

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 332/Ind/2023
Assessment Year: 2017-18

Shri Sanjay Jat, 2, Bagud, Piplaj, Barwani (Assessee/Appellant)	बनाम/ Vs.	ITO, Sendhwa (Revenue/Respondent)
PAN: AJUPJ7949Q		
Assessee by	Shri Ashish Goyal, CA and Shri N.D. Patwa, Adv	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	15.01.2024	
Date of Pronouncement	23.01.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 03.08.2023 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"], which in turn arises out of assessment-order dated 26.10.2019 passed by learned ITO, Sendhwa ["AO"] u/s 144 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, the assessee has filed this appeal on following grounds:

- "(1) *The Ld. AO was not justified in passing the order, which is bad-in-law, void ab initio barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*

- (2) *The Id. CIT(A) was not justified in confirming the order, which is bad-in-law void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*
- (3) *The Ld. CIT(A) was not justified in confirming the addition of Rs. 11,46,500/- against cash deposits during demonetization period.*
- (4) *The Ld. CIT(A) was not justified in confirming the application of section 68 and moreover adopting section 115BBE.*

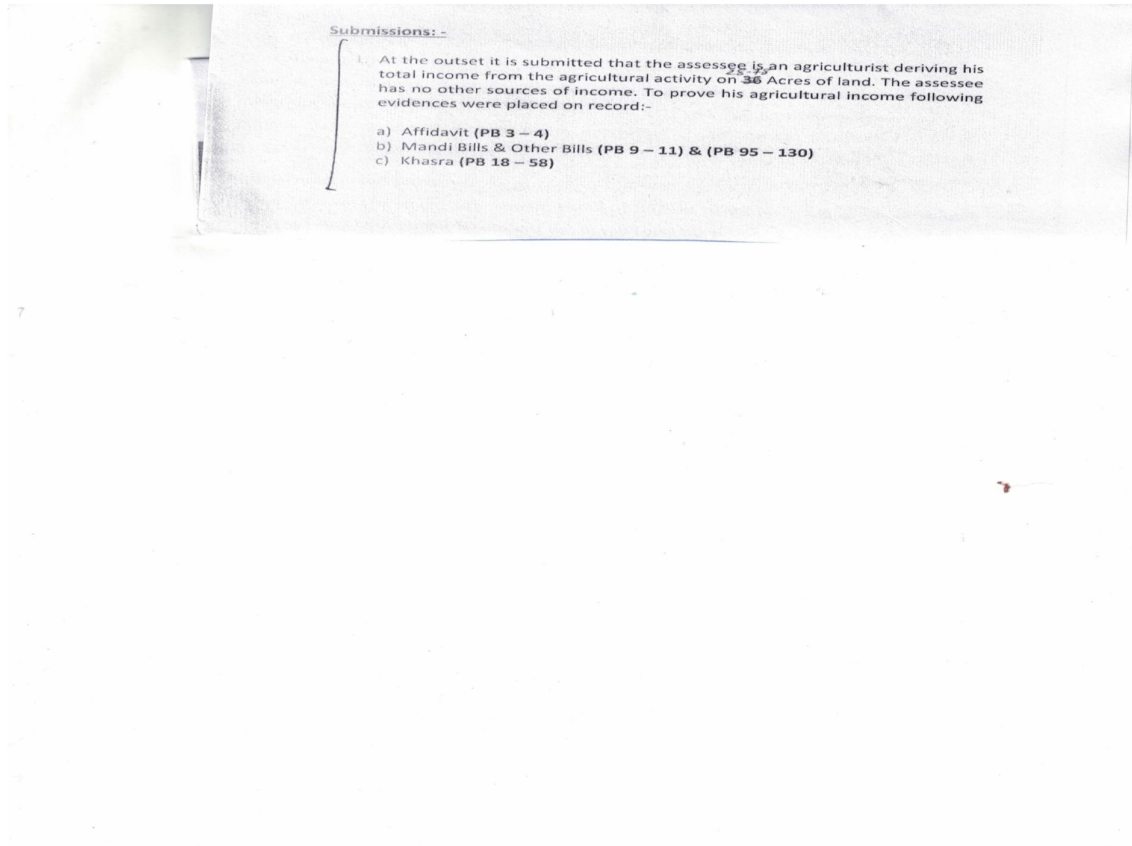
2. The background facts leading to present appeal are such that the assessee-individual is a farmer having sole source of income as agriculture. The revenue, from an information available in AIMS/ITBA module that the assessee has made cash deposits of Rs. 11,46,500/- in an a/c with Indusind Bank during demonetization period from 08.11.2016 to 30.12.2016, issued notice dated 14.03.2018 u/s 142(1) requiring the assessee to file return by 31.03.2018. In response, the assessee filed a belated return on 20.05.2019 declaring interest income of Rs. 4,537/- and agricultural income of Rs. 21,20,298/-. Although in Para No. 2 and 3 of assessment-order, the AO has noted that the assessee did not file any return, subsequently in Para No. 4.3 of same order the AO has accepted filing of belated return on 20.05.2019 declaring aforesaid incomes. The AO issued notices dated 13.08.2019 and 18.09.2019 u/s 142(1) requiring the assessee to explain the sources of cash-deposits but the assessee did not make any compliance. Ultimately, the AO completed assessment u/s 144 whereby he accepted agricultural income to the extent of Rs. 9,63,798/- out of income of Rs. 21,20,298/- declared by assessee. The AO rejected balance of agricultural income and thereby treated the cash deposits of Rs. 11,46,500/- as unexplained money u/s 69A read with section 115BBE.

Aggrieved, the assessee carried matter in first-appeal. During first-appeal, the assessee filed a detailed submission which is re-produced by CIT(A) in Para No. 6 of his order. However, the CIT(A) rejected assessee's submission and did not grant any relief. Now, aggrieved by CIT(A)'s order, the assessee has come in next appeal before us.

3. Ld. AR for assessee prayed for non-pressing of ground No. 1 and 2. Ld. DR did not have any objection. Therefore, ground No. 1 and 2 are dismissed as non-pressed.

4. We take up next ground No. 3 wherein the assessee has challenged the addition of Rs. 11,46,500/- made by AO u/s 69A treating the cash-deposits in bank as unexplained. With regard to this ground, Ld. AR carried us to the orders of lower-authorities. He submitted that it is a fact that the assessee being an agriculturist and being unaware of income-tax proceedings, was not able to make any submission before AO during assessment-proceeding but the assessee made a detailed submission during first-appeal which is noted by CIT(A) in Para No. 6 of his order. He invited our attention to Point No. 3 of assessee's submission [Page No. 6 of CIT(A)'s order] wherein the assessee filed documentary evidences of agricultural income in the shape of Khasra copy, Invoice/Mandi Receipts and an Affidavit to CIT(A) in terms of Rule 46A of Income-tax Rules, 1962. The CIT(A), however, rejected assessee's submission and upheld AO's addition precisely for two reasons, (i) the assessee's documents were in the form of land ownership records and certain sales bills which seems in the form of

self-serving documents, and (ii) the assessee cannot keep that much of cash idle at home while availing KCC (Kishan Credit Card) loan [Para No. 7.1 and 8.8 of CIT(A)'s order]. Then, Ld. AR carried us to his Written-Submission and also corroborated the same with reference to the pages of paper-book mentioned therein, to show that the assessee was having sufficient land and the crops like Banana, Makka, Chilli, Kapas, Sugarcane were grown and the produce was sold. The Written-Submission filed by assessee is re-produced below for an immediate reference:



The table below shows the complete details for the A.Y 2017-18 of land holding along with crops grown as per Khasra.

CHART-A Current Year

<u>Khasra Number</u>	<u>Land Holdings</u>	<u>F.Y</u>	<u>Crops Grown</u>	<u>PB Reference</u>
88/1, 88/2, 81/1, 81/2	4.415 Hectare	2016-17	1. Banana 2. Makka 3. Wheat	PB-21
20/1	1.708 Hectare	2016-17	1. Banana	PB-22
20/2	3.415 Hectare	2016-17	1. Banana 2. Makka	PB-22
106/3	2.113 Hectare	2016-17	1. Sugarcane	PB-23

Total	11.651 Hectare
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CHART – B Earlier Years (as available)

<u>Khasra Number</u>	<u>Land Holdings</u>	<u>F.Y</u>	<u>Crops Grown</u>	<u>PB Reference</u>
88/1, 88/2, 81/1, 81/2	4.415 Hectare	2015-16	1. Banana 2. Makka 3. Wheat	PB-26
20/1	1.708 Hectare	2015-16	1. Banana 2. Makka 3. Kapas	PB-25
20/2	3.415 Hectare	2015-16	1. Banana 2. Kapas	PB-25
106/3	2.113 Hectare	2015-16	1. Sugarcane	PB-24

Chart – C Earlier Years (as available)

<u>Khasra Number</u>	<u>Land Holdings</u>	<u>F.Y</u>	<u>Crops Grown</u>	<u>PB Reference</u>
88/1, 88/2, 81/1, 81/2	4.415 Hectare	2014-15	1. Banana 2. Makka 3. Chilli	PB-29
20/1	1.708 Hectare	2014-15	1. Makka 2. Kapas	PB-28
20/2	3.415 Hectare	2014-15	1. Banana 2. Kapas 3. Makka	PB-28
106/3	2.113 Hectare	2014-15	1. Sugarcane	PB-27

Ld. AO himself accepted agricultural income of Rs. 9,63,798 (AO pg.3)

2. Since the assessee is an agriculturist and is not required to file its return of income during relevant A.Y assessee deposited amount of Rs. 11,46,500 /- in its bank account. It is when the assessee received notice from the Ld. AO the assessee consulted his counsel and filed his return declaring agricultural income of Rs. 21,10,298 /- and interest income of Rs. 4,537 /-
3. During the period of demonetization, the old currency did not hold legal tender and it was the direction of the govt. to deposit old currency in his bank account the assessee deposited the amount arising out of sale of crop and his past savings.
4. The Ld. CIT(A) in its order sustained with the decision of Ld. AO and confirmed the addition of Ld. AO. Ld. CIT(A) in its order overlooked the evidences that were placed on record and made an absurd statement in its order (Refer Para 7.1 of CIT(A)). The extracts of para are as under:-

7.1 As noted, the appellant neither cooperated nor submitted any evidence or explanation in respect of the source of cash deposits before the Assessing Officer. Even now, the assessee merely claims to be an agriculturist and has filed certain documents in the form of land ownership records and certain sale bills, which seems more in the form of self-serving documents instead of any cogent evidence as are discussed in the subsequent paragraphs of this order. The assessee is completely silent on the fact that on the one hand he is availing KCC Bank loans thereby frequently dealing with the banks and on the other hand, he is keeping huge amount of cash idle at his home. The assessee has also not given an iota of explanation regarding the need to keep so much cash in hand with him.

5. However, the assessee had furnished the complete details of Mandi Bills, Bills of the crops that were sold directly to the customers as available :-

<u>Crops Sold</u>	<u>Date of Sale</u>	<u>Amount</u>	<u>PB REFERENCE</u>
Sugarcane	01.08.2016	68,449 /-	PB-100
Banana	31.05.2016	74,560 /-	PB-101
Banana	26.06.2016	91,720 /-	PB-103
Banana	05.06.2016	86,500 /-	PB-104
Banana	11.06.2016	72,200 /-	PB-106
Banana	17.06.2016	1,12,400 /-	PB-108
Banana	18.06.2016	85,950 /-	PB-110
Banana	04.10.2016	1,75,200 /-	PB-112
Banana	14.06.2016	84,000 /-	PB-113
Banana	06.08.2016	1,64,400 /-	PB-114
Banana	09.08.2016	1,17,200 /-	PB-115
Banana	10.08.2016	1,70,500 /-	PB-116
Banana	15.08.2016	1,34,600 /-	PB-117
Banana	01.09.2016	1,79,500 /-	PB-118
Banana	05.09.2016	1,23,500 /-	PB-119
Banana	18.10.2016	94,270 /-	PB-120
Banana	20.10.2016	82,280 /-	PB-121
Banana	23.10.2015	94,960 /-	PB-122
Banana	24.10.2015	33,100 /-	PB-123
Banana	24.10.2016	76,200 /-	PB-124
Banana	10.07.2016	1,28,654 /-	PB-125

Banana	10.07.2016	1,28,654 /-	PB-125
Banana	12.12.2016	69,905 /-	PB-126
Banana	09.12.2016	59,849 /-	PB-127
Banana	28.12.2016	40,657 /-	PB-128
Banana	14.04.2017	66,225 /-	PB-129
Banana	30.06.2016	74,184 /-	PB-130

Total	12,55,009.00
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The bills were submitted to the extent available. Being an agriculturist, assessee could not properly keep record of all the bills. Also, the bills after Nov./Dec are not added here (like PB 95)

Without Prejudice to the above

6. Only Source of Income: - In the present case, the assessee is an agriculturist and his only source of income is agricultural income. During the assessment neither the Ld. AO nor the Ld. CIT(A) could dispute that the assessee is an agriculturist and his only source of income is agricultural income and Ld. AO and Ld. CIT(A) themselves had accepted the agricultural income of Rs.9,63,798 /-. No other source of income of the assessee was found it is a settled proposition of law that if there is only one source of income then unaccounted income shall be treated as income from that source.

Reliance is placed upon:-

- Shri Madhusudan Dhakad v. ITO ITA No. 9 of 2022** (Copy enclosed)
Daulatram Rawatmull v. CIT [1967] 64 ITR 593 (Calcutta)
Annamalai Reddiar v. CIT [1964] 53 ITR 601 (Kerala)
CITv. Margaret's Hope Tea Co. Ltd. [1993] 71 Taxman 574 (Calcutta)
CITv. S.K. Srigiri & Bros. [2008] 171 Taxman 264 (Karnataka)

5. Drawing us to the documents filed in Paper-Book and referred in the above Written-Submission at different places, Ld. AR submitted that the assessee is holding sufficient land for earning agricultural income; that the assessee has also availed KCC loan for the purpose of cultivation on lands; that the assessee has sold agriculture produce in market which is evident from sample bills. He submitted that the assessee is an agriculturist and has not kept complete record and all sale bills though enough sale was in fact made. He submitted that the assessee has declared agricultural income of Rs. 21,10,298/- out of which the AO has accepted only agricultural income of Rs. 9,63,798/- without any basis. Ld. AR submitted that the AO has picked figure of Rs. 9,63,798/- just to leave approximate amount to treat the cash deposit of Rs. 11,46,500/- as unexplained to enable him to make addition u/s 69A. Ld. AR strongly contended that the assessee's full time occupation is agricultural activities and nothing else. He submitted that the assessee has already provided a few bills of agricultural income and it is practically not possible to maintain documents of 100% agricultural produce because the assessee is selling a part of crop directly to the consumers. Ld. AR submitted that the assessee has filed an affidavit to CIT(A) with averments that he has no income except agriculture and that the deposits made in bank a/c were solely from sale proceed of agricultural produce. Ld. AR submitted that the agricultural sector in our country is not fully organized. It is a known fact that the agriculturists are selling part of their crop to the established dealers and part of their crop directly to consumers. This practical fact is very much accepted in the decisions referred by him in his Written-Submission. Ld. AR relied heavily upon one of those decisions decided by **ITAT, Indore in Shri Madhusudan Dhakad Vs. ITO, ITA No. 9/Ind/2022 order dated 28.06.2022**. With these submissions, Ld. AR argued that the agricultural income shown by assessee in the return of income must have been accepted and no addition ought to have been made by AO. Ld. AR prayed to delete the same.

6. Per contra, the Ld. DR supported the addition made by AO. He submitted that the AO has passed order u/s 144 for the very reason that the assessee did not file any detail before him. He also emphasized that the assessee has made the impugned bank deposits during demonetization period. Therefore, the addition made by AO is in order and must be upheld.

7. We have considered rival submission of both sides, perused the material held on record and considered the legal precedents referred by Ld. AR. Having considered arguments of both sides and after perusal of the documents filed in Paper-Book as well as Written-Submission filed by Ld. AR to which our attention has been drawn, we find that the assessee is having ownership of agricultural lands and also sold agricultural produce in market. The assessee has filed some sample copies of pakka bills/ documents of firms named M/s Maarewa Sugars Pvt. Ltd. (sugar division), M/s Chaturbhuj Kela Group, M/s Rajlaxmi Kela Group, M/s Mahalaxmi Toll Kanta, etc. Although these are few bills which do not aggregate to the income of Rs. 21,10,298/- but the assessee himself accepts that these are few bills only and he being agriculturist is unable to maintain complete record/bills of entire sales, more particularly the crops directly sold to the customers. We also find that the assessee is having agriculture as sole source of income and there is no other source of income brought on record by Ld. AO. The assessee has also filed a solemnized affidavit to CIT(A) making averment that he has no income except agriculture. Since agricultural income is fully exempt, the assessee does not have any taxable

income and therefore the addition u/s 69A cannot be made. These aspects get full support from direct decision by Co-ordinate Bench of ITAT, Indore in **Madhusudan Dhakkad (supra)**; we extract below a few paras of decision relevant to present case of assessee:

*“6.....Ld. AR submitted that the agricultural sector in our country is not fully organized. It is a known fact that the agriculturists are selling part of their crop to the established dealers and part of their crop directly to consumers. This fact is very much accepted by **Hon’ble ITAT, Chennai in Smt. Annakkalanjiam Mathivanan ITA No. 2451/Chny/2018 order dated 22.01.2019:***

“5. The Assessing Officer as well as the CIT(Appeals) have to appreciate the fact that the agricultural products in this country are traded in unorganized sector. The workforce in the agricultural sector is unorganized. When the agricultural products are traded in unorganized sector in the country, expecting the assessee to produce bills for sale of agricultural produce is something which cannot be produced by the assessee. Moreover, when the assessee engages labourers in carrying out agricultural operation and incur expenditure, producing vouchers is something uncalled for. What is to be seen is that whether the assessee has cultivated the land as claimed. When the assessee claims that the land was cultivated with certain crops and when the Assessing Officer has taken up the assessment for examination after three or four years from the relevant financial year, no material evidence will be available on the land to show that the assessee has cultivated as claimed. The only evidence available is the record maintained by the State Government in its Revenue Department. As per the Revenue Board’s standing orders of Government of Tamil Nadu, the Village Administrative Officer in his official duty has to go round the village and take stock of the cultivation made at the relevant field and it has to be recorded in Village Account No.2. The Village Account No. 2 is otherwise known as adangal. Therefore, the only official document maintained in the course of administration is the adangal extract maintained by the Village Administrative Officer. Beyond this, the assessee cannot produce any evidence for establishing the cultivation.”

Ld. AR submitted that against the cash-deposits of Rs. 33,91,841/-, the assessee has already submitted the Bills / Vouchers of Rs. 24,49,148/- which is about 72% and the difference is 28% only. Ld. AR submitted that the assessee’s explanation that he could not maintain Bills / Voucher for sale of a part of the crop made directly to consumers, is a reasonable explanation and it must be accepted holistically having regard to the fact that the assessee is a renowned agriculturist who has received so many certificates, awards and appreciation from Govt. for his dedicated engagement in agricultural activities.

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8. Lastly the Ld. AR stressed that the assessee is a full time agriculturist as is evident from several certificates and awards received and news items published in the media. Ld. AR submitted that the assessee does not have any income except agricultural income. Ld. AR submitted that when there is no source of income except agricultural income, it is but natural that the assessee has made cash-deposits in the bank account out of agricultural income only. According to Ld. AR, agricultural income is non-taxable and hence there cannot be any addition on account of taxable income u/s 69A. Ld. AR relied upon the decision of **Indore Bench in ITO Vs. Smt. Shahnaj Bano, ITA No. 443/Ind/04 order dated 07.01.2005** and claimed it to be directly applicable to the assessee:

“8. As regards investment in flat, the AO has not brought on record any source of income except the income from agriculture claimed by the assessee. If a person has only agricultural income and no other income, then no addition can be made to the total income unless and until the AO proves that the assessee has any other source of income which is taxable under the Income-tax Act. The AO has not brought on record any material or evidence to show that the assessee was having any other source of income except agricultural income which is not taxable. CIT(A) was, therefore, justified in deleting the addition of Rs. 3,45,356/- to the total income made by the AO because the assessee has no income taxable and agricultural income is not taxable.”

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11. We have considered rival submission of both sides, perused the material held on record and considered the legal precedents cited before us. At the outset we observe that the Ld. AO has not made addition of Rs. 9,42,063/- on account of unproved agricultural income, the addition is on account of unexplained cash-deposits in the bank accounts. Therefore we have to see whether the assessee had sufficient sources to prove cash-deposits made in the bank accounts or not. In this regard, firstly we observe that the assessee is a renowned and dedicated agriculturist. On perusal of various evidences placed by Ld. AR, we find that the assessee has received so much of recognition, awards and certificates from the Government or Governmental authorities in appreciation of agricultural activities done by him. We also observe that the assessee has submitted Bills / Vouchers to the tune of Rs. 24,49,148/- and also submitted he had made sale of crops directly to ultimate consumers for which the evidences could not be maintained. We find much weightage in the submission of assessee. This submission of assessee finds direct support from **Smt. Annakkalanjiam Mathivanan ITA No. 2451/Chny/2018 (supra)**. Therefore, the assessee's submission deserves credence and acceptance....Thirdly, we also find that the assessee is having agriculture as sole source of income and there is no other source of income brought on record by Ld. AO. Since agricultural income is fully exempt, the assessee does not have any taxable income and therefore the addition u/s 69A cannot be made as decided in **ITO Vs. Smt. Shahnaj Bano (supra)**.”

8. In view of above discussions, for the reasons stated therein and taking support from judicial rulings noted above, we are of the considered opinion that the addition of Rs. 11,46,500/- made by AO u/s 69A is not sustainable. We, therefore, delete this addition. The assessee's ground No. 3 is allowed.

9. Ground No. 4 challenges the invocation of section 115BBE to the impugned addition made by AO. Since we have deleted the addition made by AO itself, the Ground No. 4 which is consequential in nature, does not have basis to survive. Therefore, this ground does not require any adjudication.

10. In the result, this appeal of assessee is allowed.

Order pronounced in open court on 23.01.2024
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Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 23.01.2024
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal, Indore Bench, Indore