

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.1057/Ind/2016

Assessment Year: 2007-08

Smt. Shobhna Yadav, 305, Shivnarayan Complex, Jahangirbad, Bhopal	Vs.	ITO-2(1) Bhopal
(Appellant)		(Revenue)
PAN No.AAZPY4090P		

Appellant by	Shri Kailash Agrawal, CA
Revenue by	Shri S.S. Mantri, Sr. DR
Date of Hearing	14.01.2020
Date of Pronouncement	21.01.2020

ORDER

PER MANISH BORAD, AM.

The above captioned appeal filed at the instance of assessee pertaining to assessment year 2007-08 is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-1 (in short 'Ld.CIT'], Bhopal, dated 29.01.2016 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 29.12.2009 framed by ITO-2(1), Bhopal.

2. Assessee has raised following grounds of appeal;

“That on the facts and in the circumstances of the case, the impugned order passed by the ld. Lower Authorities is contrary to law, materially incorrect and unsustainable in law as well as on facts. All the finding and conclusion of the Ld. Lower Authorities are also contrary to the material, opposed to the facts, equity and law.

2. That the Ld. Lower authorities have erred in not accepting the agriculture income declared by the appellant without any substantive, cogent reasons material brought on record.

3. That the Ld. To lower authorities grievously erred and were not justified in not considering and not accepting the various submission produced before him. Therefore the impugned order not sustainable in law. The consequential addition by reducing income to Rs.29,79,000/- treating the same as income from undisclosed sources is grossly wrong and hence be deleted.

4. That the Ld. Lower authorities has erred in making addition of interest accrued on KVP at Rs.24,800/-

5. That the appellant craves leave to add, alter and amend or to modify any grounds on or before the date of hearing.”

3. Brief facts relating to this issue are that the assessee is an individual. She declared total income of Rs.1,09,762/- and net agricultural income of Rs.23,30,400/- in the return of income filed on 26.07.2007. Case picked up for scrutiny followed by serving of notice u/s 143(2) of the Act. Ld. AO called for various details in order to explain net agricultural income of Rs.23,30,400/-. In response the assessee submitted that she owns 11 acre agricultural land used for harvesting and she has also taken on lease 170 acres of land for farming and doing agricultural operation from Jal Sansadhan Department, Jhansi Division, Urai in U.P.

Details of agricultural produce were failed. However, in view of the Ld. AO assessee failed to discharge the onus of agricultural activities since details of crop grown on leasehold land was not provided. Thus, the assessing officer treated agricultural income of Rs.29,79,000/- as income from other sources observing as follows:

“The assessee has not fully discharged the onus of agricultural activities being carried out by her. No details were produced in respect of crop grown on leasehold land. Looking at all this and taking into account that the assessee owns 11 acres of agricultural land & also taken on lease 170 acres of land from irrigation Department, through no evidence of agricultural operations carried on that land as given, agriculture crop warehouse receipts in the name of the assessee worth Rs.16.35 lacs, in all fairness, gross agricultural income if taken at Rs.16,35,310/- then after deducting expenses to the extent of 40% the net agricultural income could be taken at Rs.9,81,186/- also, if land used for agriculture taken as 181 acres, it would be fair and reasonable to allow Rs.5000/- as agriculture income per acre of agriculture land which comes to Rs.9,05,000/-. Therefore, looking at the facts of the case, agriculture income in the case of the assessee is assessed at Rs.9,05,000/- and remaining agricultural receipts of Rs.29,79,000/- (Rs.38,84,000-Rs.0,05,000) is added to the total income of the assessee as income from undisclosed sources which is declared in the name of agricultural income so as to claim it as exempt.”

4. Aggrieved assessee preferred an appeal before the Ld. CIT(A) against this addition but failed to succeed, since the action of the Ld. Assessing Officer was confirmed by the ld. CIT(A) as follows:

6.2 I have carefully considered the facts of the case, the assessment order and the submission of the appellant. From the submissions given by the appellant, it is seen that most of the submissions are reiterations of the submissions given to the

A.O. during the time of assessment proceedings and which have been discussed in detail in the assessment order which is reproduced above. The A.O. had given detailed observations and reasons why the agricultural income shown by the appellant was to be treated as income from undisclosed sources. For example, in Page 8 of the assessment order, the A.O. had pointed out that the appellant has not produced complete and full documentary evidences to justify the claim of agriculture income .

The appellant had stated that it has taken 170 acres sewage farm from Adhishasi Abhiyanta, Jhansi Division on which agriculture operations was carried out. The A.O. had categorically stated in the assessment order that apart from this certificate no other documentary evidence has been produced by the assessee to justify agricultural operations. During the course of appeal proceedings also the appellant was asked to submit further evidence with regard to agricultural operations on this lease land taken Jhansi Division. However, no evidence was produced by the appellant. It may also noticed that as stated by the appellant this is a sewage farm and it is not clear as to kind of agricultural products are being grown in the sewage farm and no evidence has been submitted by the appellant with regard to the same.

6.4 The A.O. on page 9 of his assessment order has stated that the appellant was unable to produce an evidence in support of the crop grown and the payment received. Also, the assessee was unable to 'produce any evidence with regard to the inputs like seeds, pesticides labour expenses, fertilizer, electricity and diesel bills. Other discrepancies which were pointed out were in terms of the recording of sale of agricultural produce in which figures were wrongly taken.

6.5 Regarding the difference in stock the appellant was not able to give any explanation or details of the crop wise quantity produced. The deposits in the bank account of the appellant had no link/connection with the deposit made on account of agricultural income receipts. Even then the A.O. had taken

gross agricultural income of Rs.16,35,310/- in accordance with the agricultural crop warehouse receipts in the name of the appellant. He had allowed expenses to the extent of 40% of the net agricultural income of Rs. 9,81,186/-. Thereafter, he allowed Rs. 5,000/- as agricultural income per acre of the agricultural land and assessed the agriculture income in the case of the appellant at Rs. 9,05,000/-. Therefore, he accepted the agricultural income of Rs.9,05,000/- and added the remaining agricultural receipts of Rs. 29,79,000/- as income from undisclosed sources in view of no evidence being produced by the appellant to substantiate his claim.

6.6 Looking to the complete facts of the case and the submissions, and also due to the fact that inspite of giving several opportunities given to the appellant to give concrete evidence with regard to the agricultural operations under taken by it, especially in the land taken on lease by the appellant, the view taken by the Assessing Officer in his assessment order of allowing agriculture income of Rs. 9,05,000/- is considered reasonable. The remaining amount of Rs. 29,79,000/which is held by the A.D. to be income from undisclosed sources is confirmed. Therefore, the grounds of appeal 2 to 5 are dismissed.

5. Aggrieved assessee is in appeal before the Tribunal. At the outset, Ld. counsel for the assessee requested for setting aside the issues raised in this appeal to Ld. CIT(A) for afresh adjudication by submitting that the assessee's claim of earning agricultural income of Rs.20,45,500/- during the assessment year 2006-07 has been accepted by the Ld. CIT(A) vide appellate order dated 11.12.2018. Since the facts are similar and the agricultural land owned by assessee in her own name and taken on lease from Jal Sansadhan Department, Jhansi Division, Urai in U.P. are the same then the

claim of the assessee for A.Y.2007-08 ought not to have been rejected.

6. Ld. counsel for the assessee also referred to various details filed in the paper book pertaining to sale of agricultural produce for assessment years 2006-07 & 2007-08 along with the quantitative details of stock remaining unsold as on 31.03.2006 which was subsequently sold duly F.Y. 2006-07 i.e. A.Y. 2007-08.

7. Per contra, Ld. Departmental Representative(DR) vehemently argued supporting the orders of both the lower authorities but was fair enough in not objecting the request made by the Ld. counsel for the assessee of restoring all the issues to Ld. CIT(A) for afresh adjudication.

8. We have heard rival contentions and perused the records placed before us. We observe that the assessee owns 11 acre of ancestral agricultural land at Village- Ikhlaspora, Distt.-Urai in U.P. which is used for harvesting and earing agricultural income. Assessee also took on lease 170 acres of agricultural land from Jal Sansadhan Department, Jhansi Division, Urai in U.P. Assessee has placed various details in support of the fact that regular agricultural operation were carried on the self-owned and leasehold land. Similar agricultural operation were also carried out in the past year i.e. A.Y. 2006-07. Records shows that for A.Y. 2006-07 also assessee's claim of earing agricultural income at Rs.20,45,500/- was adjudicated by the assessing officer treating is as income as

undisclosed sources. Against this action the assessee filed an appeal before the Ld. CIT(A) and succeeded. Ld. CIT(A) deleted the addition of Rs.20,45,500/- thereby accepting the assessee's claim of agricultural income at Rs.20,45,500/- observing as follows:

4.1 Ground No 1 :- Through this ground of appeal the appellant has challenged the addition of Rs.20,45,500/- on account of agriculture income treating the same as income from other undisclosed sources. The appellant carried out agricultural activity on 234 acre of agriculture land during the year under consideration. The details of land is as under :-

कृषि भूमि स्वामी	ग्राम	क्षेत्रफल
सीवेज फार्म जल संस्थान उरई	बघौरा	86
सीवेज फार्म जल संस्थान उरई	इखलासपुर	84
श्री संजय सिंह उर्फ धर्मवरी सिंह यादव	इखलासपुर	15
श्रीमती मालती पत्नी यदुवीर सिंह	इखलासपुर	12
श्री कुंवर सिंह यादव पुत्र राधेलाल यादव	इखलासपुर	26
श्रीमती शोभना यादव(स्वयं)	इखलासपुर	11
	कुल	234

In support of claim of agricultural activity, the appellant furnished the following documents.:-

1. Copy of Khasras for agriculture farm at Urai (UP) for 2 years
2. Copy of Certificates issued by S.E. Jal Sansthan, Urai (UP)
3. Copy of Bank account showing the payment of rent to Sewage Farm, Urai (UP)
4. Copy of fertilizer and other expenses bill
5. Copy of Rent Agreements for agricultural land other than farm at Urai (UP)
6. Copy of affidavits of Kanwar Singh, Satya Veer Singh and Malti Yadav, confirming land let-out for agriculture.
7. Copy of receipts for Rs. 50,000/- (25000+25000) for taking

sewage farm on lease
8. Copy of land Photographs.

During the year under consideration the appellant has shown the agricultural receipt of Rs. 21,00,500/- from different agriculture commodities. The bifurcation of the same is under :-

फसल का नाम	विक्रय की गई फसल की मात्रा (क्विंटल)	राशि
मटर	957.64	641960
सरसों	71.4	121380
मसूर दाल	270.78	853391
तिली	1452	390706
ज्वार	79.59	93063
कुल	1527.41	2100500

The appellant has carried out agricultural activity in 246 acres of agricultural land. It will be appropriate to adopt Rs. 25,000/- per acre agricultural income. Therefore, the total net agricultural income of the appellant is at Rs. 58,50,000/- (234 X 25,000). The appellant had shown agricultural income of Rs. 12,30,286/-. The AO has not brought out any material on record which suggests that the appellant is doing any business other than agriculture activity. In the case of International Forest Co. vs. CIT (1975) 101 ITR 721 (J&K) it has been held that AO cannot proceed to make an arbitrary addition and base his conclusion purely on guess work. He ought to have related his estimate to some evidence or material on the record as it is now well settled that if the profits shown by the appellant in his return are not accepted it is for the taxing authorities to prove that the appellant has made more profits than returned. Here the AO failed to bring on record anything which shows that appellant has earned profit other than agriculture activity. The AO has not made any enquiry and arbitrarily made the addition.

The Hon'ble M.P. High Court in the case of CIT Vis Navin Patni

(2011) 17 ITJ 195 held that, the party had proved agriculture land, agriculture operation and gross receipts minus expenses. So the Hon'ble court stated that assessing authority has not brought any evidence or material against assessee and not proved that claim made by the assessee is fabricated and given judgment in favor of assessee.

The appellant submitted all details. Therefore, the addition made by the AO amounting to Rs.20,45,500/- is deleted. Therefore, the appeal on this ground is allowed.

9. We, further observe that during the course of appellate proceedings for A.Y. 2007-08, assessee had made detailed submissions with the specific receipt no., name of crop, value of crop. Assessee has also filed quantitative details of agricultural produce during the F.Y. 2005-06 and F.Y. 2006-07 along with stock in hand as on 31.03.2006. It has been claimed before us by the Ld. counsel for the assessee that the closing stock as on 31.03.2006 was sold during the F.Y. 2006-07 relevant to A.Y. 2007-08 which is a main source of agricultural income during the year under appeal. Examining the facts in totality, we observe that the Ld. CIT(A) in his appellate order for A.Y. 2006-07 after considering the facts and details filed by the assessee had accepted the claim of the assessee showing agricultural income of Rs.20,45,500/-. Since the facts are similar for A.Y. 2007-08 which *inter alia* includes the agricultural land owned by the assessee as well as taken on lease coupled with the details of receipts of sale of agricultural produce then in such circumstances the view taken by Ld. CIT(A) in the impugned appellate order needs afresh adjudication.

10. We, therefore, in the given facts and circumstances of the case, and in the interest of justice and fair play, accept the assessee's request and restore all the issues raised in the instant appeal to the file of Ld. CIT(A) for afresh adjudication who shall also take the basis of the finding of Ld. CIT(A) in his appellate order in the case of assessee dated 11.12.2018 relating to assessment year 2006-07 and decide accordingly as per the provision of law. Needless to mention that proper opportunity of being heard should be provided to the assessee. Thus, the finding of Ld. CIT(A) is set aside and grounds raised by the assessee are allowed for statistical purposes.

11. In the result appeal of the assessee is allowed for statistical purposes as per the terms indicated hereinabove.

The order pronounced in the open Court on 21.01.2020.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 21st January, 2020

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore