

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.3076/Del./2018
Assessment Year 2012-2013

Shri Sandeep Gupta, 1476, Sector-14, Faridabad, Haryana. PIN – 121 001. PAN AEMPG2457H	vs.,	The Income Tax Officer, Ward – 1(1), Faridabad, Haryana.
(Appellant)		(Respondent)

For Assessee :	Shri I.P. Bansal, And Shri Sanjay Kumar, Advocates.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	28.08.2019
Date of Pronouncement :	11.09.2019

ORDER

This appeal by Assessee has been directed against the Order of the Ld. CIT(A), Faridabad, Dated 08.03.2018, for the A.Y. 2012-2013.

2. Briefly the facts of the case are that assessee filed return of income declaring income of Rs.9,69,700 (+ Rs.20,61,541/- Exempted Agricultural Income) on 31.07.2012 for the A.Y. 2012-2013. The assessee derives

income mainly from salary and agriculture. The assessee has shown agriculture income of Rs. 32,82,000/- for which he has produced bills from *Adathia*, M/s Jagdamba Traders for selling of agriculture produces. He has also shown Rs.12,20,959/- as expenses on agriculture for which no supporting documents were furnished except a daily expenses book written by one of his employee. The assessee has also filed *Thekanama* of land (lease deed) for having taken land on lease from two persons – namely Sh. Bhhekay Khan and Sh. Munger Kghan Tehsil & Distt. Jaisalmer, Rajasthan. In support the genuineness of agriculture income, he has also filed photocopy of *Khasara Girdawari* issued by the *Patwari* and countersigned by the Tehsildar Ramgarh No.2 along with sale bills of agriculture produce from *Adathia* M/s Jagdamba Traders. The A.O. in order to verify the genuineness of the photocopy of lease deed, issued a notice under section 133(6) to the lessor Sh. Bhhekey Khan and the Notary Public who had attested the lease deed. In response to the same, reply from Sh. Bhhekey Khan lessor was received, in which, he has admitted that he

had leased out the land to assessee and also furnished the photocopy of the lease deed which is placed on record. However, no reply was from Notary Public. In the lease furnished by lessee, the A.O. noted that the land was given to assessee from 01 April 2012 to 31-3-2013. Therefore, the land in question was not given for the assessment year under appeal. The A.O. in order to verify the genuineness of the photocopy of *Khasara Girdawari*, issued notice under section 133(6) to Tehsildar Ramgarh No.2. In response to the same, *Khasara Girdawari* of *Chak number 6 BTM Murabba number 112/35* along with quantum of area where Sh Subhash Gupta has cultivated crop was furnished by the Tehsildar. The A.O, therefore, noted that copy of *Khasara Girdawari* filed by the assessee is different from the copy furnished by Tehsildar. The assessee also filed five sale bills issued by M/s Jagdamba Traders of Ramgarh under the aegis of Krishi Upaj Mandi Samiti Jaisalmer. The A.O. doubted the same. The A.O. issued notice under section 133(6) to M/s Jagdamba Traders for verification of the bills which were returned undelivered with postal remarks

"*Incomplete address.*" The assessee was, therefore, asked to furnish complete address of M/s Jagdamba Traders to verify the genuineness of bills. The assessee submitted before the A.O. that the address mentioned in the bills are correct. The shop might have closed due to any reason. The A.O. was, therefore, requested to issue summons under section 133(6) of the Income Tax Act 1961. On request of the assessee, summons under section 131 of the Income Tax Act, 1961 was issued to M/s Jagdamba Traders and requested to furnish Original seller slip book, Copy of bank account, evidence of payment of "*Mandi Charges*" and evidence of payment made to assessee for the selling commodities. The said summons were again returned un-served with postal remarks "*Incomplete address.*" The A.O. has given numerous opportunities to assessee to substantiate his claim of having agriculture income by taking the land on lease. The assessee filed reply before A.O. filing copy of the *Khasaar Girdawari*, signed by *Patwari*. The assessee filed further reply before A.O. in which it is stated that copy of the confirmation along with copy of bank statement of M/s.

Jagadamba Traders, payment of *Mandi* charges, copy of PAN card are attached. The confirmation and other papers were directly sent to the A.O. by speed post. The assessee also furnished correct address of the *Adathia* along with email. The assessee also provided Phone No. for quick confirmation and also requested that letter/confirmation may be sent at the address best available with the assessee. The A.O. however did not accept the contention of assessee because there is a difference in the period for which lease was granted of agricultural land and that there is discrepancy in the *Khasra* with respect to same furnished by the assessee by the *Patwari*. It is noted that genuineness of the bills could not be verified because *Adathia* has done business only for assessee and in his account cash was found to have been deposited on various dates. The assessee could not produce the *Adathia* during the proceedings, therefore, bills could not be verified. The A.O. also noted that evidence of incurring expenditure have also not been produced. The A.O, therefore, treated the entire amount as income from

other sources and made addition of Rs.32,82,000/- under section 68 of the I.T. Act, 1961.

2.1. The A.O. on perusal of the capital account also found that assessee has debited Rs.2,41,000/- on account of house hold expenses. The assessee was asked to justify house hold expenses with reference to size of the family, number of school going children, standard of living and telephone/electricity bills etc. The assessee filed copy of balance-sheet with evidences. The A.O, however, made further addition of Rs.2,40,000/- on account of low house hold withdrawal.

3. The assessee challenged both these additions before the Ld. CIT(A). On the submissions of the assessee, the Ld. CIT(A) called for the remand report from the A.O. The A.O. in the remand report also collected information from Directorate of Agriculture, Jaipur, Rajasthan. As per information, yield of *Gowar* in assessment year under appeal was 323 kg per Hector, therefore, there is a difference in the production claimed by assessee. The Ld.

CIT(A) called for explanation of assessee and in the absence of reply from the side of the assessee, dismissed the appeal of assessee on both the additions.

4. The assessee in the present appeal has challenged the addition of Rs.32,82,000/- on account of agricultural income and Rs.2,40,000/- on account of low house hold expenses.

5. I have heard the Learned Representative of both the parties and perused the material available on record.

6. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and has referred to PB-9 which is reply filed before A.O. in which it is contended that assessee had taken agricultural land measuring 50 *Bigas* on lease for one year at Rs.50,000/-. The assessee earned agricultural income of Rs.32,82,000/- and after incurring expenses of Rs.12,20,459/- earned net agricultural income of Rs.20,61,541/- which is supported by the documents and confirmations etc., PB-13 is lease deed executed by Sh Bhhekay Khan, Dated 08.08.2011. PB-

14 lease deed executed by Sh. Munger Khan, Dated 05.07.2011. He has, therefore, submitted that the difference of lease deed noted by the A.O. are incorrect. PB-15 is sale on agricultural produce for the above sum supported by Krishi Upaj Mandi Samiti receipts through the *Adathia*, copies of which are filed at pages 16-20 of the PB. Pb-21 is details of agricultural expenses. PB-22 is ledger account of *Adathia* showing the sale of agricultural produce and the amounts received by assessee through banking channel. PB-27 is another reply filed before A.O. in which assessee has produced original invoices of agricultural income for verification before A.O. and photo copies of the same were also filed. PB-29 onwards are the details of doing agricultural operation. PB-99 is another reply filed by assessee before A.O. submitting *Khasra* etc., and to clarify the discrepancy. PB-102 and 103 are *Khasra* to show name of the lessor and the assessee as a lessee for doing agricultural operation. PB-105 is another reply filed before A.O. producing the entire original documents before A.O. in respect of the above contention. PB-108 is reply filed by

M/s. Jagadamba Traders confirming sale of agricultural produce by assessee to them and payments made through banking channel which is supported by receipts of Krishi Upaj Mandi Samiti. PB-107 are the copies of the bank account of M/s. Jagadamba Traders to support payments through banking channel. Learned Counsel for the Assessee, therefore, submitted that those documentary evidences clearly support that assessee cultivated the agricultural land taken on lease and earned agricultural income, therefore, no addition could be made against the assessee. PB-152 is reply of the assessee on low household expenses in which assessee explained that he has shown house hold expenses in a sum of Rs.6,29,643/- by self and other expenses made by family members totaling to Rs.15,30,415/-. He has, therefore, submitted that there was no justification to make the addition on account of low house hold expenses.

7. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that assessee failed to produce sufficient documentary evidences before

A.O. to prove earning of agricultural income, therefore, both additions may be confirmed.

8. I have considered the rival submissions and perused the material on record. The assessee has filed copy of the lease deed as noted above which are Dated 08.08.2011 and 05.07.2011. Therefore, these would prove agricultural land taken by assessee on lease in respect of assessment year under appeal, therefore, the very basis of the A.O. to disallow claim of assessee have been negated by the Learned Counsel for the Assessee. Both these lease deeds have been produced before the authorities below supported by copies of the bills of Krishi Upaj Mandi Samiti which clarify that assessee sold agricultural produce through M/s. Jagadamba Traders. M/s. Jagadamba Traders confirmed the selling of the agricultural produce by assessee through them and all the payments are made by cheque/RTGS to assessee through banking channel. The name of assessee is appearing in the *Khasra* along with owner/lesser of the agricultural land. The adtiya is assessed to tax and have PAN and have also confirmed purchasing

the agricultural produce from assessee through *Mandi* and payments have been made through banking channel, which is also supported copy of the bank statement of the *Adathia*. On the face of all these evidences on record, it clearly establishes that assessee was doing agricultural activities and earned agricultural income, therefore, there was no justification to treat the agricultural income as income from other sources. Further, assessee has explained that he has shown sufficient house hold expenses by self which contain electricity, water charges, medical, vehicle expenses etc. Other family members have also joined him in incurring the house hold expenses totaling to Rs.15,30,241/- which was noted above was more than the amount for which addition is made by the A.O. Therefore, there was no justification to make any addition on account of house hold expenses. In view of the above discussion and material on record, I am of the view that both the additions are wholly unjustified. I, accordingly, set aside the Orders of the authorities below and delete both the additions.

9. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 11th September, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "SMC" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.

Date of dictation	28.08.2019
Date on which the typed draft order is placed before the dictation Member	09.09.2019
Date on which the approval draft comes to the Sr. PS	11.09.2019
Date on which the fair order is placed before the Dictation member for pronouncement	11.09.2019
Date on which the fair order comes back to the Sr. P.S.	11.09.2019
Date on which the final order is uploaded on the website of ITAT	11.09.2019
Date on which the file goes to the Bench Clerk	11.09.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order.	