

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ ‘ Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA Nos.455 to 457/Hyd/2021		
Assessment Years:2016-17 to 2018-19		
Shri Abdul Majid Khan, Hyderabad PAN:AJGPK7329H (Appellant)	Vs.	Dy. C.I.T Central Circle 2(2) Hyderabad (Respondent)
Assessee by:	Shri P. Murali Mohan, CA	
Revenue by:	Shri P. Chandrasekhar, DR	
Date of hearing:	04/10/2022	
Date of pronouncement:	16/11/2022	

ORDER

Per R.K. Panda, A.M

The above three appeals filed by the assessee are directed against the separate orders dated 9.9.2021 of the learned CIT (A)-12, Hyderabad relating to A.Ys 2016-17 to 2018-19 respectively. For the sake of convenience, all these 3 appeals were heard together and are being disposed of by this common order.

2. There is a delay of 3 days in filing of the above three appeals by the assessee for which the assessee has filed application for condonation of delay along with affidavit explaining the reasons for such delay which is due to misplacement of papers by the Office staff. After considering the contents of the condonation application and after hearing both the sides, the

delay in filing of the above three appeals by the assessee is condoned and the above appeals are admitted for adjudication.

ITA No.455/Hyd/2021 – A.Y.2016-17

3. Facts of the case, in brief, are that the assessee is an individual and derives income from real estate business. A search and seizure operation u/s 132 of the I.T. Act was conducted in the case of Shanawaz Group of cases on 25.10.2017 during which certain information pertaining to the assessee was found. After recording due satisfaction, notice u/s 153C was issued to the assessee. In response to the same, the assessee filed his return of income for the impugned A.Y declaring total income of Rs.20,66,692/- (similarly assessee filed return of income declaring total income of Rs.8,96,25,810/- for A.Y 2017-18 and Rs.7,81,34,950/- for A.Y 2018-19).

3.1 During the course of assessment proceedings, the Assessing Officer noted that during the course of search proceedings in the case of Shri Shanawaz, additional income of Rs.40.00 crores was disclosed u/s 132(4) in the hands of Shri Shanawaz S/o Mohammed Zuberuddin and the assessee. The amount admitted by the assessee for the three A.Ys are as under:

(Amount in Rupees)				
Income from Real Estate Business	A.Y 2016-17	A.Y 2017-18	A.Y 2018-19	Total
	87,21,138	8,77,88,625	7,84,90,237	17,50,00,000

4. However, in the return of income filed, the assessee has declared income of Rs.20,66,692/- as against Rs.87,21,138/- declared at the time of search for the three impugned A.Ys. He, therefore, confronted the assessee to explain as to why the difference amount of Rs.66,54,446/- being the difference in income admitted at the time of search and the income returned by the assessee should not be disallowed. Further, in absence of any

evidence on record, he also asked the assessee to explain why agricultural income of Rs.23,92,632/- should not be disallowed. In absence of any satisfactory explanation given by the assessee, the Assessing Officer made addition of Rs.66,54,448/- being the difference between income admitted at the time of search and income declared in the return of income. Similarly, he also treated the agricultural income of Rs. 23,92,632/- as "income from other sources" in absence of any satisfactory explanation. He accordingly determined the total income of the assessee at Rs.1,11,13,770/-.

5. Similarly for A.Y 2017-18, the Assessing Officer made addition of Rs.19,17,152/- treating the agricultural income as income from other sources in absence of satisfactory explanation.

6. So far as A.Y 2018-19 is concerned, the Assessing Officer made addition of Rs.3,46,283/- being the difference between the income admitted at the time of search and income returned. The Assessing Officer made further addition of Rs.38,56,459/- treating the agricultural income as income from other sources in absence of satisfactory explanation.

7. In appeal, the learned CIT (A) sustained the addition of Rs.66,54,448/- being the difference between income admitted at the time of search and income returned by the assessee. So far as agricultural income is concerned, he gave partial relief out of the addition of Rs.23,92,632/- by considering 80% of Rs.23,92,632/- as agricultural income and sustained the balance amount of Rs.4,78,526/- by observing as under:

"7.3. I have carefully considered the submissions of the appellant, the order of the Assessing Officer, the evidence filed by the appellant's AR. Briefly, the facts are the

Assessing Officer made an addition on account of agricultural income of Rs.23,92,632/- as no evidence was furnished by the appellant. The appellant has claimed that he produces cotton crop in ten acres of land held by him R.R. Distt and has produced proof of ownership of the land. The Assessing Officer rejected the submissions stating that no details of agricultural income earned by the assessee were furnished during the assessment proceedings. During appellate proceedings, the appellant submitted that he owned agricultural land of ten acres at Chingomulu, Pudoor (Mandal) Vikarabad on which agricultural income was earned due to the sale of cotton to various cotton mills. The appellant has provided pattadar passbook as evidence to show that agricultural income is earned during the year. In the subsequent years namely AYs 2017-18 and 2018-19 in the appellant's own case, on this issue, the AO has estimated 40% of gross agricultural income towards unexplained agricultural expenses and taxed it as income from other sources. In the current year, the AO took a different view and has taxed the entire agricultural income as income from other sources. Though res-judicata is not applicable to tax proceedings, it is incumbent on the AO to maintain consistency on an issue in all the years when facts are identical. It is not correct to accept agricultural income in A.Y 2017-18 and 2018-19 but not in the current year. This is more so when the pattadar passbooks were furnished before the AO. In AY 2017-18 & 2018-19 it was held that disallowance of 20% of gross agricultural income would be sufficient to cover the unexplained agricultural expenses. Therefore, as held in the appellant's own case for AYs 2017-18 and 2018-19, 20% of the agricultural income is estimated towards unexplained agricultural expenses and the remaining 80% is treated as agricultural income. Accordingly, addition to the extent of 20% of Rs.23,92,632/- amounting to Rs.4,78,526/- is sustained and the balance Rs.19,14,106/- is directed to be deleted. Accordingly, the appeal is PARTLY ALLOWED”.

8. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal by raising the following grounds:

“1.On the facts and in the circumstances of the case the appellate order passed by the CIT(A) is erroneous both on facts and in law to the extent the order is prejudicial to the interest of the appellant.

2. The Ld.CIT(A) ought to have appreciated the fact that the Ld.AO erred in invoking provisions of sec 153C of the I.T. Act without there being any incriminating material found relating to the present appellant during the course of search at the premises of a third person.

3. *The Ld.CIT(A) ought to have appreciated the fact that the Ld.AO erred in not considering the information submitted during the assessment proceedings which is against to the Principle of Natural Justice.*

4. *The Ld.CIT(A) ought to have appreciated the fact that the Ld.AO erred in invoking the provisions of sec 153C of the IT Act without valid satisfaction note.*

5. *The Ld.CIT(A) ought to have appreciated the fact that the Ld.AO erred in making addition without appreciating the fact that merely basing on affidavit and without any corroborative evidence, no addition can be . made in the search assessment proceedings*

6. *The Ld.CIT(A) ought to have appreciated the reasons as to why the assessee has tiled the same amount of income as admitted in Original Return of Income.*

7. *The Ld.CIT(A) erred in not considering the fact that after due verification and examination, no discrepancies were found and thus the same amount of total income as admitted in original return of income was filed in response to notice u/s.153C of the Act.*

8. *The Ld.CIT(A) ought to have appreciated the fact that the Ld.AO erred in treating agricultural income as income from other sources as they were RE never part of the seized documents and the income was already declared in the original return of income.*

9. *The Ld.CIT(A) ought to have appreciated the fact that the Ld.AO erred in making an addition towards income from other sources as no incriminating material and document has been found for the AY under consideration for this particular addition during the course of search| operations.*

10. *The Ld.CIT(A) ought to have appreciated the fact that the appellant has furnished the supporting evidences regarding the agriculture income during the scrutiny proceedings.*

11. *The Ld.CIT(A), for the current assessment year, erred in considering CIT(A) orders for the assessment years 2017-18 and 2018-19 basing on which he disallowed the 20 percent of agriculture income as unexplained As state agricultural expenses without appreciating the fact that entire addition Above made by AO is to be deleted.*

12. *The Ld.CIT(A) ought to have appreciated that res-judicata is not applicable to income tax proceedings.*

13. *The Ld.CIT(A) ought to have deleted the entire addition of agriculture income instead disallowing the 20 percent of agriculture income of Rs.4,78,576/- as unexplained expenses.*

14. The Ld.CIT(A) ought to have appreciated the fact that Ld.AO erred in initiating the penalty proceedings u/s.271(1) C) of the Act without appreciating the facts of the case and without considering the submissions of the appellant.

15. The Ld.CIT(A) ought to have appreciated the fact that the Ld.AO ought to have correctly applied the provisions of interest u/s 234B and 234C of the Act in calculating the interest u/s 234B and 234C in the assessment.

16. The appellant may add or alter or modify or substitute or delete add/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal”.

8.1 The learned Counsel for the assessee at the time of hearing did not press grounds challenging the validity of assessment u/s 153C in absence of any incriminating material for which the learned DR has no objection. Accordingly, the grounds challenging the validity of assessment u/s 153C in absence of any incriminating material are dismissed.

9. The learned Counsel for the assessee strongly challenged the order of the learned CIT (A) in confirming the addition of Rs.66,54,448/- made by the Assessing Officer on account of shortfall in income admitted at the time of search and income declared in the return of income. Referring to the assessment order of Mr. Shanawaz and Mohammed Zuberuddin , he submitted that both of them have declared additional income of Rs.28.86 lakhs each on account of such shortfall which amounts to Rs.57.72 lakhs. So far as the amount of Rs.8.82 lakhs is concerned, he submitted that the other family members have also disclosed the additional income during the course of search which will take care of the discrepancy. He accordingly submitted that the learned CIT (A) is not justified in sustaining the addition made by the Assessing Officer.

9.1 Referring to the decision of the Tribunal in the case of Shafiuddin Mohd vide ITA Nos.142 to 146/Hyd/2021 order dated 29.6.2022, he submitted that under identical circumstances, the Tribunal has deleted the addition made by the Assessing Officer u/s 68 of the I.T. Act. He accordingly submitted that the addition made by the Assessing Officer and sustained by the learned Cit (A) should be deleted.

10. So far as the disallowance of agricultural income is concerned, he submitted that as against the agricultural income declared at Rs.23,92,632/-, the learned CIT (A) allowed 80% agricultural income and the balance 20% was treated by him as “income from other sources”. He submitted that the disallowance of 20% of such agricultural income is on the higher side and therefore, full relief should be granted especially when all receipts are from reputed company through proper banking channel.

11. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the CIT(A). He submitted that once the assessee has declared the income during the course of search as his additional income, he cannot reduce the same while filing the return of income. He accordingly submitted that the order of the learned CIT (A) being in accordance with law should be upheld. So far as the agricultural income is concerned, he submitted that the assessee has not maintained any books of account nor filed any details to substantiate his claim. Further, the learned CIT (A) has already granted 80% relief to the assessee and therefore, no further relief should be granted to the assessee on this account.

12. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs. 66,54,448/- being the shortfall in the income admitted at the time of search and the income declared in the return of income. We find the learned CIT (A) upheld the addition so made by the Assessing Officer on the ground that the assessee has not furnished any working note or any evidence in support of his retractions/return of lower income than the admitted income even during the appellate proceedings. According to him, the onus cast on the assessee has not been discharged and therefore, the contention of the assessee cannot be accepted. It is the submission of the learned Counsel for the assessee that the group had already offered income on account of Real Estate business at Rs.38.00 crores which included additional income of Rs.22.15 crores for any possible errors/omissions. Therefore, making addition of the amount of Rs.66,54,448/- will amount to double addition and therefore, the same should be deleted. It is also his submission that Mr. Shanawaz and Mr. Zuberuddin have already disclosed additional income of Rs.28.86 lakhs each for the impugned A.Y on account of discrepancy in gross receipts/expenses. We, therefore, deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant an opportunity to the assessee to substantiate with evidence to his satisfaction that other family members of the assessee have disclosed additional income on account of discrepancy in gross receipts for the impugned A.Y which will take care of the discrepancy in the hands of the assessee since according to the learned AR, the entire group has admitted additional income of Rs.38.00 crores, which included

the additional income of Rs.22.15 crores for any possible error/omission etc., The ground raised by the assessee on this issue is accordingly allowed for statistical purposes.

13. So far as the disallowance of agricultural income is concerned, we find as against the agricultural income of Rs.23,92,632/- declared by the assessee, the Assessing Officer treated the entire amount as “income from other sources” and on appeal by the assessee, the learned CIT (A) restricted the disallowance to 20% of such agricultural income the reasons of which are already reproduced in the preceding paragraphs. It is the submission of the learned Counsel for the assessee that treating 20% of such agricultural income as “income from other sources” is on the higher side. It is an admitted fact that the assessee has not maintained any books of account. It is also an admitted fact that the entire produce is sold to ITC Bhadrachalam and the amount has been received through banking channels. Considering the totality of the facts of the case, we are of the considered opinion that disallowance of 10% of such agricultural income as “income from other sources” as against 20% held by the CIT (A) will meet the ends of justice. We, therefore, hold that out of the agricultural income of Rs.23,92,632/-, 90% of such income is to be treated as agricultural income and the balance 10% amounting to Rs.2,39,263/- is to be treated as “income from other sources”. The second issue raised by the assessee in the grounds of appeal is accordingly partly allowed.

14. So far as A.Y 2017-18 is concerned, the only issue in the grounds of appeal is regarding the order of the learned CIT (A) confirming addition of Rs.11,81,106/- out of the addition of Rs.19,17,152/- made by the Assessing Officer treating

agricultural income as income from other sources. After hearing both the sides we find the assessee in the return of income has declared agricultural income of Rs.36,80,229/-. In absence of any evidence of crop sale like market yard, tak patties etc., the Assessing Officer estimated the gross receipt of 40% to be incurred towards agricultural expenses and determined agricultural income at Rs.17,63,077/-. The balance amount of Rs.19,17,152/- was treated as "income from other sources".

15. In appeal, the learned CIT (A) deleted an amount of Rs.11,81,106/- and sustained an amount of Rs.7,36,046/- by observing as under:

"6.3 have carefully considered the submissions of the appellant, the order of the Assessing Officer, the evidence filed by the appellant's AR. Briefly, the facts are the assessee admitted agricultural income of Rs.36,80,229/-. During assessment proceedings the assessee stated that he had ten acres agricultural land in Ranga Reddy district where cotton is produced. However, no evidences of crop sales like market yard, sales receipts were provided before the AO. The bank account copy produced before the AO reflected certain credits of agricultural crop sale which totaled to Rs.29,38,462/. Since no details of expenditure were produced, the AO estimated 40% of Rs.29,38,462/ amounting to Rs.11,75,384/- as incurred towards unexplained agricultural expenses and disallowed the same. The remaining amount not reflected in the bank statement viz., Rs.36,80,229/- minus Rs.29,38,462/- amounting to Rs.7,41,767/- was also disallowed as income from other sources. Accordingly, the net agricultural income after reducing the agricultural expenses was estimated at Rs.17,63,077/-. The balance Rs.19,17,152/- was amount of treated as excess claim and was disallowed by the AO under the head Income from other sources. The appellant is in appeal. During proceedings the appellate appellant produced evidences of ownership namely Pattadar for 10 passbook acres of land to show that agricultural income was earned during the year. It was claimed that the appellant has earned income from agricultural

operations consistently for the past several years in the returns.

6.3.1 have considered the submissions of the appellant and the contentions of the AO. It is not in dispute that the appellant possess agricultural land of ten acres at Chingomulu, Pudoor (Mandal), Vikarabad, Rangareddy District. Other than producing the Pattadar passbook, the appellant has not produced any evidences to prove the crop sales such as bills, vouchers etc. The bank account copy produced by the appellant has credits for crop sales of Rs.29,38,462/-. This proves that the appellant is carrying agricultural operations and has earned income on the same. It is not necessary that entire agricultural income has to be reflected in the bank account. It is a market practice that agricultural sales are normally through cash and the expenses are also usually incurred in cash. Therefore, it is reasonable to estimate that the appellant has incurred 20% of the gross receipts towards agricultural expenses. Therefore, restricting the disallowance on account of unexplained agricultural expenses to 20% would meet the ends of justice. Accordingly, the disallowance to the extent of Rs.7,36,046/- (20% of Rs.36,80,229/-) is confirmed and the balance Rs.11,81,106/- (Rs.19,17,152-Rs. 7,36,046) is deleted. The appeal is PARTLY ALLOWED”

16. Since while adjudicating the appeal for the A.Y 2017-18, we have held the disallowance of 10% as reasonable therefore, we restrict the disallowance to Rs.3,68,023/- as against Rs.7,36,046/-. The assessee gets relief of Rs.3,73,023/-. The grounds raised by the assessee are accordingly partly allowed.

17. So far as A.Y 2018-19 is concerned, the Assessing Officer has made addition of Rs.3,46,283/- on account of shortfall in income admitted at the time of search and returned income and Rs.38,56,459/- sustained by the learned CIT (A) by treating agricultural income as income from other sources. We find in appeal, the learned CIT (A) sustained the addition of Rs.3,46,283/-. However, out of the agricultural income of

Rs.38,56,459/- treated as “income from other sources” by the Assessing Officer, he sustained an addition of Rs.5,39,244/- treated as by observing as under:

“7.3.2 I have considered the submissions of the appellant and the contentions of the AO. Since the appellant contested the quantum of agricultural income, this issue is taken up first. On perusal of the Computation of Income and Profit & Loss account, it is seen that agricultural income was declared at Rs.26,96,219/-. In the ITR-3 uploaded vide acknowledgement number 453105481300319, in column (ix), the agricultural income was shown as Rs.26,96,219/- The same was reflected in column(5) of Schedule BP. However, in Schedule EI containing details of exempt income, the gross agricultural receipts is shown as Rs.53,92,438/-. It is apparent that there was an error in taking the gross agricultural income by the system. Therefore, the appellant's plea that agricultural income was only Rs.26,96,219/- and not Rs.53,92,438/- is accepted and the appeal is adjudicated with these corrected facts.

7.3.3 Coming to the merits of the disallowance, the AO disallowed Rs.38,56,459/- partly on account of unexplained agricultural expenses and on account of difference between the bank credits and the gross receipts. It is not in dispute that appellant possesses 10 acres of agricultural land at Chingomulu, Pudoor (Mandal), Vikarabad, Rangareddy district. The appellant has produced a bank account copy wherein credits on account of agricultural crop sale to the extent of Rs.25,59,965/- were reflected. Therefore, it is evident that the appellant had earned agricultural income. The only issue now is the disallowance on account of estimation of unexplained agricultural expenses @40% by the AO. On an identical issue it was held in the appellant's own case in AY 2017-18, in Appeal No.10211/2019-20 that estimation@20% of the gross receipt would meet the ends of justice. Therefore, the disallowance to the extent Rs.5,39,244/- (20% of Rs.26,96,219/-) is confirmed and the balance Rs.33,17,215/- (Rs.38,56,419 Rs.5,39,244) is directed to be deleted.”

17.1 So far as the addition of Rs.3,46,283/- on account of shortfall in the income declared at the time of search and income declared in the return of income is concerned, we find under identical circumstances for A.Y 2016-17, we have restored the issue to the file of the Assessing Officer with certain directions.

Following similar reasoning, the first issue raised in the ground of appeal challenging the addition of Rs.3,46,283/- restored to the file of the Assessing Officer with similar directions. The grounds raised by the assessee on the first issue are accordingly allowed for statistical purposes.

18. So far as the disallowance of agricultural income of Rs.5,34,244/- is concerned, we find in the preceding two years, we have restricted the disallowance to 10% of the agricultural income. Therefore, following the reasoning given therein, we restrict the disallowance to Rs.2,69,622/- being 10% of Rs.26,96,221/-. The assessee gets relief of Rs.2,69,622/-. The ground raised by the assessee on this issue is accordingly partly allowed.

19. In the result, all the three appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced in the Open Court on 16th November, 2022.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 16th November, 2022.

Vinodan/sps

Copy to:

S.No	Addresses
1	Shri Abdul Majid Khan, C/o P Murali Mohan & Co. C.A. 6-3-655/2/3 Somajiguda, Hyderabad 500082
2	Dy.CIT Central Circle 2(2) Hyderabad
3	CIT (A)-12 ,Hyderabad
4	Pr. CIT- Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order