

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 224/JPR/2023
निर्धारण वर्ष/Assessment Year : 2014-15

Shri Ajay Bhargava, HUF C-130, Shyam Nagar Jaipur – 302 019	बनाम Vs.	ITO, Ward 1(3) Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAJHA 6837 J		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओरसे/ Assesseeby : Shri Rajeev Sogani (C.A)
Ms. Ruchika Sogani, Adv
राजस्व की ओरसे/ Revenue by: Ms. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख/Date of Hearing : 19/07/2023
उदघोषणा की तारीख/Date of Pronouncement: 02/08/2023

आदेश/ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 15-03-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2014-15 wherein the assessee has raised the following ground of appeal.

“1. In the facts and circumstances of the case and in law, ld. CIT(A)/NFAC has erred in confirming the action of the AO in making addition of Rs.17,00,246/- to the income of the assessee without considering the same to be agriculture income earned by the assessee during the year under consideration. The action of the ld. CIT(A) is illegal, unjustified, arbitrary and

against the facts of the case. Relief may please be granted by deleting the entire addition made by the AO and confirmed by the Id.CIT(A).

2.1 Apropos solitary ground of the assessee, the facts as emerges from the order of the Id. CIT(A) are as under:-

“4. CIT’s Decision:

4.1 In this regard, the relevant portion of column No. 12 of Form No. 35 is reproduced hereunder for ready reference.

12	Whether any documentary evidence other than the evidence produced during the course of proceedings before the Income Tax Authority has been filed in terms of Rule 46A	No
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As can be seen from above table, the appellant has stated in Form No. 35 that no new evidence is being filed. During the appellant proceedings also, the appellant has not made application of new evidence. However, during the appellate proceedings, the appellant is furnished certain new evidence. In this regard, it is stated that the appellant has neither stated in Form No 35 that new evidence is being filed nor filed any application for admission of new evidence during the appellate proceedings nor made out a case for admission for new evidence as per the exceptions prescribed under Rule 46A. Therefore, the new evidence furnished by the appellant is not admitted.

4.2. The brief facts of the case and the findings of the AO as per the assessment order are stated herein. During the course of assessment proceedings, it is noticed that during the year under consideration the assessee HUF has declared abnormal agriculture income of Rs. 27,00,246/- as compared to NIL Agriculture Income in the earlier years. Further, the assessee sold Agriculture Land on 30.07.2013. However, on going through the Savings Bank account of the assessee maintained with UCO Bank, Jaipur, it is noticed that apart from sale consideration of Rs. 1,11,00,000/- received through clearing, the assessee deposited cash amount of Rs. 10,15,000/- on 03.08.2013 and Rs. 14,00,000/- on 24.08.2013. Therefore, the assessee was asked to file documentary evidence with regard to source of cash deposits in the bank account and in support of declared agriculture income of Rs. 27,00,246/- The assessee in his written submission filed on 28.09.2016 stated that the cash deposits have been made out of sale of Agriculture crops in the open market. The assessee. also stated that agriculture income has also been declared in the Return of Income. As regards the documentary evidence, the assessee filed photo copy of receipts of Krishi Upaj Mandi Samiti, totaling to Rs. 27,00,246/-. On going through the photo copy of receipts, it is noticed that all the receipts were made between 01.08.2013 to 19.08.2013 and

in the receipts, the name of seller was shown as Ajay Bhargava HUF as well as the name of buyer was also shown Self. As such, the assessee has declared agriculture income of Rs. 27,00, 246, therefore, the assessee was asked to file 'Girdawari Report and details of agriculture produced. The assessee was also asked to file an explanation with regard to discrepancy pointed out in the receipts.

4.3. Thereafter, the AO examined the reply furnished by the appellant and stated that the assessee filed copy of Girdavari Report the relevant year, according to which during the period under consideration the crop of Gwar, Bazra Wheat, Sarson, Chana were obtained. The crop of Moong which has been mentioned in the receipts has not been obtained by the assessee on the agriculture land. In this way, the assessee has tried to misrepresent the facts of the case by declaring bogus agriculture sale. Further, on going through the Girdawari Report/ Jamabandi, it is found that the land has been shown as non irrigated and therefore, it is not possible to get so much of agriculture crop on this land. Thus, the agriculture products as shown by the assessee as well as sales remained unverifiable.

Further, it appears that the Agriculture Income has been declared without any basis. While declaring agriculture Income, the assessee has failed to furnish the documentary evidence with regard to expenses incurred on account of Seeds, Fertilizers, Diesel and Electricity, Expenses & other expenses. No books of accounts or any other documents have been produced during the course of assessment proceedings in support of declared agriculture income.

4.4. The assessee has declared gross receipts of Rs. 27,00,246/-. The accuracy of the figures could not be established by the assessee by documentary evidence except filing of receipt of Krishi Upaj Mandi. Nothing has been stated about the name of Broker through which the Agriculture produce was sold. The Krishi Upaj Mandi issued the receipts to the Brokers or who are doing their broking business in the Mandi. The Broker through which the sale is made mentioned their names on the Mandi Receipts. Thus, the authenticity of the receipts could not be proved by the assessee.

It appears that the assessee has declared bogus agriculture income in order to get the benefit of exempted Agriculture-income and also to explain the source of cash deposit found in the bank account of the assessee which is not allowable to the assessee.

In the case of the assessee, it was asked to file documentary evidence in support of agriculture production as well as sale of agriculture produce, however, it failed to do so

All the facts discussed above make it clear that if rule of preponderance of probabilities is applied, then the bogus sales declared by the assessee on account of agriculture produce and filed details of sales is only a self serving documents and nothing else. It is established that to a large extent, the undisclosed income earned by assessee by way of sources which have not been disclosed by the assessee and the same has been declared in the garb of Agriculture Income.

4.5 During the appellate proceedings, the appellant furnished written submission in support of the contention that the addition of Rs. 17,00,246/- ought to be deleted. As stated earlier, the new evidence furnished by the appellant is not admitted. The following facts are relevant for deciding the issue under consideration and simultaneously the issue under consideration is also adjudicated as under.

1. The appellant has for the first time declared agriculture income of Rs.27,00,246/-.
2. The appellant has sold agriculture land on 30.07.2013 for the consideration of Rs. 1,11,00,000/- and received the entire consideration through cheques. The AO has noticed that apart from the sales consideration of Rs. 1,11,00,000/- received through clearing, the assessee has deposited cash amount of Rs.10,15,000/- on 03.08.2013 and Rs. 14,00,000/- on 24.08.2013.
3. The AO has pointed out various defects in the receipts issued by Krishi Upaj Mandi Samiti.
4. The receipts issued by Krishi Upaj Mandi Samiti shows that all the receipts has made between the short period from 01.08.2013 to 19.08.2013.
5. The AO has ascertained that there were defects in the Girdhwari Report.
6. The AO required the appellant to file documentary evidence with regard to expenses incurred on account of Seeds Fertilizers, Diesel and Electricity Expenses & other expenses. However, the appellant could not produce the same.
7. In this regard, reliance placed on the decision of the Hon'ble Supreme Court in the case of CIT v Raja Benoy Kumar Sahas Roy [1957] 32 ITR 466 (SC) wherein, the Hon'ble Court held that the assessee ought to conduct the primary, secondary and tertiary activities with respect to the agricultural activities and such expenses are to be supported by necessary documentary evidence. However the case under consideration, the appellant is not having the requisite documentary evidence.
8. Although there are various defects pointed out by the AO and the appellant could not furnish all the requisite documentary evidence as per the decision of the Hon'ble Supreme Court in the case of CIT v Raja Benoy Kumar Sahas Roy [1957] 32 ITR 466 (SC), the AO was fair in accepting an amount of Rs.10,00,000/- as agriculture income out of the total income declared by the appellant of Rs. 27,00,246/-.

In view of the above and also after considering all the facts and circumstances of the case of the consideration, I am of the considered opinion that the AO has rightly held that the remaining portion of the agriculture income declared by the appellant of Rs. 17,00,246/- is to be treated as income from other sources. Therefore, the addition of Rs. 17,00,246/- is hereby confirmed. Accordingly, this ground of appeal is dismissed.”

2.2 During the course of hearing, the ld.AR of the assessee prayed that the ld. CIT(A) has erred in confirming the action of the AO in making addition of Rs.17,00,246/- to the income of the assessee without considering the same to the agriculture income earned by the assessee during the year under consideration. The ld. AR further submitted that the ld. CIT(A) erred in confirming the action of the AO by misplacing reliance on the decision of Hon'ble Supreme Court in the case of CIT vs Raja Benoy Kumar Sahas Roy [1957]. The ld. AR of the assessee took reference at page 5 of ld. CIT(A)'s order and submitted that the decision of Hon'ble Supreme Court (supra) only speaks of primary, secondary and tertiary activities to be carried out for constituting agricultural activities. He further submitted that lower authorities have affirmed the carrying out of these activities by the assessee because income to the tune of Rs.10 lacs was accepted. Once doing these primary activities have been accepted then thereis no reason to disallow the remaining claim alleging that these activities having not performed. The ld. AR of the assessee further submitted that lower authorities have neither conducted any enquiry to disprove the evidences placed on record nor brought anything on record contrary to the evidences. Thus the ld. AR of the assessee prayed the Bench to allow the appeal of the assessee.

2.3 On the other hand, the ld. DR supported the orders of the lower authorities.

2.4 We have heard both the parties and perused the materials available on record. Brief facts of the case are that the assessee, an HUF, filed its return of income for the assessment year 2014-15 declaring total income of Rs.69,490/- and agriculture income of Rs.27,00,246/-. The assessment was completed by the AO vide order u/s 143(3) dated 20-12-2016 wherein agriculture income to the tune of Rs. 10 lacs was accepted and balance amount of Rs.17,00,246/- was treated as income from other sources by the AO with following narration.

“In view of the above findings, it would be justifiable and appropriate to treat out of total agriculture income of Rs.27,00,246/- declared by the assessee, an amount of Rs.10 lacs is treated as agriculture income and the balance amount of Rs.17,00,246/- is treated as income from other sources. Thus in view of the elaborate discussion made above, I hereby hold the amount of Rs.17,00,246/- as undisclosed income of the assessee as his income from other sources (taxable at the rate of 30% as provided u/s 115BBE.)”

In first appeal, the ld. CIT(A) has confirmed the action of the AO with following observation.

“In view of the above and also after considering all the facts and circumstances of the case of the consideration, I am of the considered opinion that the AO has rightly held that the remaining portion of the agriculture income declared by the appellant of Rs. 17,00,246/- is to be treated as income from other sources. Therefore, the addition of Rs. 17,00,246/- is hereby confirmed. Accordingly, this ground of appeal is dismissed.”

It is pertinent to mention that during hearing, the ld. AR of the assessee filed the following documents with a view to dispelling the doubts in the case of the assessee.

1. Copy of Bank statement (Page 1)
2. Copy of Jamabandi of Agricultural Land (Page 2)

3. Copy of KhasraGirdawariSanvat 2070-2073 (Page 3)
4. Details of Agriculture Receipts (Page 4)
5. Copy of Agriculture Receipts of Mandi Samiti (Pages 5-14)
6. Copy of confirmation of third party (Pages 15-17)

From the above scenario of the case, it is noted that the agricultural land is situated at Mahla Bassi near Jaipur which is owned by the assessee, HUF. The Jamabandi (PB-2) and Girdavari (PB3) filed by the assessee substantiate as evidence of agricultural activities and the entire agricultural produce was sold through Krishi Upaj Mandi Samiti for which bills are placed on record (PB 5-14). The produce was sold to Mangal Chand Rameshwar being third party whose confirmation alongwith his address is also placed on record at PBP 15-17. The Bench thus noted from the entire conspectus of the case that when it has been established that the assessee is engaged in cultivating the crops and his entire produce are sold through Krishi Upaj Mandi Samiti and bills of the same are placed on record and the produce was sold to Mangal Chand Rameshwar then there is no question to make partial addition of Rs.17,00,246/-. If there had been any doubt to the revenue authorities, it could have made enquiry to disprove the evidences placed on record by the assessee at the time of assessment or before the appellate authority which was not done and no contrary evidences were put forth. Hence, it appears from the available records that partial sustenance of addition of Rs.17,00,246/- on the part of the revenue is not justified once the lower authority has already considered that the

assessee holding the land, has undertaken the agricultural activities, has sold the produced in the Mandi, submitted all the bills where the produced are sold, confirmation of the party to whom the produces sold. Despite all these details available on record and has filed on record revenue has without controverting these evidences partly confirmed the income as non-agricultural land on the same set of facts considered as agricultural income to the extent of Rs. 10 lacs. This action of the revenue without controverting the evidence placed on record is not correct. We note that even the ld. CIT(A) has not controverted the evidence and has confirmed the addition in a cryptic order. Considering this aspect of the case we are of the view that that lower authorities erred in considering the income of the assessee in part without controverting as to why the same is not considered to allow the income in full. Based on these set of evidence filed by the assessee and discussion made so we do not concur with the findings of the ld. CIT(A) and thus the appeal of the assessee is allowed.

3.0 In the result, the appeal of the assessee is allowed

Order pronounced in the open court on 02/08/2023.

Sd/-
(राठोड कमलेशजयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-
(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 02 /08/2023

*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Ajay Bhargava, HUF, Jaipur.
2. प्रत्यर्था / The Respondent- The ITO, Ward 1(3), Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No. 224/JPR/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar