

आयकर अपीलीय अधिकरण  
गुवाहाटी पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
GUWAHATI BENCH AT KOLKATA**

[वर्चुअल कोर्ट]  
[Virtual Court]

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

डॉ. मनीष बोर्ड, लेखा सदस्य

के समक्ष

Before

**SRI RAJPAL YADAV, VICE PRESIDENT (KZ)**

&

**DR. MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A. Nos.: 162 & 163/GTY/2019**

**Assessment Years: 2014-15 & 2015-16**

***Sri Abhijit Rabha.....Appellant***  
***[PAN: ACBPR 7402 C]***

***Vs.***

***DCIT, Circle-Bongaigaon, Assam.....Respondent***

**Appearances by:**

*None appeared on behalf of the Assessee.*

*Sh. P.S. Thuingaleng, ACIT, appeared on behalf of the Revenue.*

Date of concluding the hearing : May 17<sup>th</sup>, 2023

Date of pronouncing the order : July 3<sup>rd</sup>, 2023

**ORDER**

**Per Manish Borad, Accountant Member:**

Both these appeals filed by the assessee pertaining to the Assessment Years (in short 'AY') 2014-15 & 2015-16 are directed against separate orders passed u/s 250 of the Income Tax Act,

1961 (in short the 'Act') by ld. Commissioner of Income-tax (Appeals)-2, Guwahati [in short ld. 'CIT(A)'] dated 30.11.2018.

2. When the case was called for, none appeared on behalf of the assessee. On perusal of the case file, we find that in the past, multiple occasions i.e. on 05.07.2022, 28.11.2022, 30.01.2023 & today i.e. on 17.05.2023 there is no representation on behalf of the assessee except on one occasion when written request for adjournment has been filed on 30.01.2023. *Prima facie* it indicates that assessee is not serious in pursuing this appeal. Therefore, it was decided to hear these appeals with the assistance of ld. D/R and available records.

3. The assessee is in appeal before this Tribunal raising the following grounds:

Assessment Year: 2014-15:

*"1. Because the learned CIT (Appeal) has erred on facts as well as in law in rejecting the appeal preferred by the appellant.*

*2. Because the assessment order passed is arbitrary, illegal, contrary to the letter and spirit of section 143 (3) of the Act, the explanation offered by the appellant has been rejected unreasonably.*

*3. Supreme Court in the CIT -vs- Shapoorji Pallonji 44 ITR 89 & CIT -vs- Hardutroy Chamaria held that CIT (Appeals) has no jurisdiction to travel beyond the subject matter of assessment or beyond record, i.e., return of income and the assessment order. Vide order dated 30.11.2018 CIT (Appeals) has passed following direction*

*"The Ld. AO is also directed to conduct similar enquiries in respect of the previous 6 years (prior to the year under consideration) about the cash deposits, if any, made by the Appellant, by using the powers under Section 133(6)/131 read with Section 150 of the Act, after taking due permission from the Ld. Pr.CIT for issue of notices under section 133(6)/131 to also examine the edifice, justification and bonafides of source as well as nature of such cash deposits in other*

*years also to which recourse can be made under section 150(2) of the Act. The Ld. AO is also directed to make similar enquiries in respect of all subsequent years also to ascertain whether similar cash deposits have been made by the Appellant. The Ld AO is directed, in this regard to examine the other details, if any, which are already available on assessment records."*

*The aforesaid direction passed by the CIT (Appeals) is beyond the subject matter of assessment and beyond the record. CIT (Appeals) has no jurisdiction to pass the aforesaid direction. As such order dated 30.11.2018 is liable to be set aside.*

*4. The CIT (Appeals) cannot do indirectly what he could not have done directly. The aforesaid act directed to A.O, are acts which cannot do directly as such aforesaid direction are beyond the jurisdiction of CIT (Appeals).*

*5. Because the learned CIV (Appeals) erred in law as well as on facts while confirming the order passed by Assessing Officer.*

*6. Because observations of the learned CIT (Appeals) in the order regarding agriculture income of the assessee are per-verse, arbitrary, baseless.*

*7. Because the learned CIT (Appeals) has erred in overlooking and in summarily rejecting the detailed statement of facts submitted along with memorandum of appeal, various documents and evidence, written arguments while accepting the loop-sided and factually incorrect version of the learned Adjudicating Officer.*

*8. Because the learned CIT (Appeals) has exceeded his jurisdiction and has erred on facts and in law in rejecting appeal preferred by the appellant.*

*9. The assessee craves leave to add/alter any of the ground of appeal before or at the time of hearing.*

*10. Allow stay of demand in respect of the demand confirmed by the CIT (APPEAL-2)."*

Assessment Year: 2015-16:

*"1. Because the learned CIT (Appeal) has erred on facts as well as in law in rejecting the appeal preferred by the appellant.*

2. *Because the assessment order passed is arbitrary, illegal, contrary to the letter and spirit of section 143 (3)/144 of the Act, the explanation offered by the appellant has been rejected unreasonably.*

3. *The CIT (Appeals) cannot do indirectly what he could not have done directly. The aforesaid act directed to A.O, are acts which cannot do directly as such aforesaid direction are beyond the jurisdiction of CIT (Appeals).*

4. *Because the learned CIT (Appeals) erred in law as well as on facts while confirming the order passed by Assessing Officer.*

5. *Because observations of the learned CIT (Appeals) in the order regarding agriculture income of the assessee are per-verse, arbitrary, baseless.*

6. *Because the learned CIT (Appeals) has erred in overlooking and in summarily rejecting the detailed statement of facts submitted along with memorandum of appeal, various documents and evidence, written arguments while accepting the loop-sided and factually incorrect version of the learned Adjudicating Officer.*

7. *Because the learned CIT (Appeals) has exceeded his jurisdiction and has erred on facts and in law in rejecting appeal preferred by the appellant.*

8. *Because the learned CIT (Appeals) was vindictive and passed the order in haste i.e. the order is passed on 20.12.2018 as against the date for hearing was fixed on 21.12.2018.*

9. *The assessee craves leave to add/alter any of the ground of appeal before or at the time of hearing.*

10. *Allow stay of demand in respect of the demand confirmed by the CIT (APPEAL-2)."*

4. On perusal of the grounds as well as the impugned orders, will notice that so far as the appeal for AY 2015-16 is concerned, the order of ld. AO dated 20.12.2017 is *ex-parte* and framed u/s 144 of the Act and similarly, the order of ld. CIT(A) dated 20.12.2018 is also *ex-parte* though the issue is discussed on merit in details. As regards AY 2014-15 is concerned both the lower authorities have decided the issues on merits and ld. CIT(A) has

made one more addition to that of made by ld. AO regarding unexplained cash deposit of Rs. 1.03 Cr.

5. The other issue raised in this appeal is regarding genuineness of the agricultural income declared by the assessee in the income tax return and since no documentary evidences were placed to substantiate genuineness of the claim before both the lower authorities, the same has been denied.

6. Ld. D/R vehemently argued supporting the orders of both the lower authorities and stated that the additions so confirmed by ld. CIT(A) needs to be sustained as firstly, assessee has not produced any document to explain the genuineness and the correctness of the agricultural income except showing the proof of agricultural tax paid to the Government of Assam. Secondly, it was stated that there was a huge cash deposit in the bank account of the assessee during FY 2013-14 relevant to AY 2014-15 on which ld. AO failed to take note. However, ld. CIT(A) has discussed the issue in detail and has made the addition there of and the same should be confirmed.

7. We have heard rival contentions and perused the records placed before us. The assessee is a Government employee and return of income for AY 2014-15 & AY 2015-16 were e-filed declaring total income of Rs. 22,03,210/- & 23,17,510/- respectively. The assessee has declared agricultural income of Rs. 33,65,895/- & 25,75,785/- for AY 2014-15 & AY 2015-16, respectively. The case of the assessee was selected for limited scrutiny to verify the genuineness of the agricultural income declared by the assessee which was followed by serving of notices

u/s 143(2) & 142(1) of the Act. Further, it is also observed that during FY 2013-14 & 2014-15 following amount of cash was deposited in the two bank accounts held by the assessee with HDFC Bank and Axis Bank:

<u>Bank Name and Branch</u>	<u>Account No.</u>	<u>F.Y. 2013-14</u>	<u>F.Y. 2014-15</u>
<i>HDFC Bank, Diphu</i>	<i>22681000001388</i>	<i>1,02,19,000.00</i>	<i>15,30,500.00</i>
<i>Axis Bank, Diphu</i>	<i>911010041325560</i>	<i>34,46,000.00</i>	<i>19,49,500.00</i>

8. So far as the dispute relating to the genuineness of the agricultural income is concerned, ld. AO while framing the assessment for AY 2014-15, observed that the assessee has got agricultural land measuring 17 Bighas and the market information do not support the genuineness of the agricultural income and concluded that the sale proceeds from sale of agricultural produce at Rs. 40,92,500/- deserves to be added as unexplained cash credit. However, for AY 2015-16 the agricultural income at Rs. 35,75,785/- was added as unexplained income.

9. Further, we notice that during the course of appellate proceedings the assessee has contended that it has paid in advance agricultural tax at Rs. 3,59,700/- under the challan in Form-8 under the Assam Agricultural Income Tax Rules, 1939. However, except for referring to the said challan, no evidence has been filed for both the assessment years in question before both the lower authorities in the form of any income and expenditure account, proof of agricultural produce, copy of mandi receipts as well as mode of transportation for taking such agricultural produce to the place of sale and details of sale consideration, proof of purchase of equipment, seeds and payment to labourers. The

assessee has also not filed any detail of the local Panchayat where the records of agricultural produce are entered in the records as to what was grown on the agricultural land owned by the assessee. Further, no evidence has been filed by the assessee to show that what was the quantity of produce and market rate of such produce. Due to absence of all these details, the genuineness and correctness of the agricultural income of the assessee to have been earned from the agricultural land measuring 17 Bighas (as referred by Id. AO in the assessment order) there remain no mechanism to accept the claim of the assessee.

10. However, considering the fact that AY 2015-16 has been decided *ex-parte* by both the lower authorities and further considering the fact that the assessee owns agricultural land and has paid certain agricultural tax under the Assam Agricultural Income Tax Rules, 1939, we deem it proper to restore the issue of the correctness of the claim of agricultural income shown by the assessee for both the assessment years under appeal to the file of Id. CIT(A) before whom assessee shall file all necessary details as discussed above in the preceding para and also call for remand report from the jurisdictional Assessing Officer on such documentary evidences and then to decide the issue in accordance with law. Needless to mention that proper opportunity of being heard should be provided to the assessee. The assessee is also directed to remain vigilant and file necessary documents, if considered necessary, in support of its grounds of appeal and should not take adjournment, unless otherwise required for reasonable cause. In case after providing sufficient opportunity to the assessee, there is no compliance by the assessee, then Id.

CIT(A) can pass a speaking order in accordance with law. The grounds of appeal raised regarding the addition for not accepting the agricultural income and making addition u/s 68 of the Act for AY 2014-15 & AY 2015-16 are restored to Id. CIT(A) with the directions referred herein above and are, thus, allowed for statistical purposes.

11. As far as another issue for AY 2014-15 regarding unexplained cash deposit of Rs. 1.03 Cr is concerned, we find it pertinent to go through the relevant finding of Id. CIT(A) which is given in page 68 to 70 of the impugned order and reads as follows:

*“In view of the above discussion, the impugned addition of Rs. 40,92,502/- made by the Ld. AO is, hereby, confirmed. It is further directed that the so called expenses amounting to Rs. 7,26,607/- purportedly incurred by the Appellant in earning the gross agricultural income of Rs. 40,92,502/- are deemed to have never been incurred for the purposes of earning the purported agricultural income.*

*Another very vital aspect of this matter is that the following cash deposits were made by the Appellant in his bank account:*

<i>Bank Name and Branch</i>	<i>Account Number</i>	<i>FY 2013-14</i>	<i>FY 2014-15</i>
<i>HDFC Bank, Diphu</i>	<i>22681000001388</i>	<i>Rs. 1,02,19,000/-</i>	<i>Rs. 15,30,5000/-</i>
<i>Axis Bank, Diphu</i>	<i>911010041325560</i>	<i>Rs. 34,46,000/-</i>	<i>Rs. 19,49,500/-</i>

*However, despite the fact that the Appellant had deposited an aggregate cash amounting to Rs. 1,36,65,000/- in his bank accounts (as can be seen from the table above) and that he only earned a net agricultural income (whether explained or otherwise, though presuming) of Rs. 33,65,895/-, the Ld AO ought to have examined the source as well as nature of the entire amount of cash deposits amounting to Rs. 1,36,65,000/- deposited into the bank accounts of the Appellant. This is a very vital and important aspect since, while the Ld AO had referred to the cash deposits in the bank account of the Appellant, considering the fact that the case was selected for limited scrutiny to verify the genuineness of agriculture income declared by the Appellant, and in view of huge cash deposits, the Ld*

*AO ought have gotten the case converted into full scrutiny, looking into the factual circumstances of the employment of the Appellant. Unfortunately, the Ld. AO had failed to act and such inaction has resulted in grave prejudice to the interest of the revenue. However, considering the fact that the Ld. AO might have been burdened by large number of time barring assignments and other administrative works, this vital issue might have missed his contemplation for no one would ever take such a big risk to omit making an addition of Rs. 1.03 crores or even enquiring into the same.*

*Thus, while no relief is being permitted to the Appellant, considering the fact that necessary and requisite enquiry qua source as well as nature of cash deposited amounting to Rs. 1,36,55,000/- was required to be made, and which has not been made, and thereby it is apparent that income of the Appellant has escaped assessment, I direct the AO to invoke the provisions of Section 133(6), Section 147/148 and/or, if required, Section 150 of the Act and thereafter re-assess the income of the Appellant after following the due procedure i.e.*

*a. firstly, making requisite enquiries, under Section 133(6)/131 about the total cash deposits made by the Appellant, to examine in details the source and nature of cash deposited by the Appellant in his bank account as tabulated above, after taking due permission from the Ld. Pr. CIT for issue of notices under section 133(6)/131,*

*b. secondly, thereafter, if, after due and proper enquiries, the Ld. AO is satisfied that some income has escaped assessment, recording proper reasons to re-open the case of the Appellant for the year under consideration for bringing to tax the incomes, if any, in the form of cash deposits and any other which have escaped assessment by invoking the provisions of law relating to reopening, reassessment etc. under Section 147/148,*

*c. thirdly, issuing the appropriate notice under the provisions of law relating to reopening, reassessment etc. under Section 147/148*

*d. fourthly, providing the reasons so recorded to the Appellant as soon as possible after the issue of the notice under Section 148 of the Act,*

*e. fifthly, disposing the objections, if any filed, by the Appellant to the issue of the notice under Section 148 of the Act and*

*f. finally, after following due procedure passing an appropriate order under proper provisions of Act and making additions, qua the source*

*and nature of cash deposited, under proper provisions of the Act to bring to tax the income, if any, which has escaped assessment. Needless to say that the Ld. AO shall grant proper and adequate opportunity of being heard to the Appellant and shall fully comply with the principles of natural justice considering the 'non-adversial tax regime' manifestation of the Government.*

*The Ld. AO is also directed to conduct similar enquiries in respect of the previous 6 years (prior to the year under consideration) about the cash deposits, if any, made by the Appellant, by using the powers under Section 133(6)/131 read with Section 150 of the Act, after taking due permission from the Ld. Pr. CIT for issue of notices under section 133(6)/131 to also examine the edifice, justification and bonafides of source as well as nature of such cash deposits in other years also to which recourse can be made under section 150(2) of the Act. The Ld. AO is also directed to make similar enquiries in respect of all subsequent years also to ascertain whether similar cash deposits have been made by the Appellant. The Ld AO is directed, in this regard to examine the other details, if any, which are already available on assessment records.”*

12. From perusal of the above finding and also considering the provisions of Section 251(1) of the Act as per which ld. CIT(A) has co-terminus power to that of the assessing officer as he may confirm, reduce, enhance or annul the assessment. Ld. CIT(A) based on the details of cash deposited in the bank accounts held by the assessee has made the observation that ld. AO has not examined this grave issue regarding huge cash deposit for which no explanation has been filed by the assessee before ld. CIT(A). Ld. CIT(A) has directed ld. AO to examine this issue. We, however considering the fact that in the assessment order the case of the assessee was picked up for limited scrutiny but the reasons for selection of scrutiny are not placed on record for both the assessment years. Further, this issue has been raised by ld. CIT(A) during the course of appellate proceedings and there is no evidence to show that whether the

assessee was provided any opportunity of hearing on this issue and also whether the assessee raised any objection against the new issue being taken up by Id. CIT(A).

13. Thus, considering the fact that the issue of examination of correctness and genuineness of agricultural income has already been restored to the file of Id. CIT(A), we deem it proper to restore this issue regarding direction given to Id. AO for examining the source of cash deposited in the bank accounts held in the name of the assessee at Rs. 1,36,55,000/- for fresh consideration taking into note the reasons for limited scrutiny and whether reasonable opportunity of being heard was provided to the assessee to explain the source of alleged cash sum. Thus, this issue is also restored to the file of Id. CIT(A) for afresh adjudication.

14. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

***Kolkata, the 3<sup>rd</sup> July, 2023***

*Sd/-*  
[Rajpal Yadav]  
Vice President

*Sd/-*  
[Manish Borad]  
Accountant Member

Dated: 03.07.2023

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Sri Abhijit Rabha, H. No. 21, Link Road-02, Rajgarh, Guwahati-781 003.**
- 2. DCIT, Circle-Bongaigaon, Assam.**
3. CIT(A)-2, Guwahati.
4. CIT-
5. CIT(DR), Guwahati Bench, Guwahati.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata