

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA Nos. 2541, 2543 to 2545/Mum/2021
(A.Ys.2015-16 to 2018-19)**

The Dy. Commissioner of Income Tax, Central Circle-5(3), Room No. 1906, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400021	Vs.	Shri Rajeev Samant 3 Carmichael House, Carmichael Road, Peddar Road, Mumbai - 400026
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AQBPS3460R		
Appellant	..	Respondent

Appellant by :	Ajyay Chandra
Respondent by :	Nirjay Singh

Date of Hearing	15.12.2022
Date of Pronouncement	09.02.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

These 4 appeals filed by the revenue are directed against the different orders of Id. CIT(A)-53, Mumbai. Since, similar issues and identical facts are involved in these appeals except the variation in the amount, therefore for the sake of convenience these 4 appeals are adjudicating together by taking ITA No.2541/Mum/2021 as a lead case and its finding will be applied as mutatis mutandis to the other three appeals.

ITA No. 2541/Mum/2021

- “1. Whether on the facts and circumstances of the case in law, the Ld. CIT(A) has erred in ignoring the evidentiary value of statements given by Shri Raman Bhawar and Shri Vinayak Nehe who were managing the farms of the assessee for production of grapes as these statements were never retracted nor anything on the record was brought showing that statements given by them were incorrect
2. Whether on the facts and circumstances of the case in law, the Ld. CIT(A) has failed to appreciate the incriminating material in the form of draft plan for inflation in purchases of grapes which was unearthed during the search action and it had direct relevance to the findings recorded by the Assessing Officer in his assessment order
3. The appellant craves to leave, to add, to amend and/ or to alter any of the ground of appeal, if”

2. Fact in brief is that a search and seizure action u/s 132(1) of the Act was conducted on Samant Group of Mumbai on 23.11.2017 which interalia included the assessee also. The assessee is one of the director of M/s Sula Vineyards Pvt. Ltd. During the course of assessment on perusal of the material seized during the course of search, the A.O noticed that assessee had claimed agricultural income from 3 different farms:

- (a) Dindori Farm
- (b) Kadam Farm
- (c) Samant Farm

The A.O also noticed that assessee had shown agricultural receipts in different years as under:

2012-13	1,97,03,628
2013-14	2,39,96,200
2014-15	2,85,92,184
2015-16	3,35,65,563
2016-17	4,18,92,065
2017-18	4,47,52,436

3. However, after referring the statement of Shri Raman Bhawar and Shri Vinayak Nehe the A.O stated that agricultural receipts from these farms had been inflated. From the detail provided by Mr. Raman

Bhawar the A.O stated that total land holding in Dindori farm was 64 acres and land under grapes cultivation was 35 acre (approximately). From the details provided by Shri Vinayak Nehe in respect of Samant Farm the total cultivated land area was 9 acres out of total area of 17 acres. From the detail provided by Raman Bhawar in respect of Kadam Farm the AO noticed that total land under grape cultivation was 82 acre out of total 107 acres. The A.O worked out the ratio of area under cultivation and the general production yield was computed. On the basis of aforesaid information the assessing officer computed mismatch in the agricultural receipts for different years as under:

A.Y.	Dindori Farm	Kadam Farm	Samant Farm	Total Agriculture Receipt	Total Agriculture Receipt as per ROI	Excess Agriculture Income claimed
2012-13	NA	5076000	730800	5806800	19703628	13896828
2013-14	5263196	7310000	671445	13244641	23696200	10451559
2014-15	4740084	9156000	856800	14752884	28592184	13839300
2015-16	4559067	7207200	806400	12572667	33565563	20992896
2016-17	3095836	7137000	739440	10972276	41892065	30919789
2017-18	5547593	18446000	1255800	25249393	44752436	19503043

On analysis of the information the A.O observed that there was inflation of agricultural receipts. Therefore, the assessee was asked to furnish detail of agricultural operations, detail of agricultural land holdings, break-up of the land holding vis-a-vis agricultural activity carried out on them, detail of the cost incurred for agricultural operation etc.

4. In response the assessee submitted the detail called for. The assessee also submitted that the entire grapes grown in the farm were sold to the company M/s Sula Vineyard Pvt. Ltd. and there was no

inflation as alleged. The assessee also submitted that these facts can also be verified from the company's record of raw material consumption. It was also explained that no discrepancy was found in the stock of the company during the search and seizure action and quantity of grapes supplied by the assessee were actually used for the manufacturing of wine and the purchase of the grapes made by the company from the assessee were actually without any kind of inflation. The assessee has also provided the detail of different farm as follows:

Details	Amount (in Rs)
Total Grapes sold during the year from Dindori Far	565,28,560
Total Expenses incurred on Dindori Farm	50,81,978
Profit from Dindori Farm	14,46,582

Details	Amount (in Rs.)
Total Grapes sold during the year from Kadam Farm	2,57,29,960
Total Expenses incurred on Kadam Farm	1,55,51,978
Profit from Kadam Farm	1,01,77,982

Details	Amount (in Rs.)
Total Grapes sold during the year from Samant Farm	9,20,395
Total Expenses incurred on Samant Farm	9,33,945
Profit from Samant Farm	(13,550)

The assessee also submitted that he cultivated high quality of grapes and was able to harvest the grapes successfully which resulted into the huge profits. The assessee also submitted that in his case the agricultural operations did not only require raw materials but also extra labour cost and it would not result into more profit.

5. The assessing officer was also of the view that the draft plan for purchases of grapes indicated inflation of grapes. The assessee also submitted that if yield and production data were accepted as provided

by Shri Raman Bhawar and Shri Vinayak Nehe it would result in loss from agricultural operations then no prudent businessman would invest capital for making losses in the agricultural operations. However, the A.O has not agreed with the submission of the assessee and stated that assessee had claimed receipt of Rs.3,31,78,951/- therefore, considering the inflation of 56.01% the assessing officer computed inflated agricultural income at Rs.1,85,83,510/- and treated the same as unexplained credit/income from other sources and added to the total income of the assessee u/s 68 of the Act.

6. Aggrieved, the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) had deleted the addition made by the assessing officer. The relevant part of the decision of Id. CIT(A) is reproduced as under:

“6.3 I have carefully perused and considered the findings of the AO in the assessment order, written submission of the appellant and material available on record.

During the year, the appellant has sold entire grapes grown in his farm to Sula Vineyards Pvt. Ltd. Total Grapes sold during the year from all the three Farm amounted to Rs. 194,34,300/-. After total Expenses of Rs. 1,52,22,324/-, the appellant earned profit of Rs. 42,11,976/-

During the course of the appellate proceedings, the appellant has submitted a copy of the Income-tax Settlement Commission's order u/s 245D(4) in the case of Sula Vineyards Pvt. Ltd. From perusal of the 245D(4) order it is noticed that the search action was also conducted in the case of Sula Vineyards Pvt Ltd, and after the search Sula Vineyards Pvt. Ltd filed an application before the Income-tax Settlement Commission (ITSC) for settlement of its income on various issues emanating from the search action. The Income-tax Settlement Commission (ITSC) has passed the order u/s 245D(4) on 27.09.2019.

6.3.1 The ITSC has dealt with the issue regarding the inflation of expenses on account of grape purchases. It is noted by the ITSO that as per Rule 9 report during the course of search at the various premises of Sula Group, four different types of evidences were found suggesting that the applicant had been inflating its purchases of grapes for generating cash. These were enumerated as under:

- i. Katcha slips and Farmer Vehicle Register maintained at the Dindodri and Gangapur units.*
- ii. Two pages seized from Nana Shelke which has a detailed plan of inflating the purchases for generating cash.*
- iii. Compilation of data obtained from Shri Karan Vasani, Associate Vice President (Wine making Department) and data compiled by Shri Vikram Boob of the accounts department as per SAP software.*

- iv. *Data provided by Shiri Nana Shelke, (GM Vineyard operations) in respect of forty farmers who were paid excess for grapes and who then returned the cash.*

The department relying on the Katcha slips and Farmer Vehicle Register maintained at the Dindodri and Gangapur units respectively estimated inflation in the purchases by 27.11% for FY. 15-16 and by 48.08% for F.Y. 16-17 The average of the percentage inflation for the Gangapur and Dindori Units (considering the two F.Ys 2015-16 and 2016-17) was arrived at 37.59%. This average percentage inflation in grapes purchase of 37.59% was applied by the Department for extrapolation for other years, from the AY 2011-12 to 2018-19. Total of Rs. 79,97,60,225/- was computed on account of inflation in purchase of grapes.

It was explained by the applicant that in their line of business the yield of wine as percentage to grapes varies from 55% to 75%. In its books of accounts the yield of wine was from 50.92% to 69.62% from FY 10-11 to 17-18. In case Department's working of inflation at 37.59% was accepted, the yield for F.Y. 2015-10 would be 110.55% and for F.Y. 2016-17 would 109.38% which is illogical.

Another set of evidence in the form of retrieved images seized from the mobile of Shri Nana Shelke, which was claimed to be a proposal for harvest season of 2017 for inflation of purchase of grapes. These pages show plan of extra booking of grapes of 2199 MT over and above the actual purchase of grapes of 9313 MT. It means 23.6% inflation of grapes was planned for the harvest season 2017 (relevant to FY 2016-17).

The applicant had accepted the Inflation in purchase of grape. The appellant also pointed out mistakes in data as per Katcha slips and Farmer Vehicle Register maintained at the Dindodri and Gangapur units.

Based on the data provided by Shri. Nana Shelke (GM Vineyard operations) in respect of forty farmers, who were paid excess cheques for grapes and who then returned the cash, inflation for all the seven years in aforesaid forty names of farmers comes to 11.24 crores which when compared with the total purchases booked comes to 6.07%.

The ITSC observed that out of the 4 evidences found during the course of search, none is suitable to be adopted alone to work out the inflation in the year for which data is found itself.

In the course of search some data regarding cash generated and cash expenses during FY 16-17 was found in the mobile of Shri T K Shinde GM (Finance). As per these data, total Receipts amounts to Rs.313.98 lakhs and expenses totaling Rs.311.34 lakhs.

Second record is in the form of loose paper Folder A-2 seized from a locker in the premises of Gangapur unit. The Folder contained various IOUs along with a sheet bearing the heading Cash: 2017-18 Left hand side shows cash receipts of Rs 1,68,42,134/- and right side contains details of expenses of Rs.1,66,61,264 Apparently it was the cash generated by inflation of purchases.

The ITSC considered these two documents as most important piece of evidences which gave the direct evidence of cash generation and expenditure. The generation of cash for F.Y. 16-17 is of Rs. 313.98 Lakhs which is arrived at by

inflating purchases of grapes for Rs. 265.97 Lakhs apart from other sources of cash generation. The total purchases of grapes in FY 16-17 as per statement of Mr. Shinde was Rs. 40.32 crores. Thus the inflation of Rs. 2.66 crores on account of grape purchase gives inflation of approximately 6.6%

Thus, the ITSC has accepted inflation of 6.6% for F.Y. 16-17 for purchase value for cash generation. The ITSC also noted that this percentage is also very near to of inflation worked out based on the data maintained by Shri Karan Vasani as per excel sheet which is maintained mainly for production purposes which is very vital original record and sort of primary record. This percentage is also nearer to the percentage of inflation being 0.07%, based on the data regarding extra booking of grapes in accordance with the working provided by Shri Nana shelke, GM Vineyard Operations from forty farmers.

The AO has estimated the inflation in sale of grapes on the basis of the ratio of area under cultivation and the general production yield. The AO has not considered the entire seized material before making the estimation. However, the facts emanating from the seized documents show that the appellant has made entire sale of grapes to Sula Vineyards Pvt. Ltd.

The seized documents show 6.6% inflation in purchase of grapes by Sula Vineyards Pvt. Ltd. The data provided by Shri Nana Shelke, (GM Vineyard operations) show inflation in purchase of grapes for all the seven years from 2012-13 to 2016-17 amounting to Rs. 11.24 crores. This inflated purchases were made by the Sula Vineyards Pvt. Ltd. from forty farmers, who were paid excess cheques for grapes and who then returned the cash to Sula Vineyards Pvt. Ltd. It is also noticed that the appellant's name is not mentioned in the list of 40 parties submitted by Mr. Nana Shelke.

In view of the above facts and circumstances of the case, entire sale of grapes by the appellant to Sula Vineyards Pvt. Ltd. cannot be considered as sold at inflated rate.

Hence, the addition of Rs.1,19,56,162/- made by the AO in respect of inflated agricultural receipts is deleted.

Accordingly, this ground of appeal of the Appellant is allowed.”

7. During the course of appellate proceedings before the ld. D.R referred the order of the assessing officer and contended that assessee has inflated agricultural production of grapes and ld. CIT(A) has failed to consider the draft plan which showed that there was inflation of agricultural income by the assessee. The ld. D.R also submitted that the two employees Vinayak Nehe and Raman Bhawar had not retracted their statement and supported the order of the ld. CIT(A).

8. On the other hand, the ld. Counsel submitted after referring the copies of seized paper placed at page no. 245 to 252 of the paper book

that name of the assessee Shri Rajeev Samant was not there in the list of the persons who had shown additional production of grapes as accommodation transaction. The ld. Counsel also submitted that the company Sula Vineyard Pvt. Ltd. had approached the Settlement Commission. The settlement commission had adjudicated that 6% of the grapes purchases had been inflated and the same was used for various non business purposes. The ld. Counsel submitted that no such incriminating material was found in the case of the assessee. He also submitted that two employees whose statement were recorded were not the employee of the assessee but they were the employee of the company. The ld. Counsel further submitted that no difference was found in the stock at the factory and the same was tallied with physical stock records and no unaccounted assets have been found during the search. He also submitted that the assessee was a supplier of grapes to Sula Vineyard Pvt. Ltd. and in its case the same have been verified in detail during the search and no discrepancy has been found pertaining to the case of the assessee. The ld. Counsel also submitted that statement of Shri Raman Bhawar and Shri Vinayak Nehe were not considered as a factual piece of an evidence by the Income Tax Settlement Commission and the data provided by the them was not reliable for the purpose of calculating inflated purchases. The ld. Counsel supported the order of the CIT(A).

9. Heard both the sides and perused the material on record. Without reiterating the fact as elaborated above during the course of search proceedings a list of 30 parties were found from M/s Nana Shelke (General manager of Vineyard operation) wherein it was alleged that the grapes were purchased at inflated rates from these 30 parties. The assessee's name has not been mentioned anywhere in the list. The assessee explained during the course of assessment proceedings that he had cultivated high quality of grapes where were used in manufacturing of high premium wines. In their respective statement the both the

employees as discussed supra had provided the data available with them without considering the fact that the new plantation of grapes were planted every year and at the same time there was certain grapes plantation which gets old or infected due to some disease or pest attacks and this leads to uprooting of the infected plantation after which new plantation was done. The assessee has cultivated high quality grapes and sold the entire grapes to the company which has been verified from the record of raw material and consumption and no discrepancy was found in the stock of the company during the search and seizure action carried on the company. During the course of appellate proceeding before us the Id. Counsel has also referred the copy of Income Tax Settlement Commission order dated 27.09.2019 adjudicated in the case of M/s Sula Vineyard Pvt. Ltd. wherein they had finally come to the conclusion that inflation was to be restricted to approximately 6% and the company had accordingly offered the same to tax. The Settlement Commission has treated the statement of Mr. Raman Bhawar and Vinayak Nehe as not reliable for the purpose of calculating inflating grapes purchases. Further in the list of parties from whom the company used to purchase grapes at inflated rate, the assessee's name was not at all present there. Therefore, we don't find any merit in the appeal of the revenue, accordingly, both the grounds of appeal of the revenue are dismissed.

ITA No. 2543/Mum/2021

Ground No.1 & 2

10. As the facts and issues involved in these grounds of appeal are same as ITA No. 2541/Mum/2021 as supra, therefore, applying the same findings mutatis mutandis these grounds of appeal of the revenue are also dismissed.

ITA No. 2544/Mum/2021

Ground No.1 & 2

11. As the facts and issues involved in these grounds of appeal are same as ITA No. 2541/Mum/2021 as supra, therefore, applying the same findings mutatis mutandis these grounds of appeal of the revenue are also dismissed.

ITA No. 2545/Mum/2021

Ground No.1 & 2

12. As the facts and issues involved in these grounds of appeal are same as ITA No. 2541/Mum/2021 as supra, therefore, applying the same findings mutatis mutandis these grounds of appeal of the revenue are also dismissed.

13. In the result, the appeals of the revenue are dismissed.

Order pronounced in the open court on 09.02.2023

Sd/-

Sd/-

(Kavitha Rajagopal)
Judicial Member

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 09.02.2023

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.