

आयकर अपीलिय अधिकरण, कोलकाता

पीठ 'सी' एसएमसी

IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA  
BENCH-C (SMC)

समक्ष : श्री मनीष बोरड, लेखा सदस्य

Before: SHRI MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं.य/  
ITA No. 60/Kol/2022

निर्धारण वर्ष:

Assessment Year:2014-15

Harit Properties Private Limited, Rooms 505 & 506, Mangalam, 24 Hemant Basu Sarani, B.B.D Bag, Kolkata-700 001.	बनाम / V/s.	Income Tax Officer Ward 5(1), Aaykar Bhawan, P-7 Chowringhee Square, 8 <sup>th</sup> Fl., Kolkata-700 069.
PAN: AAACH7011H		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent
अपीलार्थी की ओर से/By Appellant	Shri Sandeep Agarwal, FCA, Ld.AR	
प्रत्यर्थी की ओर से/By Respondent	Shri Biswanath Das, CIT, Ld.DR	
सुनवाई की तारीख/Date of Hearing	23-08-2022	
घोषणा की तारीख/ Date of Pronouncement	26-08-2022	

### आदेश / O R D E R

The above captioned appeal is directed at the instance of the assessee against the order dated 14-12-2021 of the Ld. Commissioner of Income-tax, Appeals [hereinafter referred to as 'CIT(A)'], National Faceless Appeal Centre, Delhi passed u/s. 250 of the Income-tax Act, 1961 hereinafter referred to as 'the Act' for the AY 2014-15.

2. The assessee has raised the following grounds of appeal :-

1. That on the facts and in the circumstances of the case and in law the Ld. CIT(A) grossly erred in confirming the addition of Rs 4,62,792/- made by the Assessing Officer as deemed income under the head House Property without appreciating the fact that the land was used for the agriculture/horticulture business and hence, it shall be treated as an exempted income u/s 10(1) of the Income Tax Act, 1961.

2. That on the facts and in the circumstances of the case and in law the Ld. CIT(A) grossly erred in confirming the actions of the Assessing Officer without appreciating the fact that during the Assessment Year 2012-13 and earlier years, the appellant has earned income from its horticulture activity and claimed the same as exempt and corresponding expenditure was also Suo moto disallowed by the appellant. Further, this treatment done by the appellant was duly accepted by the department in earlier years. Thus, on principle of consistency, the addition made by the Ld. AO should be deleted.

3. That on the facts and in the circumstances of the case and in law the Ld. CIT(A) grossly erred in confirming the actions of the Assessing Officer without appreciating the facts that the Assessing Officer completely ignored the provisions of Section 10(1) read with Section 2(1A) of the Income Tax Act, 1961. As per Section 2(1A)(c), Agriculture Income includes any income derived from the building owned & occupied by the receiver of the rent or revenue of any such land provided that the building is on or in the immediate vicinity of the land and is used as a dwelling house or as a store house of the agriculture produce.

4. That on the facts and in the circumstances of the case and in law the Ld. CIT(A) grossly erred in confirming the actions of the Assessing Officer without appreciating the facts that actual usage of the building should matter. Mere nomenclature of the building by the Municipal Corporation in the property tax receipt couldn't be considered as the determinative factor for the impugned assessment Order. The Ld. CIT(A) has also ignored the other side of the MCB Bill which states clearly that 10,485 sq. meters of the vacant land

*ere used as agricultural land. The portion of the MCB Bill cop which was beneficial for the revenue was only accepted by the authorities, but the significant facts were ignored.*

*5. The Appellant craves leave to add, alter, amend and/or withdraw any of the grounds or ground of appeal either before or at the time of appeal hearing.*

3. Briefly stated the facts as culled out from the records that the assessee is a private limited company. Income declared for AY 2014-15 at Rs.6,75,580/- in e-return furnished on 27<sup>th</sup> Sept.,2014. Case selected for scrutiny followed by serving of notices u/s. 143(2) and 142(1) of the Act. Certain details were called for. After considering the same, the Id. AO made disallowance u/s. 14A of the Act/r.w.r.t Rule 8D of the IT Rules, 1962 at Rs.51,574/-. The Id. AO also made addition for deemed income from house property in the nature of farm house owned by the assessee company. After allowing deduction @ 30% and deduction for municipal taxes income from house property estimated at Rs.4,62,792/-. Income assessed at Rs.11,70,220/-.

4. Aggrieved, the assessee preferred an appeal before the Id. CIT(A), and partly succeeded.

5. Now the assessee is in appeal before this Tribunal only against the addition for deemed income from house property of Rs.4,62,792/-.

6. The Ld. Counsel for the assessee submitted that the assessee company owns a agricultural land, wherein small portion is constructed. The main activity is agriculture, income from agriculture is shown consistently and the expenditure incurred on the said farm house are disallowed in the computation of income. It was submitted that since the assessee is earning agricultural income from the said land, no addition

for deemed income from house property called for. The Ld. Counsel for the assessee also referred to various details filed in the P.B containing 46 pages.

7. Per contra, Ld. Departmental Representative ( Ld. DR) vehemently argued supporting the orders of both the lower authorities.

8. I have heard the rival contentions and perused the material placed before me. The addition for deemed income from house property is in dispute before me. I observe that the assessee owns a farm house at C 23, Asola Homes Welfare Assco, Asola New Delhi-110 030. As per property tax bill issued by Municipal Corporation, New Delhi placed at pages 15-16 of P.B, I note that type of property is "farm house", the area of the plot/land 10,688.00 sq.mtr and constructed area is 203.00 sq.mtr. As regards the claim of assessee that income from agriculture is regularly shown, I notice that for FY 2011-12 horticulture income of Rs.45,150/- is shown, but for the year under appeal NIL income is shown from horticulture work. As regards expenses incurred on the said farm house, I note that Rs. 2,86,491/- is incurred during the FY 2011-12 as against horticulture agricultural income of Rs.45,150/- earned during the year. As far year under appeal is concerned against NIL income from horticulture Rs.5,80,380 is incurred, which includes electricity expenses Rs. 67,934/-, Municipal Tax Rs.1,03,269/-, Horticultural expenses Rs.1,70,000/-, Repairs Rs. 2,38,000/- and depreciation on plant & machinery Rs. 1,177/-.

9. The details of the expenses incurred at the said farm house and the horticulture income, which is 'NIL' for the year under appeal, it

*prima facie* suggests that the primary activity of the said farm house is not of the nature of agricultural activity, rather it seems to be a place used as farm house and the expenses incurred are for the maintenance of the said farm house. It is not the case that the assessee has carried out agricultural activity and for earning income from agriculture some expenses have been incurred rather situation is inverse. The expenses incurred are much higher and does not match with the agricultural activity. Under the given facts and circumstances of the case, I do not find any merit in the contentions of the Ld. Counsel for the assessee and thus fail to file any infirmity in the following findings of the Id. CIT(A).

*“4.3.1 I have carefully gone through the submission of the Appellant. I have also gone through the records and facts of the case. It is seen that*

*The AO has added the deemed income from House property in case of a farm house owned by the appellant on the outskirts of Delhi. The appellant has contended that the said was an agricultural land situated in a rural village of Asola and it was assessed by the Municipal Corporation as vacant land. The appellant has further mentioned that the total area of said land is 1 0,688 Square Mtrs and out of which 10.485 Square Mtrs is vacant land and on remaining area 203 Square Mtrs, a farmhouse is constructed which is less than 2% of the entire plot which was used for dwelling house and storage house for the purpose of making agricultural activities. However on verification from the receipt of property tax in respect of the said property, it is seen that the type of the property is mentioned as ' Farm House'. The document issued by the Delhi Municipal Corporation mentions the vacant land use as "Farmhouse-Residential" and the property details has address of "C- 23 Asola Homes Welfare Assco. Asola, New Delhi-11 0030" . Therefore it is clear that the said property is not an agricultural land but a farmhouse which clearly falls under the ambit of house property and the AO was accordingly right in treating the income as deemed income and taxing it under the head of house property. Further the AO has also mentioned in the*

*assessment order that the authorized representative when confronted with the said issue had admitted that the deemed income from the said property is chargeable to tax. The addition made by the AO is therefore sustained and the ground is decided against the appellant.”*

10. Thus, no interference is called for in the finding of Ld. CIT(A). All the grounds raised by the assessee are dismissed.

परिणामतः निर्धारिती की अपील खारिज की जाती है।

11. In the result, the appeal of assessee is dismissed.

आदेश खुले न्यायपीठ में दिनांक -08- 2022 को उद्घोषित।

Order pronounced in open court on 26 -08-2022

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Kolkata/ कोलकाता

\*\*PP/Sr.PS

दिनांक:-26/08/2022

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant- Harit Properties Private Limited, Rooms 505 & 506, Mangalam, 24 Hemant Basu Sarani, B.B.D Bag, Kolkata-700 001.
2. प्रत्यर्थी/Respondent-Income Tax Officer, Ward 5(1), Aaykar Bhawan, P-7 Chowringhee Square, 8<sup>th</sup> Fl., Kolkata-700 069.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण,कोलकाता ।