

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

BEFORE, SHRI RAJPAL YADAV, JUDICIAL MEMBER

And

SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2188/AHD/2017

अाधायण वष/Asstt. Year: 2009-2010

Gangaben S. Damor, 30, Vasant Vihar Society, Nr. Sahakari Jin Road, Himatnagar, Sabarkantha-383001. PAN: AKYPD9674R	Vs.	I.T.O, S.KWard-3, Himatnagar, Sabarkantha.
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(Applicant)		(Respondent)
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Assessee by :	Shri Mehul K. Patel, A.R
Revenue by :	Shri Samogyan Pal, Sr.DR

सुनवाई का ताराख/Date of Hearing : 22/03/2019

घोषणा का ताराख /Date of Pronouncement: 27/05/2019

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 Learned Commissioner of Income Tax (Appeals)-2 Ahmedabad [Ld. CIT(A) in short], dated 01/08/2017 arising in the matter of assessment order passed under s. 143(3) r.w.s 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 19/09/2016 relevant to Assessment Year (AY) 2009-10.

The assessee has raised following grounds of appeal:

1. *That on fact and in law, the learned CIT(A) has grievously erred in holding that the re-opening of assessment u/s.147 of the Act is valid.*
2. *That on facts and in law, the learned CIT(A) has grievously erred in holding that payment of insurance premium to the tune of Rs.3,00,000/- is from unexplained sources.*
3. *That on facts, evidence on record, and in law, the learned CIT(A) ought to have held that the entire payment of insurance premium is from agricultural income of the appellant and ought to have deleted the entire addition, as prayed for.*

2. At the outset, the Ld. Counsel for the assessee before us submitted that he had been directed by the assessee not to press Ground No. 1 of the appeal. Therefore we dismiss the same as not pressed.

The second issue raised by the assessee in ground number 2 & 3 is that the Ld.CIT (A) erred in confirming the order of the AO in part by holding that that insurance premium of Rs. 3 lacs was paid from undisclosed sources of income.

3. The assessee in the year under consideration has paid a sum of Rs. 4 lacs as life Insurance premium. The assessee to justify the source of such premium payment filed the return of income declaring the agriculture income of Rs. 3,07,288/- only which was filed in response to the notice issued under section 148 of the Act.

3.1 The assessee has declared agriculture income of Rs. 3,07,288/- which is the amount of sale price of the agriculture proceeds. Therefore the AO was of the view that the assessee has not claimed the expenses against the agriculture income, which is not normal practice. In view of the above, the AO treated as

the payment of insurance premium of Rs. 4 lacs as income from the undisclosed sources and added to the total income of the assessee.

The aggrieved assessee preferred an appeal before the Ld. CIT(A).

3.2 The assessee before the Ld.CIT (A) submitted that she had filed the copies of the bills pertaining to the agriculture income and proof of agricultural land owned by her.

3.3 The AO during the assessment proceedings has issued notices to the parties to whom the assessee sold the agriculture produce under section 133(6) of the Act who confirmed such transaction.

3.4 The assessee has also submitted that there was an arrangement between her and the laborers for the sharing of proceeds on the sale of crop. As such, the laborers were liable to incur the charges/expenses for the materials used in the cultivation of the crop. Accordingly, the assessee received the net agriculture income, which was declared by her in the Income Tax return.

3.5 However, Ld. CIT (A) after considering the submission of the assessee observed that the claim of the assessee cannot be rejected for having income from the agricultural activity in view of the ownership of the agricultural land which was not disputed by the AO. But the gross receipt, as discussed above, cannot be treated as income of the assessee. Therefore the ld. CIT-A treated one-third of gross receipt as profit, i.e. 1,00,000/- only. Accordingly, the Ld. CIT (A) restricted the addition made by the AO up to Rs. 3,00,000/- Accordingly, the Ld.CIT (A) allowed the appeal of the assessee in Part.

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

4. The Ld. AR before us reiterated the submission as made before the authorities below.

5. On the other hand, the Ld. DR vehemently supported the order of the authorities below.

6. We have heard the rival contentions and perused the materials available on records. None of the authorities below have challenged the fact that the assessee is the owner of agricultural land admeasuring 42,810 sq.mtr. Therefore the argument of the assessee having income from such land cannot be rejected without any evidence against the assessee. The parties to whom the agricultural products were sold also confirmed the transaction in the notice issued under section 133(6) of the Act. Accordingly, we hold that the assessee had agriculture income.

6.1 The next question arises for the quantification of such agricultural income. The onus lies on the assessee to prove the above income through the documentary evidence. There was no documentary evidence filed by the assessee to support her contention that there was no agricultural expense incurred by her. Therefore we are of the view that the agriculture income declared by the assessee cannot be treated equal to the amount of sale. Thus in the absence of the necessary documentary evidence qua to the agricultural expenses, we are of the view that 60% of the gross receipt of the agriculture products should be treated as agriculture income of the assessee. Therefore we hold that 60% of the gross receipt be treated as agriculture income and

balance should be treated income from undisclosed sources. Hence the ground of appeal of the assessee is partly allowed.

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

Order pronounced in the Court on 27/05/2019 at Ahmedabad.

**-Sd-
(RAJPAL YADAV)
JUDICIAL MEMBER**

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)
Ahmedabad; Dated 27/05/2019
Manish