

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA Nos. 182 & 183/SRT/2018 (AY 2013-14 & 2014-15)
(Hearing in Virtual Court)

Sh. Thakorbhai Nathubhai Patel, 166 at Post Rumla, Kanbiwad, Tachikhli, Dist-Navsari PAN : ACBPP8642E Appellant	Vs	ITO Ward-5, Navsari Respondent
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Assessee by	None
Revenue by	Ms. Anupama Singla, SR. DR
Date of hearing	24.03.2022
Date of pronouncement	24.03.2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeals by the assessee has directed against the separate orders of Commissioner of Income Tax (Appeals-3), [in short 'Id. CIT (A)], Valsad, even dated 23.02.2018, for the Assessment Years (AYs) 2013-14 & 2014-05. In both the appeals, the assessee has raised the certain common grounds of appeal, certain facts in both the appeals are also common. Therefore, both the appeals were clubbed heard together and are decided by consolidated order. For appreciation of facts, the facts in AY 2013-14 are treated as lead case. The assessee in its appeal in ITA Nos. 182

&183/SRT/2018 (AY 2013-14) has raised the following grounds of appeal.

“1. The Ld. CIT(A) was not just and proper on the facts of the case and in law in confirming the action of the Ld. Assessing Officer in considering the whole of the Agriculture Income as Income from undisclosed sources and making addition accordingly.

2.The Ld. CIT(A) has erred in law in not deciding the appeal on merits on the basis of grounds of appeal and not passing an speaking order.

3. The appellant prays that

3.1 The Ld. CIT(A) may be kindly directed to hear the appeal as per law.

3.2 The Ld. CIT(A) may be kindly directed to decide the appeal on merits after allowing opportunity to the appellant.

3.3 Personal hearing may be granted.

3.4 Any other relief that your honours may deem fit may be granted.

4. The appellant craves leave to amend, alter or delete any or all of the above grounds of appeals and to add any new or additional ground of Appeal at the time of hearing.”

2. Brief facts of the case are that the assessee is an individual, filed his return of income for AY 2013-14 on 19.07.2013 declaring total income of Rs. 39,71,710/-. Total income declared by assessee consists agricultural income of Rs. 35,52,180/-.The case was selected for scrutiny. The Assessing Officer while passing the assessment order asked the assessee to furnish the details of agricultural activities carried out by him during the year under consideration. The assessee furnished chart showing agricultural income earned on sale of mangoes of Rs. 3,75,322/-, Rs. 3,75,322/- on sale of sugarcane and Rs. 74,905/- as other agricultural income.

Thus, aggregating of Rs. 35,52,180/-, the assessee also furnished copy of bill dated 15.10.2012 issued by Valsad Sahakari Khand Udhyog Mandli Ltd. about agricultural income of Rs. 31,01,953/-. The assessee also furnished copy of two Kabala Karar with Arvidhbai K. Patel and Ranchodbhai Patel. In agreement (Kabala Karar) the assessee has shown that he entered in agreement for cultivation of 15 Bhigas and 20 Bhigas land belonging to Arvidhbai K. Patel and Ranchodbhai Patel respectively which was taken on rent for agricultural activities from 01.10.2011 to 01.10.2016. As per the said agreement the assessee was required to pay Rs. 2,75,000/- and Rs. 3,50,000/- to both the persons respectively. The assessee was again asked to furnish the various details of agricultural activities carried out for the assessee. The Assessing Officer recorded that no bills and vouchers of expenses were furnished by assessee.

3. In order to authenticity of the agricultural land, the Assessing Officer issued summons under section 131 to Arvidhbai K. Patel and Ranchodbhai Patel. In response to Arvidhbai K. Patel and Bhadresh R Patel, Power of Attorney of Ranchodbhai Patel attended the hearing and their statement was recorded by Assessing Officer. On the basis of the statement of Bhadresh R Patel and Arvidhbai K.

Patel, the Assessing Officer recorded that there are inconsistencies in their statement. On the basis of recording certain discrepancies, the Assessing Officer again issue show cause notice dated 11.03.2016, pointing out of the fact. The assessee filed its reply dated 22.03.2016 and asked for the statement of Arvidhbai K. Patel and Mukesh Bhai. The Assessing Officer rejected the demand of assessing and noted that case is getting time barred and the assessment may collect the copy of statement after making payment of copying charges and the fixed hearing on 25.03.2016. The Assessing Officer noted that none appeared on behalf of the assessee on 25.03.2016. The Assessing Officer treated the entire agriculture income as unaccounted income from undisclosed sources and added to the income of the assessee.

4. Aggrieved by the additions the assessee filed appeal before Ld. CIT (A). The Ld. CIT (A) uphold the action of Assessing Officer in his ex-parte order dated 23.02.2018. The ld. CIT (A) while upholding the addition recorded that the notice dated 10.01.2017, 30.01.2017 and 16.02.2018 were served but none attending of on behalf of the assessee. The Assessing Officer further noted that in response to the first notice, the assessee requested for adjournment and adjournment was granted and next date of hearing was fixed on

09.03.2017. The ld. CIT (A) recorded that despite granting opportunity none appeared on behalf of the assessee, the ld. CIT (A) confirmed the addition by taking view that due to non-compliance on the part of the assessee, which leads to conclusion that he has no reason to differ with finding of the Assessing Officer.

5. Further aggrieved, the assessee has filed the present appeal before this Tribunal. At the time of filing appeal, Sh. S. K. Kabra, Ld. authorized representative of the assessee filed his authority letter. However, when appeal was listed for hearing on 7th June, 2021, Sh. S. K. Kabra, CA filed an application for withdrawal of his authority letter. Consequent upon application for withdrawal of authority letter, fresh notice was issued to assessee through RAPD, which was duly served on the assessee, as the AD card was received back with the signature of recipient, for the hearing fixed on 21.12.2021. Despite service of notice, none appeared on behalf of assessee on 21.12.2021 and again today i.e. on 24.03.2021. In these circumstances, we left no option except to hear the submission of Ld. Departmental representative (DR) for revenue and to decide to appeal on the basis of material available on record.
6. The ld. Sr. DR for the Revenue submits that the assessee is habitual defaulter in not making proper compliance to the notices issued to him either by lower authorities or by this Tribunal. The assessee

was given ample opportunities by the Assessing Officer but he failed to make complete compliance. Again the assessee was given three opportunity by Ld. CIT(A) as recorded in para 3.3 at page No. 10 of the order passed by the Ld. CIT(A). The assessee failed to comply with the notice issued by the Ld. CIT(A). The Ld. CIT (A) left with no option, except to affirm the action of AO. The ld SR DR for the revenue submits that the appeals of the assessee may be dismissed.

7. In alternative submission, the ld. Sr. DR for the Revenue submits that in case the Hon'ble Tribunal is deem appropriate to grant any more opportunity to the assessee, the assessee be directed to be vigilant and not to default in attending the proceedings and to waste the time of public authorities/ld.CIT (A).
8. We have heard both the submissions of Learned Departmental Representative (ld. Sr DR) for the Revenue and have gone through the order of lower authorities. We find that the Assessing Officer made addition on account of undisclosed income by treating the agricultural income as income from undisclosed source. We find that the ld. CIT(A) confirm the action of Assessing Officer by taking view that in absence of compliance he has no reason to differ with finding of Assessing Officer. We find that the Ld. CIT(A) fixed the hearing on varies date and ultimately fixed the hearing on 13.02.2018. It is recorded by ld. CIT(A) that no compliance was made by the assessee. However, find that the ld CIT(A) has not

recorded his satisfaction that the notice sent through speed post was duly served on the assessee or not for hearing fixed on 13.02.2018. We instead of going into controversy, whether the assessee defaulted in attending the proceedings despite service of notice or not, before the ld.CIT (A). We find that the order of the ld. CIT (A) is not in accordance with mandate of section 250(6) of the Income Tax Act. Section 250(6) of the Act mandates that the Ld. CIT (A) while deciding the appeal is required to pass order on points of determination (grounds of appeals), decision therein on and reasons for such decision. Therefore, considering the facts and circumstances of the case, the appeal of the assessee is restored back to the file of the ld. CIT (A) to decide all the grounds of appeal on merit in accordance with law. Needless to order that before passing the order the ld. CIT (A) shall grant fair opportunity of hearing to the assessee. The assessee is also directed to appear before the ld. CIT (A) as and when the date of hearing and to provide all necessary evidence and information without any further delay and not to seek the adjournment without any valid reasons. The assessee is further directed to provide his e-mail address and telephone number to make communication with him or his representative. The assessee shall file his latest address and e-mail

address and his telephone number or of his representative, within fifteen days of receipt of this notice in the office of assessing officer as well as before jurisdictional CIT(A). Accordingly the grounds of appeal by assessee are allowed for statistical purpose.

9. In the result, appeal of the assessee is allowed for statistical purpose.

ITA No. 183/SRT/2018 for A.Y 2014-15

10. Considering the fact that we have allowed the appeal of assessee for A.Y 2013-14 and restored the matter back to the file of Ld. CIT (A) therefore, appeal for A.Y 2014-15 is also allowed with similar direction.

11. Order pronounced on 24/03/2022, in open court and result was placed on notice board.

Sd/-

(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 24/03/2022

Ganesh Kumar

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Assistant Registrar, ITAT, Surat

		Date	Initial	
	Draft order was prepared by author himself			
	Draft placed before author			
	Draft proposed & placed before the second member			
	Draft discussed/approved by Second Member.			
	Approved Draft comes to the Sr.PS/PS			
	Kept for pronouncement on			
	File sent to the Bench Clerk			
	Date on which file goes to the AR			
	Date on which file goes to the Head Clerk.			
	Date of dispatch of Order.			
	Draft dictation sheets are attached			