

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI**

**BEFORE SHRI KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA.NOs. 1502 & 1538/MUM/2020
(A.Ys: 2012-13 & 2013-14)**

Amjad Anwar Shahbazker 3 Fransesca, 14 Chimbai Road Bandra (W), Mumbai - 400050 PAN: AAOPS4981N	v.	DCIT – 13(1)(1) Room No. 218 Aayakar Bhavan, M.K. Road Mumbai - 400020
(Appellant)		(Respondent)

Assessee by	:	Shri Haresh P. Shah
Department by	:	Shri Mehul Jain
Date of Hearing	:	11.04.2022
Date of Pronouncement	:	15.06.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. These appeals are filed by the assessee against different orders of Learned Commissioner of Income-tax (Appeals)-21 [hereinafter for short "Ld. CIT(A)] dated 19.06.2017 for the A.Y.2012-13 and 2013-14.
2. The Assessee had filed these appeals with the delay of 931 days and had filed affidavit from the consultant, who was consulting assessee

as well as his family for past 20 years. In the affidavit, the consultant has submitted that he has represented the assessee before the assessing officer and First Appellate Authority. Due to his health condition and ill-health he could not file this appeal in time. Even the assessee has filed the affidavit stating that assessee is regularly filing the returns and declared substantial income. It was submitted that the delay is caused due to ill-health of the consultant and it was agreed that there is a substantial delay in filing the present appeal. For the sake of substantial justice, they relied on Hon'ble Supreme Court decision in the case of Collector, Land Acquisition versus MST Katiji and others. On the other hand, Ld DR opposed the above submissions and has vehemently argued that the delay should not be condoned because the delay caused is not properly explained, he relied on PCIT *v.* Vilson Particle Board Industries Ltd [423 ITR 65 (Bom)].

3. Considered the rival submissions and the affidavits submitted before us. We observed that there is substantial delay in filing this appeal and the reasons explained before us that this is due to negligence and ill-health of the consultant who was representing the assessee's case. No doubt the assessee as well as consultant had filed the affidavit explaining the inability and reasons for not filing the appeal in time. However, the

Hon'ble Supreme Court in the case of MST Katiji and others have expressed that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice being done because of a non-deliberate delay. Therefore, for the sake of substantial justice we are inclined to hear these appeals and accordingly condoned the delay.

4. Brief facts of the case are, the return of income (ROI) was filed by the assessee on 30.03.2014 declaring total income of ₹.64,17,020/- and claiming agricultural income at ₹.27,87,290/-. Subsequently, the case was selected for scrutiny and notices u/s 143(2) and 142(1) were issued and served on the assessee. In response, AR of the assessee attended and filed the relevant information as called for.

5. The assessee is a director in Intercon Construction India Pvt Ltd and has offered income from salary, capital gain, other sources and Agricultural income. During Assessment proceedings, Assessing Officer observed that assessee has shown agricultural receipts of ₹.33,59,941/- from its proprietary concern, M/s Merit Farms. The assessee was asked to submit the details and supporting in respect of agricultural income claimed

in the ROI. The assessee had filed a reply vide letter dt 25.03.2015 alongwith 7 X 12 extracts, which is reproduced below:-

"4.3 In response to the show cause, the A.R. attended the hearing on 25.03.2015 and submitted reply vide its letter dated 25.03.2015 and relied on the same. The reply of the assessee is reproduced as under:

"As required by you for the purpose of scrutiny assessment of my above mentioned client, I am submitting herewith the evidence justifying the Agriculture Income as under.

The assessee carries on the agriculture activity from the plot located at Chirner Village Ransai, Taluka Uran District, Raigad. Out of the Plots located at Village Raisai, two plots are owned by the assessee himself and rest of the plot are owned by his relatives, who has permitted the assessee to use the plot for the activity, as they cannot reach up and manage themselves for different reasons.

The assessee has been carrying on the agriculture activity from last 15 years and now the plot hold 4555 Mango Trees, 1715 Cashew Trees, 20 Almond Trees and few other trees like Jamun, Sweet Lime, Coconut, Guava, Chickoo, Banana, Papaya, etc. The yield of Mango and Cashew Trees are used for sale and rest all the products are used for self consumption.

The sale of the fruits are done on farm itself. The fruit vendors visit the farm personally, with their own means of Transportation, and take the delivery of the fruits from the farm itself.

The details of the Plots and the trees on the Plots are given on annexure attached herein. As an evidence I am enclosing herewith the 7 x 12 extract issued by the Talati of Taluka Uran District Thane, which shows the ownership of the Agriculture Plot and the Trees grown on it."

6. The Assessing Officer rejected the explanation submitted by the assessee with the observation that the assessee had failed to submit any proof like vouchers, Bank Statement, Vendors bills etc. As per the submissions, the assessee owns two plots and the rest of the plots are

owned by his relatives and claimed that they have permitted him to use the plot for the agricultural activities, however, no supporting documents/agreements was produced. In absence of any documents and evidences, the amount claimed by the assessee in the books are remain unexplained, hence, Assessing Officer added the above amount u/s 68 of the Act.

7. Aggrieved, assessee preferred an appeal before Ld.CIT(A)-21, Mumbai and filed paper book and additional evidence u/r 46A, this includes copies of sales bills, confirmations of owner of agricultural land for allowing assessee to carry out agricultural activity, labour charges, purchase vouchers, salary vouchers and photographs. The matter was remanded to AO for his observations and AO objected to such additional evidences which were not filed before him even though proper opportunities were given to assessee during assessment proceedings. After considering the submissions, the Ld.CIT(A) dismissed the appeal filed by the assessee with the following observations: -

"10. Considering the opportunities provided in the assessment proceedings and in the appellate proceedings, it is not considered reasonable to allow any further opportunity. The appellant has credited certain amounts received in cash and deposited in his bank accounts and claimed the same to be out of agricultural income. Evidence to support such claim was not filed in the assessment proceedings despite opportunity provided. Much later after a few hearings in the appellate proceedings, appellant filed additional evidence. No case was made out for admission of additional evidence and no explanation was filed as to why the same was not produced

before the assessing officer. The assessing officer has a valid point in objecting to the so called additional evidence.

11. Further, to verify the authenticity of the claim of the appellant regarding the contents of additional evidence filed, specific details were called. Despite reminders, the same was not filed. The persons whose names are mentioned as consignees, persons to whom payments in cash are claimed to be made are not verifiable. To verify whether any of the persons had given the agricultural land to appellant to carry out such lucrative agricultural operations without charging anything, details in respect of such persons was called. The same was not furnished. The details of location of agricultural land latitude and longitude was not provided. It is obvious that appellant has tried to cover up its unaccounted income deposited in cash by claiming it to be agricultural income. It has failed to establish its case and in fact has avoided verification and scrutiny by not providing the details called for."

8. Aggrieved, the assessee is in appeal before us raising following grounds of appeal:

"The Grounds mentioned here under are without prejudice to one another

1 The Learned as Commissioner of Income Tax (Appeal's) 21 Failed to appreciate the facts that evidence laid Before appeal proceeding was not accepted even Though vouchers and receipt of agricultural activities Signed by independent third party.

2. The Learned Commissioner of income for (Appeal's) 21 has failed to appreciate the fact that additional Evidence produce at the time of Appeal Proceeding have been true and fair and has not be concocted.

Appellant here by states that there is a delay in filing of the appeal by 931 days due To sickness and domestic problems of the tax practitioner and subsequently Tax consultant was busy with completing compliances of filing Returns of GST, TDS and filing of Income Tax Returns & Assessment and it then it Slept Out of his mind.

3. Appellant sympathetically submits that delay of his appeal may be condone in the interest of justice.

4. *The Appellant Craves leave to add, to alter or to amend any one or more of Grounds as mentioned herein above as and when necessary."*

9. At the time of hearing, Ld.AR brought to our notice findings of Assessing Officer and Ld.CIT(A). In support of his submissions, he brought to our notice Page No. 34 of paper book which is details of land holding as per which assessee was holding 4.194 ha and other family members are holding 48.48 ha. In the above said agricultural land the assessee was having 4555 Mango trees, 1715 cashew trees, 1105 Timber and 115 coconut trees. He also brought to our notice the confirmation letters from relatives, which is placed at pages 55 to 60 of the paper book. With the above submissions, he submitted that Ld.CIT(A) has decided the issue exparte, he prayed for one more opportunity so that revenue authorities can verify the claim of the assessee. For the record, he brought to our notice page 244 of the paper book to submit that the assessee was declaring agriculture income from AY 2003-04 onwards consistently.

10. On the other hand, Ld.DR relied on the order passed by Ld.CIT(A) and further he relied on the written submissions, for the sake of clarity, it is reproduced below:

"1. *The issue on merit in this case is regarding treatment of agricultural income as unexplained cash credits u/s 68 of the Income Tax Act.*

2. *The assessee is not the owner of all the plots of land on which he claims to have carried out agricultural activity. Out of total area of 52.674 hectares of land, only 6.824 hectares i.e. 12.96% of total area of land is owned by the assessee and remaining land is owned by relatives. No rent agreement or profit/revenue sharing agreements with other land owners is submitted. In absence of evidences to show that land was taken on rent for carrying agricultural activity, it can't be concluded that the assessee has himself actually carried out any agricultural activity.*

3. *Certain queries were raised by the Ld. CIT(A) in Para 7 Page 5 of the CIT(A) order for further verification of additional evidences submitted by the assessee; but these details/documents are not submitted by the assessee either before the Ld. CIT(A) or Hon'ble ITAT in the present proceedings. Therefore, the findings of the Ld. CIT(A) mentioned in Para 10 & Para 11 in Page 7 of the CIT(A) order should be upheld.*

4. *All the documentary evidences of sales/expenses submitted by the assessee are selfmade vouchers. When assessee was asked to submit basic details such as name & address of labourers etc, he failed to do so. In fact, perusal of Page 66 to Page 95 of Paper Book for AY 2012-13 dated 28/02/2020 shows that the salary and labourers expenses vouchers doesn't mention any business name/trade name and thus, it can't be ascertained whether such expenses were incurred for carrying agricultural activity or some other purpose.*

5. *Perusal of Page 14-18 of paper book for AY 2012-13 dated 28/02/2020 shows that there are regular deposits and withdrawals of cash from bank accounts during the entire year. When expenses for agriculture income during the entire year is only Rs.2.9 lacs, the need for withdrawing huge amounts of cash in regular intervals can't have any bonafide purpose. This observation also confirms the finding of Ld. CIT(A) that the assessee tried to cover up his unaccounted income deposited as cash in bank by claiming it as agricultural income.*

6. *Without prejudice to above 4 arguments, even if the 7/12 extracts of all pieces of land are only considered, then there are discrepancies observed in the sales bills on comparison with 7/12 extracts of land. Perusal of the Sales Bills from Page 193 to Page 221 of paper book for AY 2012-13 dated 28/02/2020 shows that the assessee has sold karela, drumstick, padwal, papaya, ghosali,*

cucumber. However, the 7/12 extracts of land submitted by the assessee doesn't mention any of these agricultural produce. This observation shows that the sales bills are not genuine.

7. Apart from the above arguments, the undersigned also relies on the findings stated in the order of Ld. CIT(A) and prays that the appeal of the assessee may be dismissed."

11. Considered the rival submissions and material placed on record. We observed from the record that assessee is holding substantial land to the extent of 48.48 ha along with his relatives, it is brought on record that the family members have permitted him to use the land for agriculture purpose by filing confirmation letters, which is placed on record by the assessee. From the information available on record we also observed that assessee was having 4555 Mango trees and other kinds of trees in the above said lands. Further we observed that assessee was consistently declaring agricultural income from assessment year 2003– 04 and offered to tax. The revenue also accepted the agriculture income offered by the assessee. Considering the overall merits on the submissions made by the assessee we are inclined to remit this issue back to the file of assessing officer with a direction to verify the records submitted by the assessee on merit and verify the same. It is needless to say that assessee may be given a proper opportunity of being heard. In the result the issue under consideration is remitted back to the file of AO for statistical purpose and ground raised by the assessee are allowed for statistical purpose.

12. The facts in assessment year 2013–14 are mutatis mutandis to the assessment year 2012–13, the issue raised in this appeal also remitted back to the file of assessing officer for statistical purpose.

13. In the result, appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the open court on 15th June, 2022

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER
Mumbai / Dated 15/06/2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file. //True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum