

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

**I.T.A .No.-4618/Del/2018
(ASSESSMENT YEAR-2014-15)**

NARENDRA SINGH, C/O RAG AND ASSOCIATES, CAS, 209, JAGDAMBA TOMER, 13, PREET VIHAR, COMMERCIAL COMPLEX, NEW DELHI - 110 092 (PAN: ABZPS0493H) (APPELLANT)	vs	ITO, WARD 3(4), HAPUR, UTTAR PRADESH (RESPONDENT)
Appellant by		Shri Neeraj Mangla, CA
Respondent by		Shri S.L. Anuragi, SR. DR.

ORDER

This appeal filed by the Assessee is directed against the order dated 11.04.2018 of the Ld. CIT(Appeals), Muzaffarnagar relevant to assessment year 2014-15 on the following grounds of appeal: -

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.
2. That on the facts of the case and under the law, the Id CIT(A) had erred in sustaining the addition of Rs.4,60,000/- being amount of sale of old agriculture stock which was made by the Id A.O. as income from other source and also

invoking the provision of sec 69A, for confirming the addition of Rs.4,60,000/-

3. That on the facts of the case and under the law, the Id CIT(A) had erred in sustaining the addition of Rs.4,98,620/- 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, Tehjsil Modinagar, Distt. Ghaziabad) , through Krishi Utpadan Mandi Samiti, Hapur and received payment of Rs.4,98,620/- towards the sale proceeds of Popular trees from M/s Ganesh Timber Products (through banking Channel).
4. 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.4,98,620/-
5. That on the facts of the case and under the law, the Id CIT(A) had erred in sustaining the addition of Rs. 1,75,000/- which was made by the Id A.O. as income from other source and also invoking the provision of sec 69A, for confirming the addition of Rs.1,75,000/-

NOTE:

The assessee craves leave to amend/ modify aforementioned grounds of appeal and/or to raise additional

ground(s) of appeal, at any time prior to / during the course of appellate proceedings.

2. The brief facts of the case are that Assessee filed his return of income on 15.09.2014 through e-filing declaring total income of Rs. 2,37,360/- and agricultural income of Rs. 1,75,000/-. The case of the assessee was processed u/s. 143(1) of the Income Tax Act, 1961 (in short "Act") on 16.12.2014 working out NIL demand. The case of the assessee was selected for scrutiny through CASS for the reasons "Large investment in property (AIR) as compared to total income" and statutory notice u/s. 143(2) of the Act was issued on 28.8.2015. Further notice u/s. 142(1) of the Act alongwith detailed questionnaire was issued on 21.4.2016. In compliance to the above questionnaire no compliance was made by the assessee. Another notice u/s 142(1) of the Act was issued on 16.5.2016. In response to the above notices, the AR of the assessee attended the proceedings on various dates and filed written submissions. After considering the same, the AO made various additions totaling to Rs. 28,82,950/- thereby assessing income at Rs. 32,37,140/- (including agricultural income of Rs. 1,75,000/-) vide order dated 08.12.2016 passed u/s. 143(3) of the Act. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 11.04.2018 has partly allowed the appeal of the assessee. Aggrieved with the

impugned order dated 11.4.2018, assessee is in appeal before the Tribunal.

3. The Id. 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*

Hon'ble Members,

It is respectfully submitted as under:

FACTS

*1. That the issues involved in this matter are as
under:-*

*a) Addition of Rs.4,98,620/- made by the Ld A.O.
on the baseless view that such amount of
Rs.4,98,620/- represented the sale proceeds of
spontaneously grown trees and also the sale proceeds
of spontaneously grown trees cannot be treated as
Agriculture Income. While doing so, the Id A.O. had
over looked the fact that the assesses had not claimed
the receipt of Rs.4,98,620/- to be his Agriculture
Income, but had claimed the same as capital Receipt'.
However, the Id A.O. had treated such receipt of
Rs.4,98,620/- as the assessee' " Income from other
Sources".*

b) Addition of Rs. 4,60,000/- made by the Ld. AO and upheld by the Ld. CIT(A) on the pretext that the submission of the appellant had remained unsubstantiated.

c) Out of the addition of Rs. 7,50,000/- made u/s 68 by the Ld. AO; an addition of Rs. 1,75,000/- was confirmed by Ld. CIT(A) on the pretext that the lender had deposited cash in his bank account source of which was not explained by the appellant.

2. That during the course of appellate proceedings the assessee's AR had furnished following explanations:-

a) In respect of first issue it was stated as under

i) The assessee had grown popular Trees in his agricultural land situated in village Bhadola, Tehsil Modinagar , Distt. Ghaziabad about 4-5 years ago:

(ii) the assessee sold the poplar trees in F.Y. 2013-14 through Krishi Utpadan Mandi Samiti, Hapur: and

(iii) the assessee received the sale consideration of Rs.4,98,620/- in respect of such poplar trees from M/s Ganesh Timber Products via banking channel.

b) In respect of second issue an affidavit from seller of potatoes, his land holding details and the copies of cash book of the assessee substantiating the

purchase and sale of potatoes was furnished. The said evidences were not adjudicated by Ld. CIT(A).

c) In respect of unsecured loan confirmation of account, ITR and bank statement of lender were furnished.

3. That the Ld CIT(A) while adjudicating the issues held as under:-

a) in last para of point No. 15(appearing) on the page no. 20-21 of his order dt. 16.03.2018 had mentioned "zY is noted that the appellant has not furnished any evidence to show the cultivation of poplar tree on the agricultural lane, owned by him."

b) In Para 13 on page 20 of appellate order has mentioned that "it is noted that the appellant has claimed to have purchased potatoes during F.Y. 2012-13. However, the entire submission on this account has remained unsubstantiated. "

c) On page 22 of the appellate order held that "However, the source of cash of Rs. 1,75,000/- could not be explained in the hands of the said HUF".

SUBMISSION

4. That the following are being furnished as additional evidences:-

a) *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 Modi Nagar, Distt. Ghaziabad from the Tensildar. Modinagar, Distt Ghaziabad. A perusal of the same reveals that in fasli 1420 (F.Y.2012-13) poplar trees were standing on the assessee's agricultural land at village bhadola, tehsil modinagar, Distt. Ghaziabad.*

b) *in respect of sale of potatoes the appellant had procured his account from M/s Sanjay Kumar Salim Ahmed (arthi), commission agent through whom the potatoes were sold by the appellant.*

c) *In respect of source of cash deposit in the bank account of lender, an affidavit stating that the cash was deposited out of its income.*

5. *That during the course of proceedings, neither the Ld A.O. nor the Ld.CIT (A) had ever required the assessee to furnish such documents. The Id. CIT (A) had decided the appeal against the assessee, without*

giving sufficient opportunity to the assessee to adduce evidences.

6. That these documents establishes the facts of the case of the appellant and goes to the root of the issues involved. Further, the appellant was prevented by reasonable cause to furnish these evidences at earlier stages.

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

4. Referring to the above, Ld. counsel for the assessee submitted that similar grounds has been raised by the co-owner of the assessee who is also the brother of assessee i.e. Sh. Krishan Vir Singh in ITA No. 3311/Del/2018 (AY 2014-15) and the Tribunal vide its order dated 05.4.2019 has set aside the issues in dispute to the file of the AO for fresh consideration. As regards ground no. 1 , it was not pressed by him. However, he requested that ground no. 2, 3, 4 & 5 may be set aside to the AO with the similar directions as given in aforesaid order of Tribunal passed in assessee's brother case.

5. The Id. DR, on the other hand, heavily relied on the order of the Ld. CIT(A). He submitted that the assessee during the course of assessment proceedings assessee failed to

substantiate the same despite being given opportunities by the Assessing Officer. Even before the Ld. CIT(A) he could not substantiate his claim for which the Ld. CIT(A) has confirmed the addition made by the Assessing Officer. He accordingly submitted that the order of the Ld. CIT(A) be upheld and the grounds raised by the assessee on this issue be dismissed.

6. I have considered the rival arguments made by both the sides and perused the orders of the authorities below as well as the Application u/R 29 alongwith additional evidences i.e. affidavit confirming that the contents of Application u/r 29 are correct; Khatauni Khasara No. 36; Account from M/s Sanjay Kumar Salim Ahmed (arhi), commission agent through whom the potatoes were sold by the appellant; affidavit from Narender Singh HUF confirming the loan and explaining the source of cash deposits. After perusing the additional evidences, I am of the view that in the interest of justice, the said additional evidences are very essential to admit. Hence, I admit the same and proceed further.

6.1 I find that Assessee's counsel has not raised the ground no. 1, hence, the same is dismissed as such.

6.2 As regards ground no. 2, 3, 4 & 5 are concerned, I find that similar grounds have been raised by the brother of assessee i.e. Sh. Krishan Vir Singh in ITA No. 3311/Del/2018 (AY 2014-15) before the Tribunal and the Tribunal vide its

order dated 05.4.2019 has set aside the issues in dispute to the file of the AO for fresh consideration. The relevant finding of the Tribunal read as under:-

"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.”

6.3 Respectfully following the precedent as aforesaid, the ground no. 2, 3, 4 & 5 are set aside and remit back to the file of the AO with the aforesaid directions as passed in assessee brother's case i.e. Sh. Krishan Vir Singh in ITA No. 3311/Del/2018 (AY 2014-15) decided on 05.4.2019 by the SMC Bench, Delhi, being identical facts and circumstances of the case.

7. In the result, the Appeal of the Assessee is allowed for statistical purposes.

Order pronounced on 22-05-2019.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 22/05/2019

SRBhatnagar

Copy forwarded to: -

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

5. DR, ITAT

By Order,

Assistant Registrar, ITAT, Delhi Benches