

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K.N.CHARY, JUDICIAL MEMBER

ITA No. 3362/Del/2014
(Assessment Year: 2007-08)

Surinder Kumar Sanpal, A-250, New Subzi Mandi, Azadpur, New Delhi PAN: ABBPS5068C	Vs.	ITO, Ward-19(4), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Akash Garg, CA Shri Abhiroop Aggarwal, CA
Revenue by:	Shri N. K. Bansal, Sr. DR
Date of Hearing	28/02/2019
Date of pronouncement	15/05/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the ld CIT (A)-XXII, New Delhi dated 28.02.2014 for the Assessment Year 2007-08.
2. The assessee has raised the following grounds of appeal:-
 - “1. That on the facts and circumstances of the case the learned CIT(Appeals)-XXII has erred in law as well as on facts in ignoring altogether the details in the capital account of assessee in the firm M/s M.S.Traders, datewise details in his personal savings bank account and his personal statement of affairs for the financial year 2006-07 provided to explain the nature and source of deposit of Rs. 17,00,000/- in capital A/c ;
 2. That on the facts and circumstances of the case the learned CIT(Appeals)-XXII has erred in law as well as on facts in treating the deposit of Rs. 17,00,000/- by cheques as

deposits in cash and then taking support of various judicial decisions unwarrantedly to confirm his biased opinion;

3. *That on the facts and circumstances of the case the learned CIT(Appeals)-XXII has erred in law as well as on facts in disputing and/or rejecting the following claims and documents about agricultural income of assessee of Rs. 11,24,800/- in F.Y 2005-06 and of Rs. 10,62,700/- in F.Y 2006-07 based on suspicion , highly stretched imagination and a blatant twisting of facts and decisions in judicial precedents :-*

- Ownership and valuation of Agricultural land ,when title deeds having been placed on record;*
- Production of lemons on already planted trees ,when income from sale of lemons has been appearing since many previous years;*
- Process of earning and receiving sale proceeds of lemons sold, when procedure duly accepted by assessing officer in his remand report and agricultural activity having taken place about five year earlier;*
- Distinguishing between 'assessee planted lemon trees in the land' and 'land was having old lemon trees' unwarrantedly as trees were undisputedly old(lemons can not be taken from newly grown plants) and thereby leveling a baseless allegation of having turned turtle;*
- Sale bills of 2/3rd share of lemons at wholesale lemon market at the place where land is situated;*
- Agricultural income of assessee having been accepted by same ITO in earlier A.Y- 2006-07 reflecting same in ITNS-150 while calculating tax on income assessed u/s 143(3) of I.Tax act, 1961 and also appearing in his 'Statement of affairs as on 31.3.2006' submitted during assessment, but the Ld. CIT(A)-XXII has disputed the contents of assessment orders of his own department unwarrantedly;*
- Date wise details of savings Bank A/c of assessee for the F.Y 206-07 having only 5(five) transactions on receipt side and only 7(seven) transactions on payment side and a detailed cash account showing receipts and payment separately in the case of a partner of firm ,holding that CASH A/C, BANK A/C and Statement of affairs of an individual do not constitute books of*

account and thereby ignoring capriciously a judicial precedent whose ratio is exactly matching with that of this case .

- *Mangos from Mango trees, Guavas from already grown Guava trees, apples from Apple trees and other such produces are well known agricultural produce ,the sale of which are well established 'Agricultural income' but not so for Ld. CIT(A)-XXII.*

4. *That on the facts and circumstances of the case the learned CIT(Appeals)-XXII has erred in law as well as on facts in not considering addition of Rs. 17,00,000/- as a duplicate addition in income as this amount is introduced in capital account of firm by cheques issued out of Rs. 22,00,000/- deposited in same Bank account in cash.”*

3. Brief facts of the case shows that assessee is an individual who filed his return of income of INR 107210/-. The major source of income of the assessee is from sale and purchase of fruit and vegetables as ‘ Kaccha Aradtia’. The case of the assessee was selected for scrutiny and assessee was asked to furnish various details amongst them was addition in capital account and details of the agricultural income. The learned assessing officer noted that during the year the assessee has shown an addition of INR 1,700,000 in his capital account for which assessee did not furnish any details and therefore the addition to the extent of that was made. Further on verification of the copy of the state bank of India account of the assessee was found that assessee has deposited INR 22,00,000/- of cash in the month of December 2006 for which no explanation was provided and therefore the learned assessing officer made the addition of the same. Consequently, assessment order u/s 143 (3) of the act was passed by the learned AO on 31/3/2007 determining the total income of the assessee at INR 4007210/-. Assessee aggrieved with the order of the learned AO preferred an appeal before the

learned CIT – A, who confirmed both the addition. Therefore assessee is in appeal before us.

4. The learned authorised representative vehemently stated that the
 - a. Amount of cash has been deposited in the savings bank account with the state bank of India for assessment year 2007 – 08 by the assessee and from that account only the assessee has made further investment in the partnership firm. Therefore there is a double addition, once of the source of the income and second of the application of income.
 - b. That assessee has earned total agricultural income of INR 1062700/- which has been shown in the cash account and therefore the available total cash with the assessee was INR 2330773/- for the year. Out of which the assessee has deposited the cash in the savings bank account. Therefore the both the addition made by the learned assessing officer and confirmed by the learned CIT – A are incorrect.
 - c. That cash account submitted for financial year 2006 – 07 wherein the complete source of funds available with the assessee is shown. He referred to the statement of affairs of the assessee as on 31/03/2007, the details of the bank account with the state bank of India.
 - d. Agricultural income shown by the assessee is not at all disputed as there is no addition made by the learned AO on that account.
 - e. Assessee owns 38 acre of the agricultural land and out of which it has earned only INR 1,062,700/-. Neither the learned AO nor the learned CIT – A both have found the evidences submitted by the assessee not to be false. He

submitted that assessee submitted the details of the lender holding, the details of the sale of the agricultural produce, the bills of sale, the manner of earning the agricultural income, the expenditure incurred by the assessee on the agricultural operation is nil because one third of the agricultural produce is already given to the labor. He stated that as there is no evidence which is found to be false, the agricultural income is required to be accepted.

- f. That as assessee is having agricultural income in cash on year-to-year basis there is an opening balance available of Rs. 1143449/- in the hands of the assessee. He submitted the order of the assessment u/s 143 (3) of the act for earlier years.
- g. He further referred to the order of the learned CIT – A wherein he has held that agricultural income shown by the assessee is bogus. He stated that the learned CIT – A has merely stated so without understanding that assessee is having huge agricultural land, the expenditure incurred by the assessee is nil because only to 3rd of the agricultural produce have been sold by the assessee and one third is towards the expenditure incurred by the cultivator of the land.
- h. That cash account submitted by the assessee showing the opening balance, addition during the year, be drawn during the year and the balance at the end of the year has been held by the learned CIT appeal that it is merely a summary of the capital account. He submitted that it is the cash flow account which shows that wherefrom the case is generated and wherefrom that it has been spent.

In view of this he submitted that both the addition made by the learned AO deserves to be deleted. He further relied upon the decision of the honourable High Court in CIT vs. LANDMARK INNOVATION (PRIVATE) LTD dated 08/08/2013 wherein it has been held that when the assessee is selling agricultural producers in cash and deposit the same amount in the bank account of the assessee same cannot be added u/s 68 of the income tax act on the ground that no primary record of agricultural activities were made available.

5. He also raised an interesting argument that at the assessee is not maintaining the books of accounts; the addition made by the learned assessing officer u/s 68 of the income tax act does not apply because nothing is credited in the books of accounts. He stated that if the money is credited in the bank pass book/bank account of the assessee the provisions of section 68 does not apply as the assessee is not maintaining any books of accounts.
6. The learned Departmental representative vehemently supported the orders of the lower authorities and submitted that the assessee has failed to give any explanation before the lower authorities and therefore the additions have been made. He extensively read the order of the learned CIT – A wherein the additions have been confirmed after examining the only the details furnished by the assessee with respect to the agricultural income earned by the assessee. It was further stated that assessee has not furnished any evidences before the learned assessing officer and therefore the learned AO was left with no option but to make the above addition.
7. We have carefully considered the rival contention and perused the orders of the lower authorities. The brief fact shows that

assessee is an individual who is a partner in different partnership firms. During the year the assessee has deposited INR 1,700,000 as addition to capital in a partnership firm namely M/s M S Traders. The assessee has also deposited a sum of INR 2,200,000 in the state bank of India bank account of the assessee. From the state bank of India bank account assessee has issued cheques for deposit into the partnership firm of INR 17, 00,000. Therefore out of the deposit of INR 2,200,000 in cash in the bank account with state bank of India which is the source, the assessee after depositing the above sum in cash has issued the cheques of INR 1,700,000 in favor of the partnership firm as his capital. Therefore it is apparent that INR 2,200,000 has been added by the assessing officer as an income and once again the addition of INR 1,700,000 is also made, therefore it is apparent that there is a double addition in the hands of the assessee. For this reason we direct the learned assessing officer, reversing the order of the learned CIT – A, to delete the addition of INR 1,700,000 on account of deposit in the partnership firm as his capital. In view of this ground number 1 and 2 of the appeal of the assessee are allowed.

8. Third ground of the appeal is the deposit of INR 2,200,000 in the savings bank account of the assessee deposited in cash by the assessee source of which is shown by the assessee as an agricultural income added by the learned assessing officer and confirmed by the learned CIT – A is under challenge.
9. First issue is that whether the assessee is having an agricultural land which can result in to agricultural produce Admittedly, the assessee is having the agricultural land of more than 38 acres, the documents for which have already been submitted before the

learned CIT – A. However as originally the assessee stated that he is having agricultural land of only 23 acres, despite the documents of the agricultural land holding produced before the learned CIT – A, only for the reason that assessee is initially not aware about the area of land, he disbelieved the holding of 38 acres of the land. As assessee has produced the documentary evidence of 38 acres of the land in the name of the assessee on which the agricultural activities are carried on, the land holding of the assessee cannot be denied. Therefore the learned CIT – A committed an error by not accepting the ownership of the land despite having the title deeds placed on record.

10. The 2nd issue is with respect to the production of lemon on already planted trees. It is a fact that year to year assessee is showing an agricultural land and agricultural income deriving there from. During the year the assessee produced the sale bill of 36722 kg of lemons INR 1062700. The sale bill is not disputed by the AO of learned CIT appeal but the original production of the lemon is disputed. When assessee has sold the lemon and produces the bills before the lower authorities without examining and proving the bill of the lemon sale falls it cannot be stated that the assessee has not sold lemon at all. This is so also because of the reason that in earlier years also the assessee has sold lemon and same have been accepted in assessment proceedings under section 143 (3) of the act for assessment year 2006 – 07. Even otherwise till to date the assessment under section 143 (3) of the act for assessment year 2006 – 07 has not been disturbed.
11. Third issue is of expenditure on agriculture. With respect to the agricultural expenditure the assessee has stated that he has

deputed the farmers who contribute for the cost of agricultural activities including seeds and they keep one third of the agricultural produce as their share for labour and expenditure. The two third of the share of the agricultural produce remains with the assessee and which has sold. The assessee submitted that this is an oral agreement and there is no written agreement with the cultivators. Just because there is no written agreement with those persons, in view of the sale bill of the lemon, consideration of which has been received by the assessee, holding of the agricultural land sufficient to generate so much of agricultural produce the claim of the assessee cannot be rejected.

12. Fourth issue is of having the factum of agricultural income accepted by revenue in earlier years. In the earlier year the assessee has shown agricultural income of rupees 1124800/- for assessment year 2006 - 07 which has been accepted by the assessing officer, therefore the revenue has accepted the claim of the assessee that assessee is agricultural income. This year the agricultural income shown by the assessee is less than what has been shown by the assessee in earlier years despite being the same area of the agricultural land.
13. Fifth issue is of sale of agricultural produce to various parties from whom cash is received. The learned CIT - A in para number 8.36 has been shown the various bills. Assessee submitted the details of 4 traders who purchased lemon from the assessee. The learned CIT - A instead of making enquiries from these 4 persons, he merely referred to the various telephone numbers mentioned on those bills and held that this belongs to different locations. He also tried to analyze the handwriting on the balance and stated that that the handwriting is similar. He

further noted that even the mention of the name of the assessee is in similar manner. It was further noted that the name of the broker/Dalal has also not been mentioned. On the basis of these findings it is noted that all these 4 appeals are bogus. It is true that all these observations of the learned CIT – A on the basis of the information submitted by the assessee, however, when the learned CIT – A so much of account on the veracity of the bills, before saying that the bills are bogus, he should have asked the assessee to either produce those parties or made independent enquiry with respect to the buyers. In absence of these it is merely an allegation which has not been substantiated. Merely on allegation and doubts the addition cannot be made. They need to be substantiated by due enquiry.

14. Sixth issue is whether provision of section 68 applies when the assessee has not maintained the book of accounts. This issue is no more an issue of debate in view of the decision of Honourable Mumbai High court in case of Arun J Muchalla V CIT [2017] 85 taxmann.com 306 (Bombay)/ [2017] 250 Taxman 362 (Bombay)/ [2017] 399 ITR 256 (Bombay) where in it has been held that even in case of deposits in bank accounts provision of section 68 applies. The Hon Bombay High court in that case relied up on the decision of Honourable Supreme court in Sudhir Kumar Sharma (HUF) v. CIT [2016] 69 taxmann.com 219/239 Taxman 264 (SC) after referring decisions such as Baladin Ram v. CIT [1969] 71 ITR 427 (SC) (para 7), CIT v. Bhaichand N. Gandhi [1983] 141 ITR 67/[1982] 11 Taxman 59 (Bom.) (para 7), Anand Ram Raitani v. CIT [1997] 223 ITR 544 (Gau.) (para 7), CIT v. Smt. Usha Jain [1990] 182 ITR 487/52 Taxman 12 (Delhi) (para 7), CIT v. Taj Borewells [2007] 291 ITR

232 (Mad.) (para 8), Sudhir Kumar Sharma (HUF) v. CIT [2014] 224 Taxman 178/46 taxmann.com 340 (Punj. & Har.) (para 10) . Therefore we reject that argument of the assessee that provision of section 68 does not apply when the amounts are credited in the bank account as assessee has not maintained the books of accounts.

15. In the result Ground no 3 of the appeal is partly allowed.
16. Ground number 4 of the appeal has already been adjudicated by the adjudicating ground number 1 of the appeal of the assessee wherein we have held that there is a double addition in the hands of the assessee with respect to INR 17,00,000/-. Therefore now the ground number 4 becomes infructuous.
17. In the result appeal of the assessee is partly allowed.
Order pronounced in the open court on 15/05/2019.

-Sd/-
(K.N.CHARY)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 15/05/2019
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi