

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.287 to 291/Asr/2017
A.Y.: 2009-10 to 2011-12 & 2013-14 to 2014-15
I.T.A. No.198/Asr/2017
A.Y.: 2012-13**

M/s CGA Marketing, Pvt. Ltd. F-77, Backside Hotel Gulfam Bathinda. [PAN: AACCG3515F] (Appellant)	Vs.	Asstt. Commissioner of Income Tax, Circle-1, Bathinda. (Respondent)
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Appellant by	None
Respondent by	Sh. Hitendra Bhauraoji Ninawe, CIT. DR

Date of Hearing	23.02.2023
Date of Pronouncement	15.03.2023

ORDER

Per: Bench:

A batch of appeal was filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals), Bathinda, [in brevity the 'CIT (A)'] order passed u/s 250(6) of the Income Tax Act 1961, [in brevity the Act] order dated 17.03.2017 for A.Y. 2009-10 to 2011-12 & 2013-14 to 2014-15. The impugned

orders were emanated from the order of the Id. Dy. Commissioner of Income Tax, Circle-1, Bathinda (in brevity the AO) order passed u/s 143(3) of the Act.

2. At the outset all the appeals of the assessee are identical fact and similar nature of additions. **ITA No. 287/Asr/2017** is taken as lead case.

The assessee has taken the following grounds which are extracted as below:

“1. That on the facts and circumstances of the case, the learned CIT(A) has erred in not adjudicating Ground No. 2 of the appeal regarding validity of the assessment framed in response to illegal and invalid notice issued under section 148 of the Act. The 2nd ground of appeal is as under:-

“That the learned AO has erred in law and on facts by making reassessment in response to illegal, invalid notice issued under section 148 of the I. T. Act. As such, assessment framed in response to such a notice is void abinitio. The same be cancelled”.

2. The learned CIT(A) has erred in law as well as on the facts of the case in confirming the gross receipts of Rs. 39,03,62,282/- as income of the assessee company from other sources and not income from agricultural operation in the summary manner without appreciating the explanation filed and material placed on record at the time of assessment, report of the Income Tax Department through the Inspector and findings of the CBI on the directions of the Hon’ble Madhya Pradesh High Court in the proper manner.

3. *The learned CIT(A) has erred in law as well as on the facts of the case in confirming the gross receipts of Rs. 39,03,62,282/- as income of the assessee company from other sources and not income from agricultural operation in the summary manner by holding that the assessee appellant has not cooperated during the assessment proceedings whereas the assessee appellant has duly cooperated during the assessment proceedings and filed necessary information and the department has further made independent inquiry through the Inspector on the basis of information provided by the assessee appellant.*

4. *The learned CIT(A) has erred in law as well as on the facts of the case in confirming the gross receipts of Rs. 39,03,62,282/- as income of the assessee company from other sources without appreciating that all the receipts are either from sale of agricultural produce amounting to Rs. 23,25,14,401/- or amounts received from various persons in connection with the agricultural process as lease money amounting to Rs. 15,78,47,881/- as per evidence and other material filed by the assessee appellant from time to time and also reported by the otherinvestigating agencies including independent inquiries made by the department through its Inspector.*

5. *Without prejudice to the above, the learned CIT(A) has erred in law as well as on the facts in not allowing the undisputed expenditure incurred by the assessee appellant amounting to Rs. 16,90,96,294/- out of the gross receipts amounting to Rs. 39,03,62,282/- by holding that since the appellate company is indulged in fraudulent activities of*

shoring up revenue by illegally collecting money and not through agricultural activities whereas as per settled law, the assessee appellant is duly entitled for expenses incurred for earning income of Rs. 39,03,62,282/- may be from any source.

6. The learned CIT(A) has erred in law as well as on the facts of the case by confirming in a summary manner addition of Rs. 21,63,49,889/- (on account of increase in paid up share capital Rs. 4,00,000/-, share premium Rs. 36,00,000/-and current liabilities & provisions Rs. 21,23,49,889/-) without appreciating the explanation furnished and material placed on record during the assessment/appellate proceedings.

7. The learned CIT(A) has erred in law as well as on the facts of the case by holding the assessment of the Assessing Officer as framed without affording any proper, reasonable and sufficient opportunity to the assessee appellant at the time of making addition of Rs. 60,67,12,171/- as income from other sources against returned loss ofRs. 1,83,85,773/-.

8. The learned CIT(A) has erred in law as well as on the facts by not allowing the rebate on account of liability created by the SEBI vide order dated 04-02-2016 on account of lease money amounting to Rs. 15,09,72,412/- shown as income by the assessee company.

9.That the appellant craves to add or amend the grounds of appeal.”

3. When the appeal was called for hearing, none was appeared on behalf of assessee to represent the case. There is no application for seeking adjournment either. On perusal of record, we find that the Id. Deputy Commissioner of Income Tax, Circle-1, Bhatinda has completed the affixture on dated 15/02/2023, under V Rule 20 of Code of Civil Procedure, 1908 (V of 1908) related service of notice of ITAT-Amritsar Bench for intimation of hearing on dated 23/02/2023. In view of the above and considering the nature of dispute, we proceed to dispose the appeal *ex-parte qua* after hearing the learned CIT-DR and on the basis of material available on the record.

4. Brief fact of the case is that the case of the assessee was reopened u/s 148 by receiving information from the reliable source. The Id. AO conducted the verification and finally assessment was completed by addition of turnover of income which are claimed as agricultural in nature and the share capital received by the company from the investor. The assessee claims that the assessee is an agriculturist, and all the income are generated from the agricultural income. The assessee received the share capital but due to lack of verification the share capital, the share premium and current liability and provisions are added back with the total income aggregate amount of Rs.21,63,49,889/- as remained unexplained. The agricultural turnover amount to Rs.39,03,62,282/- was also added back due to non-existence of bonafide agricultural land. Aggrieved assessee filed an appeal before

the Id. CIT(A) & remained unsuccessful. Being aggrieved assessee filed an appeal before us.

5. The Id. CIT DR submitted that the assessee is not holding any agricultural property but credited the agricultural income in the books of account. Also, the share capital and share premium and current liabilities are remained unexplained and unverified before the Id. AO. He fully relied on the order of both the revenue authorities.

6. The assessee first challenged the jurisdiction of the Id. AO related to the assessment u/s 148 of the Act. Here, recorded reason of the Id. AO in page no. 1 of the assessment order which is reproduced as under:

“The assessee company filed its return of income on 29.11.2010 declaring income of Rs.NIL. Apart from this, the assessee has declared gross agricultural income of Rs. 38,34,86,813/- in the return of income. The return was processed at the returned income. Notice u/s 148 of the Act was issued on 31.12.2015 after recording the reasons, as under, and after obtaining prior approval of Principal Commissioner of Income Tax, Bathinda.

"In the year under consideration the assessee has shown gross agricultural income of Rs.38,34,86,813/-. In this case, in the assessment year 2012-13 the assessee has also shown agricultural income to the tune of Rs.

1,09,66,93,875/- and the case was assessed u/s 143(3) of the IT. Act, 1961. During the assessment proceedings, the assessee company was afforded numerous opportunities to explain/justify its agricultural income shown in the return. The assessee was also asked to give detail and nature of agriculture produce, evidence in respect of holding of agricultural land alongwith date of purchase/ acquisition of land and source of acquisition, detailed chart showing income & expenditure account under the head 'agriculture income', details of agriculture produce and parties to whom agriculture produce has been sold along with Form-J or any other documentary evidence in support of its claim of agricultural income. The assessee was also asked to produce books of account for verification along with bills/ vouchers etc. However, the assessee neither filed any reply nor produced books of account for verification. Again the assessee was asked to prove the genuineness of agricultural income and also requested to produce books of account for the year under consideration. Summons u/s 131 were also issued to the M.D. of the company requiring him to produce complete books of account for the A. Y. 2012-13 along with other information as called for earlier. However, despite giving numerous opportunities, the assessee neither produce any books of account / vouchers for verification nor any evidence was filed with regard to its claim of agricultural income. The assessee did not produce any bill/ voucher

from which the expenses such as crop expenses, labour expenses, plant purchases or any other expenses for verification which make go to establish that the company was carrying out agricultural activities. Thus, the assessee failed to prove the genuineness of agricultural income. During proceedings, the enquiries were also made through Inspector of this office with regard to the agricultural activities of the company at the site on which it was claimed by the company that on the said land the company was doing agricultural activities. During site inspection, the Inspector of this office visited the land at Village Raura Tehsil Baap Distt. Jodhpur. The Inspector had reported that land was dry, and some part of land was barren and on which some plants like Brahmi, Dake, Sheesham were growing which could not yield such high revenue. Moreover, the growth period of trees was approximately 10 to 12 years. They could not yield such high income, thus, burden of proof is upon the assessee to prove that his income was agricultural income which was exempted from tax and the whole income of Rs. 1,09,66,93,875/- by treating as income from unexplained other source in view of the following observation:-

(i) Girdawari of the agricultural land on which it was claimed that the company and the other small farmers to whom the land was given on lease were doing agricultural activity. Girdawari is the vital documents

from which the nature of the activities on the land can be adjudged carried on by any person, whether it were agricultural activity or not and who till the land. In the absence of girdawari and fardjamabandi, the element who tills the land is missed.

(ii) The assessee could not produce revenue record from which it can be ascertained that the company was the owner or the other persons to whom it was claimed that the land was given on lease on behalf of the company.

(iii) In the reply dated 26.03.2015, the company has claimed that the trees like Brahmi dake, Neem, Sheeshak, Jojoba etc. take 8 to 9 years for gaining maturity means thereby ready to earn agricultural income. The plea of the assessee is not tenable at all because the company was incorporated in the year 2005 as per certificate of registrar of the company. If we presume that the company was earning agricultural income from such plants how it is possible that the company earned such huge income in the year under consideration i.e. F.Y. 2011-12 relevant to assessment year 2012-13, when the date of attaining of maturity of such plants which, grown in the year 2005 is in 2014 and if any income will have to be earned that may be from the A. Y. 2014-15 onwards not in the year under consideration.

(iv) The assessee has failed to produce books of account, vouchers, bills of purchasing of plant etc. due to non production of books of account. The expenses claimed to be incurred on account of expenses claimed for earning of agricultural income could not be verified.

In view of the above, whole of the income of Rs. 1,09,66,93,875/- shown by the company had been assessed by treating as income from unexplained other source and not agricultural income by applying the ratio of the judgments in the case of CIT v. R. Venkataswamy Naidu [1956] 35 ITR 312 (SC) in which the Hon'ble Court have held that the assessee has to put before the Income-tax Authorities proper material which will enable them to come to a conclusion that the income which is ought to be assessed, is agricultural income. It is not for the Income-tax Authorities to prove that it is not an agricultural income as well as relying upon the other case in the case of CIT v. Ramakrishna Deo [1956] 35 ITR 312 (SC) it was held by the Hon'ble Court that a person who claimed the benefit to an exemption has to be established.

From the above, it is clear that the assessee failed to substantiate its claim of agriculture income. On the similar lines, the income to the tune of Rs.38,34,86,813/-, which had been claimed as exempt under the head

'agriculture income' by the assessee for the A. Y. 2009-10, is required to be taxed as unexplained income from other sources.

In the light of the above, I have reasons to believe that the assessee company has escaped assessment an amount of Rs.38,34,86,813/- by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment.

Accordingly, notice u/s 148 is to be issued to reassess the income which has escaped assessment besides any other income chargeable to tax which would have escaped assessment and would come to my notice subsequently in the course of assessment proceedings under this section, within the meaning of section 147 of the Income Tax Act, 1961.”

7. We heard the rival submission and considered the documents available in the record. The reopen was made on basis of the information. The assessing authority also completed the verification before come to the conclusion for reopening the case of the assessee. The entire issue was dealt by the ld. AO very carefully and also the prior approval was obtained from the ld. PCIT, Bathinda.

7.1 On the other hand, the assessee was unable to produce any contrary view or any judgment against the observation made by the ld. AO in recorded reasons. The

issue was dealt by the Id. CIT(A) but the assessee was unable to sustain its claim. We find no infirmity in the recorded reason. The Id. AO had made the reopening within his jurisdiction.

Accordingly, **the ground no. 1 of assessee is dismissed.**

Ground No. 2 to 7 of Assessee

8. The Id. CIT DR further invited our attention in the observation of the Id. AO in assessment order para 3.2 to 5 which are extracted as below:

“3.2. In view of the above, it was held that the assessee company has failed to prove the genuineness of the agriculture income shown in the return. The assessee had also failed to furnish the proof of agriculture land holding in the hands of company. During assessment proceedings, no books of account/vouchers/bills etc. were produced from which activities and expenses claimed to be incurred on labour, lease money, crop expenses, plant purchases could be verified. Accordingly, the huge agricultural income shown by the assessee was assessed as income under the head ‘income from other sources’.

4. During the course of assessment proceedings for the assessment year 2009-10, it was stated by the assessee company that as per SEBI order dated 04.02.2016, it has to return back the lease money received and so revised Profit & Loss Account for the A.Y. 2007-08 to 2015-16 was filed. However, no documents/evidences to substantiate the figures shown in the revised P & L account were filed by the assessee.

4.1 *The facts of the case under consideration are almost similar to the facts of the assessment years 2012-13 & 2013-14 wherein agricultural income shown by the assessee was assessed as income under the head 'income from other sources'.*

4.2 *In the P & L account of audit report, the assessee has shown gross income at Rs.39,03,62,282/- (including Lease money shown under the head agricultural income, at Rs.38,34,86,813/-) and have claimed certain expenses. The assessee has not filed any evidence of expenses incurred and even has not bothered to file any reply to show cause notice. Accordingly, the entire amount of gross income shown at Rs.39,03,62,282/- is assessed as assessee's income from 'Income from other sources'.*

4.3. *It may be mentioned here that the onus is upon the assessee to prove the genuineness of the agricultural income which the assessee has failed to prove.*

In the case of CIT v. R. Venkataswamy Naidu [1956] 29 ITR 529 (SC) the Hon'ble Court have held that the assessee has to put before the income-tax authorities proper material which will enable them to come to a conclusion that the income which is sought to be assessed, is agricultural income. It is not for the Income-tax Authorities to prove that it is not an agricultural income. In the other case, CIT v. Ramakrishna Deo [1956] 35 ITR 312 (SC) it was held by the Hon'ble Court that a person who claimed the benefit to an exemption has to establish it. Thus, burden of proof is on assessee to prove that his income is agricultural income which is exempt from tax.

4.4 *I am satisfied that the assessee has furnished inaccurate particulars of income as mentioned above and therefore, penalty proceedings u/s 271(l)(c) of the I.T. Act, 1961.*

5. *In the balance sheet annexed with the audit report, the assessee has shown increase in paid up share capital at Rs.4,00,000/- and share premium received at Rs.36,00,000/-. Further, there is increase in the 'Current liabilities and provisions' to the tune of Rs.21,23,49,889/-. The assessee has not filed any evidence of accretion and even has not bothered to file any reply to show cause notice. Thus the increase in other items appearing in the balance sheet in the shape of 'Share Capital', 'Share premium' and 'Current liabilities & Provisions' also remained unexplained.*

Accordingly, the said amounts aggregating to Rs.21,63,49,889/-are treated as unexplained cash credits in the books of assessee and treated as income of the assessee.”

8.1 In this relation, the observation of the Id. CIT(A) is further reproduced para 2 to 4 of the appeal order which is reproduced as below:

“2. In the assessment proceedings, the appellant company failed to furnish proof of agricultural land holding and prove the genuineness of agricultural income shown in the return. The requisitioned books of accounts/vouchers/bills etc could not be produced before the AO thereby disintitling him to verify the activities and expenses claimed to be incurred on labour, lease money, crop expenses, plant purchases etc. In fact, the appellant company followed up its non-cooperation in proving

the agricultural income as had been done by it during the assessment proceedings of A.Ys. 2012-13 & 2013-14. The AO categorically noted that theonus being on the appellant company to prove the genuineness of the agricultural income, remained undischarged. Thereafter, applying the law laid down in CIT Vs. R. Venkataswamy Naidu [1956] 29 ITR 529 (SC), the AO treated the gross agricultural income shown by the appellant company as “income from other sources”. In addition to that, the accretion to paid-up share capital and share premium as well as current liabilities and provisions, which could not be explained by the appellant company, was treated as unexplained cash credit and added back to the income.

3. In the appellate proceedings, the same grounds were taken as that taken against the assessment framed for A.Y. 2012-13. The said grounds stand decided by the order of this appellate authority dated 13/02/2017 in Appeal No. 102-IT/CIT(A)/ BTI/15-16. The grounds of appeal pertaining to the aforesaid addition in the instant appeal cannot be decided any differently. The grounds are, accordingly, rejected. The action of the AO in treating the gross agricultural income as “income from other sources” is upheld on the basis of reasons recorded in the aforesaid appellate order. A copy of the said appellate order dated 13/02/2017 is made part of this order.

4. So far as the addition of Rs. 21,63,49,889/- is concerned, the appellant company is seen to have not cooperated in the assessment proceedings in as much as the sources for such

accretion was never explained before the AO. Even in the appellate stage, no effort has been made to demonstrate the sources which led to the accretion. Other than castigating the AO for not giving adequate opportunity to explain the accretion, no other explanation was either offered at the assessment stage or at the appellate stage. In the circumstances, the action of the AO is upheld.”

9. We heard the rival submission and perused the orders of the revenue authorities. We find that the assessee was unable to substantiate its claim through the evidence in ITAT. The several opportunities were allowed to the assessee but assessee was remained unsuccessful for providing any documents in favour of its claim. The assessee did not possess any agricultural land or property for generating the revenue against this asset. Related to paid up share capital Rs.4 lac, share premium Rs. 36 lac and current liability and provisions Rs.21,23,49,889/- which is worked total amount to Rs.21,63,49,889/- was remained unexplained and unverified. In the hearing before the ITAT the assessee was remained unsuccessful to submit any documents or evidence in its favour. We find no infirmity in the order of the Id. CIT(A) and Id. AO. Accordingly.

Accordingly, **the ground nos. 2 to 7 are dismissed.**

Ground No. 8

10. The assessee claimed that the lease money amounting to Rs.15,09,72,412/- rebate on account of liability created by the SEBI which the assessee company booked as expenses. The ld. AO added back the same. The ld. CIT(A) had dealt the issue in his order the relevant para no. 7 of the ld. CIT(A) order for ready reference. The observation of the ld. CIT(A) is already depicted in the para no. 8 of our order which is mentioned above. We find no infirmity in the order of the ld. CIT(A).

Accordingly, **the ground no. 8 is of the assessee is dismissed.**

11. In the result, the appeal of the assessee is dismissed.

12. Ground no. 9 is general in nature.

13. In the result, **ITA No. 287/Asr/2017 is dismissed.**

14. The order of ITA 287/Asr/2017 is *mutatis mutandis* applicable to ITA No 288-291/Asr/2017 and ITA No. 198/Asr/2017 and follows accordingly.

15. In the result, all the appeals of the assessee bearing **ITA No. 287 to 291/Asr/2017** and **ITA No. 198/Asr/2017** are dismissed.

Order pronounced in the open court on 15.03.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

(1) The Appellant

(2) The Respondent

- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

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