

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” “B” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.363/Bang/2023
Assessment Year: 2007-08

Tarikere Pandurangarao Manjunath (T.P. Manjunath) Harish Silks & Sarees Nehru Road, Durgigudi Shivamogga 577 201  <b>PAN NO : AGXPM3266F</b>	<b>Vs.</b>	ITO Ward-1 & TPS Shivamogga
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri V. Srinivasan, A.R.
<b>Respondent by</b>	:	Shri Ganesh R. Ghale, Standing Counsel for Department

<b>Date of Hearing</b>	:	15.06.2023
<b>Date of Pronouncement</b>	:	15.06.2023

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by assessee is directed against order of NFAC for the assessment year 2007-08 dated 8.3.2023.

2. Facts of the issue are that the assessee filed his return of income on 31.10.2007 declaring total business income of Rs.1,55,910/- and net agricultural income of Rs.8,29,710/-. The return was processed u/s 143(1) of the Income-tax Act,1961 [‘the Act’ for short] accepting the returned income. Subsequently, the case was selected for scrutiny through. Assessment u/s 143(3) of the Act was completed on 29.2.2009,

wherein AO made three additions/disallowances on account of closing stock, agricultural income and sundry creditors.

2.1 Against this assessee went in appeal before NFAC/CIT(A). The NFAC/CIT(A) deleted the addition in respect of unconfirmed creditors to the tune of Rs.3,07,334/-. However, he confirmed the addition made in respect of difference in closing stock at R.2.18 lakhs and addition towards unproved agricultural income at Rs.8,29,710/-. Now the assessee is in appeal before us with regard to sustaining addition of Rs.2,18,000/- being difference in closing stock and addition of Rs.8,29,710/- being other income instead of agricultural income.

3. With regard to first issue, I heard the rival submissions. According to the AO, the inventory of stock filed as on 31.3.2006 and 31.3.2007, it was noticed that closing stock shown as on 31.3.2007, there was a mistake leading to the under-stating of closing stock. The assessee was asked to verify the mistake by furnishing full details of opening stock, purchase, sales and closing stock in respect of such item. According to the AO, there was no proper explanation by the assessee. However, it was noticed that the original inventory stock was taken manually by sales girl and that was subsequently computerized stock inventory has been taken out and the same was furnished to the AO. The AO was not ready to accept the rectified computerized stock inventory giving reason that it was after-thought. In our opinion, there is no base for such allegation made by AO. The assessee explained and submitted that there was no suppression of value of closing stock as the GP rate in the assessment under consideration was 8.59% as against 9.18% in immediately preceding previous assessment year i.e. 2006-07. It was also

submitted before us that the net profit in the assessment year under consideration was 1.58% as against 4.26% in immediate earlier assessment year i.e. 2006-07, it was declined due to high competition and inflation. It is also submitted that fluctuating of GP rate from year to year is not in assessee's hand in this line of business since the assessee is in the line of textile and cloth business where the fashion changes on day to day basis. The relevant GP and net profit rate in earlier 3 years is as follows:

Asst. Year	Sales	Gross Profit	G.P. Ratio	Net Profit as per P & L A/c	Net Profit ratio
31.03.2006	68,08,844	6,25,067	9.18%	2,89,890	4.26%
31.03.2005	41,27,106	3,40,489	8.25%	1,88,018	4.56%
31.03.2004	21,29,353	2,81,327	13.21%	1,11,612	5.24%

3.1 In my opinion, the mistake was crept while preparing the stock inventory manually by sales girl that was corrected by assessee and computerized rectified stock inventory has been filed and it cannot be said that it is an after-thought. When the mistake was noticed by assessee, it was rectified by computerizing the same. Further, the GP rate commensurate with earlier year rate of GP rate. Accordingly, I am of the opinion that the addition made towards discrepancy in stock inventory is not proper. Accordingly, I delete the addition of Rs.2,18,000/-.

4. Next ground in this appeal is with regard to sustaining addition of Rs.8,29,710/- being other income assessed as agricultural income.

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4.1 Facts of the issue are that on perusal of Capital account in the books of accounts produced, the AO observed that the assessee shown agricultural Income from the lands which was taken on "Land Tenancy" from the Agriculturists. The assessee was asked to produce, the details of expenses in order to verify the correctness of agricultural income declared from the lands which he has taken on "Land tenancy or Lease or Geni". In response to the same, the assessee furnished the details along with the postal addresses of the agriculturists. Accordingly, summons were issued to all the agriculturists and their statements were recorded by the AO. In order to verify as to whether the cultivation of agricultural land under "Land tenancy" or "Geni" or "Lease" by any other person is legally allowable under the Karnataka Land Reforms Act, 1974 or not, a letter was written to Tahsildhar, Shimoga. In compliance the Tahsildhar, Shimoga in his letter No. LRF.CR.69/09-10 dated 10-12-2009 submitted his report. On perusal of the report, the AO noticed that the assessee violated the law of the Karnataka Land Reforms Act, 1974. The assessee has not produced any evidence in support of his claim from agricultural income. The AO stated that the assessee taken the advantage of uneducated agriculturist and who are not aware of any law and the assessee declared the agricultural income to the department on there "Geni or Leased" land. The practice of giving the agricultural land on "Cheni" is prevailing. The "Cheni" means to harvest the ready crop, on the prevailing market rate which will be changing according to the price of the areca, the person who entries into agreement with the land owner will cut the ready crop of areca from the trees and such raw areca is sold by the owner. All the harvesting expenses will be borne by the person who under takes the "Cheni" and other agricultural expenses will be borne by the land owner. The income earned from the "Cheni" will be business income and not

agricultural income. The onus lies with the assessee to prove the agricultural income which is exempt from tax. In this case assessee has not proved that the agricultural income is really the agricultural income earned from the agriculture. The AO further stated that the assessee camouflaged his other income as agricultural income. The assessee's claim that he has earned the agricultural Income from the lands taken on "Geni" or "Lease" or "Land tenancy" cannot be acceptable *for the following reasons:*

- (a) The "Geni" or "Lease" or "Land tenancy" of lands is not permissible under Section 5 of the Karnataka Land Reforms Act, 1974.
- (b) The agreements on a Stamp Paper of Rs. 2/- cannot be acceptable for the reason that considering the quantum of transactions, the agreements should have been made on the stamp paper by paying stamp value to the extent which was required as per Section 17 of the Karnataka Stamp Act, 1957 and the said agreement should have been Registered before the Sub-Registrar.
- (c) It is unbelievable that the assessee has earned such huge agricultural Income after making payment towards leased amount to farmers, and meeting all the *cultivation expenses' which is found to be 5 to 10 times* more than the income that may earned by an agriculturist himself if he himself cultivated the lands.
- (d) It is also unbelievable that the assessee has managed the cultivation of Lands which were situated in different villages in spite of managing the Cultivation of his own lands and managing his business the volume of Which is more than one crore.

- (e) The assessee is a prudent businessman, he should have obtained regular "A" Bill or "B" bill in support of sale of Areca, if at all he has actually cultivated the lands and to the extent of Areca Crop sold.
- (f) Prepared self-made vouchers to suit the needs.

4.2 In view of the above findings, the AO held that the assessee has not at all cultivated the agricultural lands belonging to others and the said agreements of "Geni" was nothing but documents created in order to create a source in the form of agricultural income which is exempt and even if the "Geni" agreement are acceptable in terms of any law, The AO also held that the assessee has not at all earned such a huge agricultural Income after meeting expenses towards lease amount payments and also other cultivation expenses, which proved from the farmers statements and in the absence of regular sale bills of agricultural produce. Accordingly, the AO proceeded to bring to tax the income shown in the form of Agricultural income as income of the assessee earned from his business which has been shown camouflaged as agricultural Income. Hence, the AO made addition of Rs. 8,29,710/- which was confirmed by NFAC.

5. I heard the rival submissions and perused the materials available on record. The assessee has said to be taken the land on lease from the following parties and declared income as below:

S.No.	Name of the Land Owner	Extent of land leased	Income declared by the appellant at Rs.
1	B.P. Shadaksharaiah	2.20 Acres	96,515
2	Hyder Ali Khan	2.10 Acres	1,99,760
3	J.L. Jayasheela	3.24 Acres	2,03,260

4	Mallappa Shankarappa	3.20 Acres	1,78,400
5	Mallikamba	7.43 Acres	61,400
6	S. Mallappa Shekarappa	3.10 Acres	89,275

5.1 The assessee has filed the lease deed from these parties for taking the lands from above parties. The assessee was asked to produce the copy of agreement entered into for acquiring lands on Tenancy, along with copy of Pahini, Bill in support of sale of agricultural products and details of expenses to verify the genuineness of the agricultural income declared by the assessee. The bills produced does not bear the name of the assessee nor the name of the original land owner. According to the AO, assessee violated the Law of Karnataka Land Reforms Act, which was confirmed by the Tahsildar, Shivamogga vide his letter dated 10.12.2009. On this basis, the lower authorities observed that no Tenancy shall be created or continued in respect of any land nor shall any land be leased for any period as per section 5(1) of the Karnataka Land Reforms Act, 1974. Accordingly, lower authorities confirmed the treatment of agricultural income declared by the assessee as non-agricultural income i.e. income from other sources. In my opinion, violation of Karnataka Land Reforms Act cannot be reason to disallow the claim of assessee as agricultural income.

(i) In my opinion, Mr. B.P. Sadaksharayya – Rs.96,515/- whose sworn statement has been recorded u/s 131 of the Act on 22.12.2009 who has confirmed to give the land to the assessee in his statement and the same is to be accepted as agricultural income. Being so, there cannot be any addition on this count. The addition is deleted to the tune of Rs.96,515/-.

(ii) Similarly, in the case of Hyder Ali Khan addition is at Rs.1,99,760/-, whose statement recorded on 24.11.2009 and he has denied the fact that he has given the land on lease to the assessee. Being so, an amount of Rs.1,99,760/- cannot be considered as an agricultural income. The same is to be treated as income from other sources. Hyder Ali Khan has denied giving the land to the assessee on lease basis for carrying out the cultivation. Hence, Rs.1,99,760/- earned from his land is to be treated as non-agricultural income.

(iii) J.L. Jayasheela – Rs.2,03,260/- in whose case notice was issued to him u/s 131 of the Act on 18.12.2009. There was a medical certificate filed on this record vide certificate dated 26.12.2019 and Mr. J.L. Jayasheela has not appeared before AO for enquiry. The assessment order was passed on 29.12.2009. Before passing assessment order, the AO ought to have conducted further enquiry. No enquiry has been carried out. The assessee filed all the details before the AO like RTC record of the properties, debit entries and receipts. In my opinion, the proper enquiry has not been conducted on this issue. It is appropriate to remit this part of the issue to the file of AO for fresh consideration.

(iv) Mallappa Shankarappa – Rs.1,78,400/- who has not confirmed it by appearing before AO. Hence, I remit the issue to the file of AO for fresh consideration as discussed above.

(v) Mallikamba – Rs.61,400 who has not appeared before AO for enquiry as in the case of J.L. Jayasheela. However, she has confirmed by way of letter written to AO along with medical certificate and ledger account and receipts when the notice u/s 131 of the Act was issued to her. Being so, I direct the AO to

accept income of Rs.61,400/- as against agricultural income only.

(vi) Mr. Mallappa Sekharappa – Rs.89,275/-, who has not appeared before AO and also not confirmed. Hence, income of Rs.89,275/- to be treated as income from other sources because of non-confirmation. Addition confirmed.

5.2 Thus, the above issue is decided as follows:

1	B.P. Shadaksharaiah	Rs.96,515	Addition deleted
2	Hyder Ali Khan	Rs.1,99,760	Addition confirmed
3	J.L. Jayasheela	Rs.2,03,260	Remitted to AO for fresh consideration
4	Mallappa Shankarappa	Rs.1,78,400	Remitted to AO for fresh consideration
5	Mallikamba	Rs.61,400	Addition deleted
6	S. Mallappa Shekarappa	Rs.89,275	Addition confirmed.

6. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 15<sup>th</sup> June, 2023

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 15<sup>th</sup> June, 2023.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,  
ITAT, Bangalore.**