

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD òSMCö BENCH

**Before: Shri Sandeep Gosain, Judicial Member  
And Shri Amarjit Singh, Accountant Member**

**ITA Nos. 1644 & 1645 /Ahd/2018  
Assessment Year 2003-04 & 2004-05**

Shri Vithalbhai H. Patel, C/o Sarvodaya Hospital, Dabhan Bhagol, Tal. Nadiad Kheda-387320 PAN: ADOPP1428N (Appellant)	Vs	The ITO, Ward-4, Nadiad (Respondent)
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**Revenue by: Shri G.C. Daxini, Sr. D.R.  
Assessee by: Ms. Urvashi Shodhan, A.R.**

Date of hearing : 02-03-2020  
Date of pronouncement : 04-03-2020

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

These two assessee's appeals for A.Y. 2003-04 & 2004-05, arise from order of the CIT(A)-2, Vadodara dated 06-04-2018, in proceedings under section 143(3) r.w.s. 147 r.w.s. 254 of the Income Tax Act, 1961; in short òthe Actö.

2. These two appeals of the assessee pertained to different assessment years are based on similar issue of identical facts, therefore, for the sake of

convenience, both these appeals are adjudicated together by taking facts of the ITA No. 1644/Ahd/2018 as lead case and its finding will be applicable to the other case i.e. ITA No. 1645/Ahd/2018.

3. All the grounds of appeal filed by the assessee are pertained to the issue of addition of Rs. 4,56,911/- made by the assessing officer on account of showing excess agricultural income of production of kismis.

4. The fact in brief is that the assessment order u/s. 143(3) of the Act r.w.s. 147 of the act was passed on 22<sup>nd</sup> Dec, 2006. In the return of income, the assessee has shown agricultural income of Rs. 12,81,686/-. The assessing officer has restricted agricultural income to the extent of Rs. 2.5 lacs and balance amount of agricultural income to the extent of Rs. 10,31,686/- was added to the total income being income from other sources. The Id. CIT(A) has sustained the aforesaid addition. The ITAT vide its order in ITA 1043 & 1044/Ahd/2010 dated 28-08-2015 has set aside the issue of agricultural income for re-examination to the file of the assessing officer. Thereafter, the assessing officer has completed assessment u/s. 143(3) r.w.s. 147 r.w.s. 254 of the act on 30<sup>th</sup> December, 2016. During the course of assessment, the assessee was asked to justify the source of agricultural income along with documentary evidences. The assessee has submitted agricultural land holding documents and other detail related to agricultural income. On perusal of the detail submitted by the assessee, the assessing officer noticed that assessee has shown total income of Rs. 24,50,645/- including kismis income of Rs. 21,59,111/-, other agricultural income of Rs. 2,91,534/- and claimed expenses of Rs. 11,68,959/- resulting

into net agricultural income of Rs. 12,81,686/-. The assessing officer has stated that only issue which was to be decided was the income shown from kismis of Rs.21,59,111/-. The assessee has submitted that entire sale of kismis during A.Y. 2003-04 was out of the closing stock of the last assessment year 2002-03 and no new production was generated during the year under consideration. For assessment year 2003-04, the assessee was having opening stock of 42,243 kg. kismis and no production of kismis was made during the year. Out of the said opening stock, the assessee had made sale of 28,194 kg kismis leaving closing balance of kismis at 14,050 kg. As per certificate 7/12, the assessee was having land around 70 acres and as per certificate no. 12 around 18 hectares of land was used for cultivation of grapes during the year under consideration and the remaining 45 acres of land was used for cultivating other items like Amla etc. The assessing officer has stated that out of the opening stock of kismis of 42,244 kg. as on 1<sup>st</sup> April, 2003 the assessee had sold 28,370/- kg. of kismis on various dates during the financial year relevant to the year under consideration at the price ranging from minimum of Rs. 60 to maximum of Rs. 100 to the amount of Rs. 21,59,390/- as reproduced at page no. 4 of the assessment. The assessing officer has stated that the average rate of the sale price comes to Rs. 76.11. To verify the rates quoted by the assessee, the assessing officer has issued notices u/s. 133(6) of the Act to the Director of National Research Centre for grapes, Pune (which works under Indian Council of Agricultural Research, Government of India). As per the information received, it was reported that in Hiraj Village, District Solapur the production of grapes was around 15 to 16 per tonnes/ acre and kismis yield was 4 to 4.10 tonnes/acre and average rates of kismis was around 55 to 60 per kg. as provided by the

National Research Centre for Grapes and the income from the sale of kismis was worked out by the assessing officer at Rs. 17,02,000/- (28,370 kg x Rs. 60/-). Accordingly, the assessing officer has computed total net agricultural income at Rs. 8,24,775/- as against total net agricultural income of Rs. 12,81,656/- shown by the assessee and difference of Rs. 4,56,911/- was treated as income earned from undisclosed sources and added to the total income of the assessee.

5. The assessee has preferred appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee reiterating the facts reported by the assessing officer. During the course of appellate proceedings before us, the Id. counsel has contended that ITAT has set aside the case to the file of assessing officer to examine the issue of land holding. The Id. departmental representative contended that ITAT has set aside the case to the file of assessing officer for deciding afresh in the light of the submission of land holding made by the assessee and as per facts and circumstances of the case and in accordance with law.

6. We have heard both the sides and perused the material on record. As per para 16 of the ITAT order dated 28<sup>th</sup> August, 2015, it is stated that the issue in the present case was about the agricultural income earned by the assessee and the assessing officer while making addition had noticed that assessee did not furnish any evidence of carrying out agricultural operation. The Co-ordinate Bench has also referred the certificate of land holding furnished by the assessee which required to be re-examined by the assessing officer by the above observation, the case is remitted to the file of assessing

officer for deciding the issue afresh. During the course of set aside proceedings, it is reported that as per certificate 7/12 the assessee was having total land holding around 70 acres and as per certificate No.12, the assessee has used 18 acres of land for cultivation of grapes and 45 acres of land was used for cultivating other items like Amala etc. During the year out of opening stock of kismis of 42244 kg the assessee had sold 283370 kg of kismis on various dates at the sale price in the range of Rs. 60/- to Rs. 100/- per kg. for total amount of Rs. 21,59,390/-. The assessing officer has computed the average rate of sale price at Rs. 76.11 per kgs. To verify the genuineness of the sale price quoted by the assessee, the assessing officer has collected information u/s. 133(6) of the act from the Director National Research Centre for Grapes Pune. The National Research Centre has informed the yield of kismis per acres in that area reported above in the order with sale price between Rs. 55 to 60 per kg.. Therefore, the assessing officer has computed total income from sale of kismis of Rs. 17,02,200/- after taking highest rate of Rs. 60 per kg reported by the Director, National Research Centre for Grapes, Pune and difference of Rs. 4,56,911/- was treated as income earned from undisclosed sources. In the light of the above facts and findings, it is observed neither the assessee has given the break up and supporting detail of different varieties and quantities of kismis produced and sold during the year at different rates and nor the assessing officer has given the detail of kind of varieties to which the rates in the range of Rs. 55 to 60 per k.g are to be applied. In view of the facts and circumstances, we observed that it will be appropriate to take average of the rate as per the rate quoted by the assessee and average rate adopted by the assessing officer at Rs. 67 per kg. (Rs. 76 + Rs. 58). After taking average of rate adopted by

the assessee and average rate adopted by assessing officer at Rs. 67 per kg the total income from sale of Rs. 28,370 kg of kismis is determined at Rs. 1900790/- (28370 x67) as against sale price of kismis adopted by the assessee at Rs. 21,59,111/-, therefore, we restrict the disallowance to the extent of Rs. 2,58,321/- as against disallowance of Rs. 4,56,911/-made by the assessing officer. Therefore, this appeal of the assessee is partly allowed.

ITA No. 1645/Ahd/2018

7. Without reiterating the facts as cited above while adjudicating the appeal of the assessee vide ITA No. 1644/Ahd/2018 the total disallowance in the case of assessee is determined at the average of the two averages rates adopted by the assessee and adopted by the assessing officer at Rs. 74.52 + 57.5 @ Rs. 66 per kg. Therefore, the sale price of 10560 kg of kismis is determined at Rs. 6,96,960/- as against sale price of Rs. 7,86,960/- adopted by the assessee. Accordingly, the addition of income from undisclosed sources is restricted to Rs. 90,000/- as against Rs. 1,53,360/- determined by the assessing officer. Therefore, this appeal of the assessee is also partly allowed.

8. In the result, both the appeals of the assessee are partly allowed.

Order pronounced in the open court on 04-03-2020

**Sd/-**  
**(SANDEEP GOSAIN)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 04 /03/2020**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

आदेश कललम अषत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलअ अधकरण,  
अहमदाबाद