

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI****BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER****ITA No.824 /Mum/2018
(A.Y. 2012-13)**

Ruchi Acroni Industries Ltd., 611, Tulsiani Chambers, Nariman Point, Mumbai - 21	Vs.	DCIT,CC-7(2) Room No. 655, 6 th Floor, Aaykar Bhavan, Mumbai 20
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACR6534R		
Appellant	..	Respondent

Appellant by :	Bhupendra Shah
Respondent by :	Ajay Chandra

Date of Hearing	12.10.2022
Date of Pronouncement	21.10.2022

आदेश / O R D E R**Per Amarjit Singh (AM):**

The present appeal filed by the assessee is directed against the order passed by the ld. CIT(A)-49, Mumbai which in turn arises from the order passed by the A.O u/s 143(3) r.w.s 153C of the Act. The assessee has raised the following grounds before us:

- “1. In the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax(A) erred in confirming the order u/s 143(3) r.w.s 153C even though no incriminating documents were found to support the additions made by the learned Assessing Officer.
2. In the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax(A) erred in confirming addition of Rs. 32.09 lakhs on account of agricultural income.

Without prejudice to the above and alternatively

3. *In the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax(A) erred in disallowing agricultural income amounting to Rs. 32.09 lakhs even though the learned Assessing Officer had allowed Rs. 5,11,686/- out of the above Rs. 32.09 lakhs and disallowed only the balance amount of Rs. 26,59,082/- in the Assessment Order.*
4. *In the facts and circumstances of the case and in law, the Assessing Officer erred in levying penalty u/s 271(1)(c) and charging interest u/s 234A, B & C.*
5. *In the facts and circumstances of the case and in law, the Commissioner of Income Tax(A) erred in confirming the above additions.*

2. The fact in brief is that search and seizure action u/s 132(1) of the Act was conducted in the case of Ruchi Soya Group on 29.01.2013. M/s Ruchi Acroni Industries Ltd. was also one of the group company which was also covered during the search u/s 132(1) of the Act. Thereafter, assessment u/s 143(3) r.w.s 153C of the Act was completed in the case of the assessee on 23.03.2015. During the course of assessment on perusal of the computation of income the A.O noticed that assessee had shown agricultural income of Rs.32.09 lacs during the year under consideration. The A.O was of the view that such agricultural income was on higher side compared to such income shown in the preceding year in which the assessee had shown agricultural income at Rs.5,11,686/-. On query the assessee explained that main reason for increased in the agricultural income during the year under consideration was because of cultivating two crops "Rabi & Kharif". The A.O has not accepted the submission of the assessee in the absence of specific detail and evidences. The A.O observed that the agricultural income of Rs.5,50,000/- was reasonable income for the year under consideration and the balance claim of agricultural income to the amount of Rs.26,59,082/- was added to the total income of the assessee.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee reiterating the facts stated by the A.O.

4. During the course of appellate proceedings before us, the ld. Counsel vehemently contended that this was the unabated assessment year in the case of the assessee and during the course of search no incriminating material was found pertaining to agricultural income, therefore, addition made by the A.O was invalid. The ld. Counsel has also furnished paper book comprising copies of document and detail filed before the lower authorities. The ld. Counsel has also placed reliance on the following judicial pronouncements:

- i. Sinhgad Technical Education Society 397 ITR 344 (SC)
- ii. Murli Agro Products ltd. 49 taxmann.com 172 (Bombay)
- iii. Continental Warehousing Corporation (Nhava Sheva) ltd. 374 ITR 645 (Bombay)
- iv. Gurinder Singh Bawa 150 ITD 40 (Mumbai Trib)”

On the other hand, the ld. D.R supported the order of lower authorities.

5. During the course of assessment proceedings the A.O. noticed that assessee had shown agricultural income of Rs.32.09 lacs compared to agricultural income of Rs.5,11,686/- shown in the preceding year. The A.O has not agreed with the explanation of the assessee that reason for increased in the agricultural income was on account of cultivating two crops. i.e “Rabi and Kharif” during the year under consideration. Therefore, after considering the income to the extent of Rs.5.5 lac as reasonable agricultural income for the year under consideration. The remaining claim of agricultural income of Rs.26,59,082/- was disallowed and added to the total income. During the course of appellate

proceedings the ld. Counsel has produced the supporting copies of bill etc. before the CIT(A) stating that same were also produced before the A.O, however, the ld. CIT(A) has not admitted such evidences under Rule 46 of the Act holding that same were not produced before the A.O. during the course of assessment proceedings. However, in the case of the assessee after perusal of the material on record, we find that lower authority has not pointed out any incriminating material found and seized during the course of search action on the basis of which addition of agricultural income was made in the case of the assessee. We have perused the decision of judicial pronouncements referred by the ld. Counsel. In the case of CIT Vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. The Hon'ble jurisdictional High Court of Bombay held that addition can be made by the A.O in the assessment order u/s 153A r.w.s 143(3) of the Act only on the basis of incriminating material found and seized during the course of search. In the case of CIT vs. Sinhgad Technical Education Society. the Hon'ble Supreme Court held that as per provision of Sec. 153C incriminating material which was seized had to pertain to assessment year in which the addition was made. After perusal of material on record it is undisputed fact that during the course of search and seizure action no incriminating material was found and seized on the basis of which impugned addition of agricultural income was made by the A.O. Therefore, following the decision of Hon'ble jurisdictional High Court of Bombay in the case of CIT Vs. Continental Warehousing Corporation (Nhava Sheva) Ltd., we don't find any justification in the decision of ld. CIT(A), therefore, ground no. 1 of the assessee is allowed since addition was not made on the basis of any incriminating material found and seized during the course of search. Since, we have allowed the appeal of the assessee as no incriminating

material was found therefore, ground no. 2 & 3 of the assessee become infructuous, therefore, the same stand dismissed.

6. Ground no. 4 pertaining to initiating of penalty and charging of interest are consequential in nature therefore, the same stand dismissed. The appeal of the assessee is partly allowed.

7. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 21.10.2022

Sd/-

(Aby T Varkey)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 21.10.2022

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.