

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
'PATNA BENCH' AT KOLKATA,  
[Virtual Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)  
&  
Shri Rajesh Kumar, Accountant Member**

**I.T.A. Nos. 127 & 128/PAT/2019  
Assessment Years: 2006-2007 & 2012-2013**

***Alok Kumar,.....Appellant  
C/o. Nirmal & Associates,  
Chartered Accountant,  
Nepali Kothi, Opp. Gasoline Petrol Pump,  
Boring Road, Patna-800 001  
[PAN: AIRPK0300L]  
-Vs.-***

***Assistant Commissioner of Income Tax,....Respondent  
Central Circle, Muzaffarpur***

**Appearances by:**

*Shri Nishant Maitin, C.A., appeared on behalf of the  
assessee*

*Smt. Rinku Singh, CIT(D.R), appeared on behalf of the  
Revenue*

Date of concluding the hearing : January 04, 2023

Date of pronouncing the order : January 06, 2023

**O R D E R**

**Per Rajpal Yadav, Vice-President (KZ):-**

The present two appeals are directed at the instance  
of assessee against the separate orders of ld.

Commissioner of Income Tax (Appeals), Patna-3 dated 02.01.2019 passed for assessment years 2006-07 and 2012-13. Since the common issues are involved in both the years, therefore, we heard both the appeals together and deem it appropriate to dispose of them by this common order.

2. Though the assessee has taken four grounds of appeals in each assessment years but his grievances revolve around a single issue, namely ld. CIT(Appeals) has erred in confirming the addition of Rs.1,85,000/- and Rs.5,00,000/- in A.Y. 2006-07 and 2012-13 respectively. These additions have been made by the ld. Assessing Officer by holding that agricultural income declared by the assessee could not be substantiated. Hence these incomes deserve to be assessed as income from other sources.

3. Brief facts of the case are that a search and seizure operation was carried out at the premises of the assessee on 13.01.2012 under section 132 of the Income Tax Act. It emerges out from the search that assessee is the key person of the Group. The Group has been running various business premises as well as Educational Institutions. According to the ld. Assessing Officer, the assessee had receipts from the students enrolled in the Institutes namely Ram Raheem Educational and

Charitable Trust, Safar Hashmi Educational and Welfare Society etc. He has amassed huge money for his personal purposes, namely making investments in immovable or movable properties either his name or in the name of his family members. A notice under section 153A was issued upon the assessee in both the years. The assessee has filed his return of income disclosing agricultural income of Rs.1,85,000/- in A.Y. 2006-07 and Rs.5,00,000/- in A.Y. 2012-13. The Id. Assessing Officer did not accept this claim of the assessee and he recorded the following finding in A.Y. 2006-07 as well as 2012-13:-

**Assessment Year : 2006-07**

*“Regarding agricultural income, the assessee was not able to substantiate his claim. He did not possess any cultivable land. In fact, after search when all information regarding investment for purchase of land surfaced, father and son, the assessee came up with the idea of showing huge agricultural income year to year. In the process, by showing agricultural income, without paying any tax the assessee and his father made an attempt to generate a fund to explain the huge investments made by them.*

*Intriguingly, though the assessee maintains a bank account, he kept the amount allegedly received as gift from his father of Rs.5,51,000/- with him. The assessment records of the donor, the assessee’s father was gone into. There also similar set of cash flow was prepared in the name of Sri S.N. Sharma. It is pertinent to mention here that the S.N. Sharma disclosed*

*agricultural income of Rs.26,00,000/- and normal other income, shown as under:-*

<i>Assessment year</i>	<i>Agricultural income</i>	<i>Income from other sources</i>
<i>2006-07</i>	<i>3,00,000/-</i>	<i>96,500/-</i>
<i>2007-08</i>	<i>5,00,000/-</i>	<i>97,500/-</i>
<i>2008-09</i>	<i>5,00,000/-</i>	<i>1,05,000/-</i>
<i>2011-12</i>	<i>6,00,000/-</i>	<i>3,00,000/-</i>
<i>2012-13</i>	<i>7,00,000/-</i>	<i>3,50,000/-</i>

*The A.R. of the assessee contended that the assessee is owning lands. But those are not agricultural land. Agricultural activities of the assessee are not established by facts.*

*After a careful consideration of facts and circumstances, I hold that the cash gift of Rs.5,51,000/- kept in cash by the assessee and subsequent accumulation of further cash gifts allegedly received in the AY 2007-08 2008-09, till "cash in hand" swelled upto Rs.17,64,344/- as at 31.03.2008 is all sham. After search, if someone tries to explain all his investments by showing agricultural income of family members and received gifts in cash from them, keeping the cash in hand and not putting it in bank, year to year. It cannot be believed. It may be pointed out here that the assessee in the assessment year 2009-10, had major investments of Rs.12,00,000/- for purchase of NSC and Rs.21,73,837/- for purchase of land.*

*The cash flow statement, for AY 2006-07, 2007-08, 2008-09 in which cash found to have been introduced in the form of gifts and agricultural income is not acceptable and is rejected. As cash in hand as at 31.03.2006 at Rs.7,88,307/-, having regard to the assessee's disclosed income earning*

*activities is disregarded. Regarding agricultural income, the assessee having been failed to establish by facts his agricultural activities, I hold that such income disclosed by the assessee, was earned from some non-agricultural activities”.*

**Assessment Year : 2012-13**

*“Agricultural income: The assessee, had declared the agricultural income to the tune of Rs.5,00,000/- in the year under assessment. The assessee did not possess any cultivable land. As already discussed in the earlier assessment, since the AY 2006-07, the assessee had been showing agricultural income in lakhs to generate a fictitious fund as cash in hand. The assessee failed to establish by facts his agricultural activities. As such, I hold that such income disclosed by the assessee was earned from some non-agricultural activities”.*

4. Appeals to the ld. CIT(Appeals) did not make any relief to the assessee.

5. Before us, it was contended that identical additions were made in the group cases, namely Ramajee Choudhary HUF & others, which have been deleted by the Tribunal. He placed on record a copy of the Tribunal’s order dated 09.08.2018 in IT(SS)A No. 56-62/PAT/2017. He further contended that agricultural land stood in the name of grandfather (i.e. Baba) and, therefore, ld. Assessing Officer should have accepted the agricultural income declared by the assessee. On the other hand, ld. CIT(DR) contended that no land is

existing in his name and assessee failed to prove the fact that actual agricultural operations have been undertaken by him.

6. We have duly considered the rival contentions and gone through the record carefully. As far as assessment year 2006-07 is concerned, the original return, which ought to have been filed by the assessee under section 139(1), has not been placed on record. A notice under section 153A dated 27.06.2013 was served upon the assessee and in response to that notice the assessee has filed return of income on 13.03.2014. In this return, the assessee has disclosed additional income under the head "agricultural income". In the assessment framed under section 153A, income could only be determined on the basis of seized material found during the course of search. Ld. Assessing Officer has not made any reference to such seized material for making the addition. In other words, he has not made any addition basically. The time limit to issue notice under section 143(2) or under section 142(1) *qua* the regular assessment proceedings under section 143(3) has elapsed prior to the search. Therefore, whatever may be the situation, this assessment for A.Y. 2006-07 becomes final and did not abate because no incriminating material relevant to this assessment year was referred in the assessment order. The assessee very conveniently declared the agricultural

income under the belief that it is an assessment under section 153A, the addition could not be made and agricultural income would not lead to any tax liability upon him, but introduction of this capital under the head of agricultural income could be used for explaining the investments in other assessment years. To our mind, this is a simple exercise of capital building for the purpose of referring it in some other proceedings. Since the assessment for A.Y. 2006-07 did not abate no fresh item could be included in the taxable income of the assessee. This sum of Rs.1,85,000/- is to be totally ignored neither it is to be considered for availability of any capital for the purpose of future utilisation in subsequent assessment years nor it will lead to recovery of any taxes from the assessee under the head "income from other sources". In other words, the addition cannot be made without any seized material. It is a voluntary disclosure at the end of the assessee without any tax implication being agricultural income, which is to be ignored because the role of an agricultural income is application of tax rate slab on the total income. In the absence of seized material, assessment is not open for making the changes of declared income u/s 139D of the Act. The income of the assessee ought to be taken at Rs.1,14,035/- only. This amount of Rs.1,85,000/- should be considered as a neutral neither it will be available to the assessee for future application in assessment years

subsequent to A.Y. 2006-07 nor it will lead to any tax liability upon the assessee.

7. As far as A.Y. 2012-13 is concerned, it is a searched year. Therefore, it is a regular assessment under section 143(3), where Assessing Officer would undertake the exercise of examining the earning of agricultural income at the end of the assessee. A perusal of the finding of the ld. Assessing Officer would suggest that there is no evidence with the assessee to demonstrate the availability of the agricultural land as well as carrying out of any agricultural activity. After going through the record, we do not find any merit in the grounds of appeal raised in A.Y. 2012-13.

**8. In the result, ITA No. 127/PAT/2019 is treated as allowed for statistical purposes, whereas ITA No. 128/PAT/2019 is dismissed.**

Order pronounced in the open Court on 6<sup>th</sup> January, 2023.

**Sd/-**  
**(Rajesh Kumar)**  
**Accountant Member**

**Sd/-**  
**(Rajpal Yadav)**  
**Vice-President(KZ)**

***Kolkata, the 6<sup>th</sup> day of January, 2023***

*Copies to : (1) Alok Kumar,  
C/o. Nirmal & Associates,  
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Boring Road, Patna-800 001*

- (2) *Assistant Commissioner of Income Tax,  
Central Circle, Muzaffarpur*
- (3) *Commissioner of Income Tax (Appeals),  
Patna-3,*
- (4) *Commissioner of Income Tax-*
- (5) *The Departmental Representative*
- (6) *Guard File*

*TRUE COPY*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

***Laha/Sr. P.S.***