

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 529/Bang/2023</b>
<b>Assessment Year : 2017 – 18</b>

Shri Abdul Hannan, Mumtaz Electricals, Jayanagar Badavane, Hiriyur – 577 598. <b>PAN: ABZPH2983F</b>	<b>Vs.</b>	The Income Tax Officer, Ward – 1, Chitradurga – 577 502.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Kashinath Kalmath, Advocate
Revenue by	:	Shri Subramanian .S, JCIT (DR)

Date of Hearing	:	11-10-2023
Date of Pronouncement	:	11-10-2023

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal is filed by the assessee against the order dated 13.06.2023 passed by the NFAC for A.Y. 2017-18 on following grounds of appeal:

<i>Grounds of Appeal</i>		<i>Tax effect relating to each Ground of appeal (see note below)</i>
1.	<i>The Learned CIT(A) erred in holding the order of assessment made for the assessment year 2017-18 is not in violation of principles of Natural Justice, when an order is passed without considering the request of the appellant, for cross examination of the purchaser of Pomegranates, who denied the transaction.</i>	
2.	<i>The order of the Learned CIT(A) is opposed to the decisions of Hon'ble High Court of Allahabad rendered in the case of Nathu Ram Premchand vs. Commissioner of Income Tax, U.P (39 ITR 561 (All), and to the decision of the Hon'ble High court of Karnataka rendered in the case of Sai Ramakrishna Karuturi vs. Union of India and others (2018) 402 ITR 7 (Kar).</i>	
3.	<i>The Learned CIT(A) while not disputing the agricultural income, confirmation of the transaction by one of the purchaser, merely on the ground that the another purchaser did not confirm purchase, ought not to have confirmed the addition.</i>	Rs.27,61,265/-
4.	<i>The Learned CIT(A) while not disputing the agricultural income, confirmation of the transaction by one of the purchaser, merely on the ground that the another purchaser did not confirm purchase, ought not to have confirmed the addition.</i>	
5.	<i>The Learned CIT(A), since there being no investment of agricultural income in any asset, ought to have held no addition is warranted.</i>	

6.	<i>The Learned CIT(A) ought to have considered the reduction of confirmed transaction of Rs.5,20,365/- from out of the agricultural income declared.</i>	
7.	<i>The confirmation of addition by the Learned CIT(A) is opposed to law and without consideration of the facts and the law.</i>	
8.	<i>On the facts and in the circumstances levy of interests was not warranted.</i>	
9.	<i>The appellant prays that this Hon'ble be pleased to permit the appellant to add, delete or modify any ground or grounds at the time of hearing.</i>	
<i>Total tax effect (see note below)</i>		<i>Rs.27,61,265/-</i>

## **2. Brief facts of the case are as under:**

2.1 Assessee is an individual and is an electrical contractor. Assessee is also renting a lodge and earns agricultural income. For the year under consideration, assessee filed his return of income on 30.08.2017 declaring total income of Rs.8,92,760/- and agricultural income of Rs.55,42,965/-.

2.2 The case was selected for limited scrutiny to verify large agricultural income. Accordingly notices were served to the assessee calling for various details. In response to the notices issued, assessee filed the financial statements along with agricultural land holdings, bank statements and other details. The Ld.AO upon verification of assessee's agricultural income for the preceding years found to be very low as compared to the year under consideration where there is a steep hike. 133(6) notices were issued to the persons to whom assessee had submitted to have sold the agricultural produce during the year under

consideration. In response to 133(6) notices, one of the agent submitted that they have not done any transaction with the assessee. The assessee had sought for cross examination of the purchaser who had denied the transaction with the assessee. However the Ld.AO denied the same by observing as under:

*“10. In the present case, the revenue has discharged its burden, when based on the very material provided by the assessee, enquiries were made and letter got from the concerned party, that no transactions were undertaken with the assessee. The assessee was also made aware of this evidence when show cause notice was sent asking the assessee to explain the same. Without any explanation, the assessee has simply asked for cross-examination on 24/12/2019. To provide for cross examination will mean time has to be given for the other party to receive the summons and attend from out of station. However, the case is time-barring and that could not be done.”*

2.3 The Ld.AO thus made an addition of the entire sale proceeds alleged to be received from the purchaser who had denied the transaction with the assessee under Income from Other Sources. Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A). Before the Ld.CIT(A), assessee filed all the details and also raised the ground of non-granting cross examination by the Ld.AO. The Ld.CIT(A) dismissed the appeal of assessee without considering any submissions in a cryptic way.

2.4 Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this *Tribunal*.

3. The Ld.AR submitted that cross examination sought by assessee before the authorities below has been denied leading to gross violation of principles of natural justice. He referred to the decision of *Hon'ble Supreme Court* in case of *M/s Andaman Timber Industries vs CCE, Kolkata-II, reported in (2015) 127 DTR*

241. The Ld.DR on the contrary though supported the orders of the authorities below could not justify the reason for denying the cross objection of the assessee.

4. We have perused the submissions advanced by both sides in the light of records placed before us.

5. Admittedly the addition has been made in the hands of the assessee based on a statement of a third person and the denial of cross examination by the authorities below under such circumstances is not acceptable in the eyes of law. Respectfully following the ratio laid down by *Hon'ble Supreme Court* in case of *M/s Andaman Timber Industries vs CCE, Kolkata-II (supra)*, we direct the Ld.AO to grant cross examination of the person who has denied the transaction with assessee in a response to the notice issued u/s. 133(6). The Ld.AO is directed then to consider the claim of assessee in accordance with law. The assessee is also directed to file all relevant details in support of his claim.

6. We note that the notice issued by this *Tribunal* was returned back with some comment by the postal department. However, the Ld.AR has submitted that the Ld.AO may be directed to issue notices to the following address and the email ID as recorded hereinbelow.

**Assessee Details**

Name: Mr. Abdul Hannan  
Address: Mumtaz Electricals,  
Jayanagar Badavane,  
Hiriyur – 577 598.  
Mobile No. 9845383726  
Email ID: [hannanhyr@gmail.com](mailto:hannanhyr@gmail.com)

7. The Ld.AO is thus directed to issue notices to the assessee to the address mentioned hereinabove.

**Accordingly, the grounds raised by the assessee stands allowed for statistical purposes.**

**In the result, the appeal filed by the assessee stands allowed for statistical purposes.**

Order pronounced in the open court on 11<sup>th</sup> October, 2023.

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 11<sup>th</sup> October, 2023.  
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant  | 2. Respondent          |
| 3. CIT        | 4. DR, ITAT, Bangalore |
| 5. Guard file |                        |

By order

Assistant Registrar,  
ITAT, Bangalore