

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH
(Conducted Through Virtual Court)
Before: **Shri Rajpal Yadav, Vice President**
And **Smt. Annapurna Gupta, Accountant Member**

ITA No. 312/Ahd/2020
Assessment Year 2015-16

Jaydeep J. Patel (HUF), Nadiad PAN: AAAHJ9750Q (Appellant)	Vs	The ITO, Ward-1, Nadiad (Respondent)
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Revenue by: Shri Ajay Arti, CIT-D.R.
Assessee by: Shri Vartik R. Choksi, A.R.

Date of hearing : 02-12-2021
Date of pronouncement : 17-01-2022

आदेश/ORDER

PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-

The present appeal has been filed by the assessee against the order passed by the Ld. Principal Commissioner of Income Tax, Vadodara-2, (in short referred to as Pr. CIT), dated 03-03-2020, in exercise of his revisionary powers u/s. 263 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”).

The Registry has marked the appeal as delayed by 31 days. But it is noted that the appeal was filed on 10/06/2020. When, due to the pandemic of Covid-19, the limitation prescribed for filing appeals was extended till

further orders' by the Hon'ble Supreme Court vide its order dated 23/03/2020. Therefore, there is no delay as such in the filing of the appeal.

2. The brief facts relating to the case are that the assessee had filed return of income for the impugned assessment year, i.e. 2015-16 ,declaring total income of Rs. 18,98,080/- and agricultural income of Rs. 54,41,480/- which was accepted in scrutiny assessment made u/s. 143(3) of the Act vide order dated 22-11-2017. Thereafter on going through the assessment records, the ld. Pr. CIT noted the following errors in the order of the AO

1) that the Assessing Officer had failed to verify whether the claim of agricultural expenses was commensurate with the agricultural income.

As per the Ld.Pr.CIT the reasonable expenses should have been to the tune of 40% of the income , as per a decision of the ITAT Ahmedabad bench referred to by him,while it was very meager in the present case. He noted that while the total agricultural receipts were Rs.62,30,167/- ,40% of the same came to Rs.24,92,067/- while the assessee had shown only Rs.7,88,687/- He noted from the records that the assessee had incurred neither irrigation expenses nor electricity expenses and labor expenses claimed were also to the extent only 6.5% of the receipts, while as per the Ld.Pr.CIT the normal labor expenses was to the tune of 25% of the receipts.

He therefore was of the view that the failure of the Assessing Officer to examine the claim of expenses incurred by the assessee had led to the order passed by him being erroneous so as to cause prejudice to the revenue.

b) He further noted that the AO had merely accepted the claim of the assessee HUF of having received rent for utilization of agricultural land, Saanth, from Shri Rai Jaydeep Patel and Shri Tapan Jaideep Patel ,both specified persons u/s 40A(2)(b) of the Act, of Rs. 1,12,500/- each without any verification with documentary evidences

. For this reason also, he was of the view that the order passed by the Assessing Officer was erroneous causing prejudice to the revenue.

3. Accordingly, he assumed jurisdiction for revision of the order u/s. 263 of the Act and show cause notice was issued to the assessee. Due reply was filed by the assessee in response contending that both the issues,i.e of claim of agricultural expenses, agricultural income earned by the assessee and even the issue of Saanth received from the aforesaid two persons had been duly inquired into and examined by the Assessing Officer, who, on being satisfied with the replies filed by the assessee had accordingly accepted the claims so made by the assessee.

4. The Id. Pr. CIT however rejected the contention of the assessee and stated that both the issues ought to have been properly examined by the AO and outlined the manner in which the inquiries needed to be conducted by the Assessing Officer. He held that the failure of Assessing Officer to do so had rendered the assessment order erroneous so as to cause prejudice to the Revenue. Accordingly, he set aside the order of the Assessing Officer with directions to frame assessment

afresh after making proper inquiries/verifications and examining the accounts and records of the assessee. The relevant findings of the Id. Pr. CIT in this regard is at para 6 to 6.9 of the order is as under:-

“6. The submission of the assessee has been, carefully considered. The assessee has mainly contended incurred by the assessee are justifiable for the reason the by the AO at the time of proceedings Crop of Tobacco expenses to be incurred in to other the of 40% cannot be applied in the case of the assessee. The submitted that as it is following method of accounting, some of the pertaining to Agricultural Produce in A.Y. 2015-16, incurred booked in earlier year i.e. A.Y. 2014-15. However, the assessee did not provide any bifurcation of the expenses pertaining to different assessment years booked in another assessment year.

6.1 The officer was required to properly examine the following points to do so:-

i. The land holding in of the HUF members as per 8A certificate the crops cultivated as per 7/12 extracts for the above agricultural holding for the year under consideration i.e. F.Y. 2014-15.

ii. The detail of each crop cultivated on the above agricultural land in season.

iii. The yield of particular crop during the year under consideration i.e. FY. 2014-15 for that specific (area wise), alongwith some corroboratory by govt. or concerned authority of that respective area.

iv. The total quantity of produce of each crop in the case of assessee.

v. Verification of claim of sale of agricultural produce made by the assessee. The A.O. should have enquired u/s. 133(6)/131 from the parties to whom the sales have been made by the assessee.

vi. Considering huge claim of agricultural income, the AO should have asked the inspector to conduct spot enquiry on the field of the assessee to get the actual condition and genuineness of the claim made by the assessee.

6.2 On perusal of the case records it is seen that the assessee had itself submitted a chart showing year wise agricultural income and agricultural expenses. The chart is reproduced hereunder:-

<i>AY</i>	<i>Amount of Agriculture Receipts</i>	<i>Amount of Agriculture Expenses</i>
<i>2013-14</i>	<i>5060139</i>	<i>1514471</i>
<i>2014-15</i>	<i>4752552</i>	<i>1655239</i>
<i>2015-16</i>	<i>6230167</i>	<i>788687</i>
<i>2016-17</i>	<i>2439874</i>	<i>742982</i>

The figure of in the year under consideration is comparatively very low and the same is prima facie evident from the above chart itself. The same was required to

be verified in detail at the time of assessment of proceedings but the AO failed to do so. The Assessing Officer has not verified in detail, the issue of meager agricultural incurred by the assessee during the year under consideration. The AO has simply accepted the submissions put forth by the assessee and has not applied his mind on the rationale behind the reason of such low figure of expense. The assessing officer has also not drafted a comparative picture showing the comparison between the expenses and income shown in the previous year by the assessee. Further, the arguments put forth by the assessee before the undersigned are supporting facts and documentary evidences. The Assessing Officer was required to make in-depth verification of the Agricultural income and Expenses as shown by the assessee and also make comparative analysis of the expense incurred in the previous year along with the source thereof. The Assessing Officer was also required to cross check the claim of the assessee by issuing notice u/s. 133(6) to the local authorities/entities working on that area.

6.3 Further, on perusal of the case records it is seen that the assessee shown Rs. 2,25,000/- received from Shri Rai Jaydeep Patel and Shri Tapan Jaideep Patel (Rs. 1,12,500/- each) towards SANTH. Shri Rajiv Jaydeep Patel and Shri Tapan Jaydeep Patel are specified persons u/s. 40A(2)(b) of the Act. SAANTH is the rent for utilization of agricultural land given to someone for agricultural activities. The Assessing Officer was required to specific the land which was given on rent by the assessee in the assessment order, along with any documentary evidenced at time of assessment proceedings but the Assessing Officer failed to do so and only accepted the submission.

6.4 Assessing Officer was required to examine the claim of the assessee regarding Agricultural expenses and Rent Income at the time of assessment proceedings but the Assessing Officer has failed to do so. It is thus apparent that the order of the Assessing Officer was erroneous and it was prejudicial to the interest of the revenue as the claim of the assessee was accepted without proper verification.

7. The issues in the light of the in the preceding paras need to be verified. In view of the discussion the order is to have been passed by the Officer without enquiries, & verification of material on record.

8. In the of K.A. Ramaswamy Chettiar (220 ITR 657) the Hon'ble Madras Court held when the ITO is to make an enquiry of a particular item of income if he does not make an enquiry as expected, that would be a ground for the Commissioner of Income to interfere U/s.263 with the by the ITO is erroneous and prejudicial to the interest of the revenue

3.1 In the of case of Swarup Vegetable Products vs. Commissioner of Income Tax (1990) 187 ITR 412 (All), it was held by Hon'ble Allahabad High Court as uunder: -

"It is beyond dispute that, U/s. 263 of the IT Act, the CIT does have the power to set the assessment order and send the matter for a fresh if he is satisfied that further enquiry is necessary, and that the order of the ITO is prejudicial to the interest of the Revenue."

9. As per clause (a) to Explanation 2 to Section 263 of the Income Tax Act, an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if in the opinion of the Pr. CIT or CIT, the order is passed without making inquiries or verification which should have been made. In the instant case, the failure on the part of the A.O. with regard to examination/verification of the issues discussed in Para 6 herein above has rendered the assessment erroneous, in so far as, -it is prejudicial to the interest of revenue. Therefore, in exercise of the conferred by Section 263 of the Income-tax Act, 1961, Assessing Officer is set aside on the above discussed issues with the directions that the assessment should be framed afresh after proper enquiries/verification of the sources of investment in property and after examining the accounts and records of the assessee and after allowing reasonable opportunity of being heard to the assessee.”

5. We have heard both the parties and have also gone through the order of the ld. Pr. CIT and the documents referred to before us.

As noted in para 6.1 of the order of Pr. CIT, the assessment order was found erroneous since the AO was required to “*properly examine*”(italics provided by us) certain points relating to the claim of agricultural income, expenses and Saanth claimed to have been received by the assessee during the impugned year. As per the ld. Pr. CIT, the issue ought to have been “*properly examined*” on several aspects as noted therein beginning from the examination of the ownership of the land by the assessee HUF, the crop cultivated therein, the quantity of crop cultivated, the quantum of crop sold as also the expenses incurred. Similar is the error noted by the ld. Pr. CIT vis-à-vis the rental income earned (SAANTH) from letting out of agricultural land to two members of the assessee, HUF.

5.1 It has been demonstrated before us by the Ld.Counsel for the assessee and has not been denied by the Ld.DR that these very specific points ,raised by the Ld.Pr.CIT , stood examined during assessment proceedings.

Queries on all the specifically pointed out aspects of the earning of the incomes ,relating to agricultural income and SAANTH, was duly raised during assessment proceedings vide notice issued u/s. 142(1) of the Act dated 28-11-2016 and 07-09-2017 requiring the assessee to furnish proof of agricultural land, sale bills of agricultural produce, copy of accounts of agricultural income earned, name of the crop cultivated, to whom the produce was sold, quantity of produce sold, gross agricultural income received on account of sales, detail of agricultural expenses incurred along with supporting evidences as also details of income received on account of land amount of SAANTH substantiated with confirmation of person to whom the land was given. Due reply vis-à-vis all the above queries raised was filed by the assessee vide their letters dated 3-07-2017 and 18-09-2017 giving all the details along with supporting documents and evidences as required for. The notices issued by the Assessing Officer was placed before us at P.B and the reply of the assessee to those notices ,specific to the issues raised by the Ld.Pr.CIT, are reproduced at para 4 of the order of the Ld. Pr. CIT which is a reproduction of the reply filed by the assessee to the Ld.Pr.CIT during the revisionary proceedings before him.

5.2 Thus undoubtedly we find that all the points listed by the Pr. CIT on which proper inquiry needed to be carried out were inquired into during assessment proceedings including the land holding in the name of the assessee HUF, the details of the crops cultivated, the quantity of produce sold along with their sale bills, the details of expenses incurred along with their supporting evidences and also the confirmation of the SAANTH received ,were enquired into.

5.3 Further we have noted that the specific anomalies/discrepancies noted by the Ld.Pr.CIT in the documents on record, prompting him to conclude that the issue of agricultural income earned and SAANTH earned needed to be examined further,were all addressed by the assessee demonstrating that either explanation with regard to the same were furnished to the AO or pointing out that the discrepancy was baseless or were explained to the Ld.Pr.CIT during revisionary proceedings.And ,we find that the Ld.Pr.CIT ,without addressing these explanations/contentions of the assessee still proceeded to hold the assessment order erroneous for inadequate examination of the issues.

6. The ld. Pr. CIT, we have noted, emphasized the need for further/proper inquiry on the agricultural income returned finding the expenses incurred to be very low as compared to the other years . As per the show cause notice issued to the assessee the Ld.Pr.CIT noted no irrigation expenses to be incurred nor any electricity expenses if the

irrigation facility was of the assessee and he also found the labor expenses to be on the lower side being 6.5% of the sales when as per him the normal expenses were to the tune of 25% of sales. He also referred to a decision of the ITAT Ahmedabad Bench holding that 40% expenses were reasonable in agricultural activity while as per the chart submitted by the assessee the expenses were very low being only Rs.7.88 lacs as against agricultural income of Rs.62.30 lacs.

6.1 To all this , we find, that the assessee had pointed out that the absence of irrigation expenses/electricity expenses had been explained during assessment proceedings itself being on account of the fact that the assessee was cultivating Raw tobacco which required very little quantity of water and also hardly any pesticide ,the crop itself being a pesticide and further that since the members of the assessee HUF were engaged in agricultural activities the labor cost also was low. The assessee also explained to the Ld.Pr.CIT that the expenses for crops sold in the year were mainly incurred in the preceding year since the crop, i.e tobacco, grown by the assessee took a particularly long time to grow and the assessee accounted for the expenses on cash basis, therefore, the expenses reflected against its income for a year did not necessarily relate entirely to the income earned in that year and the income of a year was to be compared with the expenses incurred in the preceding year to arrive at a proper comparison. To this effect, he had pointed out also that there was no discrepancy in the percentage of

expenditure incurred in the preceding year as compared to the income earned in the impugned year, being approximately 30 to 40% of the same, which was in accordance with the comparative figures of the preceding year and succeeding years also. All the above finds mention in the letter addressed to the Ld.Pr.CIT reproduced at para 4 of the order.

6.2 Similarly, we find that in relation to the SAANTH earned by the assessee as stated above admittedly the Assessing Officer had conducted inquiries and asked for confirmation also from the members of the HUF who had paid the agricultural rent to the assessee HUF. Now, without pointing out any infirmity in the inquiry conducted by the Assessing Officer or any fact which the inquiry conducted revealed raising suspicion with regard to the transaction, the Id. Pr. CIT has merely stated that the issue needed to be further investigated in depth.

6.3 The AO therefore having examined the specific aspects of agricultural income/SAANTH pointed out by the Ld.Pr.CIT and the assessee also having addressed every discrepancy /anamoly pointed out by the Ld.Pr.CIT vis a vis the inadequacy of inquiry, there could not possibly have been any finding of error in the order of the AO without the Ld.Pr.CIT addressing/dealing and controverting the explanation of the assessee vis a vis the discrepancies noted. It is clear therefore that the Ld.Pr.CIT has failed to make out a case of

inadequate inquiry by the AO in the present case and the exercise of revisionary powers is simply based on the Ld.Pr. CIT taking a different view on the facts relating to the issues in question, as opposed to the Assessing Officer, without pointing out any infirmity in the view taken by the Assessing Officer. This is clearly beyond the ourview of section 263 of the Act.

7. The Hon'ble jurisdictional High Court has repeatedly held that it was not open to exercise revisionary powers merely on change of opinion. As pointed out by the Ld.Counsel for the assessee ,the said proposition has been reiterated in the following case laws:

Aryan Arcade Ltd.vs CIT (2017) 84 Taxmann.com 293

CIT vs R K Construction Co. (2008) 313 ITR 65(Guj)

8. Further the ITAT Ahmedabad Bench in an identical case where revisionary powers were exercised for directing detailed inquiry on agricultural expenses incurred ,held that where the AO had accepted agricultural income after conducting due inquiries no revision u/s 263 can be done and that it tantamounted to mere change of opinion for which revisionary powers cannot be exercised.Copy of the said order in the case of M/s Sitaram J Gavli ,Silvasa vs Income Tax Officer in ITA No. 1337/Ahd/2009 dated 31-12-2009 ,was placed before us.

In view of the above, we are convinced that there is no finding of error by the Ld.Pr.CIT in the order passed by the AO. The order passed u/s 263 is therefore set aside.

9. The appeal of the assessee is allowed.

Order pronounced in the open court on 17 -01-2022

Sd/-

(RAJPAL YADAV)
VICE PRESIDENT True Copy
Ahmedabad : Dated 17/01/2022

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / 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 अपीलीय अधिकरण,
अहमदाबाद