

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No. 72/Ahd/2019
(Assessment Year : 2015-16)

Shraddha Farm,
5, Panchamrut Vibhag – 2,
Science City Road,
Sola Over Bridge, Sola,
Ahmedabad – 380 065.

Vs. ITO,
Ward – 4(2)(5),
Ahmedabad.

[PAN No. ACIFS 8881 R]

(Appellant)

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(Respondent)

Appellant by : Shri Manish Shah and J. P. Shah, A.R.
Respondent by : Shri Shiv Sevak, Sr. D.R.

Date of Hearing 04/07/2019
Date of Pronouncement 30/07/2019

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 11.12.2018 passed by the Commissioner of Income Tax (Appeals)-4, Ahmedabad arising out of the order dated 27.12.2017 passed by the ITO, Ward – 4(2)(5), Ahmedabad under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to “the Act”) for the Assessment Year 2015-16.

2. The short point involved in this particular case is this as to whether a firm is entitled to exemption on agricultural income particularly when the firm is not the owner of such agricultural land but the partners.

3. The brief facts leading to this case is this that the assessee firm filed its return of income on 08.01.2016 declaring total income of Rs.NIL/- for A.Y. 2015-16, which was processed u/s 143(1) of the Act. At the same time the assessee has shown exempt income from agriculture to the tune of Rs.39,80,792/-. The agriculture sales of Rs.52,26,355/- and purchase and other expenses of Rs.12,45,563/- is also reflected from the details submitted by the assessee, though the assessee firm is not owning any agricultural land in its balance sheet.

In reply to the explanation called for to this effect by the Revenue, the assessee submitted before the Assessing Officer that all the three partners namely Shri Bhargav Mukundbhai Patel (son), Mukundbhai Ramabhai Patel (Father) and Smt. Ushaben Mukundbhai Patel (Mother) are from the same family and all are agriculturists who are owning substantial size of agricultural land where activities are carrying on, on regular basis. The details of agricultural land owned by partners of the firm, area of such land and crop grown on the said land along with the copy of 7/12 abstract and Form 8A were duly submitted before the Assessing Officer along with the affidavit affirmed by the partners stating that the land are exclusively used for partnership firm for the purpose of doing agricultural activities of the said firm. However, the plea of the assessee was not found acceptable by the Learned AO and hence a second show-cause dated 22.12.2017 was issued directing the assessee as to why the difference of Rs.39,80,792/- being the difference of Rs.52,26,355/- and Rs.12,45,563/- should not be treated as business income and added to the total income of the assessee in view of the particular fact that the assessee firm does not own any agricultural land in its balance sheet. Finally, the assessment order was passed against the assessee by making an addition of Rs.39,80,792/- on the said ground as discussed above. While doing so, the Learned Assessing Officer made an observation that no agreement between the firm and land owners indicating such activity has been submitted by the assessee firm, neither, the firm

was paying any rent to the land owners and hence as per definition of section 2(1A) of the Act, the firm was not entitled to such exempt agricultural income. In appeal, the same was confirmed by the Learned CIT(A). Hence, the appeal before us.

4. At the time of hearing of the instant appeal, the Learned Counsel appearing for the assessee submitted before us that the ownership of land was not a prerequisite for having agricultural income and it would suffice if revenue is derived from agricultural activities carried out on an agricultural land situated in India. If that be so, then the assessee is entitled to get the relief of exempt agricultural income as claimed. In support of his argument he has relied upon the judgment passed by the Hon'ble ITAT, Pune Bench in the matter of ITO-vs-Gajanan Agro Farms reported in (2013) 33 taxmann.com 149 (Pune - Tribunal). On the contrary, the Learned DR relied upon the order passed by the Revenue.

5. Heard the respect parties, perused the relevant materials available on record. It appears from the partnership deed which is available on record that the said partnership firm has decided to carry on business on selling of agricultural produces from 01.04.2013 by doing agriculture work in the partnership by the name "Shraddha Farm" at Ahmedabad. Needless to mention such partnership deed has been executed amongst three partners namely Patel Mukundbhai Rambhai, Patel Ushaben Mukundbhai and Patel Bhargav Mukundbhai. The detail of the agricultural land is also mentioned in the said partnership deed at clause – 1.

We have further considered Section 2(1A) which defines agricultural income which is derived from the agricultural land situated in India used for agricultural purposes. This section does not specify that Revenue has to be derived by the owner of the agricultural land only. The term 'revenue', therefore, implies some yield or some

income from agricultural operations. Further that it can be inferred that agricultural income can also be derived by person who is a cultivator or who is the owner of land. It is only the receiver of rent-in-kind who can directly be held to be the owner of land as referred to in this section. Further that a cultivator may be the owner but it is not necessary that he has to be the owner. In terms of Clause (a) there can be a recipient of rent from land which implies ownership and also a recipient of revenue derived from land, which implies that the person can be the owner or may not be the owner of land. Sub Clause (1) of Clause (b) speaks of income derived from an agricultural land by agricultural activity. Thus revenue derived from land or from agriculture implies a periodic return of income from agricultural operations only. The identical issue has been considered by the Pune Bench in the matter of ITO-vs-Gajanan Agro Farms. The relevant portion whereof is as follows:

“17. Clause (a) specifically states that agricultural income means any rent or revenue derived from land which is situated in India and is used for agricultural purposes. Similarly, clause (b) speaks about income derived from a land situated in India and which is used for agricultural purposes of agriculture or any other work specified in items (ii) and (iii) of this clause. Clause (c) is not applicable in this case. A plain reading of this section makes it clear that all that is necessary that revenue should be derived from a land situated in India and which is used for agricultural purposes. This section does not specify that revenue has to be derived by the owner of the agricultural land only. Revenue therefore implies some yield or some income from: agricultural operations. Sub-clause (ii) and (iii) also use the terms "cultivator" and "receiver of rent-in-kind". These terms also appear in Clause (c) of section 2(1A). Thus, it can be inferred that agricultural income can also be derived by a person who is a cultivator or who is the owner of land. It is only the receiver of rent-in-kind who can directly be held to be the owner of land as referred to in this section. A cultivator may be the owner but it is not necessary that he has to be the owner. In clause (a), there can be a recipient of rent from land which implies ownership and also a recipient of revenue derived from land, which implies that the person can be the owner or may not be the owner of land. Similarly, sub-clause (i) of clause (b) speaks of income derived from an agricultural land by agriculture. This makes it clear that revenue derived from land or from agriculture implies a periodic return of income from agricultural operations only. As per Explanation VI to section 60(1) of the Civil Procedure

Code, 1908 includes all such persons who can cultivate land by his own labour or by labour of members of his family or by servants or by labourers by wages payable in cash or in kind as an agriculturist.

18. Hence the terms 'cultivator' or 'receiver of rent-in-kind' could be inferred to be a person who cultivates the land either on his own or through assisted labour and this person includes a firm as well. In normal sense, the term 'cultivator' means one who does cultivation of the land and cultivation includes tilling of the land, sowing of the seeds, planting etc., which are the activities carried on by the assessee. It is not necessary that such activity should be done by owner of land himself or by the entity engaged in agriculture.

19. It is not a mandate of law that in order to have agricultural income the person must own the agricultural land. In that case, most of the rural population who do not own land but cultivate land of others on Batai system as it is popularly known and who are dependent on agriculture for their livelihood would not be having agricultural income at all. Ownership of land is, therefore, not a prerequisite for having agricultural income. It would suffice if revenue is derived from agricultural activities carried out on an agricultural land situated in India for an income to qualify as agricultural income recognized under the Income-tax Act.

20. The Assessing Officer had also stated that the assessee firm had not furnished any documentary evidence in support of the claim that income derived was agricultural income. In this regard the stand of the assessee has been that land in question was received by it from Maharashtra State Farming Corporation for joint cultivation to grow and produce sugarcane. Assessee also placed on record before authorities below the copy of the agreement executed for joint cultivation with Maharashtra State Farming Corporation. Thus there was no denying the fact that sugarcane was cultivated on the land owned by MSFC Ltd., and also the basic agricultural activity in the form of preparation of land for cultivation, ensuring water supply, plantation of seeds, tending of saplings of sugarcane, spraying of insecticides and pesticides, manuring etc., was carried out in respect of sugarcane by the partners of the firm. It was clear stand of the assessee before the Assessing Officer that since land was owned by MSFC Ltd., it was not reflected in the Balance Sheet. The Assessing Officer was not justified in rejecting this argument. At the same time Assessing Officer has not doubted the cultivation of sugarcane on the agricultural land in question. In this situation, the Assessing Officer was not justified in holding that income of assessee is not income from agriculture. In any case merely because the agricultural activities were conducted in the name of the firm will not take away the character of income in the hands of the recipient. It is only the agricultural income which has been distributed among partners which was derived from agricultural activities on the land in question.

Even if firm would not have been in existence, this character of income would not have changed in the hands of the partners who owned the land.

21. The agreement executed between MSFC Ltd., and the assessee for joint cultivation of land belonging to MSFC Ltd. Though the agreement is in the form of a joint cultivation of land, the articles of the agreement are such that all activities of agricultural operations and enjoyment of the fruits of cultivation are given to the assessee. In return, the assessee has to undertake the following:

- (i) Keeping a deposit of Rs. 10,00,000/- with MSFC Ltd.*
- (ii) Payment of Rs. 20,00,000/- p.a. as guaranteed share of produce regardless of the actual income derived from agricultural activities.*
- (iii) Upkeep and maintenance of the establishment owned by MSFC Ltd. in Kolhapur farms including payment of salaries etc. to the employees of MSFC Ltd. in Kolhapur farm.*
- (iv) Payment of land revenue and related charges and cess in respect of Kolhapur farm.*
- (v) Upkeep and maintenance of soil in Kolhapur farm.*
- (vi) Returning of 5250 metric tons of sugarcane at the termination of agreement. This condition is absent in the agreement dated 09.05.1997 relevant for assessment year 2002-03.*

This shows that relationship between MSFC Ltd., and the assessee firm can be properly described as that of the landlord and a tenant. The assessee firm has to make the payment of a fixed sum of Rs. 20,00,000/- every year during the subsistence of the agreement regardless of production from the agricultural farm. Under these circumstances and on the basis of the fact which were produced at the time of assessment, the Assessing Officer was not justified in rejecting the claim of assessee that income in question is derived by firm from agricultural operations carried on the land belonging to MSFC Ltd., Pune, as agricultural income. The conclusion of the Assessing Officer is based on improper interpretation of law and on surmises and conjectures. In view of the above, the CIT(A) was justified that amount of Rs. 32,69,820/- and Rs. 35,13,376/- for A.Ys. 2002-03 and 2003-04 respectively are agricultural income of assessee firm. This reasoned factual finding need no interference from our side. As a result, both the appeals filed by the Revenue are dismissed.

22. The Cross Objections filed were in support of the order of the CIT(A) goes academic. In view of the foregoing conclusion wherein the order of the CIT(A) has been upheld.”

If the ratio of the judgment is applied to the instant case then it can be well appreciated that the assessee firm though not being the owner of the agricultural land in question is entitled to get exemption of the agricultural income derived from the said land owned by the partners of the firm. The issue is thus decided in the affirmative i.e. in favour of the assessee and against the Revenue.

Thus with the above observation, we delete the addition made by the authorities below.

6. In the result, assessee's appeal is allowed.

This Order pronounced in Open Court on

30/07/2019

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 30/07/2019
Priti Yadav, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-4, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad