

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “एक सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE SHRI ANIL CHATURVEDI,
ACCOUNTANT MEMBER

आयकर अपील सं / ITA No.1399/PUN/2018

निर्धारण वर्ष / Assessment Year : 2005-06

Ranjit Kantilal Shah,
Kruti Construction,
Shridhar Krupa Complex,
Opp. Killa Baugh,
Gold Finch Peth,
Solapur, Pune – 413002.

..... अपीलार्थी /
Appellant

PAN : ACKPS2955G.

बनाम v/s

The Asst. Commissioner of Income Tax,
Circle – 2, Solapur.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Gopal R. Aswani.

Revenue by : Shri Shashank Deogadkar.

सुनवाई की तारीख / Date of Hearing : 07.08.2019	घोषणा की तारीख / Date of Pronouncement: 17.10.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by assessee is emanating out of the order of Commissioner of Income Tax (Appeals) – 7, Pune dated 29.06.2018 for A.Y. 2015-16.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual and Partner in M/s. Kruti Infrastructures which is engaged in the business of Building and Development and is also having agricultural income. Assessee

electronically filed its return of income for A.Y. 2015-16 on 19.03.2016 declaring total income of Rs.22,44,590/- and agricultural income of Rs.38,65,208/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 15.12.2017 and the total income was determined at Rs.31,04,840/- and agricultural income of Rs.30,04,958/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.29.06.2018 (in appeal No.PN/CIT(A)-7/Cir-2/10254/2017-18) dismissed the appeal of the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal and has raised the following effective ground :

“On the facts and in the circumstances of the case and in law the honourable CIT(A) erred in confirming the addition of Rs.8,60,250/- made by the learned AO by not accepting the claim of the appellant of the agricultural income and treating the same as “Income from Other Sources”. The appellant hereby prays that the addition may please be deleted.”

3. The case file reveals that there is delay of one day in filing the present appeal. Assessee filed an affidavit wherein he inter-alia submitted that the delay in filing the present appeal occurred due to bonafide mistake and it is purely unintentional and therefore prayed that the delay of one day be condoned. Ld.D.R. did not seriously object to the prayer of condonation.

4. On the issue of condonation of delay of appeal, I have gone through the petition filed by the assessee and heard the Ld.A.R. After considering the reasons stated in the affidavit, I am of the view that

the delay in filing the appeal has been satisfactorily explained. In view of these facts, I condone the delay and admit the appeal for hearing.

5. During the course of assessment proceedings AO noticed that assessee was having agricultural land at Gut No.98/A/1/1 admeasuring 5H-06R and another land having Gut No.98/B2 admeasuring 1H-60R (16.46 acres), both being situated at Dongaon. Assessee is stated to have grown crops like sugar cane, grapes, mango, jawar etc, (the details of cultivation on the said lands are tabulated by the AO under Para 5 of the assessment order). Assessee was asked to produce the details of sales affected along with documentary evidence. Assessee stated that the sales have been made at the farm site only and for which he produced self-made bills and vouchers. To verify the productivity of the crops and the claim made by the assessee, AO issued notice u/s 133(6) of the Act to the District Superintendent Agriculture Officer, Solapur. On the basis of the response received from District Superintendent Agriculture Officer, AO confirmed the productivity shown by the assessee and as stated by the District Superintendent Agriculture Officer, noted that assessee had shown excess productivity of mangoes which is nearly double the average in Sholapur in F.Y. 2014-15. The assessee was asked to explain the difference to which assessee inter-alia submitted that assessee had cultivated 400 trees in one acre of land but District Superintendent Agriculture Officer considered only 40 in one acre. It was therefore submitted that the data supplied cannot be compared with the actual cultivation of the assessee. The submissions of the assessee were not found acceptable to the AO. AO held that assessee has over inflated

the productivity details by around 45%. He therefore disallowed the extra productivity level of 45% above the average computation as given by District Superintendent Agriculture Officer and re-worked the excess production of mangoes to the extent of Rs.8,60,250/- and made its addition. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO.

Aggrieved by the order of Ld.CIT(A), assessee is now in appeal.

6. Before me, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further submitted that AO has merely relied on the report of District Superintendent Agriculture Officer. He further submitted that no verification of the number of trees in the field of the assessee was undertaken by the AO. He further submitted that assessee had planted the trees in a unique pattern of 10/10 and thereby increased the productivity. Ld.A.R. further submitted that AO has only considered the report of the District Superintendent Agriculture Officer selectively and to support his contention, he pointed to the table at Page 3 of the assessment order wherein the productivity of grapes, pomegranates, jawar etc. cultivated by the assessee were mentioned and though the same was lower than the productivity stated by the District Superintendent Agriculture Officer but it was accepted by the AO. He submitted that without bringing any material on record, AO has made addition on adhoc basis. He therefore submitted that the addition made by AO be deleted. Ld. D.R. on the other hand, supported the order of lower authorities.

7. I have heard the rival submissions and perused the material on record. The issue in the present ground is addition on account of excess production of mangoes. I find that AO has merely relied on the report of District Superintendent Agriculture Officer for working out the excess production. Further even on the basis of the report, he has held that 40% increase in productivity as stated by the Agricultural Officer is accepted. I find that AO did not carry out any verification of the agricultural land personally or by through any of his officials to verify the contentions made by the assessee. It is a fact that assessee had shown income from mangoes in earlier years which has not been disturbed by the authorities in earlier years. I am of the view that AO could not have proceeded to make the disallowance merely on the basis of report of District Superintendent Agriculture Officer and without any evidence to the contrary in his possession. I therefore direct the deletion of addition made by the AO. **Thus, the ground of the assessee is allowed.**

8. **In the result, the appeal of assessee is allowed.**

Order pronounced on 17th day of October, 2019.

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 17th October, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-7, Pune.
4. Pr. CIT-6, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" /
DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.