

आयकर अपील अाधिकरण, अहमदाबाद ँयायपीठ  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
" D " BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
And

SHRI Ms. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 1040/AHD/2014

अथावषाAsstt. Year: 2009-2010

Shri Bharatbhai R. Patel, B-8, Indraprasth Tenaments, Gotri Road, Ellora Park, Baroda-3900023.  PAN: ACPPP2989J	Vs.	The Income Tax Officer, Ward 6(1), Baroda.
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(Applicant)		(Respondent)
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Assessee by :	Shri Mukund Bakshi, A.R
Revenue by :	Shri Jayant Javeri, Sr. D.R

सुनवाई क ताराख/Date of Hearing : 22/02/2019

घोषणा क ताराख /Date of Pronouncement: 26/04/2019

**आदेश/O R D E R**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-I, Baroda, dated 27/01/2014 ( in short "Ld.CIT(A)") arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dt.29/12/2011 relevant to the Assessment Year 2011-2012.

2. The interconnected issue raised by the assessee in all the grounds of appeal is that the Ld. CIT (A) erred in confirming the order of the AO by treating the income of Rs. 11,51,000/- as a non-agricultural income and therefore the same is liable to tax under the head income from other sources.

3. The facts of the case are that the assessee is an individual and during the year under consideration he has declared a sum of Rs. 11,51,000/- as net agriculture income which was shown in his income tax return for the rate purpose.

3.1 The assessee in support of his agriculture income has filed the following document:

- a) Copy of affidavit,
- b) Certificate issued by the Mamlatdar, Jan Seva Kendra, Dabohi, and
- c) Proof of Land Holding.

3.3 The assessee further submitted that his family members and other farmers had cultivated the land and he received only the share of agricultural income (i.e., 3/4<sup>th</sup> portion) in the form of rent in kind.

3.4 The assessee further submitted the details of cash deposited in the bank and utilization of agricultural income as under:

3.8 *Alongwith his submission dated 10/08/2011, the assessee also filed copy of bank statement with Bank of Baroda A/C NO.14790100002757, showing cash deposited out of agriculture income. The same is verified and following cash deposits were claimed by the assessee to be made out of agriculture income:*

<i>Sr.No.</i>	<i>Date</i>	<i>Mode of deposit</i>	<i>Amount(Rs.)</i>
1.	16/05/2008	By Cash Deposited-Agriculture income	35,000
2.	18/06/2008	By Cash Deposited-Agriculture income	5,000
3.	20/09/2008	By Cash Deposited-Agriculture income	40,000
4.	17/10/2008	By Cash Deposited-Agriculture income	45,000

5.	21/11/2008	By Cash Deposited-Agriculture income	42,000
6.	04/12/2008	By Cash Deposited-Agriculture income	10,000
7.	09/12/2008	By Cash Deposited-Agriculture income	42,000
8.	07/03/2009	By Cash Deposited-Agriculture income	5000
		Total	2,24,000

Therefore, the assessee was asked to explain the balance amount of Rs.9,27,000/- (Rs.11,51,000 – Rs.2,24,000). The assessee's representative vide letter dated 31/10/2011 has furnished the estimated break-up of utilization of the amount of Rs.11,51,000/- which is as under:

Sr.No.	Details of utilization	Amount(Rs.)
1.	Cash Deposited in Bank of Baroda A/c	2,24,000
2.	House hold expenses met out of agriculture income-approx.	3,60,000
3.	Down payment for Car purchase (Rs5,10,000-4,50,000)	60,000
4.	Expense for the medical treatment of Father (Heart surgery) & Mother	1,40,000
5.	Financial Help to Relative-Younger Brother and Brother in law	80,000
6.	Advance to cultivators for agricultural expenses	1,50,000
7.	Other expenses	1,37,000

4. However, the AO disagreed with the contentions and submissions of the assessee by observing as under:

- i. The assessee only owns the admeasuring land 0-39-24.
- ii. The assessee did not furnish any proof to establish the agriculture income that he has received in the form of rent in kind.
- iii. The assessee did not submit the details of the persons who were engaged in the cultivation.
- iv. The assessee did not furnish the details of the persons to whom the crops were sold.
- v. The assessee has no evidence to prove that the money was utilized in the above manner.
- vi. The assessee has also failed to establish the source/genuineness of agriculture income.

4.1 Hence the AO by applying the provision of section 69-A of the Act, treated the agriculture income of Rs. 11,51,000/- as unexplained income and accordingly added to the total income of the assessee as income from other sources.

5. The aggrieved assessee preferred an appeal before the Ld. CIT (A). The assessee before the Ld. CIT (A) submitted that out of total agricultural land admeasuring 5-44-81; he is the owner of 2-79-83 of agriculture land, and the remaining area of agriculture land admeasuring 2-64-98 is owned by his son(s) and daughter.

5.1 The assessee during the appellate proceedings further submitted the details of farmers/cultivators and the details of agriculture crop produced as given under.

*Details showing Area Wise-Crop Production during F.Y.2008-09.*

<i>Serial No.</i>	<i>Account No.</i>	<i>Survey No.</i>	<i>Area Square Feet (Hectareare sq. mtd)</i>	<i>Name Farmer/Cultivators</i>	<i>of</i>	<i>Crop grown</i>
1	143	166/1 of 1	0-33-68	Patel Lallubhai	Ramdas	Tuver
	143	168	0-22-59	Patel Ramdas	Bharatbhai	Tuver
2	162	468	0-39-24	Suthar Narbheram	Haribhai	Cotton
3	127	220/9	0-32-11	Patel Ramdas	Bharatbhai	Cotton
	127	434	0-38-05	Ptel Ramdas	Bharatbhai	Banana
	127	543	0-44-00	Suthar Narbheram	Haribhai	Banana
	127	546	0-13-08	Patel Ramdas	Bharatbhai	Banana
4	156	220/2	0-24-97	Patel Kalidas	Manubhai	Chilly
	156	545	0-32-11	Patel Kalidas	Manubhai	Banana
5	160	535	0-15-46	Suthar	Haribhai	Chilly

				<i>Narbheram</i>	
6	163	232	0-32-92	<i>Suthar Haribhai Narbhrm</i>	<i>Chilly</i>
	163	270	0-34-49	<i>Suthar Haribhai Narbheram</i>	<i>Chilly</i>
7	133	123	0-30-92	<i>Patel Parthkumar Bharatbhai</i>	<i>Sugarcane</i>
	133	169/1of1	0-29-12	<i>Patel Parthkumar Bharatbhai</i>	<i>Sugarcane</i>
	133	370	0-32-11	<i>Patel Parthkumar Bharatbhai</i>	<i>Cotton</i>
8	159	52	0-35-67	<i>Patel Parthkumat Bharatbhai</i>	<i>Cotton</i>
	159	332	0-19-03	<i>Patel Parthkumar Bharatbhai</i>	<i>Grass</i>
	159	374/1	0-09-51	<i>Patel Parthkumar Bharatbhai</i>	<i>Tuver</i>
	159	404	0-27-35	<i>Patel Parthkumar Bharatbhai</i>	<i>Tuver</i>
	159	169/3/2/B	0-38-05	<i>Suthar Urmilaben Balubhai</i>	<i>Tuver</i>

5.2 The assessee also submitted the details of agricultural income declared in his return of income from the A.Y.1999-2000 to A.Y.2010-11 as under:

*The details of the Agricultural Income declared by the Appellant from A.Y. 1999-2000 to A.Y.2010-11 are as under:*

<i>Assessment Year</i>	<i>Agricultural Income</i>	<i>Remarks</i>
<i>1999-00</i>	<i>42,400</i>	
<i>2000-01</i>	<i>45,450</i>	
<i>2001-02</i>	<i>40,600</i>	
<i>2002-03</i>	<i>1,09,750</i>	
<i>2003-04</i>	<i>1,93,610</i>	
<i>2004-05</i>	<i>1,67,560</i>	
<i>2005-06</i>	<i>1,58,351</i>	
<i>2006-07</i>	<i>4,51,052</i>	<i>Additional Agri. Land purchased.</i>
<i>2007-08</i>	<i>8,50,000</i>	<i>Additional Agri. Land purchased.</i>
<i>2009-09</i>	<i>11,51,000</i>	<i>In assessment u/s.143(3), the learned AO has disallowed the entire Agri. Income and has treated it as income from other sources.</i>
<i>2010-11</i>	<i>12,51,000</i>	

6. However the ld. CIT (A) disagreed with the submissions made by the assessee on the ground that the necessary details of the cultivators/crops had not been produced during the assessment proceedings.

6.1 The Ld. CIT (A) further found that there was a contradiction in the statement of the assessee as he claimed before the AO that he was employed in the Vadodara and therefore he was not carrying out agricultural activities. Thus he had given the land to the farmers and family members for cultivation. But during the appellate proceedings, he has submitted that he and his family members carried out the agricultural operation on the said agricultural land.

6.2 The ld. CIT (A) further observed from the submission made by the assessee that the details of the address of the persons who have been engaged in the cultivation/agricultural activities were not furnished.

6.3 The assessee has also not submitted the details of expenses incurred for carrying out agriculture activities and also the details of agricultural produces along with relevant evidence.

6.4 In view of the above, the Ld. CIT (A) disregarded the submission of the assessee and accordingly confirmed the addition made by the AO for 11,51,000/- u/s 69A of the Act.

7. Being aggrieved by the order of the Ld. CIT (A), the assessee is in appeal before us.

8. The Ld. AR before us filed a paper book running from pages 1 to 73 and submitted that the assessee has been declaring the agricultural income

year after year since AY 1999-2000 which was duly admitted by the Revenue including the AY 2010-11 which was subject to assessment under section 143(3) of the Act.

9. The learned AR also submitted that the assessee was the owner of the agricultural land as evident from the details placed on pages 8 to 36 of the paper book.

10. On the contrary, the Ld. DR submitted that

- i. The assessee has not furnished the addresses of the persons who were engaged in the cultivation activity of the agricultural produce.
- ii. The assessee has not furnished the details of the expenses incurred by him in connection with the agricultural activity.
- iii. The assessee has not furnished the details of the persons to whom the crop was sold.

10.1 The Ld. DR vehemently supported the order of authorities below.

11. We have heard the rival contentions and perused the materials available on record. The issue in the instant case relates whether the assessee has carried out any agricultural activity in the year under consideration. The assessee has declared agriculture income of 11,51,000 in his income tax return. But the assessee during the assessment proceedings failed to substantiate the agriculture income based on documentary evidence. Therefore the same was treated as income under the head of other sources by the AO. The learned CIT (A) subsequently confirmed the action of the AO.

11.1 The primary onus lies on the assessee to justify the agriculture income based on documentary evidence. Though the assessee has submitted the details of the agricultural products produced, the persons engaged in the cultivation activity, etc., the assessee failed to substantiate his claim by furnishing the documentary evidence such as the address of the parties of the Cultivators/ farmers and the sale bill of the crop.

11.2 It is a fact on record that the assessee has been declaring agriculture income in his income tax return consistently year after year since the assessment year 1999-2000. But on perusal of the same, we note that there was no assessment carried out by the Revenue till the assessment year under consideration as well as in the subsequent assessment year, i.e. 2010-11. Therefore it is implied that there was no verification carried out by the Revenue of the agriculture income declared by the assessee in the earlier AYs. Thus the question arises whether the principle of consistency can be applied in the given facts and circumstances. Indeed there cannot be any fault of the assessee if there was no assessment carried out by the Revenue in respect of the income declared by the assessee in his income tax return in the earlier years on account of no assessment by the Revenue. Once the assessee has declared income in his income tax return, then it is up to the Revenue to select his case under scrutiny assessment under section 143(3)/147 of the Act as the case may be. Therefore the assessee cannot be faulted/ punished in the event his case was not selected under the scrutiny assessment by the Revenue.

11.3 Thus in our considered view the principle of consistency can be applied. Our view is fortified from the fact that the Revenue in the subsequent assessment year, i.e. 2010-11 has accepted the agriculture income of the

assessee in the assessment framed under section 143(3) of the Act. Thus, considering the principle of consistency and the agricultural land owned by the assessee, we are of the view that the contention of the assessee that he has carried out agricultural activity cannot be brushed aside. Therefore we hold that there was an agriculture income earned by the assessee in the year under consideration.

11.4 The next question arises for the quantification of agricultural income. The quantification of the agriculture income can be decided based on documentary evidence, and the principle of consistency will be of no help to the assessee as far as quantification of the income is concerned in the given facts and circumstances. It is because the assessee has failed to file the documentary evidence in support of his agriculture income except for the ownership of the land. In the absence of sufficient documentary evidence, we are not impressed with the argument of the learned counsel for the assessee. However in the interest of justice and fair play and keeping the principles of consistency, we are inclined to treat the 50% of the income described above, i.e. 5,75,500.00 as agricultural income of the assessee.

11.5 Before parting, we are inclined to make it clear that we are treating the income described above to the tune of 50% as agricultural income in the absence of the documentary evidence. Therefore the above ratio, i.e. 50% of treating agricultural income cannot be taken as the rule of consistency or precedent while deciding the issue of other assessment years of the assessee. As such the fate of agriculture income disclosed by the assessee will depend

upon the facts and circumstances of the relevant assessment year. In view of the above, the ground of appeal of the assessee is partly allowed.

12. In the result, the appeal of the assessee is partly allowed.

**Order pronounced in the Court on 26/04/2019 at Ahmedabad.**

**-Sd-**

**(Ms MADHUMITA ROY)  
JUDICIAL MEMBER**

**(True Copy)**

Ahmedabad; Dated 26/04/2019

*Manish*

**-Sd-**

**(WASEEM AHMED)  
ACCOUNTANT MEMBER**