

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI**

BEFORE SHRI AMIT SHUKLA, AM  
AND  
SHRI PRASHANT MAHARISHI, AM

**ITA No. 2984/Mum/2023**

(Assessment Year: 2014-15)

**ITA No. 2985/Mum/2023**

(Assessment Year: 2013-14)

**ITA No. 2986/Mum/2023**

(Assessment Year: 2016-17)

**ITA No. 2987/Mum/2023**

(Assessment Year: 2017-18)

**ITA No. 2988/Mum/2023**

(Assessment Year: 2015-16)

**ITA No. 2989/Mum/2023**

(Assessment Year: 2019-20)

**ITA No. 2990/Mum/2023**

(Assessment Year: 2018-19)

Shri Pawan Jajoo  
Room No.61, 5<sup>th</sup> Floor,  
Old Hanuman Lane,  
Kalbadevi Road,  
47 Shanti Bhavan,  
Mumbai-400 002

**(Appellant)**

Income Tax Office  
Ward 7(4),  
Vs. Aaykar Bhavan, Churchgate  
Mumbai-400 020

**(Respondent)**

**PAN No. APPPJ4473C**

**Assessee by** : Shri S.L. Jain, AR

**Revenue by** : Shri Jagdish Jangid, CIT DR

**Date of hearing:** 21.02.2024

**Date of pronouncement :** 22.02.2024

**ORDER**

**PER BENCH:**

01. These are seven appeals filed by the assessee from A.Y. 2013-14 to 2019-20, involving common grounds of appeal, filed against the appellate order passed by learned Commissioner of Income-tax (Appeals)-49, Mumbai, [ the Id CIT [A] ] on 6<sup>th</sup> June, 2023, dismissing the appeal of the assessee. Therefore, assessee is aggrieved and is in appeal before us.
02. Brief facts of the case shows that
  - i. Assessee is an individual engaged in the business of brokerage, interest on savings account and agricultural income.
  - ii. Search under Section 132 of the Act was carried out on 6<sup>th</sup> December, 2018, by investigation wing, New Delhi at the premises of locker no.104 at Fakir Chand Lockers and Vaults Pvt. Ltd, Khara Boli, held in the name of the assessee.
  - iii. in that locker cash amounting to ₹14 lacs were found.
  - iv. Statement of the assessee was recorded under Section 132(4) of the Income-tax Act, 1961 (the Act), where the assessee has stated that

cash of ₹12 lacs belongs to him and the remaining ₹2 lacs belongs to his sister.

- v. The learned Assessing Officer found that this locker at Fakir Chand Lockers and Vaults Pvt. Ltd, Khara Boli, 6704A, Naya Bazar, Delhi. The locker was allotted without proper KYC and the lockers were also operated without any rules and regulations and further, CCTV cameras were also not working.
- vi. As one of the lockers was allotted in the name of assessee, summons under Section 131 of the Income-tax Act, 1961 (the Act) was issued to him and Assessee appeared on 4<sup>th</sup> December, 2018 and statement was recorded on oath. He was questioned about ₹14 lacs and its sources, wherein in answer to question no.8, he submitted that out of ₹14 lacs, 12 lacs belongs to him and ₹2 lacs belongs to her sister. She has given this money before one year to him to be placed in locker.
- vii. With respect to the source of ₹12 lacs, Assessee says that it is out of his savings from brokerage and agricultural income. He was also questioned that where his annual income is only ₹3 lacs how ₹14 lacs in denomination of new notes of ₹2000 were found from locker. He expressed ignorance.



- viii. With respect to the source of income he stated that he does not have any documentary evidence.
  - ix. With respect to the notes of new denomination of ₹2,000/-, he did not give any information.
  - x. search warrant was issued in the name of the assessee on 6<sup>th</sup> December, 2018, wherein this sum was found.
03. During the course of assessment proceedings for A.Y. 2019-20, the assessee was asked to explain the source of cash found and also to substantiate that ₹2 lacs belong to her sisters. The learned Assessing Officer also issued notice under Section 133(6) of the Act to Fakir Chand Lockers and Vaults Pvt. Ltd. on 12<sup>th</sup> April, 2021, asking for certain KYC information. However, no such information was received. The learned Assessing Officer questioned the assessee once again to file necessary details and assessee was given several opportunities.
04. On 19<sup>th</sup> May, 2021, the assessee submitted that he is engaged in agricultural activities and brokerage. The details were asked about these activities and its income such as, Mandi Bills, Purchase Invoices of the seeds and cultivation reports. The assessee was also asked the details about her sisters and when she deposited money with him. On submission of certain details, the learned Assessing Officer issued notice under Section 133(6) of the Act to his sisters, Anita Devi Baldeva [ sister of

Assesee] on 21<sup>st</sup> May, 2021. Till the date of assessment no such details were filed and therefore, the learned Assessing Officer held that ₹2000 denomination notes were not available prior to 8<sup>th</sup> December, 2016 and there is no explanation as to how assessee came into possession of the same. He made an addition of ₹14 lacs under Section 69A of the Act to the total income of the assessee as per return of income filed on 30<sup>th</sup> September, 2020 of ₹3,48,890/- and assessed the total income for A.Y. 2019-20 at ₹17,48,890/-.

05. For A.Y. 2013-14, assessee filed return of income on 29<sup>th</sup> March, 2015, declaring income of ₹1,88,520/-, and agricultural income of Rs 1,68,000/- was claimed as exempt, in response to notice under Section 153A of the Act. The learned Assessing Officer passed an assessment order under Section 153A of the Act read with section 144 of the Act on 17<sup>th</sup> June, 2021, wherein addition of ₹1,68,000/- was made as income from undisclosed sources to the total income of the assessee as declared by the assessee in his return of income as exempt income. In this case also assessee could furnish only the certificate from Patwari for agricultural land holding. Accordingly, total income of the assessee was assessed at ₹3,56,520/- and addition of the agricultural income was made of ₹1,68,000/- as assessee failed to prove the complete source of agricultural income.
06. For A.Y. 2014-15, assessee filed return of income on 30<sup>th</sup> March, 2016, at ₹2,16,980/- and further, agricultural

income was shown of ₹1,76,000/-. The assessment order under Section 153A read with section 144 of the Act was passed on 21<sup>st</sup> June, 2021, treating the agricultural income as the normal income and total income was assessed at ₹3,92,980/-.

07. For A.Y. 2015-16, assessee filed its return of income on 27<sup>th</sup> March, 2017, declared total income of ₹2,59,810/- and also claimed agricultural income of ₹1,84,000/-. The assessment order was passed on 17<sup>th</sup> June, 2021, assessing the total income of the assessee at ₹4,43,801/-.
08. For A.Y. 2016-17, the assessee filed return of income on 27<sup>th</sup> March, 2017, showing income of ₹2,68,540/- and claiming agricultural income of ₹1,78,000/-. On similar facts, the assessment order under Section 153A read with section 144 of the Act was passed on 17<sup>th</sup> June, 2021, at the total income of ₹4,46,540/-.
09. For A.Y. 2017-18, the assessee filed return of income on 29<sup>th</sup> March, 2018, declaring total income of ₹2,94,820/- claiming agricultural income of ₹1,89,500/- as exempt. On similar facts, assessment order under Section 153A read with section 144 of the Act was passed on 17<sup>th</sup> June, 2021, at the total income of ₹4,84,320/-.
010. For A.Y. 2018-19, assessee filed his return of income on 31<sup>st</sup> August, 2018, declaring total income of ₹3,46,730/- claiming agricultural income of ₹1,98,000/-. The assessment order under Section 153A read with section 144A of the Act was passed on 17<sup>th</sup> June, 2021,

determining the total income of the assessee at ₹5,44,730/-.

011. Therefore, for all these assessment years except AY 2019-20, the learned Assessing Officer disbelieved agricultural income of the assessee and same was added to the total income of the assessee as income from undisclosed sources.
012. For A.Y. 2019-20, the addition of ₹14 lacs was made to the total income of the assessee on account of cash found from the locker during the course of search u.s 69A of the Act.
013. Assessee aggrieved with the assessment orders, preferred the appeal before the learned CIT (A)-49, Mumbai, who passed common order in these appeals from A.Y. 2013-14 to 2019-20, wherein assessee challenged the addition of ₹14 lacs for A.Y. 2019-20 and addition of agricultural income from A.Y. 2013-14 to 2018-19 as income from undisclosed sources.
014. The learned CIT (A) passed an order on 6<sup>th</sup> June, 2023, wherein he found that several notices were issued to the assessee which remained unresponded. On 30<sup>th</sup> April, 2023, the assessee filed a common submission. It is the claim of the assessee before him that assessee has given detailed submission on 13<sup>th</sup> May, 2021, 19<sup>th</sup> May, 2021 and 24<sup>th</sup> May, 2021, which were not considered by the learned Assessing Officer in proper perspective. He reiterated his submission that out of ₹14 lacs found 12

lacs belongs to him as out of his savings as he is a farmer and Petty Commission Agent. Commission activities are on a very small scale. The sum of ₹2 lacs belongs to his sisters. He also submitted before the learned Assessing Officer the details of agricultural land owned by him and sales receipt of Rajasthan Government Anaj Mandi. He also submitted Patwari certificate of the land ownership which was produced before the learned Assessing Officer which was rejected and credit of agricultural income was not given. The learned CIT (A) was also submitted that as assessee is belonging to the village near Bikaner District Rajasthan and he infected with COVID, proper opportunity was not given. The evidences submitted by the assessee before the learned CIT (A) which were also produced before the learned Assessing Officer were considered by the learned CIT (A). Such evidences are; copies of the sales receipt from agricultural produce committee at Bikaner and further the certificate of land holding. The learned CIT (A) upheld the action of the learned Assessing Officer holding that these evidences are inadequate and therefore, he confirmed the addition of agricultural income for A.Y. 2013-14 to 2018-20 as income from undisclosed sources.

015. For A.Y. 2019-20, with respect to the addition of ₹14 lacs he also upheld the addition for the reason that there is no plausible explanation of saving of the assessee of ₹12 lacs put in the locker. He further held that as the cash was found in the denomination of ₹2000/- notes which was only available after 8<sup>th</sup> December, 2016, could not have

been available with the assessee in earlier years. With respect to the sum of ₹ 2 lacs, belonging to her sisters, he held that the explanation of the assessee remains unsubstantiated. Accordingly, the addition of ₹ 14 lacs was also confirmed.

016. Therefore, assessee aggrieved with appellate order is in appeal before us for all these years. The assessee submitted two paper books containing 73 pages and 32 pages before us. In paper book containing 32 pages of the submissions made before the lower authorities are enclosed. In paper book containing 73 pages, the assessee submitted that there is an agricultural land situated at village Rajdev Tehsil Dungargarh, District Bikaner, Rajasthan, wherein the assessee is part owner of 94.3 hectares of the land. The share of the assessee in the land is  $1/7^{\text{th}}$ . Therefore, he is owning 33.23 acres of land. For this, he submitted P-13-N statement of agricultural land holding. In those statements, the various agricultural produced were also mentioned.

017. For A.Y. 2013-14 to A.Y. 2018-19, he also submitted a statement of income which in fact were the copies of return originally filed. In the second paper book, he referred to page no.3 stating that he earned a meager agricultural income for all these years which were disbelieved by the learned Assessing Officer. He submitted that up to 2018-19, he has total agricultural income for all these six years amounting to ₹10,93,500/-. He further stated that he has also accumulated brokerage

income earned in earlier years of approximately of ₹1,06,500/- which was kept in the locker. He also submitted that her sister residing at New Delhi, a sum of ₹2 lacs for safe custody given to him ,which was also placed in the locker.

018. Before us, he also submitted that [1] there is no notice issued to the assessee under Section 143(2) of the Act for A.Y. 2013-14 to 2018-19, and on this ground also the assessment order passed is invalid and [2] referred to the assessment orders and stated that agricultural income added in the hands of the assessee for earlier six years has once again being added in the hands of the assessee in A.Y. 2019-20, [3] He also challenged the fact that there is no incriminating material found during the course of search with respect to earlier years and therefore, for A.Y. 2013-14 to 2018-19, no addition could have been made in the hands of the assessee.

019. The learned Departmental Representative vehemently supported the order of the learned lower authorities and submitted that in absence of any substantial detail of agricultural activities, the agricultural income shown by the assessee has been correctly added as income from undisclosed sources in the hands of the assessee. Further, the argument of the assessee of ₹2 lacs received from his sisters is also unsubstantiated and merely an affidavit is filed. He further stated that even if the income of the assessee is considered to be out of his past savings, there is no explanation that how he came into the possession of



new notes issued of ₹2,000/- post demonetization. In view of this, the orders of the lower authorities are sustainable.

020. We have carefully considered the rival contentions and perused the orders of the lower authorities. We have also perused the paper books filed and arguments raised before us. The fact clearly shows that assessee is an individual earning income from brokerage and agricultural activity. In Locker no.104, with Fakir Chand Lockers and Vaults Pvt. Ltd. of New Delhi, assessee was found to be having that locker wherein cash of ₹14 lacs was found. The explanation of the assessee that cash of ₹12 lacs belongs to him out of his agricultural activities and past savings and further ₹ 2 lacs is given to him by his sisters. This explanation was disbelieved by lower authorities. We find that undoubtedly, the assessee has 1/7<sup>th</sup> share in agricultural land situated at village Rajdev Tehsil Dungargarh, District Bikaner, Rajasthan. The total land holding pertaining to the assessee is ₹33.24 acres . This land holding is undisputed. In the land records there are certain agricultural produce mentioned with respect to each of the year for past six years. The assessee has shown agricultural income in the range of ₹1.68 lacs to ₹1.98 lacs. With respect to the proof of sale of agricultural produce the assessee has also submitted the agricultural produce marketing committees receipts on sample basis. Undisputedly, assessee has not submitted complete details of the agricultural produce for all these years. However, on looking at the holding of the agricultural records of land holding, the agricultural produce mentioned there in and

some of the bills of APMC produced before us clearly show that assessee is engaged in agricultural activities. Now the only issue remains is whether in absence of complete details of sale of agricultural produce the income shown by the assessee is acceptable or not. We find that on the basis of land holding, the assessee has shown annual agricultural income of ₹6000/- per acre. Looking to the totality of the facts, we find that such income cannot be excessive and cannot be considered as income from undisclosed sources. Therefore, the addition made by the learned Assessing Officer of agricultural income shown by the assessee as undisclosed income for A.Y. 2013-14 to 2018-19, is unsustainable and deserves to be deleted.

021. Coming to the A.Y. 2019-20, where the additions of ₹14 lacs is made, the source is explained by the assessee being ₹ 12 lacs out of past savings. Source of this ₹ 12 lacs is stated to be an agricultural income of ₹10,93,500/- and balance of ₹1,06,500/- out of his saving from Petty Commission Activities. On looking at the income offered by the assessee for A.Y. 2013-14 till 2019-20, it is apparent that assessee has disclosed total income of commission and bank interest for all these years of approximately ₹10 lacs. Even after accounting for all expenditure out of this sum, the savings of only ₹1,60,000/- being 5% of his other income cannot be disbelieved. Therefore, the additions to the extent of ₹12 lacs in the hands of the assessee out of ₹14 lacs are explained.



022. Coming to the sum of ₹2 lacs, which assessee has stated to be belonging to her sisters is supported by an affidavit. The affidavit of Smt. Anita Devi Baldeva, shows her residential address and her Permanent Account Number, which clearly shows that she has kept a sum of ₹2 lacs in cash with him, which was kept by assessee into locker. The source of such sum is from her past savings and out of Stredhan. She has also given her permanent Account Number. This is the explanation of the assessee since the date of search. Then, permanent Account number is also given and money is owned by his sister, the addition cannot be made in the hands of the assessee. The learned Assessing Officer though issued notice u/s 133(6) of the act to her which were not replied to. But that does not go against the assessee. Therefore, looking at the smallness of the amount and the affidavit of her sisters stating her Permanent Account Number the addition of ₹ 2 lakhs comprising in total addition of Rs 14 lacs in the hands of the assessee is not sustainable. The reason of the learned Assessing Officer that the above sum was found in the locker in the denomination of new notes of ₹2000/-. However, there is no evidence available with the Revenue authorities that new notes were placed in the locker. Therefore, solely on that basis, in view of the explanation supported with the evidence which is provided by the assessee, addition cannot be made.
023. Further, it is apparent that for A.Y. 2013-14 till A.Y. 2018-19, no incriminating evidence is found during the course of search. On that basis also, there cannot be any addition in



the hands of the assessee for those years where the addition is made, considering agricultural income as undisclosed income.

024. It is also apparent that for all these assessment years, there is no reference of issue of notice under Section 143(2) of the Act. The assessments have framed under Section 153A of the Act but no notice under Section 143(2) of the Act has been issued.

025. However, as the addition stands deleted on the merits itself, there is no reason to deal with the other legal grounds of incriminating material as well as non-issue of notice under Section 143(2) of the Act, which are left open.

026. In the result, all 7 appeals filed by the assessee are allowed.

Order pronounced in the open court on 22.02.2024.

Sd/-  
(AMIT SHUKLA)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 22.02.2024

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,



True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai