

आयकर अपीलुीय अधलकरण, 'डी' नुयायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'D' BENCH: CHENNAI**

शुी एन.आर.एस. गणेशन, नुयायलक सदसुय एवं  
शुी रमित कुओर, लेखा सदसुय के समकुष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND**  
**SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No.741/Chny/2017**

नुधररण वरुष / **Assessment Year: 2008-09**

Shri S. Elango,  
C/o. Shri S.Sridhar, A.S.Sriraman,  
Advocates  
New No.14, Old No.82, Flat No.5,  
1<sup>st</sup> Avenue, Indira Nagar, Adyar,  
Chennai-600 020.

v. The Dy. Commissioner of  
Income Tax,  
Central Circle-III(1),  
Chennai.

**[PAN: AACPE 6397 G]**

(अपीलरुथी/ **Appellant**)

(प्रतुयरुथी/ **Respondent**)

अपीलरुथी कुी ओर से/ Appellant by

: Mr. S.Sridhar, Adv.

प्रतुयरुथी कुी ओर से /Respondent by

: Ms.R.Anitha, JCIT

सुनवरुई कुी तारुीख/Date of Hearing

: 14.11.2019

घुुषणरु कुी तारुीख /Date of Pronouncement

: 10.02.2020

**आदेश / O R D E R**

**PER RAMIT KOCHAR, ACCOUNTANT MEMBER:**

This appeal filed by assessee is directed against appellate order dated 13.02.2017 passed by learned Commissioner of Income Tax (Appeals)-19, Chennai (hereinafter called "the CIT(A)"), in ITA No.290/10-11 for assessment Year (ay) 2008-09, the appellate proceedings before learned CIT(A) had arisen from assessment order dated 30.12.2010 passed by learned Assessing Officer (hereinafter called "the AO") u/s.143(3) of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The grounds of appeal raised by assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Chennai (hereinafter called "the Tribunal") read as under:-

*"1. The order of The Commissioner of Income Tax (Appeals) 19, Chennai dated 13.02.2017 in I.T.A.No.290/2010-11 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.*

*2. The CIT (Appeals) erred in partly sustaining the assessment of agricultural income under the head 'income from other sources' in the computation of taxable total income without assigning proper reasons and justification.*

*3. The CIT (Appeals) failed to appreciate that having noticed the history of the case with regard to the generation of the agricultural income and its acceptance in those earlier Assessment Years, the restriction of the claim of such income at Rs. 10,000/- per acre for the purpose of sustaining the balance as income from other sources was wrong, erroneous, unjustified, incorrect and not sustainable in law.*

*4. The CIT (Appeals) went wrong in recording the findings in this regard in para 5 of the impugned order without assigning proper reasons and justification.*

*5. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.*

*6. The Appellant craves leave to file additional grounds/arguments at the time of hearing."*

3. Briefly stated the facts of the case are that the assessee is engaged in the business of real estate and property developers. The only effective ground raised by assessee is with regard to assessment of agricultural income declared by assessee to the tune of Rs. 10,20,708/- in the return of income filed with Revenue, which was brought to tax by AO as income from unexplained sources under the head 'Income from Other Sources'.

The assessee submitted before the AO copy of Pasali, wherein, it is mentioned that crops such as casuarinas, coffee, pepper and cardamom are grown. However, no details of yield is mentioned in the said Pasali and in view of that the AO was of the view that quantum of receipts through sale of these crops cannot be ascertained. The AO also observed that assessee has not furnished details of the receipt of the sale proceeds, such as the date of sale, mode of payment, date of receipt of payment, name and address of the purchaser to whom the sales were made etc. . The AO rejected claim of the assessee to treat said income as agriculture income and the same was brought to tax as income from un-explained sources under the head 'Income from other sources' by AO vide assessment order dated 30.12.2010 passed by AO u/s 143(3) of the 1961 Act.

4. The assessee being aggrieved by an assessment framed by AO u/s 143(3) vide assessment order dated 30.12.2010, filed first appeal with learned CIT(A) who was pleased to partly allow appeal filed by assessee vide appellate order dated 13.02.2017, by holding as under :

*"4. The assessee had claimed an amount of Rs.10,20,708 as agricultural incomes. The assessee owns about 21 acres of dry land near Salem and the ownership of the said lands has been accepted by the Hon'ble ITAT earlier. The assessee is a real estate and property developer based out of Chennai and could not have become an agriculturist by himself. At best, he could have been an absentee landlord expecting income from far off lands. In this regard, the AR has made the following written submission.*

*In addition to the submissions of the Appellant dated 11.2.2025, it is humbly submitted with respect to the issue of claim of agricultural income, pursuant to the order of the ITAT in the earlier AYrs, the said claim of the Appellant was allowed in full by the AO and the*

*relevant assessment orders passed in terms of section 254 r.w.s. 143(3) of the Act are enclosed herewith. Further the details with regard to the Income and expenditure of the agricultural activities along with Chitta and Adangal extracts produced before the AO during the course of the assessment are also enclosed herewith. Further the appellant has also placed on record the scrutiny orders for the AYrs.2012-13, 2013-14 & 2014-15 wherein the claim of agricultural income was allowed in full. In such circumstances, the Appellant pleads for allowing the same in full in the interest of justice.*

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*5. The submissions are further considered. Assessee has not given any details of crops sown and harvested. The details of agricultural operations conducted with purchase of seeds, manure or pesticides have not been given. Assessee is not able to show a single rupee of expenditure incurred either by means of bank transaction or any purchase voucher maintained. Assessee has claimed the entire receipt in cash and the source of said cash receipt has also not been revealed. It appears that the assessee is trying to pass off his otherwise cash incomes as agricultural income. However, assessee has proved the ownership of land. In view of the same, assessee is given the benefit of having received Rs.10,000 per acre of dry land as absentee land lord of lands in Salem District. AO is directed to allow an amount of Rs,2,10,000 as agricultural income and bring the balance of Rs.8,10,708 as unexplained income from other sources."*

5. The assessee being aggrieved by an appellate order passed by learned CIT(A), filed second appeal with tribunal and it was submitted before the Bench by learned counsel for the assessee that Ld.CIT(A) has admitted that assessee is engaged in agricultural operations and the assessee is owning 21 acres of agricultural land near Salem. It was submitted that in assessment year 2009-10, the Ld.CIT(A) was pleased to allow 50% of the income declared by assessee as an agriculture income derived from said land and when the matter came up before tribunal in second appeal filed by assessee, the tribunal was pleased to allow 75% of the income declared by assessee as an agriculture income. The Ld.DR objected to the

same and submitted that 21 acres of agricultural land could not yield that much quantum of agricultural income. Our attention was drawn by learned DR to Page No.20 of the Paper Book, wherein, assessee has submitted 'agricultural income and expenditure account' for the financial year 2007-08(ay: 2008-09) and the assessee is showing lease rent from Padappai lands and Kolli Hills . It was submitted by learned DR that 21 acres of land cannot yield such a high Revenue/income. The learned DR has placed on record some clippings downloaded from internet prepared by one 'Jagdish Reddy' wherein it is claimed that black pepper can yield profit of only Rs. 1,65,000/- per acre in 8 years, to justify her stand that the assessee is declaring higher income as agriculture income, which as per learned DR is infact income not derived from agricultural operations but is an income from unexplained sources.

6. We have considered rival contentions and perused the material on record. We have observed that similar issue came up before Chennai-tribunal for ay: 2009-10 in assessee's own case , wherein after considering contentions of both the parties and perusing material on record , tribunal was pleased to hold that 75% of the income declared by assessee to be an income from agricultural , vide its orders in ITA No.1031/Mds/2014 dated 07.10.2016 , by holding as under:

*5. The first ground relates to restricting the claim of agricultural income at 50% of Rs.18,33,002/-. In the return of income, the assessee has claimed agricultural income at Rs.18,33,002/-. Since the assessee has not carried out any agricultural operation, the Assessing Officer treated the above income as "income from unexplained sources" and brought to tax.*

5.1 On appeal, after considering the submissions of the assessee and by following the decision of Coordinate Bench of the Tribunal in assessee's own case for earlier assessment years in I.T.A. Nos. 1507 to 1511/Mds/2011 dated 06.06.2013, wherein it was held that once the assessee has proved the holding of the agricultural lands, to presume that no agricultural income was derived therefrom was unfair, the Id. CIT(A) has restricted 50% of the income of Rs.18,33,002/- as income derived from the said land holdings and sustained balance 50%.

5.2 Before us, the Id. Counsel for the assessee has contended that the Id. CIT(A) was not correct in restricting the agricultural income and pleaded that the disallowance of 50% of agricultural income should be treated as income from agriculture. On the other hand, the Id. DR supported the order of the Id. CIT(A).

5.3 We have considered both the sides, perused the materials available on record and gone through the orders of authorities below. The assessee has claimed agricultural income at Rs.18,33,002/-. Since the assessee was engaged in the business of real estate, the Assessing Officer has held that the assessee cannot be considered as a cultivator or receiver of rent in kind as per the definition under section 2(14) of the Act and made the disallowance by treating the above income as income from unexplained sources. It is not disputed that the assessee was holding agricultural land to claim agricultural income. In this case, the assessee has claimed agricultural income in the form of lease rent receipt in respect of the agricultural lands at different places. Against the appeals filed by the assessee for earlier assessment years, the Tribunal vide its order dated 06.06.2013 has held that once the assessee has proved the holding of the agricultural lands to presume that no agricultural income was derived therefrom was unfair. However, in the absence of complete details with regard to deriving of income from the said lands, the Id. CIT(A) allowed 50% of the income of Rs.18,33,002/- as income derived from the said land holdings and sustained the balance disallowance.

5.4 The main dispute of the Department is with regard the income from the lands at Kollu Hills and Ulagankathan village. The above location of the land holdings are not situated in metro city so that the lease-holder can execute agreement or of any kind and the assessee can produce the same before the authorities below. We have carefully considered the appellate order and assessment order passed by the authorities below on this issue. When the agricultural land held by the assessee was not disputed, it cannot be held that there was no income from the above said agricultural land holdings. Since the Id. CIT(A) restricted the disallowance on estimated basis in the absence of material evidence for the income earned by the assessee, we are of the considered opinion that the disallowance sustained by the Id. CIT(A) is on higher side and it has to be reasonably reduce the disallowance sustained by the Id. CIT(A). Accordingly, we allow 75% of the income of Rs.18,33,002/- as income derived from the said land holdings and the Assessing Officer is directed to disallow the balance 25%. Thus, the ground raised by the assessee is partly allowed. "

6.2 Respectfully following the aforesaid appellate order dated 07.10.2016 passed by tribunal in ITA No.1031/Mds/2014 for ay: 2009-10 and in order to maintain consistency , we allow 75% of the income to the tune of Rs. 10,20,708/- declared by assessee as agricultural income , by relying on

the decision of the Hon'ble Supreme Court in the case of Radhasoami Satsang v. CIT reported in (1992) 193 ITR 321(SC) in order to maintain consistency. We note that learned CIT(A) accepted agriculture income from said lands held by assessee to the tune of Rs. 10,000/- per acre for impugned ay and Revenue has neither filed any appeal nor filed any cross objections against the said decision of learned CIT(A) accepting agricultural income partially from said land to the tune of Rs. 10,000/- per acre. Thus, the appeal filed by assessee is partly allowed as indicated above. We order accordingly.

7. In the result, the appeal filed by the assessee in ITA No. 741/Chny/2017 for ay: 2008-09 is partly allowed as indicated above.

Order pronounced on the 10<sup>th</sup> day of February, 2020 in Chennai.

**Sd/-**

(एन.आर.एस. गणेशन)

**(N.R.S. GANESAN)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

(रमित कोचर)

**(RAMIT KOCHAR)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 10<sup>th</sup> February, 2020.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF