

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI  
BEFORE SHRI M. BALAGANESH, AM AND MS. KAVITHA RAJAGOPAL, JM**

ITA No. 903/Mum/2020  
(Assessment Year: 2015-16)

Mr. Salim Kunhi Bava 17/19, Khallick Villa, Ground Floor, Balamiya Lane, Mahim, Mumbai-400 016	Vs.	ACIT-21(3) Mumbai
PAN/GIR No. AACPB 5116 E		
<b>(Appellant)</b>	:	<b>(Respondent)</b>

<b>Appellant by</b>	:	Shri Bhupendra Shah
<b>Respondent by</b>	:	Shri Manoj Kumar Singh

<b>Date of Hearing</b>	:	08.09.2022
<b>Date of Pronouncement</b>	:	05.12.2022

**ORDER**

**Per Kavitha Rajagopal, J. M.:**

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('ld.CIT(A) for short)-48, Mumbai passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2015-16.

2. This appeal is time barred by 60 days and the assessee has filed an affidavit stating that as he was travelling from Mumbai to Kerala, due to agricultural work, he was unable to file the appeal on time and prayed for condoning the delay of 60 days in filing the appeal.

3. Having heard the rival submissions and perused the materials on record. We find that there was "sufficient cause" for the delay in filing of the said appeal on time. Considering the same, we hereby condone the delay.

4. The solitary issue involved in this appeal is the addition of Rs.17,72,115/- on estimated basis out of the agricultural income declared by the assessee.

5. The brief facts are that the assessee is in the business of Manpower Recruitment in the name of Al Saalim International Recruiting House mainly for Overseas Clients based in the Gulf Countries. The assessee filed his return of income dated 31.08.2015, declaring total income of Rs.30,53,319/-. The assessee's case was selected for limited scrutiny on account of "Large Agricultural Income" and assessment order dated 31.10.2017 was passed by the Assessing Officer (A.O. for short) u/s. 143(3) of the Act determining the total income at Rs.48,25,510/- by making the impugned addition of Rs.17,72,115/-, on account of 'income from other sources', by disallowing the claim of agricultural income, claimed by the assessee.

6. It is observed that the assessee has earned 'business income' at Rs.26,24,556/- and 'income from other sources', amounting to Rs.5,78,720/-. The assessee has earned nominal receipts from business activities, amounting to Rs.61,46,427/- and taxable income at Rs.26,27,567/-. The assessee has also declared exempt agricultural income, amounting to Rs.24,22,115/-.

7. From the facts of the case, it is evident that the assessee has a holding of around 22 acres of land in Triuvegapara, Palakkad District, Kerala, in which there are around 1200 rubber trees. During the impugned year, the assessee is said to have obtained agricultural income out of sale of rubber sheets of 18,497 kgs. for which the A.O. enquired the assessee, pertaining to the said income out of the sale of rubber sheets and also the

expenses incurred for the said cultivation. It is observed that the assessee has submitted the bills for the sale of rubber to M/s. Panattuthodi Rubber Traders Malapuram, Kerala.

The details of which are tabulated as under:

<i>Sr. No.</i>	<i>Bill No. and date</i>	<i>Rubber sheet in Kgs.</i>	<i>Rater per kg.</i>	<i>Amount</i>
1	06 dated 16.04.2014	3,971.00	140.00	5,55,940
2	09 dated 02.05.2014	3,980.00	145.00	5,77,940
3	42 dated 11.08.2014	4,798.50	127.50	5,99,058
4	49 dated 02.09.2014	5,847.00	118.00	6,90,017
	<b>Total</b>	<b>18,596.50</b>		<b>24,22,955</b>

8. From the above mentioned details, it is observed that the assessee has made a sales of Rs.24,22,955/- and has submitted that the expenses incurred for tapping of rubber along with the labour charges and other materials, including fertilizer, manure, etc. was meted out by sale of scrap rubber. This justification given by the assessee was not accepted by the A.O. on the ground that the income earned by the assessee seems to be exorbitant and that it was highly impossible to derive such income out of 1200 trees, which are alleged to be more than 20 years old. The A.O. not satisfied with the assessee's submission, relied on the statistical data available from the Rubber Board under the Ministry of Commerce and concluded that the average yield could be 1,443 kgs. per hectre from 185 to 200 trees per acre. The A.O. has also called for information u/s. 133(6) of the Act from the Jt. Director (S & P), Rubber Board, Kerala. The A.O. stated that the assessee's count on the total number of trees was beyond the ideal density prescribed by the Rubber Board, for which the assessee stated that he had not planted according to the Rubber Board norms. The A.O. made a presumption that based on these statistics obtained from the Rubber Board and also on perusal of the research papers of National Research Programme on Plantation Development sponsored by the Department of Commerce, Ministry of Commerce and Industry, Government of India, the average

yield of the assessee could be 2848 kgs. (1,443 x 1200/450). The A.O. held that there was a radical difference in the yield shown by the assessee and that calculated by the A.O. The A.O. restricted the agricultural income of Rs.6,50,000/- and added the remaining amount of Rs.17,72,115/- to the total income of the assessee under the head 'income from other sources' and added the impugned amount to the total income of the assessee.

9. Aggrieved by the said order, the assessee was in appeal before the Id. CIT(A), who confirmed the said addition made by the A.O. on the ground that the A.O. had rightly extrapolated the income of the assessee on estimation basis by relying on the decision of the Hon'ble Supreme Court in the case of *Commissioner of Sales Tax, M. P. vs. H. M. Eusufali Ali H. M. Abdulali* (in Civil Appeal No. 1068 and 1069 of 1970), which held that the best judgment assessment/estimation can be made even without supporting material when it is not bias or on rational basis. The Id. CIT(A) has also failed to admit the additional evidences filed by the assessee pertaining to 41 vouchers issued by the assessee's recruiting in-house firm on account of sale of coconut, bananas, etc. for meeting out the miscellaneous expenses incurred for tapping rubber from the trees. The Id. CIT(A) rejected these evidence on the ground that it was an afterthought and there was no justification given by the assessee to produce these evidences to substantiate its claim which was not given before the A.O.

10. The assessee further aggrieved by the order of the Id. CIT(A) was in appeal before the Tribunal.

11. The ld. AR for the assessee contended that the assessee has been selling rubbers to some buyers even in the previous years and has also paid Kerala VAT for the same. The ld. AR further stated that all the transactions have been done through proper banking channels and that the assessee has furnished all the bank statements, pertaining to the credits of the sales out of the agricultural income. The ld. AR submitted that the A.O. made a rational estimation of the yield of rubber by relying on the data's available in Rubber Board and also online data's. The ld. AR brought our attention to page no. 82 of the paper book, wherein M/s. Panakkal Rubber Agencies has confirmed the purchases of rubber, raw materials from the assessee, along with the relevant documentary evidence. The ld. AR prayed for deletion of the addition made by the lower authorities.

12. The ld. Departmental Representative (ld. DR for short), on the other hand, contended that the A.O. has not made a rational estimation and only as per the information available from the Rubber Board and other source of income, the yield was calculated. The ld. DR relied on the orders of the lower authorities.

13. Having heard the rival submissions and perused the materials on record. It is observed that the assessee was carrying out agricultural activity even before the A.Y. 1997-98, which is evident from the assessment order of A.Y. 1997-98 placed on record by the assessee in its paper book. The assessee was also engaged in the business activity specified above and was also earning 'income from other sources'. As the scrutiny assessment pertaining to the assessee was only to the limited purpose, examining "Large Agricultural Income", the A.O. could have made a more detailed enquiry as to the yield and subsequent sale of the agricultural product. The A.O. has restricted himself only to

the collection of data from the Rubber Board, Kerala and certain research materials which were available online. No doubt, this information give a general prescription of the nature and yield of agricultural products, the same does not amount to a conclusive evidence as to the quantity of the yield.

14. In the common parlance, it is obvious that no one person can produce any equal amount of yield in a similar agricultural activity which wholly depends on various factors such as the climatic condition, nature of soil, number of trees and the quantity of fertilizers, etc. The A.O.'s justification that the sale bills of rubber from M/s. Panagattuthodi Rubber Traders are not genuine was on the ground that it was situated in assessee's native place whereas the assessee's farm was around 100 kms. away from the place of sale. This reasoning of A.O. was merely on the basis of surmises and conjectures. The A.O. has failed to look into the nature of the transaction, the payments received by the assessee, the ledger account of the buyer namely M/s. Panagattuthod Rubber Traders etc. The A.O. has not looked into the documentary evidences such as the confirmation letter from the buyer, the supporting bills, etc. but rather has opted to rely on the statistical data, as the only way for determining the average yield of the assessee.

15. The Id. CIT(A) has also failed to consider these aspects and has merely relied on the decision of the A.O. The assessee has duly discharged his onus of proving the impugned income, whereas the lower authorities have grossly failed to make the necessary enquiry into the evidence produced by the assessee.

16. From the above observation, we find merit in the submissions made by the assessee.

17. In the result, the appeal filed by the assessee is allowed.

*Order pronounced in the open court on 05.12.2022*

Sd/-

(M. Balaganesh)  
Accountant Member

Mumbai; Dated : 05.12.2022

Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)  
Judicial Member

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai