

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE**

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.3280/Bang/2018

Assessment year : 2011-12

Shri Dinesh (HUF), 3 rd Floor, BMTc Complex, 80 feet Road, Koramangala. PAN – AACHD 2253 G	Vs.	The Income-tax Officer, Ward-8(3), Bengaluru.
APPELLANT		RESPONDENT

Revenue by	:	Shri Ravishankar, Advocate
Assessee by	:	Shri Ganesh R Ghale, Advocate Standing Counsel for the Dept.

Date of hearing	:	05.11.2019
Date of Pronouncement	:	17.12.2019

ORDER

Per B.R Baskaran, Accountant Member :

The assessee has filed this appeal challenging the order dated 3/10/2018 passed by Id CIT(A)7, Bengaluru in partially sustaining the addition relating to agricultural income declared by the assessee.

2. I heard the parties and perused the record. The assessee declared agricultural income of Rs.20.10 lakhs in the return of income filed for the year under consideration.

3. The AO noticed that the assessee has held only 1.05 acres of agricultural land. Hence he wrote letters to Tahalsildhar, Virajpet and also issued summons. He also conducted enquiries with the mother and sister of the assessee who were residing in the village. The various types of enquiries made by the AO has been narrated by AO as under:-

“In response to the notices, the assessee's authorized representative Sri. Chaithya V. Madrabetty appeared and submitted the details called for. On verification of the details furnished, it is seen that the assessee is having agricultural income to the tune of Rs.20,10,900/- by selling agricultural products like pepper, Coffee Seeds & Silver Oak trees. To verify the same, letters were written to Tahsildar, Veerajpet, summons u/s.131 of the IT Act was also issued to the Tahsildatr Veerajpet. In response to these letters and the summons the Deputy Tahsildar, Veerajpet Sri.M.Y.Diwakar appeared and submitted the report of the Tahsildar, Veerajpet along with the report of the Deputy Tahsildar and the report of the Revenue Inspector and the statements recorded by the revenue inspector of Veerajpet from Smt. K. Lakshmi, Mother of the assessee, and the Local Enquiry Mahazar which includes the statement of assessee's sister Smt. Yamuna and also provide the RTC's.

As per the RTC, the assessee possesses only 1.05 acres of agricultural land pertaining to Survey No. 53/3 & 53/4. As per the statement of assessee's mother Smt. K. Lakshmi, and the Local Enquiry Mahazar which includes the statement of assessee's sister Smt. Yamuna and report of the Tahsildar the agricultural income is estimated at Rs. 85,000/- (i.e. Rs. 40,000/- from sale of 16 coffee bags and Rs. 45,000/- from sales of 13 quintal of pepper) only.

With regard to income from sale of Silver Oak trees, the authorities have reported that there are no proper evidences for cutting of silver oak trees, however there are few traces for having cut the silver oak trees, based on which, the Tahsildar, Veerajpet have reported there are around 4 silver oak trees cut and its estimated cost is Rs.48,000/-. The Tahsildar, Veerajpet has estimated the cost of silver oak tree on the bases of the present growth of silver oak trees standing in the land of the assessee, which is estimated at.Rs.12,000/- per silver oak tree.”

4. The assessee contended before the AO that the AO should not rely on the report given by Revenue Inspector and also submitted that the statements given by his mother and sister should not also be relied upon. He submitted that he has sold 120 silver oak trees, 50 bags of coffee and 1 tonne of pepper and earned agricultural income of Rs.20.10 lakhs. The AO did not accept the contention of

the assessee. He observed that the mother and sister of the assessee are also members of assessee (HUF) and hence their statement can be relied upon. Accordingly he restricted the agricultural income to Rs.1,33,000/- consisting of Rs.85000/- earned from sale of coffee/pepper and Rs.48,000/- earned from sale of silver oak tree.

5. In the appellate proceedings the ld CIT(A) noticed that there were certain contradiction in the report given by revenue authorities. The AO had taken the silver oak trees sold by the assessee as 4 in number. The ld CIT(A) took the number of silver trees sold by the assessee 20 and accordingly determined the agricultural income at Rs.3.25 lakhs and confirmed the balance amount of addition. Still aggrieved the assessee has filed this appeal before the Tribunal.

6. The ld AR reiterated the submissions made before the AO and further submitted that the assessee has sold 120 numbers of silver oak trees and hence the ld CIT(A) was not justified in restricting the number of silver oak trees sold by the assessee to 20.

7. On the contrary the ld DR submitted that the AO has made proper enquiries and accordingly determined the agricultural income. The ld CIT(A), considering the contradiction noticed in the report of revenue authorities has increased the agricultural income to Rs.3.25 lakhs. Accordingly the ld DR submitted that the order passed by ld CIT(A) should not be disturbed.

8. I heard the rival contentions and perused the record. I noticed that the assessee has held only 1.05 crores of land though the assessee has claimed that it has sold 120 silver trees and 50 bags of coffee he did not adduce any evidence in the form of confirmation from the buyers sale bills etc to prove the said claim. On the contrary I noticed that the AO has conducted enquiries with revenue authorities and also mother and sister of the assessee. The Revenue Inspector has physically inspected the areas and has given report. I have noticed that the Id CIT(A) has considered all these facts. Since there was certain contradiction in the reports given by the Revenue authorities, the Id CIT(A) has increased the number of trees sold by the assessee from 4 numbers to 20 numbers and accordingly determined the agricultural income as Rs.3.25 lakhs. The AO observation made by the Id CIT(A) in this regard extracted below :

“It is observed that the Kartha of the HUF Shri Dinesh lives in Bangalore and carries out his own business. The land of the HUF measuring 1.05 acres is situated in the village Nokhya, Ponnampet Hobli, Virajpet Tahsil which is more than 240 kms from Bangalore. The mother and sister of Shri Dinesh live in this village and are familiar with the agricultural activities carried out in their land. Smt. Lakshmi, the mother of Shri Dinesh, is also a member of the assessee HUF. The statement of Smt Lakshmi as regarding income from coffee and pepper at Rs.'5,000/- has been accepted by the Tahsildar who in turn has reported the same figure to

the AO. The AO has also accepted this amount. However, though it was mentioned that 20 silver oak trees cut and sold during the year in the statement of Smt. Lakshmi, same has not been accepted by the AO. It is observed that the report of the RI dated 13-01-2014 submitted to the Dy. Tahsildar is contradictory in the sense that while it mentions that the mark for cut trees were not found, at the same time it mentions that some trees appear to be cut here and there but could not count them. Further, if the number of trees cut could be as low as four - as mentioned in the subsequent report of Dy. Tahsildar, there could not be any difficulty counting the same. The number of standing trees at 32 as per report, is also not a big number to create any difficulty for counting the cut trees. Therefore, it is not understandable as to how contradictory reports were submitted by the state Revenue Authorities. Hence, having considered the facts, I am of the considered view that the number of silver trees has to be taken at 20 as submitted in the statement of the mother and sister of Shri Dinesh and also as per spot Mahazar prepared by the RI. Thus, the income from sale of 20 silver oak trees will be Rs 2,40,000/-. Consequently, the total income from agriculture for the assessce will be Rs 3,25,000/- for the year.”

9. Considering the facts of the case and material placed on record I am of the view that the order passed by the Id CIT(A) is a well reasoned order and the same does not call for any interference. Accordingly I confirm the order passed by the Id CIT(A).

10. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on **17th December, 2019.**

**Sd/-
(B.R Baskaran)
Accountant Member**

Bangalore,
Dated, 17th December, 2019.

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Dictation note enclosed
10. Date on which order goes for Xerox & endorsement.....
11. Date on which the file goes to the Head Clerk
12. The date on which the file goes to the Assistant Registrar for signature on the order
13. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
14. Date of Despatch of Order.
14. Dictation note enclosed