

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

**Before Sh. Saktijit Dey, Vice President
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 1058/Del/2022 : Asstt. Year: 2017-18

Bhupendera Sharma (HUF), E-9, Sector-41, Noida Uttar Pradesh-201301 (APPELLANT)	Vs	Pr. CIT, Noida, Uttar Pradesh-201301 (RESPONDENT)
PAN No. AAACA6163D		

**Assessee by : Sh. P. C. Yadav, Adv. &
Ms. Chandrima Choudhary, Adv.
Revenue by : Ms. Sapna Bhatia, CIT-DR**

Date of Hearing: 10.10.2023	Date of Pronouncement: 21.12.2023
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by assessee against the order of Id. PCIT, Noida dated 16.03.2022.

2. Following grounds have been raised by the assessee:

"1. That the impugned order of learned PCIT u/s 263 of the Income Tax, 1961 is illegal in holding that AO had accepted the version of the assessee without making any inquiry regarding the agricultural Income declared by the assessee particularly when the AO had made proper enquiries in this regard independently well as after considering the relevant evidence and material placed on record.

2. That the impugned order of learned PCIT u/s 263 of The Income Tax, 1961 is illegal and void-ab-inito in as much as she held that the assessing officer had accepted the version of assessee without making any

enquiry regarding claim of agriculture Income particularly when the AO had made proper inquiries in this regard during the course of assessment proceedings.

3. That for the similar reasons, the PCIT was also legally wrong in placing reliance on the provisions of Explanation- 2 of section 263(1) in as much as proper enquiry was made by the AO.

3. The assessee is a HUF and has shown income from other sources and agricultural income. During the course of assessment proceedings, the assessee was required to furnish the details as per the questionnaire issued. The assessee filed return of income on 26.03.2018 declaring total income of Rs.4,73,850/-. Later on, the case selected for scrutiny through CASS to examine the large agricultural income of the assessee and notice u/s 143(2) was issued on 22.09.2018.

4. For the sake of ready reference, the operative portion of the Assessment Order is reproduced below:

"2. The assessee is a HUF and has shown income from other sources and agricultural income. During the course of assessment proceedings, the assessee was required to furnish the details as per the questionnaire issued. The written submissions were uploaded by the assessee and same has been placed on record.

3. With the above remarks, the returned income of the assessee is accepted. Assessment is completed on returned income of Rs.4,73,850/-. Charge interest u/s 234A & 234B of the Income Tax Act, 1961, if applicable, issue notice of demand and challan. Given credit of prepaid taxes."

5. The operative portion of the order u/s 263 is reproduced below:

"2.4 After perusal of the assessment record, the following discrepancies are observed:

"1. Vide written reply dated 24.12.2019, your AR asserted that you had executed agreements on 10.04.2016 with four persons namely (i) Sh. Durga Prasad (ii) Sh. Rajendra Prasad Verma (Hi) Sh. Balveer Singh and (iv) Sh. Shriram all residents of Lucknow, for contract farming and elaborated the components/provisions of an agreement. However, it is noticed from perusal of all the four agreements that nowhere, exact details of the land taken (situated at Lucknow) on lease e.g. the khata/khasra no., location, area etc. has been found incorporated in the alleged agreements (only unattested copy of Statement of khata found attached with the agreements). Similarly, the total amount fixed for the entire land has not been mentioned (only rate per bigha mentioned). The agreement was executed for three years 10.04.2016 to 31.03.2019, however, no documentary evidence with regard to termination of these agreements was filed. Also, these are neither registered even not notarized. According to the Registration Act, all these agreements are required to be registered, since, through these, the tenancy right/land are leased out to a tenant for a period of more than 11 months. Lastly, your signatures were not found affixed in any of the agreements, which makes these so-called agreements not-binding on the opposite party, thus inoperative. It seems that all the agreements are bogus. In view of the above, it appears that you have chosen the route of agricultural income to legalize your undisclosed and unexplained income. Therefore, the income of Rs. 98,67,900/- shown as agricultural income is liable to be added in your income as unexplained income. The AO has failed to examine these issues, during the assessment proceedings.

1. In support of the land taken on lease, unattested copy of Statement of Khata were filed alongwith the agreements, however, it is revealed from perusal of these Statement of Khata that the land were in joint

name with other persons, whereas, the agreements were executed with, only one person. This cast doubt on the authenticity of the impugned agreements; however, the AO has failed to examine this issue, during the assessment proceedings.

1. It is stated by your AR, vide reply dated 20.12.2019 that you had also executed contract farming agreement with M/s Avyukta Industries Pvt. Ltd. on 10.05.2016, for sale of fresh vegetables. As per the details available on Registrar of Companies website, the said company has been struck off from ROC. Further, as per the details available on the website of ROC, this company is not engaged in any kind of agricultural activity. Further, this agreement is also neither registered nor notarized. Furthermore, bank statement of the company (A/c No. 126305500421 with ICICI Bank Ltd) reveals several credit entries of huge cash deposit, which certainly cannot be treated receipts against sale of vegetables (purchased by it on bulk basis). It is also revealed from the bank statement that payments were also made to your son namely Sh. Abhishek Kumar (PAN- ARTPK4445M) and your wife Smt. Pratibha Sharma (PAN-ADJPS1141C) by the above said company. In view of the foregoing discussion, it is sufficient to say that this company is a bogus company and created only to provide the entries. This case was required to be enquired in detail but the AO has not made proper verification and inquiry.

2. These four agreements were executed on 10.04.2016 and copy of the Ledger and Journal Voucher revealed that the first purchase was made by M/s Avyukta Industries Pvt. Ltd. from you on 10.05.2016 (the date of execution of the agreement with it) for Rs. 29,00,000/-. It is incomprehensible which vegetables grew so early that were sold by you within one month of the execution of the agreements. This cast doubt on the authenticity of the impugned agreements and consequently the genuineness of the alleged agricultural income, however, the AO has failed to examine this issue and to obtain the month-wise and crop-wise production and sale, during the assessment proceedings [Only total quantity mentioned (unit not mentioned -

whether qntl. or ton), sale price and total sale of the crops were filed].

1. Vide direction u/s 144 A dated 12.12.2019, the Range head advised the AO that the investigation be not confined to the guidelines (as contained in the said directions) but directed the AO to make a thorough and comprehensive investigation, but the AO has failed to comply to the directions and completed the assessment, in a hurriedly manner, in spite of the fact that the following details/information/documents as asked by the AO, herself, vide notice u/s 142(1) dated 27.11.2019 remained uncomplied with by you e.g. (i) the copy of agreements (back/reverse side), (ii) Copy of all bills/ vouchers/invoices in respect of all purchases, Expenses and sales and (Hi) Details of the Green/Poly house built on the leased land alongwith details of expenses incurred and details of the subsidy received. These details were vital to ascertain the genuineness of the agricultural income, as shown by you and had direct bearing on the assessment proceedings.

1. Copy of Ledger account of the assessee in the books of M/s Avyukta Industries Pvt. Ltd. revealed that entire payments have been received by you, against total purchase of Rs. 1,17,50,000/-, during AY 2017-18. Further, you also acknowledged to have received the entire due payments and filed copies of Receipt/Confirmation, in this regard. However, copy of bank statement of M/s Avyukta Industries Pvt Ltd (A/c No. 126305500421 with ICICI Bank Ltd.) revealed that a cheque no. 028768 dated 31.01.2017 for Rs. 10,00,000/- was issued in the name of Smt. Pratibha Sharma (To whom other payments were also being made by M/s Avyukta Industries Pvt Ltd). This cast doubt on the authenticity of the books of a/cs of M/s Avyukta Industries Pvt Ltd as well as genuineness of the agricultural income declared by you, but the AO has failed to examine this issue.

1. You have declared gross agricultural income of Rs. 1,12,42,700/-, in the ITR however, as per your ledger account in the books of M/s Avyukta industries Pvt. Ltd., the gross agricultural income comes to Rs. 1,16,67,900/- (Total payment Rs. 1,17,50,000/- minus freight &

cartage Rs. 82,100/-). This apparent anomaly cast doubt on the books of a/cs of M/s Avyukta Industries Pvt. Ltd. as well as genuineness of the agricultural income declared by you but the AO has failed to observe it, during the assessment proceedings.

2.5 In view of the above, the assessment order passed by the ITO, Ward-1 (2), Noida is erroneous and prejudicial to the interest of revenue and may be cancelled or modified by invoking the provisions of section 263 of the Income Tax Act, 1961."

6. Owing to non-compliance of the assessee, the Id. PCIT passed the order u/s 263 holding as under:

"3.1 On the facts of the present case, it is evident that the AO accepted the version of the assessee without making any inquiry or verification Thus, by accepting the unsubstantiated, varying and disjointed claims of the assessee, failing to conduct detailed and legitimate inquiries, the AO utterly failed to conduct meaning full investigations essential to determine the total income of the assessee. Hence, when the AO has failed to take notice of all the relevant facts and has failed to examine the correctness or otherwise of the claims and assertions by the assessee, it is evident that he has failed to apply his mind and discharge his duty as an assessing officer during the course of the assessment proceedings. Consequently, the assessment order, passed by the AO is rendered erroneous in so far as it is prejudicial to the interest of the revenue.

3.2 In view of above facts and circumstances, I find that the assessment order u/s 143(3) dated 30.12.2019 passed by the assessing officer ITO Ward (1)(2), Noida is erroneous in so far as it is prejudicial to the interest of revenue, since it is a case of no enquiry on the claims made by the assessee in his income tax Return."

7. Aggrieved, the assessee filed appeal before the ITAT.
8. Heard the arguments of both the parties and perused the material available on record.
9. The assessee has filed ROI declaring an income of Rs 4,73,850/. The case of the assessee was selected for limited scrutiny on the ground "large agricultural income" during the impugned year. The Assessing officer, after calling the requisite details from the assessee passed the order u/s 143(3) vide order dated 30.12.2019 accepting the returned income.
10. Relevant dates which go to the root of the matter are as under:

Date	Event	Reference
10.04.2016	Assessee entered into agreement with Durga Prasad, Rajendra Prasad, Shri Ram, Balveer Singh for contract farming.	P.NO. 28-72 OF PB
10.05.2016	Assessee entered into an agreement with M/s. Avyukta Industries for the sale of vegetables	P.NO. 159-164 OF PB
26.03.2018	Assessee filed its ROI at Rs. 4,73,850/-	P. NO. 1-2 OF PB
22.09.2018	Notice u/s 143(2) for limited scrutiny was issued to the assessee	P.NO. 9-12 OF PB
06.09.2019	Notice u/s 142(1) along with the questionnaire was issued to the assessee	P. NO. 13-14 OF PB
06.09.2019	Assessee filed its reply to the notice of 142(1)	P. NO. 15 OF PB
25.10.2019	Company to whom assessee sold the agricultural proceeds has been struck off by ROC	See ITAT order Pg-
09.12.2019	Assessee submitted its reply to the notice dated 27.11.2019	P.NO. 17 OF PB
14.12.2019	A show cause notice was issued to the assessee pointing out discrepancies in the documentary evidences and also enquiring about the issue of striking off.	P. NO. 19 OF PB

20.12.2019	Assessee filed its replies to the show cause notice and clarified about the issue of striking off of the purchaser company. Assessee also clarified that first two land tenancy agreements were not materialized.	P. NO. 22-24 OF PB
24.12.2019	Assessee filed second reply and clarified about the new tenancy agreement with the four land owners assessee also filed the audited balance sheet and other documents of Avyukta Industries Private Ltd.	Page No 25-27
30.12.2019	Assessment order u/s 143(3) was passed accepting the returned income.	
21.02.2022	A show cause notice u/s 263 was issued to the assessee by Ld. PCIT	P. NO. 3 OF PB
09.03.2022	Another show cause notice was issued to the assessee by Ld. PCIT	P.NO. 6 OF PB
16.03.2022	PCIT passed order u/s 263	

11. Perusal of Page number 9 of the Paper book reveal that the case of the assessee was selected for limited scrutiny. It is settled position of law that scope of enquiry in the limited scrutiny case is very limited and the AO cannot travel beyond that. However, the Ld. PCIT has taken a view that as if it is a complete scrutiny case and the AO has failed to conduct some more enquiries into the matter.

12. It is settled position of law that in the assessment proceedings the Assessing officer has to play dual role one is of an investigator and one is of an adjudicator. If while acting as an investigator he/she could not conduct any enquiry then such order can be termed as erroneous and prejudicial to the interest of revenue. Secondly, while acting as an adjudicator if the AO takes one of the plausible view then such an order cannot be termed as erroneous and prejudicial to the interest of revenue. Malabar Industries 243 ITR 43(SC).

13. Perusal of show cause notice dated 14.12.2019, page number 19 of PB would prove that it is not a case where the order has been passed without conducting any enquiry.

14. During the course of assessment proceedings, the AO specifically inquired from the assessee into the issue of earning of agricultural income and in response to such inquiry, the assessee filed adequate replies and relevant documentary evidences in support of its claim. The AO accepted the genuineness of the assessee's claim and on the basis of evidences furnished and then accepted the returned income of the assessee.

15. The observations made by the Id. PCIT and rebuttal thereof are tabulated hereunder with the remarks of the assessee for the sake of convenience and ready reference.

Observation of PCIT	Rebuttal	Remarks
Location and detail of land is not provided in the tenancy agreements	Factually incorrect and already dealt with by the Hon'ble ITAT H Bench in one of the member of assessee HUF	ITAT in the case of one of the member of HUF namely Abhisek Kumar has already discarded this observation - See Page No -5 Para-8-agreement not registered Para-9 Page number-6 location and details of land missing.
Contract: Farming done with Avyukta Industries Company was struck off Company was not engaged in Agriculture activities Agreement is neither registered nor notarized Several credits of huge cash deposits	Company was in existence in the impugned year and it was struck off on 25.10.2019, Company Memorandum of Association (Pg No- 170-179 of PB) authorizes Company for agriculture activities	ITAT in the case of Abhisek Kumar in ITA number- 1141/D/2022 order dated 18.08.2023 has already dealt with these aspects- See Page number- 6

Agreements with Avyukta was executed on 10.04.2016 and payments started coming from 10.05.2016 (within one month the crops grown)	PCIT has not brought any material on record to show that the assessee has started the cultivation of crops after 10.04.2016	ITAT order - Page -7
Discrepancies in Ledger account of Avyukta and assessee vis-a- vis sale proceeds received	PCIT failed to appreciate that the assessee has in fact shown large amount of agricultural receipts, means rate of tax would effect assessee. The fact of the matter is that there was cash sales also.	ITAT order at Page -7

16. The Id. PCIT has directed the AO to conduct enquiry in the above mentioned issues. It is submitted that under the provisions of section 263 it is incumbent upon Id. PCIT to specifically point out as to what enquiries the AO has not conducted or conducted in a perverse manner that can lead to a conclusion that the order has been erroneous and prejudicial to the interest of revenue. The Id. PCIT cannot direct the AO to conduct enquiries without specifying as to how that led to prejudice to the revenue.

17. Reliance is being placed on the following orders and judgments:

1. ITA No. 1141/Del/2022 A.Y. 2017-18 in the case of Abhishek Kumar Vs. PCIT wherein the facts of the case are similar and the appellant is a coparcener of the instant assessee.
2. ITO Vs. DG Housing Projects 343 ITR 329 wherein it was held that the Commissioner cannot remit the matter for a fresh decision to the Assessing Officer to conduct further enquiries without a finding that the order of Assessing

Officer is erroneous. Such finding that the order is erroneous is a condition precedent for exercise of jurisdiction u/s 263.

18. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 21/12/2023.

Sd/-

(Saktijit Dey)
Vice President

Dated: 21/12/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR