

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "SMC" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.4132/Del/2019

[Assessment Year : 2014-15]

Kuldeep Katiyar, C/o-M.K.Bhatt & Co., 302, Triveni Complex, E-10/12, Jawahar Park, Laxmi Nagar, New Delhi-110092. PAN-AAVPK3800H	vs	ACIT, Circle-60(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	24.03.2022	
Date of Pronouncement	17.05.2022	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2014-15 is directed against the order of Ld. CIT(A)-23, New Delhi dated 14.03.2019. The assessee has raised following grounds of appeal:-

1. *"That the CIT (Appeals) has erred in law and on facts in confirming the order of assessment under section 143(3) of the Act, without appreciating the fact that the notice under section 143(2) was issued on the basis of "Limited Scrutiny under CASS" (Large agricultural income) which reason is not in accordance with the jurisdictional conditions as stipulated under section 143(2) and accordingly order passed under section 143(3) bearing dated 27-12-2016 is void ab initio.*
2. *That the CIT (Appeals) has erred in law and on facts in confirming the order of assessment under section 143(3) of the Act, without appreciating the fact that while making the addition of Rs. 13,07,933/- on account of alleged excess agricultural income and*

alleged expenses to earn the agricultural income, on the basis of conjectures and surmises, without objectively considering the replies of the appellant.

3. *That the CIT (Appeals) has erred in law and on fact in confirming the order of assessment under section 143(3) of the Act, without appreciating the fact that while making the addition of Rs. 13,07,933/-, an invalid and vague show cause notice was issued bearing date 19-12-2016, which has been taken as basis of impugned addition and therefore addition made on the basis of an invalid show cause notice is bad in law.*
4. *That the CIT (Appeals) has erred in law and on fact, in confirming the order of assessment under section 143(3) of the Act, without appreciating the fact that AO while making impugned assessment order has flouted the observations made by the Honorable Allahabad High Court in case of V.K. Packaging vs. TRO and others (266ITR 283) and passed the order in a hurry. Further, the impugned addition has flouted the fundamental policy of Indian law which say the following principles must be strictly followed in passing any order:*
 - a. *Judicial approach*
 - b. *Independent application of mind*
 - c. *Decision made should not perverse or irrational.*
5. *That the CIT (Appeals) has erred in law and on fact, in confirming the order of assessment under section 143(3) of the Act, and enhancing the assessed income by an amount of 4,49,990/- under section 251(l)(a) of the Act by travelling beyond the matters arising out of the assessment proceedings. The CIT (Appeals) has erred in law and on fact by examining a new source of income more particularly when separate provisions for such eventuality are enshrined in the Act, as the show cause given vide the order sheet entry made on 21-02-2019 clearly indicates that the same was given to tax unexplained credit under section 68 of the Act.*

6. *Appellant craves leave to add, alter, delete or modify any ground of appeal on or before hearing of the appeal.”*

2. At the time of hearing, no one appeared on behalf of the assessee. It is seen from the records that there is no appearance on behalf of the assessee. Notice sent through speed post has been returned back unserved by the Postal authority with remark “left”. The assessee has not provided any other address to the Registry. It was incumbent upon the assessee to provide correct address and any change was required to be notified to the Registry. Therefore, the appeal is taken up for hearing in the absence of the assessee.

FACTS OF THE CASE

3. Facts giving rise to the present appeal are that in this case, the assessee is an individual and is engaged as partner in the business of manufacturing of shoes under the name “Zoomtech Industries” who filed return of income declaring income at Rs.28,23,260/- on 24.03.2015. Subsequently, the case was selected for limited scrutiny through CASS. Notice u/s 143(2) of the Income Tax Act, 1961 (“the Act”) was issued and duly served upon the assessee. Another notice u/s 142(1) of the Act was issued on 31.05.2016 to the assessee. IN response to the statutory notices, Ld. Authorized representative of the assessee, Shri Amit Rastogi, CA appeared from time to time and furnished details/information/evidences which were placed on records. During the course of assessment proceedings in order to verify the correctness of income/expenditure claimed by the assessee, necessary documents/details were called for and examined accordingly. On perusal of the same, it was noticed that the assessee had claimed agricultural income of Rs.26,28,420/-. The Assessing Officer (“AO”) did not accept the quantum of agricultural income and restricted

the same on the basis of data collected from the website of Directorate of Economics and Statistics, Ministry of Agricultural and Family Welfare. Thereby, the AO treated the excessive agricultural income amounting to Rs.13,07,933/- as income from undisclosed sources.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who dismissed the appeal of the assessee and further made enhancement of income of Rs.4,49,990/-.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before the Tribunal.

6. The effective ground is against sustaining the addition of Rs.13,07,933/- treating the agricultural income as income from other sources and further enhancement of addition amounting to Rs.4,49,990/-.

7. Ld. Sr. DR, Sh. Om Parkash heavily relied on the orders of the authorities below and submitted that there is no infirmity into the assessment order and finding is based on statistical data.

8. I have heard the contention of Ld. Sr. DR and perused the material available on record. I find that the assessee produced certain evidences in support of his claim regarding earning of agricultural income. The AO without verifying the correctness of claim and rebutting the evidences based his finding on certain statistical data. No material is brought on record by the Revenue to rebut the claim of assessee, regarding having higher yield of crops.

9. In my considered view, the statistical data may reflect the trend but cannot be a conclusive proof regarding crop yield. There remains a sharp

decline and rise in the yield of crops influenced by various factors. The AO ought to have verified by making necessary inquiry about the correctness of claim of the assessee. No finding is given on the evidences filed by the assessee regarding the genuineness of evidences filed by the assessee. Hence, looking to the totality of facts, the addition was made purely on the basis of conjectures and surmises. Such action is not permissible under law. The Revenue ought to have brought adverse material on records to rebut the claim of the assessee. In the absence of such evidence, the impugned additions cannot be sustained. Hence, the AO is hereby directed to delete the addition. The grounds raised in the assessee's appeal are thus, allowed.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 17th May, 2022.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI