commissionr of Income-tax, Central Circle-1(2), Bengaluru.
PAN – BCBPS 2290C.		
APPELLANT		RESPONDENT

Appellant by	:	Shri Aravind V Chavan, Advocate
Respondent by	:	Shri TN Prakash Addl, CIT

Date of hearing	:	02.4.2019
Date of Pronouncement	:	22.4.2019

ORDER

PER SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER :

The assessee has filed appeal against the order dated 30/12/2013 of CIT(A)-VI, Bengaluru passed u/s 143(3) and 215 of the Income-tax Act, 1961 (the Act) and pertaining to asst. year 2009-10.

2. The assessee has raised the following grounds of appeal:

“1. The Learned Commissioner (Appeals) erred in confirming the order of the learned Ad of Income Tax in disallowing the commission expenses of Rs.10,52,590/- was the expenditure incurred by the Appellant for an iKme which has been offered u/s.56 of Income Tax Act.

2. The Appellant submits that during the year under consideration, the Appellant had earned an income of Rs.26,92,305/- for making available of the datas to the Insurance Company. The above income was possible only with the help of certain individual persons for whom the Appellant has paid part of the income earned for earning the income offered. Therefore, the same is deductible.

3. The learned Assessing Officer erred in confirming the additions of Rs.9,75,000/-, which was declared as Agricultural income of the Appellant.

4. The Appellant further submits that the Appellant owns substantial agricultural land, which has been given to sub-tenants for operation of Agricultural income and the income was received from Agricultural operation has been correctly disclosed under Agricultural income, which is to be included for rate of tax purpose only.

5. The Appellant, without prejudice to the above claims, further begs to Hon'ble Court

(a) Permit to submit that the following legal grounds, which has not been taken up before Hon'ble Commissioner of Income Tax and is claimed before Hon'ble Bench at this stage, which may be admitted and adjudicated upon the

legal ground. This request to be considered based on the Hon'ble Apex Court's decision in the case of NTPC Vs CIT, 229 ITR 363.

(b) The order of the Hon'ble Assessing Officer is legally not tenable because the order has been passed after the date of search carried out at the premises of the Appellant and the Appellant submits that as per Second Proviso to Sec.153A(1) that, any assessment relating to any Asst. Year falling within the period of 6 years pending on the date of initiation of search u/s.132 in abate. Based on the above order passed by the learned Addl. Commissioner of Income Tax, requires to be annulled.

For the above and any other grounds that may be advanced at the time of hearing, the Appellant prays that the Appeal be allowed.“

3. The brief facts of the case are that the assessee has income from salary and income from other source and filed the Return of income electronically on 20/3/2010 with total income of Rs.3,60,93,180/- and the Return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and notice u/s 143(2) was issued.

4. In the return of income, the assessee has claimed expenses on commission to the extent of Rs.10,52,590/- under income from other sources. The assessee has not maintained the books of accounts and the AO has issued summons u/s 131 of the Act

since there is no proper compliance and cooperation, the AO has disallowed the claim of expenditure from the gross commission income.

5. In respect of the 2nd issue, the assessee has disclosed the agricultural income to the extent of Rs.9,75,000/- and since no details were submitted and no evidence was produced. The AO treated the non agricultural income as 'income from other sources' and determined the total income of Rs.6,52,16,230/- and passed order u/s 143(3) dated 22/2/2011.

6. Aggrieved by the order of AO, assessee filed appeal before the CIT(A). The Id CIT(A) having considered the ground of appeal submission of the assessee in respect of the commission expenses of Rs.10,52,590/- has dealt on this issue at para 9 of the order and assessee's explanation were referred dated 21/10/2013. The CIT(A) is of the opinion that the assessee has claimed expenditure and could not furnish supporting details. No doubt assessee has received the commission for procurement of orders from Bajaj Alliance Insurance Co. therefore, expenditure has been incurred for collection of data but no evidence/details were produced. Since there is no evidence or any details filed by the assessee in the appellate proceedings, the CIT(A) has confirmed this addition of Rs.10,32,590/- and similarly the assessee has disclosed agricultural income of Rs.9,75,000/-. In the appellate proceedings, the CIT(A) is of the opinion that the assessee could not substantiate before the

lower authorities and no evidence of ownership of agricultural and sale of agricultural produce for earning such income was filed in appellate proceedings hence confirmed both the additions and granted relief in respect of others additions and partly allowed the appeal.

7. Aggrieved by the order of the CIT, the assessee has filed an appeal before the Tribunal.

8. On the first disputed issue of claim of commission expenditure of Rs.10,52,590/- the ld AR submitted that the assessee has earned commission income of Rs.26,92,305/- in respect of claiming expenditure on the insurance data collections, the ld AR prayed to submit the details and also for an opportunity before the lower authorities.

9. In respect of second issue of addition of treatment of agricultural income Rs.9,75,000/- as non agricultural, the ld AR submitted that the assessee is owning the agricultural lands and agricultural activities are being carried out and referred to the paper book at page 36 to 196 where copies of original sale deeds are in the regional Tamil language and translated copies were also filed and prayed that the source cannot be doubted and prayed for allowing the assessee's appeal. Contra the ld DR supported the order of the CIT(A).

10. We have heard the rival submission and perused the material on records and the first disputed issue on claim of commission expenditure of Rs.10,52,590/-. The Id AR's contentions are based on the letters and further the payments were made by cheque. The Id AR could not file any details and prayed for opportunity. We consider it appropriate to provide an opportunity as the receipt of commission income is not disputed and the disclosure is made by the assessee in the Return of income but the claim of commission expenditure of Rs.10,52,590/- is without any supporting document except the submission that they are genuine and through account payee cheques. Therefore to meet ends of justice, we consider it appropriate to restore this issue to the file of the CIT(A) who shall call for remand report from the AO and assessee shall cooperate in filing the details for the disposal of the appeal.

11. In respect of the second disputed issue of treatment of agricultural income of Rs.9,75,000, we find Id AR's substantiated the stand with the copies of the sale deed and translated copies in the paper book and which the Id DR has not disputed. But the contention of the Id DR that the Documents were filed first time before the Tribunal and the lower authorities never had occasion to verify and examine the same. Therefore we are of the opinion that since they are filed first time before the Tribunal and were also considered in the assessment of the assessee in subsequent years. Accordingly, we consider it appropriate to restore this dispute issue to the file of the CIT(A) along with evidences filed. The assessee

shall cooperate in submitting information expeditiously and the CIT(A) shall pass a reasoned and speaking order on merits.

Accordingly, we restore the disputed issues to the file of CIT(A) and allow the grounds of appeal of the assessee for statistical purposes.

In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on **22nd April, 2019.**

Sd/-

(A.K GARODIA)
ACCOUNTANT MEMBER

Bangalore
Dated : 22/4/2019
Vms

Copy to :1. The Assessee
2. The Revenue
3.The CIT concerned.
4.The CIT(A) concerned
5.DR
6.GF

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.