

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'SMC-1' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1128/Del./2018
(Assessment Year : 2013-14)**

**ITA No.1129/Del./2018
(Assessment Year : 2014-15)**

Shri Jagat Singh,
185, North Civil Lines,
Muzaffarnagar.

vs. ITO, Ward 1 (2),
Muzaffarnagar.

(PAN : DBKPS9675H)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri P.C. Yadav, Advocate
REVENUE BY : Shri R.K. Gupta, Senior DR

Date of Hearing : 03.03.2021

Date of Order : 10.03.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in the inter-connected appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. Appellant, Shri Jagat Singh (hereinafter referred to as 'the assessee') by filing the present appeals sought to set aside the impugned orders dated 01.03.2017 & 14.11.2017 passed by the

Commissioner of Income-tax (Appeals), Muzaffarnagar qua the assessment years 2013-14 & 2014-14 respectively on the identical grounds inter alia that :-

“ITA NO.1128/Del/2018

‘1. That delay in filing appeal may very kindly be condoned as the appellant was hospitalized.

2. That ITO & CIT (A) erred on facts in disallowing agricultural income shown by the appellant at Rs.4917000/- & restricting it to Rs.2417000/- by ITO & Rs.3042000/- by CIT (A).

3. That order of ITO & CIT (A) may please be set aside.

ITA NO.1129/Del/2018

1. That ITO & CIT (A) erred on facts in disallowing agricultural income shown by the appellant at Rs.5558000/- & restricting it to Rs.43087000/- by ITO & Rs.3558000/- by CIT (A).

2. That order of ITO & CIT (A) may please be set aside.”

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee e-filed return of income at an income of Rs.2,03,000/- & Rs.2,13,600/- and agricultural income of Rs.49,17,000/- & Rs.55,58,000/- for AYs 2013-14 & 2014-15 respectively. During scrutiny proceedings, Assessing Officer (AO) questioned the agricultural income claimed by the assessee at two places, one situated at Village Chausana, District Shamli qua measuring 53 bighas and assessee had given this land on lease at an income of Rs.9,000/- per bigha, which has not been disputed and second chunk of land measuring 250 bighas situated at Village Ahmadpur Grant, Tehsil & District Haridwar claimed to have

taken by the assessee on lease at Rs.1,000/- per bigha has been disputed, AO disputed the quantum of income earned by the assessee from this land @ Rs.11,500/- per bigha being on higher side. Declining the contentions raised by the assessee, AO estimated income of the land measuring 250 bighas situated in District Haridwar to the tune of Rs.2,500/- per bigha and framed assessment at the total income of Rs.27,03,100/- & Rs.14,63,600/- by making addition of Rs.25,00,000/- & Rs.12,50,000/- for AYs 2013-14 & 2014-15 respectively.

4. Assessee carried the matter before the Id. CIT (A) by way of filing appeals who has partly allowed the appeals by confirming the addition to the extent of Rs.18,75,000/- & Rs.12,50,000/- for AYs 2013-14 & 2014-15 respectively. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Undisputedly, assessee has claimed to cultivate the land of 250 bighas taken on lease @ Rs.1,000/- per bigha which has not been questioned by the AO. It is also not in dispute that AO as

well as Id. CIT (A) have declined to accept the quantum of income claimed to have earned by the assessee from this land @ Rs.11,500/- per bigha being highly inflated. It is also not in dispute that both AO as well as Id. CIT (A) have proceeded to restrict the agricultural income @ Rs.2,500 per bigha and @ Rs.5,000/- per bigha respectively purely on the basis of estimation and guesswork. It is also not in dispute that assessee has claimed to have sown two crops, namely, wheat and rice in the land in question.

7. In the backdrop of the aforesaid facts and circumstances of the case, the sole question arises for determination in this case is :-

“as to whether assessee has earned agricultural income of Rs.11,500/- per bigha qua land measuring 250 bighas taken on lease situated at Village Ahmadpur, District Haridwar?”

8. Challenging the impugned order passed by the Id. CIT (A), Id. AR for the assessee contended inter alia that AO as well as Id. CIT (A) have not examined the record viz. copy of khasra of Haridwar land, copy of fasli khasra, copy of affidavit of persons who have purchased wheat and rice from the assessee; that assessee has made a specific request to the Addl. CIT that some Revenue official may be deputed to Haridwar land for physical verification as was done for Chausana land; that Addl.CIT during assessment proceedings for AY 2014-15 directed the AO to estimate the income from Haridwar land to Rs.5,000/- per bigha,

though not agreed upon by the assessee; that no third party would adduce false evidence in favour of the assessee; that AO has not preferred to enforce the attendance of the witnesses and relied upon the judgments of **Hon'ble Supreme Court in CIT vs. Orissa Corp. 159 ITR 78 (SC)**, **Hon'ble Allahabad High Court in Sheo Narian Duli Chand 72 ITR 766 (All.)**, **Nathu Ram Premchand vs. CIT 49 ITR 561 (All.)**, and **coordinate Bench of the Tribunal in case of Mukesh V Prajapati vs. ITO in ITA No.2118/Ahm/2007**.

9. However, on the other hand, ld. DR for the Revenue to repel the arguments addressed by the ld. AR for the assessee contended that since the land in question was taken by the assessee at nominal lease rent and was submerged with water i.e. inundated, the same cannot produce the highly inflated agricultural income @ Rs.11,500/- per bigha and thereby relied upon the orders passed by the AO as well as ld. CIT (A).

10. Ld. AR for the assessee drew our attention to pages 1 to 3 of the paper book giving complete justification and computation of agricultural income as intimated to the AO during assessment proceedings and during the appellate proceedings before the ld. CIT(A). Assessee vide letter dated 10.02.2017, available at pages 5 & 6 of the paper book, given the name of three persons whose

agricultural income was assessed during AYs 2009-10, 2011-12 & 2012-13. Assessing the agricultural income by the AO as well as ld. CIT (A) @ Rs.2,500/- and Rs.5,000/- per bigha respectively, they have taken into account quality of agricultural land being not upto mark as it is described as jalmagan land (in undated) and that no details / supporting evidences have been provided in respect of expenses and sale proceeds.

11. So far as question of land in question treated as jalmagan (inundated) by AO as well as CIT (A) is concerned, ld. AR for the assessee drew our attention towards fasli khasra prepared by the land Revenue department on the basis of physical inspection after rabi and kharif crop, available at page 24 of the paper book, which goes to prove that the land is shown as duly cultivated for paddy & crops during kharif and rabi period. This fasli khasra was issued on 03.09.2013. Needless to say that this fasli khasra has been provided to the AO during assessment proceedings.

12. Ld. DR for the Revenue drew our attention towards Annexure 'A' annexed with the assessment order which is Udran Khatauni in which land in question is recorded as Rajwaha Jalmagan Bhoomi. No doubt, this Annexure 'A' was also provided by the assessee to AO but was issued on 07.05.2010 and cannot be found relevant for the years under consideration i.e. 2013-14 &

2014-15 particularly when assessee has made a specific request to the AO as well as Id. CIT (A) for physical inspection of the land in question to check its quality but AO has not preferred to make any physical inspection rather proceeded to estimate the income on the basis of guesswork.

13. Fasli khasra brought on record by the assessee, available at pages 24 & 25 of the paper book, is an official document prepared by the Revenue department on the basis of physical inspection in due course of their duties and as such, presumption of truth is attached to the same. So, the same cannot be thrown into dustbin merely on the basis of conjectures and surmises. So, the contention of the Id. DR that land in question was jalmagan bhoomi is not sustainable.

14. Secondly, it is the case of the AO/CIT(A) that assessee has failed to submit any documentary evidence to support the agricultural income. Ld. AR for the assessee drew our attention towards affidavits filed by the persons to whom agricultural produce sold by the assessee, available at pages 16 to 25 of the paper book, wherein all the deponents have stated on oath that they have purchased the agricultural produce viz. paddy, horticultural produce, etc., which have also not been taken into account by the AO. Merely estimating the agricultural income on the basis of

khatoni which is not relevant to the years under assessment is not sustainable in the face of fasli khasra for the period under consideration showing regular cultivation of paddy and wheat in the land in question. AO has ignored all these documents for the reasons best known to him.

15. Perusal of fasli khasra brought on record by the assessee got duly corroborated with evidence in the form of affidavits filed by the persons who have purchased the agricultural produce from the assessee and the fact that since the very beginning assessee has been requesting the Revenue Authorities to conduct physical inspection of land in question so as to actually assess its quality and production capacity. AO has not even preferred to examine the persons who were engaged in the agricultural production by the assessee and also not examine the persons who have purchased the agricultural produce from him during the year under consideration.

16. When all the documents have been brought on record by the assessee during assessment proceedings but not examined by the AO assessee cannot put again and again in the same assessment proceedings and all the documents relied upon by the assessee presumed to have been accepted by the AO. Even, at no point of time, assessee has been directed by the AO to produce the concerned persons who have facilitated cultivation of the

agricultural land and purchased the agricultural produce from the assessee.

17. Furthermore, when we examine all these facts in the light of the fact that Addl.CIT during assessment proceedings of Assessment Year 2014-15 directed the AO to estimate the agricultural income from the land taken on lease @ Rs.8,000/- per bigha as per letter dated 09.12.2016, this fact goes to prove that without examining the documentary evidence brought on record by the assessee, Revenue authorities are estimating the agricultural income at their whims and fancies.

18. In view of what has been discussed above, we are of the considered view that the assessee has duly brought on record the entire evidences to prove agricultural income @ Rs.11,500/- per bigha per annum and has not inflated its income. All the documents have gone unrebutted on the part of the Revenue authorities. Consequently, both the appeals for AYs 2013-14 & 2014-15 filed by the assessee are allowed.

Order pronounced in open court on this 10th day of March, 2021.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 10th day of March, 2021.
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Muzaffarnagar.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.