

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 1989/DEL/2021**  
**[Assessment Year: 2017-18]**

Vijay kumar, H. No. 34, V&PO Ghalauli, Distt. Saharanpur (U.P.) PAN- ATVPK3589Q	<u>Vs</u>	Income-tax Officer, Ward-3(3)(4), Deoband, Distt. Saharanpur.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Sh. Rohitash Kumar Adv. & Sh. Prem Parakash, Adv.	
<b>Respondent by</b>	Sh. Om Parkash, Sr. DR	
<b>Date of hearing</b>	17.08.2022	
<b>Date of pronouncement</b>	31.08.2022	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal centre, Delhi, dated 29.10.2021, pertaining to the assessment year 2017-18. The assessee has raised following grounds of appeal:

“1. That the appellate passed u/s 250 by Ld. CIT(Appeals) NFAC by is unjustified, arbitrary and against the fact of the appeal.

2. That Ld. CIT(A) considered written submission dt. 24.09.2021 only which was partly but he did not consider/touch the written submission dt. 16.10.2021 with evidencing proof which was in full response.
  3. That Ld. CIT(A) wrongly confirmed the addition of Rs. 140000/- as invested from agricultural income savings of precedent years.
  4. That Ld. CIT(A) wrongly confirmed the addition of Rs. 39028/- as invested from his personal saving mae from agricultural income and business income.
  5. That the appellant deserve a right to add any ground of appeal later on as when it be required.”
2. Facts, in brief, are that the assessee is an individual and has filed his return of income declaring income at Rs. 3,99,340/- on 16.2.2019. Subsequently, the Assessing Officer reopened the assessment u/s 147 of the Income-tax Act, 1961 (in short “the Act”) and a notice u/s 148 of the Act was issued after obtaining the requisite approval from the Competent Authority. In response to the notice the assessee again filed his return of income declaring total income at Rs. 3,99,340/- on 6.12.2019. Thereafter the authorized representative of the assessee attended the proceedings. The AO while framing the assessment made two additoin of Rs. 39,028/- and Rs. 1,40,000/- as unexplained investment in agricultural land. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals). The learned CIT(Appeals) also sustained the additions and dismissed the appeal. Now the assessee is in appeal before this Tribunal.

3. Learned counsel for the assessee reiterated the submissions as made in the written submissions. For the sake of clarity the submissions of the assessee are reproduced as under:

“Ref:- Written Submission

Sir,

With due respect it is submitted that the written submission by the assessee is being given from your kind consideration as under

1. Points under consideration:-
  - (i) The investment was made from agriculture income at Rs. 490000/- out of which Rs. 140000/- disallowed.
  - (ii) The assessee took a loan of Rs. 600000/- from HDFC bank out of which Rs. 39028/- disallowed.
2. The assessee made an investment of Rs. 490000/- from agricultural income to purchase the agricultural land 10 bighas in F.Y. 2016-17. The assessee is earning the income from the 43 bighas agricultural land from so many years regularly. The assessee made the investment Rs. 350000/- in F.Y. 2016-17 from the agriculture income of previous year (F.Y. 2016-17) and the balance Rs. 140000/- from agricultural income of 3 precedent years ie F.Y. 2013-14 to F.Y. 2015-16.

3.

Ld. income tax officer concerned has allowed the investment of Rs. 350000/- due to being shown in his return filed by the assessee for A.Y. 2017-18 but made the addition of Rs. 140000/- to the returned income because the assessee has not shown the agricultural income in his return of income filed for A.Y. 2014-15, A.Y. 2015-16 and A.Y. 2016-17.

The assessee submits that the assessee is resident of village Ghalauli he had no knowledge that he had to show the agriculture income in his return of income because he was under bonafide belief that the agriculture income is exempt from income tax so this point should have not been considered of against him considering above facts.

4. The assessee has the evidencing proofs as follows:-

- 3.(i) The assessee is uploading the copies of inkhab khatuani in the proof of ownership of 53(43+10) Bighas agriculture land.
- 3.(ii) The assessee is uploading the copies of Khasra of 3 years 1423,1424 and 1425 fasli i.e. year 2015 (1423+592) year 2016 (1424+592) and year 2017 (1425+592) in evidence of crop production.
- 3.(iii) The assessee is uploading the certificates of sugar cane supply to sugarcane Mill Indian potash limited Rohana Kalan for 3 F.Y. years 2013-14 ,2014-15 and 2016-17 in which he supplied sugar cane for Rs 156910/-, Rs 398715/-, 765924/- respectively.
- 3.(iv) The assessee wants to draw your kind attention on this fact that assessee produced different types of crops just like paddy wheat etc in his agricultural land in addition to the sugarcane which are sold in open market to some any persons getting the cash amount their of. Sugar cane is also sold in open market on cash payment basis other than sugar mill supplied. If the assessee had not shown the agricultural income in his return of income filed for A.Y. 2014-15, A.Y. 2015-16 and A.Y. 2016-17 then the action may be taken against him under any other provisions of Income Tax Act but it cannot be said that he had not earned any agricultural income in these years relying on the citation as mentioned below :-

smt. Bhanuben Chimanlal Malavia V/S. Income Tax Officer ITAT,RAJKOT BENCH , (2006 ) 100 TTJ 0337 Ruling Para no.06  
"Asessee has submitted a copy of land records in respect of agricultural land owned by her and sale bill of agriculture produced sold by her - Therefore, growing of agricultural produce and its sales cannot be disbelieved- Merely because assessee has shown agricultural income for the first time and land records show a different produce, the claim of assessee cannot be rejected".

In the light of citation, assessee has produced the evidences of ownership of agricultural land in form of khatauni and proofs of crop production from the agricultural land in form of copy of khasra of F.Y. 2013-14, F.Y. 2014-15, F.Y. 2015-16 and F.Y. 2016-17 and the certificated issued by sugar mill in evidence of supply of sugar cane to sugar mill in 3 precedent years which proves that assessee gained the agricultural income in aforesaid years and invested Rs. 350000/- from previous year income(F.Y.2016-17) which has been accepted by assessing officer in the assessment order and balance Amount Rs. 140000/- out of savings from agriculture income of 3 precedents year as aforesaid.

As per ruling assessee should be owner of agriculture land and produce the agricultural crops on it continuously and the crop produces be sold by the agriculturist. All conditions are fulfilled by the appellant in his case.

It is quite clear from aforesaid discussion of ruling with relevant facts and evidencing proofs that this ruling is fully applicable on the assessee's case.

Ld.CIT(A) has relied on hon'ble Supreme Court decision in the case of "Goetze(india) Ltd. Vs. CIT (2006) 157 Taxman 1 (SC) wherein it was held that "the appellant sought to claim a deduction by way of a letter before the AO. The deduction was disallowed by the AO on the ground that there was no provision under the Income -tax Act to make amendment in the return of income by modifying an application at the assessment stage without revising the return".

In the citation AO disallowed the claim for deduction sought by appellant because he can not amend in the return of income. This citation is related to the claim for deduction sought by appellant can not be allowed by AO without revising the return. This ruling is not quite applicable on the appellant's case and facts are different also.

The assessee submits that he invested Rs. 600000/- in purchasing the agricultural land after taking a personal loan of Rs. 600000/- from the HDFC bank. Ld I.T.O. made a addition of Rs 39028/- to the returned income

because concerned bank disbursed the amount of Rs . 560972/- only.The assessee submits in this regard the assessee has invested Rs. 39028/- from personal savings from agricultural income of precedent years. He has an agricultural income near about Rs. 350000/- per year which had been accepted by assessing officer in the assessment order passed for the A.Y. 2017-18. A detailed discussion in about agriculture income has been made in point no.03.So you are kindly requested that a small amount of Rs. 39028/- should have not been made the addition to the returned income considering the heavy agricultural income in comparison of amount invested.

It is therefore requested to kindly allow the appeal making deletion of additions amount Rs. 179028 (Rs. 14000039028) considering the above submissions and evidencing proof.

4. On the contrary, learned Sr. DR opposed the submissions and supported the orders of the authorities below.

5. I have heard the rival submissions and perused the material available on record. I find that the Revenue has not disputed about the ownership of agricultural land activity carried out by the assessee and also the AO for the assessment year 2017-18 has accepted of having earned agricultural income of Rs. 3,50,000/-. Therefore, it cannot be inferred that the assessee was not having any agricultural income in the previous years. Merely stating that the assessee filed nil return of income would not justify that the assessee was not having any agricultural income. Looking to the material placed before the Tribunal as well as before the authorities below, the assessee has been earning income from agricultural activities

and was also receiving payments from sugar mill. Therefore, looking to the totality of the facts and material placed before me, I am of the view that the authorities below were not justified in making the addition without verifying the contention of the assessee. Hence, the impugned additions are hereby deleted. Grounds raised in appeal are allowed.

6. Assessee's appeal is allowed.

The order was orally pronounced in open court on 17<sup>th</sup> Aug. 2022. However written order is signed and delivered today.

Order pronounced in open court on 31<sup>st</sup> August, 2022.

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**  
**ITAT, NEW DELHI**