

अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी मंजूनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.1062, 1063, 1064, 1065, 1066 & 1067/Chny/2018
निर्धारण वर्ष /Assessment Years: 2008-09 to 2013-14

The Income Tax Officer,
Non-Corporate Circle-14(3),
Chennai.

M/s. Prabhu Dhananjayan
(HUF),
Vs. 18/1, Sourastra Nagar,
II Street, Choolaimedu,
Chennai – 600 094.
[PAN: AAEHP 4043G]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by : Shri G. Chandrababu, Addl. CIT
प्रत्यर्थी की ओर से /Respondent by : Shri T.R. Sarathy, C.A
सुनवाई की तारीख/Date of Hearing : 24.02.2021
घोषणा की तारीख /Date of Pronouncement : 10.03.2021

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

These six appeals filed by the Revenue are directed against the orders of the learned Commissioner of Income Tax (Appeals)-14, Chennai dated 09.06.2017 and pertain to assessment years 2008-09 to 2013-14.

2. For the sake of convenience, the facts from the assessment year 2012-13, in ITA No.1066/Chny/2018 has taken, wherein the AO has discussed in the assessment order in detail. We find that the facts of remaining other appeals also similar.

3. The brief facts of the case for assessment year 2012-13 are that the assessee is a HUF and he is carrying agricultural activity by growing mango fruits and selling the same in South East Asian countries as well as local market. The assessee had filed return of income for the assessment year 2012-13 on 30.03.2013 declaring taxable income of Rs. 2,84,754/- and agricultural income of Rs. 29,81,938/-. In support of the agricultural income, the assessee has submitted an income and expenditure statement and also the balance sheet. In the assessment order, the AO has noted that the assessee is exporting mangoes from his own garden and purchasing and selling the same and showing it as his agricultural income. The assessee has submitted before the AO that he has not purchased mangoes from the market to export the same but he is only exporting the mangoes that are grown from his own mango garden. The AO has also raised one more doubt that the assessee has not maintained any record that what is the total tonnage of mangoes grown in his mango garden and therefore, he is of the opinion that as per the report of the District Collector, Thiruvallur which is based on the

National Horticulture Board that the average yield for tree which is around 15 years of age is shown 120 to 150 KG per tree. Applying the outer limit of the said yield range 150 KG per tree, the assessee could have a best produce of 90 tons of mangoes as against the 168.3 tons shown by him. Thus, there is a difference of 78.3 tons of mangoes which can be safely inferred to have been purchased by the assessee from local market.

4. On appeal before Ld. CIT(A), it was submitted that the assessee is in the cultivation of mangoes and whatever mangoes cultivated from his mango garden were exported to Malaysia and Singapore and submitted that the entire activity of the assessee has to be treated as an agriculture activity and sale proceeds received from export of the mangoes has to be treated as an agricultural income. It is also submitted before the Ld. CIT(A) that the AO without establishing the facts simply is having a doubt that the assessee may be purchasing some of the mangoes from the local market and estimated the agricultural income which is not correct. He also submitted the report given by the District Collector, Thiruvallur based on the National Horticulture Board, the AO came to the conclusion that the 15 acres of mango garden can produce only 90 tons of mangoes as against actual production of the mangoes by the assessee is 168.3 tons. The above observation made by the AO without there being any

basis, the mango production is based on the soil, weather and variety of mango, depending upon all these facts, mango yielding varies from place to place even within district itself. Therefore, the report given by the District Collector, Thiruvallur based on the National Horticulture Board cannot be a conclusive proof and he has submitted that the entire sale proceeds has to be treated as agricultural income.

5. The Ld. CIT(A) after considering the detailed explanation given by the assessee stated that the entire sale proceeds by the assessee cannot be treated as a business income and allowed the appeal filed by the assessee. For the sake convenience, relevant portion of the order is extracted as under:

“6.3 Firstly, the expected yield from 15 acres of garden would be only 90 tons (i.e. @ 6 tons per acre) as against 7.5 to 11 tons yield per acre shown by the Appellant in the six years under appeal.

6.4 Secondly, the post harvesting activities undertaken by the appellant i.e. grading, packing, exporting the mangoes to foreign countries to fetch higher prices is a commercial activity, and hence any income contributed by these activities, cannot be considered as agricultural income. Hence the AO considered and disallowed a substantial portion of the agricultural income claimed by the appellant and brought the same to tax.

6.5 The above views of the AO are not correct. As rightly submitted by the appellant, the agricultural income means income derived from the cultivation of agricultural crops. The income derived from the sale of agricultural produce is also agricultural income. The sale of the produce need farm level. It is the choice of the farmer to choose the place and method of sale. He can sell the produce in the field itself, or he can take the produce to the agriculture market for sale or he can -store the produce for longer periods of time and then sell at a later date. It is the choice of the farmer to choose the method and the way of marketing his produce. The intention of the farmer is to get the maximum price for his produce. The Dept: cannot expect the farmer to sell his farm produce in a particular way or at a particular place.

6.6 Thus, the activity of the 'agriculture' doesn't stop, once the crop is harvested. It continues till the farmer sells his produce by any means in the market place whether in India or abroad, as long as the produce is kept in the form of the original produce itself.

6.7 Suppose the farmer converts his agricultural produce into a different product, by using a production or manufacturing process; the profit attributed for such a conversion, will not constitute agricultural income. But, as long as the agricultural produce does not undergo any production or manufacturing process, the farmer's activity till he sells his produce remains agricultural activity.

6.8 For example, if the farmer uses his mangoes for the production of mango pulp or mango juice and markets such pulp or juice, it is not an agricultural activity, because the product produced in the / farm (mangoes) gets changed to a different product (pulp or juice), and the income attributable for such conversion is non-agricultural income and liable for tax.

6.9 In the appellant's case what is produced by the appellant is mango fruits. The appellant has not subjected the fruits to any manufacturing or processing activity. The appellant instead of selling the fruit in the local market exported the mangoes to a different country and sold the same. The mango fruits produced by the appellant is sold in the same form. Hence, this sale price represents the 'sale of agricultural produce, which in turn constitutes agricultural income under the Income Tax Act. The place and price at which the produce is sold cannot alter the character of the income, as long as the produce remains an agricultural produce in its original form.

6.10 The AO's contentions that the appellant had been exploring the export market by a series of activities and thus becomes an entrepreneur and hence the activity becomes business activity is not correct. A farmer always aims at producing higher yield (produce) and sells the same at an appropriate market to maximise his profits. When a farmer starts growing a commercial crop for the purpose of marketing the produce, the farmer becomes an entrepreneur and the activity which is aimed at maximizing his returns, cannot be termed as a business activity, since the basic source of the activity is agriculture. Thus it retains the character of agricultural income and gets exemption under the Income Tax Act.

6.11 To understand the above in a better way, one has to go into the basics of the nature of agriculture. The Agriculture is basically of two types — Subsistence Agriculture (Cultivation predominantly for one's own/family consumption) and Commercial Agriculture (Cultivation predominantly for marketing). In the present days, the farmers have totally shifted from Subsistence agriculture to Commercial agriculture. Cultivation of certain crops like cotton, sugar cane, tobacco etc. is

totally commercial, because they are meant for personal consumption of the cultivator and are meant for marketing alone. Yet, cultivation of all these crops is agriculture and income derived from such cultivation is agricultural income and exempt from tax.

6.12 Any innovative ideas, technologies employed, the methods, modes and strategies adopted by the agriculturist to market his agricultural produce and all other steps, strategies and activities undertaken by the agriculturist for obtaining better price for his produce, though appear to be entrepreneurial activities, is part and parcel of his agricultural activity.

6.13 In the present appellant's case, since the appellant's agricultural product (mangoes) remained unchanged throughout the period and is finally sold in the same form (as mangoes only); all the activities undertaken by the assessee i.e. grading, packing, exporting the mangoes to overseas markets, constitute agricultural activity and the entire income derived thereby, constitutes agricultural income and is exempt from tax.

6.14 The next issue to be seen is regarding the expected yield of mangoes from the appellant's mango garden. As per the contention of the AO, the expected mango yield from the appellants 15 acres of mango garden will be to the extent of 6 tonnes per acre as against 7.5 to 11 tonnes per acre, shown by the appellant in different years. For this purpose, the AO relied on various statistical data published by the governmental agencies etc, wherein the national, state and district average yield were reported at an average of 150kg per tree, which works out to six (6) tons per acre. Hence the AO considered only 90 tonnes as the possible mango yield from 15 acres and disallowed the balance claim.

6.15 The above view of the AO is not correct. As rightly pointed out by the appellant, the average yield always gives a distorted picture. These statistics is the average of all the mango gardens which include gardens of different age groups ranging from two (2) years to seventy (70) years, and also gardens that are scientifically nourished, and gardens that are totally neglected. In the appellant's case, the appellant's garden is a well maintained and scientifically managed garden of prime age of about 20 years. Hence the yield of the appellant is always higher than the average yield.

6.16 In India, in general, mango trees are grown with little or no maintenance. This type of garden gives a relatively low yield/income year after year with no/little maintenance. Majority of the mango gardens in India fall under this category. But that does not mean the mango trees do not require any maintenance. The mango trees or any other agricultural produce respond well to the management like regular cultivation, fertilization, plant protection, soil replenishment and other practices. Once the farmer pays higher attention, the yield will go up to

the optimum level potentiality and also produces good yield regularly year after the year, unlike the gardens with little or no maintenance. Therefore, the yield of a well maintained/managed mango garden is always much higher than the national/state/district average yield. In such a case, one has to see the yield potentiality of the varieties grown in the garden, and not the average national/state/district yield.

6.17 Further, the varieties grown by the appellant is Banganapalli and Himampasand which are high yielding varieties compared to the shy (irregular) bearers like Malagoa etc. Further, a well- maintained mango garden, in its prime age, can yield up to 24 tons per acre in a year.

6.18 On an average, a normally maintained mango orchard gives the yield at the range of 5 to 9 tons per acre, per year. (Source: Publications of National Horticulture Board {nhb.gov.in/reportfiles/mango/MANGO.htm}), It should be noted here, that, these are only average yield and not the yield potentiality, which would be much higher than the average yield. Normally, mango plants start bearing at the age of 3-4 years, and the yield may be as low as 10-20 fruits (2-3kg) per tree, rising to 50-75 fruits (10-15kg) in the subsequent years, and to about 500 fruits (1 00kg) in its tenth year. in the age group of 20-40 years, a tree bears 1000-3000 fruits (200-600kg) in a year. The productive age of a grafted mango tree is usually upto 40-50 years, after which the yield of mango trees decline (Source: Publication {<http://www.agrifarming.in/mango-farming>}). Normally 40 trees per acre are planted. Hence yield @ 200 to 600 kg/tree results in 8 to 24 tonnes per acre.

6.19 The above publications also broadly reveal that the yield of mango varies greatly depending upon the variety of the fruit, the managerial skills of the farmer, water availability and agro-climatic conditions prevailing in the region, fertilization, plant protection, soil replenishment and other cultivation & practices etc. Again, it should be noted that there are enough instances, where the farmer with his skills and resources has beaten the climatic and regional considerations dramatically and reaped more than double the average yield consistently.

6.20 Further, the appellant is well educated and has lot of passion for agriculture, especially for horticultural crops. He has been attending lot of seminars/workshops/trainings etc. for updating and improving his knowledge in agriculture. Therefore, the appellant being an enterprising agriculturist and coupled with his good resources and high skill, has made his mango garden a model garden, where the yield is at the peak of their potentiality depending on the variety (Banganapalli/ Himampasand).

6.21 In view of the above stated detailed discussions, I am of the considered opinion, that the appellant's yield is not abnormal and very much realistically possible due to his hard work, scientific management and better utilization of the resources. In fact, the appellant's incurring of high farm expenses itself, is an evidence of managing the garden in a

better and scientific manner with good inputs like fertilization, tilling, irrigation, soil replenishment, plant protection etc.

6.22 It is also important to mention here, that in the normal course, the expected mango sales per acre on an average will be around Rs 50,000/- to Rs 75,000/- of the farmer sells the mangoes at 'faiâr1'evei. Nearly 20% will be the annual expenditure, resulting in a net profit of Rs.40,000/- to Rs. 65,000/- per acre. The same produce, in the same conditions, if brought to the market and sold to the final consumers, it will normally fetch double price. Further, if the produce is properly graded and packed in neat packing material, it will fetch still better price. If the produce is exported to foreign markets, it will fetch still a higher price. Therefore, the appellant's export sale of mangoes and realizing sale price at 6 times than that of local farm level sales, cannot be considered as abnormal or unrealistic. Of-course, in each level there will be additional expenditure to be incurred by the farmer. In fact, the existence of higher expenditure by the appellant for these respective activities, itself is an indication and evidence, that the appellant had actually engaged in these activities and realized higher sale price for his produce (mangoes). It is not out of context to mention here that, in the assessment order, the AO himself has observed that the assessee has resorted to out of box thinking, studied and explored the international markets carefully and has identified suitable markets to export, invested huge money in advance on packing material and freight, required for exporting mangoes to abroad, and has been exporting mangoes on a regular basis from year to year, to these countries. All these activities have added value in realising higher sale price for the mangoes produced by the appellant. Hence no adverse inference can be drawn in this regard.

6.23 The next issue to be examined is the document submitted by the appellant to the bank, while availing the loan. In the financial year 2006-07, the appellant submitted a month-wise estimation of purchases and sale of mangoes before obtaining a loan, Based on this document, the AO opined that the assessee was indulging in purchase of mangoes outside the books of accounts and showing the same as his own produce. Before me and the AO, the appellant submitted that, it was only an estimation made for the purpose of availing a higher loan facility from the bank, and the figures in the letter are only presumed and estimated ones, as if such volume of mangoes are to be procured from the open market.

6.24 The above submissions of the appellant seem to be correct. There are no evidences brought on record to show, that the appellant had actually purchased mangoes in any of the years under consideration. Though the appellant in its letter to the bank showed the entire cost as "purchases" on an estimated basis, in reality, most of the expenditure incurred (or to be incurred) by the appellant is on account of packing material costs, export (transportation) charges and labour (grading and packing charges). These expenses alone constitute about 60-80% of

the total costs. The balance represents cost of producing the mangoes by the appellant.

6.25 The AO has not brought on record any concrete or corroborative evidence, to show that the have been purchased from the open market at the price mentioned in the documents submitted to the bank by the appellant since it was only an estimation submitted by the appellant to the bank to obtain a higher loan facility In the absence of any corroborative evidence collected by the AO no adverse inference can be drawn on account of the above document given to the bank.

6.26 In any case, as detailed in the foregoing paras, the appellant's 15 acres of mango garden is capable of producing the mangoes exported by the appellant, during the years under consideration.

6.27 In view of the above stated detailed reasons, I am of the considered opinion, that the appellant's 15 acres of mango garden is capable of producing the mangoes exported by the appellant, during the years under consideration. Moreover, the mangoes produced by the appellant in his garden have remained in the same form of mangoes and sold in the same form to the foreign countries. The entire activity starting from growing the mangoes, harvesting them, grading, packing and exporting them abroad, constitutes agricultural activity and the entire sale proceeds derived by the appellant is nothing, but agricultural income and exempt from tax u/s 10 (1) of the IT Act.

6.28 Hence the AO is not justified in coming to the conclusion, that the appellant's activity of export of mangoes is a commercial or business activity, and the income earned from the same needs to be treated as a business income.

6.29 As a result, the finding by the AO, that the agricultural activity undertaken by the appellant, is nothing but a business activity and that the same needs to be treated as a business income, is not factually and legally tenable, and hence not justified and needs to be set aside.

Therefore, the addition made by the AO on this ground for all the AY's under consideration on this issue is deleted."

On being aggrieved, The Revenue is in appeal before us.

6. We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below.

7. The assessee is having 15 acres of mango garden and he is cultivating the same and the yield from the mango garden exported to

Singapore and Malaysia. Accordingly to the AO, the assessee purchasing the mangoes apart from the production from his own mango garden exporting the same to Singapore and Malaysia, therefore he is of the opinion that the exporting activity carried by the assessee is a business activity and he estimated the agricultural income for acre is Rs. 35,000/- and remaining amount treated as a business income. In the assessment order, the AO has not established that the assessee is purchasing mangoes and exporting. We find that it is an assumption of the AO to come to the above conclusion without any material. The AO further came to the conclusion that the yielding from the assessee's mango garden cannot be more than 90 tons as against 168.3 tons, based on the report of the District Collector, Thiruvallur. This fact is examined by the Ld. CIT(A) at length and he gave a finding that the yielding of the mangoes depend upon the soil, maintenance, variety of mangoes and other aspects and the report of the District Collector is not a conclusive proof. We are fully agreeing with the Ld. CIT(A) on this count. We are also of the opinion that the report of the District Collect, Thiruvallur is not a conclusive proof. The Ld. CIT(A) has considered all the facts and came to the conclusion that the activity carried by the assessee is an agricultural activity and directed the AO to delete the addition. We find no reason to interfere with the order passed by the Ld. CIT(A).

8. In the result, appeal filed by the Revenue in ITA No.1066/Chny/2018 is dismissed.

9. As far as other appeals in ITA Nos. 1062, 1063, 1064, 1065 & 1067/Chny/2018 filed by the Revenue are concerned, the facts and issues are the same. Therefore, no separate adjudication is required for the above appeals. Thus, all the appeals in ITA Nos. 1062, 1063, 1064, 1065 & 1067/Chny/2018 filed by the Revenue are also dismissed.

10. In the result, all the six appeals filed by the Revenue are dismissed.

Order pronounced on 10th March, 2021 in Chennai.

Sd/-
(श्री जी मंजूनाथा)
(G. MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 10th March, 2021

EDN, Sr. PS

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