

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER
AND
SHRI DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1488/PUN/2018
निर्धारण वर्ष / Assessment Year: 2014-15

Mohamed Hanif Rasul Patel, Golibar Road, Near Railway Crossing, Miraj, Sangli. PAN : ABPPP5778G	Vs.	ITO, Ward-1(5), Sangli.
Appellant		Respondent

Assessee by : Shri M. K. Kulkarni
Revenue by : Shri Ramnath P. Murkude

Date of hearing : 15.09.2022
Date of pronouncement : 19.09.2022

आदेश / ORDER

PER DR. DIPAK P. RIPOTE, AM :

This appeal is directed against the order of Commissioner of Income Tax (Appeals)-1, Kolhapur dated 02.07.2018 emanating from the order u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 passed by ITO, Ward-1(5), Sangli, dated 18.12.2017.

2. The grounds of appeal are as under :-

- “1. On the facts and in the circumstances of the case and in law the A. O. the Assessing Authority and Ld. CIT(A) was not justified in confirming the order of the A.O. when he passed the assessment without granting sufficient opportunity as mentioned in the appeal order of CIT(A) in his common order. The principles of natural justice have been violated. The assessment be quashed.
2. On the facts and in the circumstances of the case and in law the Ld. CIT was not justified in confirming the addition of Rs.

69,45,000/- as assessee's unexplained cash deposits in Bank A/c under S. 69A of the Act. The appellate had filed confirmation from Lenders before A. O. The provisions of S. 69A do not apply to the facts of this case. The addition be deleted.

3. *On the facts and in the circumstances of the case and in law it is an undisputed fact that the assessee is Agricultural and has no other source of income. The Grapes cultivation is part of agricultural production. The Hon'ble Supreme Court in S. S. Rajalinga Raja v. State of Madras (1967) 63 ITR 617 held "Income arises when commodity is disposal of by sale, consumption or use in manufacture and other processes carried on by assessee qua that commodity. Thus the agricultural income in the year when grapes were used for manufacture of Raisins and not when it was deposited into bank account. This vital aspect has not been considered by both the authorities. The addition be quashed.*
4. *On the facts and in the circumstances of the case and in law the Hon'ble Supreme Court (supra) observed the decision of the Supreme Court in Deora Tea Co. Ltd. v. Commr. Agr. I. T. (1962) 44 ITR 6 (SC) is authority for the proposition that the agricultural income to arise, it is not predicated that the agricultural income must be sold: use of agricultural produce for the purpose of business of the assessee may give rise to agricultural income. The principle enunciated applies to this case of the appellant. Since deposits are out of agricultural income the exemption be allowed to the assessee.*
5. *On the facts and in the circumstances of the case and in law and considering ground No. 4 above the judgment of the Hon'ble Punjab and Haryana High Court in the case of CIT v. Rana Gurujit Singh (2012) 75 DTR 376 (P & H) applies to the facts of this case and in view of this both the authorities below have taxed the agricultural income which is exempt under S. 10 of the Act. The addition be quashed.*
6. *On the facts and in the circumstances of the case and in law the Raisins manufactured by the appellant using grapes in its manufacture is an naturally stable food compared of important food elements is considered as healthy snack. In view of this its production is agricultural income and is exempt under the Act.*
7. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) was not justified in confirming the addition of Rs. 6,12,430/- as income from business. Since it is an undisputed fact now and as per grounds of appeal raised above it is not a business income but agricultural income exempt under the Act. The addition be deleted.*
8. *On the facts and in the circumstances of the case and in law and in the alternative it was incumbent upon the authorities below*

while holding the agricultural income as business income they were bound by duty to consider all expenses incurred to earn the said income also considering the provisions of Rule 7 of the I.T. Rules, 1962. The necessary directions are required to be issued to the A. O. to consider this basis aspect of (allowing reasonable expenses to earn business income). Both the authorities in the process have brought under taxation the "green income only" which is impermissible in law.

9. *On the facts and in the circumstances of the case and in law while allowing ground of appeal No. 1 before CIT(A) the fact has been admitted that the assessee was agriculturist and had no income other than agricultural income. In the circumstances the action of the Act in reopening the assessments under S. 147 r.w.s. 148 is vitiated in law. The A. O. has failed any 'speaking order' in reply to objections raised against the reasons recorded u/s 148 of the Act. This is contrary to the verdict of the Hon'ble Supreme Court in GKN Driveshaft Ltd (supra). Alternatively, the matter may be remanded to A. O. for pursuing the assessment offer a 'speaking order' on the objections raise as decided in Home Finders Housing Ltd. (2018) 404 ITR 611 (Mad) in which case the SLP filed by the Department was dismissed.*
10. *On the facts and in the circumstances of the case and in law the action taken by the A. O. and confirmed by CIT(A) is not sustainable in law as it is an admitted position of law by Ld. CIT(A) that the appellant had only agricultural income and no other income. The action under S. 147 is vitiated in law as the income of the assessee chargeable to tax has escaped assessment. In the absence of proper satisfaction having not recorded the consequent assessment be quashed.*
11. *On the facts and circumstances of the case and in law the levy of interest u/s 234B and 234C is not justified.*
12. *The appellant craves to leave, add/amend or alter any of the above grounds of appeal."*

3. The Id. AR submitted that identical issue has been decided by Hon'ble ITAT, Pune in ITA Nos.1474 to 1477/PUN/2018 for A.Ys. 2010-11 to 2013-14 dated 20.03.2019, in assessee's own case.

4. We have heard both the parties and perused the record. It is observed that the ITAT in ITA Nos.1474 to 1477/PUN/2018 for

A.Ys. 2010-11 to 2013-14 dated 20.03.2019 in assessee's own case has held as under :-

“8. On perusal of record and after hearing both the learned Authorized Representatives, the main issue which arises is the computation of agricultural income from the activity of cultivating grapes and income from business on the manufacture of raisins in the hands of assessee from year to year. The assessee has admittedly, carrying on the said activities and the total receipts of assessee are not to be treated as agricultural income in its hands. However, Rule 7 of the Rules clearly provides the basis for computing income from similar operations, wherein the agricultural income and business income is to be computed. The said Rule 7 of the Rules has not been applied or followed by the authorities below. In all fairness, we deem it fit to restore this issue back to the file of Assessing Officer with direction to apply the provisions of Rule 7 of the Rules in order to compute the income from agricultural activities and the income from manufacture of raisins in the hands of assessee. Further, case of assessee before us is that the income so generated would also explain the availability of cash in the hands of assessee. Accordingly, we direct the Assessing Officer to verify the stand of assessee in this regard including his explanation of availability of cash from past savings. The Assessing Officer shall give reasonable opportunity of hearing to the assessee and compute the income in line with our directions. The learned Authorized Representative for the assessee has not raised any submissions against disallowance of interest expenses and hence, the same is upheld. The grounds of appeal raised by assessee are thus, partly allowed.”

5. Thus, the ITAT set aside the issue to the Assessing Officer. In the year under consideration also, the Assessing Officer has not considered the application of Rule 7 of the Income Tax Rules, 1962. Therefore, the case is set aside to the Assessing Officer as per the ITAT direction in ITA Nos.1474 to 1477/PUN/2018 for A.Ys. 2010-11 to 2013-14 dated 20.03.2019 in assessee's own case. The Assessing Officer shall give opportunity to the assessee. Accordingly, we set aside the order of the CIT(A). Hence, the

grounds of appeal of the assessee are allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on this 19th day of September, 2022.

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 19th September, 2022.
Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Kolhapur.
4. The Pr. CIT-1, Kolhapur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.