

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. A. D. JAIN, VICE PRESIDENT
AND
SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.1596/Del/2018
Assessment Year: 2014-15

ITO Ward- 21 (4) New Delhi	Vs.	Bikram singh Prop. 8/34, Mehram Nagar, New Delhi PAN No.ADKPS5232P
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. C. S. Aggarwal, Sr. Advocate
Respondent by	Ms. Alka Gautam, Sr.DR

Date of hearing:	16/03/2022
Date of Pronouncement:	16/03/2022

ORDER

PER A.D. JAIN, VP:

This appeal filed by the revenue is preferred against the order of the CIT(A)-7, New Delhi, dated 19.12.2017, pertaining to A.Y.2014-15.

2. The grievance of the revenue reads as under :-

1. "On the facts and under the circumstances of the case, Ld. CIT(A) has erred in law and facts in deleting the Capital Gain of Rs. 4,52,25,000/- ignoring that the property in whose respect capital gain of Rs. 4,52,25,000/- was added by AO in assessment order for A.Y. 2014-15 is not the same as property assessed to tax in A.Y. 2015-16."
2. "On the facts and under the circumstances of the case, Ld. CIT(A) has erred in law and facts in deleting the addition of Rs. 38,86,226/- as agricultural income ignoring that assessee failed to prove its initial onus to substantiate its claim in relation to agricultural income."
3. "On the facts and under the circumstances of the case, Ld. CIT(A) has erred in law and facts in deleting the disallowance of interest expenses of Rs. 77,95,075/- ignoring that netting off of interest expenses paid on overdraft with interest income FDR is not permissible as per IT Act"
4. "The appellant craves to be allowed to add any fresh ground(s) of appeal and / or delete or mend any of the ground(s) of appeal."

3. Representatives of both the sides were heard at length.

Case records carefully perused.

4. Underlying facts relating to the grievance raised vide Ground No.1 are that the AO had proceeded to make an addition of Rs.4,52,25,000/- allegedly representing an amount earned by way of short term capital gain, on the basis of 26 AS statement for F.Y.13-14, wherein, the AO noted that M/s. DLF Utilities Limited had deducted the tax at source of Rs.4,52,25,000/- on a sum of Rs.4,52,25,000/-credited to the account of the assessee.

5. On the basis of this information, the AO asked the assessee to furnish justification for not offering any income as capital gain. In its reply, the assessee explained that the transaction for sale of property with DLF Utilities Limited was for Rs.5,05,31,250/-, for which, the sale consideration was received after deduction of TDS @1%.

6. The sale deed was executed on 17.06.2014, which falls in F.Y.2014-15, relating to A.Y.2015-16. The submissions of the assessee did not find favour with the AO, who made the addition.

7. The assessee agitated the matter before the CIT(A) and explained the facts.

8. After considering the facts and the submissions, the CIT(A) held as under :-

4.2. I have carefully considered the assessment order and written submission filed by the Ld. AR. The addition had been made on account of deduction of TDS of Rs.4,52,250/- in the 26AS statement reported to be deducted u/s 194IA of the Act by M/s DLF Utilities Ltd. on 09.01.2014 on sale consideration of Rs.4,52,25,000/-. In the absence of any information submitted at the assessment stage the addition was made.

4.3. During the proceedings before me it has been submitted that there was no such sale of property in the previous year relevant to A.Y. 2014-15. The land was sold on 17.06.2014 and it was therefore assessable in A.Y. 2015-16 only. TDS had been deducted in parts however final payment/transaction was effect on 17.06.2014. Since the transaction does not pertain to the current year the same is deleted.

9. Before us, the DR supported the findings of the AO. However, she could not bring out any distinguishing fact and could not point out any factual error in the findings of the CIT(A).

10. Per contra, the Counsel for the assessee reiterated the facts which were stated before the AO and the CIT(A).

11. We have carefully considered the orders of the authorities below. There is no denial that the transfer of the property was made on 17.06.2014, pertaining to A.Y.2015-16. Since the transaction does not fall in the year under consideration, we do

not find any error or infirmity in the findings of the CIT(A). Ground No. 1 is, accordingly, rejected.

12. Facts relating to Ground No.2 are that the assessee had claimed having derived agricultural income of Rs.38,86,226/-.

13. The AO was of the opinion that the income from agriculture was grossly inflated, as the same was disproportionate to the expenses claimed.

14. The assessee was asked to give details of the crops raised and sold during the year, the area of land under cultivation and the details of agricultural expenses. On receiving no plausible reply, the AO concluded by holding that the reported income is not through the agriculture and accordingly made the addition of Rs.3886226/- as income from other sources.

15. The assessee agitated the matter before the CIT(A) and pointed out that he was into agricultural activities since A.Y.2010-11 and the same has been accepted till A.Y.2013-14.

After comparing the agricultural income shown in earlier years and finding the same as comparable with the income shown during the year under consideration, the CIT(A) deleted the disallowance.

16. Before us the Ld. DR strongly supported the findings of the AO. The Counsel for the assessee, on the other hand, furnished a chart of agricultural income shown and accepted in the earlier assessment years.

17. We have carefully considered the orders of the authorities below. We find that in A.Y.2010-11, the assessee has shown income of Rs.31,30,479/-, in A.Y. 2011-12, Rs.31,02,251/-, in A.Y.2012-13, of Rs.31,02,251/-, in A.Y.2012-13 of Rs. 32,38,827/-, and in A.Y. 2013-14, of Rs.21,99,533/-. In all these years, the agricultural income shown by the assessee has been accepted by the AO. We, therefore, do not find any reason for not accepting the same for the year under consideration too. Considering the past history, we decline to interfere with the findings of the CIT(A). Ground No.2 is, accordingly, rejected.

18. The underlying facts relating to Ground No.3 are that the assessee has claimed interest expenses of Rs.77,95,075/-, paid through overdraft, against fixed deposits, as deduction against interest income from FDRs. The assessee was asked to justify the claim of such deduction and to establish the nexus between the funds borrowed and those deposited in FDRs. On receiving no plausible reply, the AO disallowed Rs.77,95,075/-.

19. The assessee carried the matter before the CIT(A) and explained that a similar disallowance, made in A.Y.2013-14, has been deleted by the CIT(A), and further explained that in the immediately succeeding assessment year A.Y.2015-16, the AO himself has accepted the claim; and that after considering the facts, the CIT(A) held as under :-

6.2. I have carefully considered the assessment order and written submission filed by the Ld. AR. The appellant has claimed interest expenses of Rs.77,95,075/- paid on overdraft against fixed deposits as deduction against interest from FDRs. The appellant has submitted that the overdraft was used in the proprietary business M/s Loveline Enterprises and the overdraft facility was against the indicated FDRs only. The funds are utilized for business purpose only. The expenditure is therefore allowable u/s 57(iii) of the Act. In view of the submissions the addition on account of disallowance of interest expenses is deleted. This ground of appeal is ruled in favour of the appellant.

20. Before us, the Ld.DR supported the assessment order. The Ld. Counsel for the assessee brought to our notice that the assessee had been claiming deduction from A.Y.2009-10, which had been allowed in the earlier and later assessment years. The Ld. Counsel furnished a chart are as under :-

Assessment Year	Interest earned on FD	Interest paid on Overdraft	Difference shown as income	Treatment by AO under section 143(3)
2009-10	76,88,462	43,41,033	33,47,429	Allowed
2010-11	79,64,283	56,62,201	23,02,082	Allowed
2011-12	72,29,714	40,22,615	32,07,099	Allowed
2012-13	59,88,724	56,15,843	3,72,881	Allowed
2013-14	88,64,385	73,15,529	15,48,856	Disallowed
2014-15	1,42,94,609	77,95,075	64,99,534	Disallowed
2015-16	1,11,16,216	90,17,333	20,98,883	Allowed

21. Since similar claim has consistently been allowed since A.Y. 2009-10, and is also allowed in the immediately succeeding A.Y.2015-16, we do not find any reason as to why on an identical set of facts, disallowance has been made by the AO during the year under consideration. Considering the facts in totality, we do not find any reason whatsoever to interfere with the findings of the Ld.CIT(A). Therefore, Ground No.3 is also rejected.

22. In the result, the appeal filed by the revenue is dismissed.

23. The order is pronounced in the open court on 16.03.2022 in the presence of both the rival representatives.

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:- 16.03.2022

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(A.D. JAIN)
VICE PRESIDENT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	21.03.2022
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	