

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.1687/Ahd/2019  
Assessment Year : 2016-17**

Dhirubhai Mohanbhai Patel (HUF) Plot No.16, Vikram Park Nr. Bajrangdas Ashram NH No.8, Thakkarbapa Nagar Ahmedabad 382 350	Vs	The DCIT Circle-7(2) Ahmedabad
<b>PAN: AAGHD 1362 L</b>		
(Appellant)		(Respondent)

Assessee by :	Shri Parin S. Shah, AR
Revenue by :	Shri Ashok Kumar Suthar, Sr.DR

**Date of Hearing : 11/03/2024  
Date of Pronouncement: 13/03/2024**

**ORDER**

**PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

This appeal is filed by the Assessee as against the Appellate order dated 30/08/2019 passed by the Commissioner of Income-tax (Appeals)-7, Ahmedabad [“CIT(A)” in short] arising out of the assessment made under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) relating to the Assessment Year (AY) 2016-17.

2. The brief facts of the case are that the assessee is a Karta of Hindu Undivided Family (HUF) engaged in the business of property

development. For the AY 2016-17, the assessee filed his return of income on 30/03/2018 declaring total income of Rs.82,30,270/- and agricultural income of Rs.9,50,000/-. The return was taken up for scrutiny assessment and various notices issued u/s.143(2) of the Act calling from the details of agricultural income shown by the assessee. In response thereto, the assessee has not produced details of the agricultural income, nature of crops grown, etc. except 7/12 Revenue records. In the absence of any further details, the Assessing Officer treated the agricultural income of Rs.9,50,000/- as the “income from other sources” and added as the undisclosed income of the assessee.

3. Aggrieved against the assessment order, the assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A) after taking into note, the agricultural income shown by the assessee for the AYs 2011-12 to 2015-16 and restricted the agricultural income with that of the previous assessment year; namely, A.Y. 2015-16 of Rs.1,80,000/- as the agricultural income and confirmed the balance amount of Rs.7,70,000/- as the undisclosed income of the assessee by observing as follows:

*“6.1 I have carefully considered assessment order and submission filed by appellant. The appellant has shown agricultural income of Rs 9.50 lacs in return of income. The appellant has submitted only copy of 7/12 extracts of land held by him hence AO has made addition of such income in assessment order. In appellate proceedings, appellant has also submitted such 7/12 extracts along with return of income and assessment orders for earlier years to prove that it was earning agricultural income consistently in past years.*

*6.2 On perusal of details submitted by appellant, it is observed that appellant has only submitted 7/12 extracts to prove that he is holding agricultural land and such facts are not disputed by AO. The appellant has not submitted agricultural sale bills or details like*

*expenditure incurred for earning such income either in assessment proceedings or appellate proceedings hence contention of appellant that entire agricultural income shown in return of income is genuine cannot be accepted. However, appellant has submitted details of agricultural income shown in return of income in earlier assessment years and assessment order passed in earlier years which is summarised as under:*

<i>Assessment Year</i>	<i>Net agricultural income shown in return Rs.</i>	<i>Assessment order</i>
<i>2011-12</i>	<i>1,91,120</i>	<i>--</i>
<i>2012-13</i>	<i>1,86,630</i>	<i>--</i>
<i>2013-14</i>	<i>1,76,557</i>	<i>143(3) dated 14/09/2015</i>
<i>2014-15</i>	<i>1,77,261</i>	<i>143(3) dated 26/07/2016</i>
<i>2015-16</i>	<i>1,80,259</i>	<i>--</i>

*The appellant has also relied upon decision of Hon'ble Ahmedabad ITAT in the case of Shri Bharatbhai R Patel 1040/Ahd/2014 dated 26/4/2019 wherein it is held as under:*

*"11. We have heard the rival contentions and perused the materials available on record. The issue in the instant case relates whether the assessee has carried out any agricultural activity in the year under consideration. The assessee has declared agriculture income of 11,51,000 in his income tax return. But the assessee during the assessment proceedings failed to substantiate the agriculture income based on documentary evidence. Therefore the same was treated as income under the head of other sources by the AO. The learned CIT (A) subsequently confirmed the action of the AO.*

*11.1 The primary onus lies on the assessee to justify the agriculture income based on documentary evidence. Though the assessee has submitted the details of the agricultural products produced, the persons engaged in the cultivation activity, etc., the assessee failed to substantiate his claim by furnishing the documentary evidence such as the address of the parties of the Cultivators/ farmers and the sale bill of the crop.*

*11.2 It is a fact on record that the assessee has been declaring agriculture income in his income tax return consistently year after year since the assessment year 1999-2000. But on*

*perusal of the same, we note that there was no assessment carried out by the Revenue till the assessment year under consideration as well as in the subsequent assessment year, i.e. 2010-11. Therefore it is implied that there was no verification carried out by the Revenue of the agriculture income declared by the assessee in the earlier AYs. Thus the question arises whether the principle of consistency can be applied in the given facts and circumstances. Indeed there cannot be any fault of the assessee if there was no assessment carried out by the Revenue in respect of the income declared by the assessee in his income tax return in the earlier years on account of no assessment by the Revenue. Once the assessee has declared income in his income tax return, then it is up to the Revenue to select his case under scrutiny assessment under section 143(3)/147 of the Act as the case may be. Therefore the assessee cannot be faulted/ punished in the event his case was not selected under the scrutiny assessment by the Revenue.*

*11.3 Thus in our considered view the principle of consistency can be applied. Our view is fortified from the fact that the Revenue in the subsequent assessment year, ie. 2010-11 has accepted the agriculture income of the ITA no. 1040/AHD/2014 Asstt. Years 2009. 10 assessee in the assessment framed under section 143(3) of the Act. Thus, considering the principle of consistency and the agricultural land owned by the assessee, we are of the view that the contention of the assessee that he has carried out agricultural activity cannot be brushed aside. Therefore we hold that there was an agriculture income earned by the assessee in the year under consideration.*

*11.4 The next question arises for the quantification of agricultural income. The quantification of the agriculture income can be decided based on documentary evidence, and the principle of consistency will be of no help to the assessee as far as quantification of the income is concerned in the given facts and circumstances. It is because the assessee has failed to file the documentary evidence in support of his agriculture income except for the ownership of the land. In the absence of sufficient documentary evidence, we are not impressed with the argument of the learned counsel for the assessee. However in the interest of justice and fair play and keeping the principles of consistency, we are inclined to treat the 50% of the income described above, i.e. 5,75,500.00 as agricultural income of the assessee.*

*11.5 Before parting, we are inclined to make it clear that we are treating the income described above to the tune of 50% as agricultural income in the absence of the documentary evidence. Therefore the above ratio, i.e. 50% of treating agricultural income cannot be taken as the rule of consistency or precedent while deciding the issue of other assessment years of the assessee. As such the fate of agriculture income disclosed by the assessee will depend upon the facts and circumstances of the relevant assessment year. In view of the above, the ground of appeal of the assessee is partly allowed.*

*12. In the result, the appeal of the assessee is partly allowed."*

*Considering ratio of decision rendered by Hon'ble Ahmedabad ITAT referred supra and fact that appellant HUF has consistently shown agricultural income in return of income which is accepted as such in earlier assessment year and AO not disputing the fact that appellant is holding agricultural land, net agricultural income is estimated to be at Rs 1,80,000 out of Rs 9,50,000 shown in return of income. This estimation is made based upon agricultural income shown in earlier assessment years in range of Rs 1,75,000 to 1,90,0000. The appellant has failed to produce material evidences to substantiate the claim that such income has raised 400% times in current assessment year in comparison with earlier assessment years. Thus, appellant gets relief of Rs 1,80,000 and balance addition of Rs 7,70,000 made by AO is confirmed. This ground of appeal is partly allowed."*

4. Aggrieved against the appellate order, assessee is in appeal before us raising the following grounds:

- "1. The order passed by Ld. AO and confirmed by CIT(A) is bad, illegal and required to be quashed.*
- 2. Ld. CIT(A) erred in law and on facts in confirming addition of Rs.7,70,000/- by treating agriculture income as income from undisclosed sources ignoring documentary evidences and submission of the appellant.*
- 3. Charging of interest u/s.234A, 234B and 234C is unjustified.*
- 4. Initiation of penalty proceedings u/s.271(1)(c) is unjustified."*

5. Ld.Counsel Mr.Parin S.Shah appearing for the assessee relied on the decision of Co-ordinate Bench of this Tribunal in the case of Shri Bharatbhai R Patel (extracted in CIT(A)'s order above), wherein this Tribunal has allowed 50% of the income as the agricultural income of the assessee in the absence of documentary evidences. Thus, the Ld.Counsel pleaded to allow 50% of the income as the agricultural income of the assessee in the present case.

6. Per contra, Ld.DR Ashok Kumar Suthar appearing for the Revenue submitted that the assessee has never filed any details relating to sudden increase of the agricultural income to four times with that of the earlier assessment years. In the above circumstances, the Ld.CIT(A) after taking note of the agricultural incomes offered in the earlier years, confined the agricultural income to Rs.1,80,000/- which does not require any interference and the appeal is liable to be dismissed.

7. We have given our thoughtful consideration and perused the material available on record. As prayed by the assessee's counsel to grant 50% of the income as the agricultural income of the assessee, the assessee has not produced any material, in spite of opportunities given before the lower authorities as well as before us, no new material placed on record. Further, the Co-ordinate Bench decision in the case of Shri Bharatbhai R. Patel (in ITA No.1040/Ahd/2014 for AY 2009-2010, order dated 26/04/2019), there were no assessments taken place for ten consecutive assessments, whereas in the present assessee's case regular assessment u/s.143(3) of the Act was done for AYs 2013-14 & 2014-15 where agricultural income of Rs.1,76,557/- and Rs.1,77,261/- respectively were accepted by

the Assessing Officer. Whereas in the very preceding AY 2015-16 assessee had shown agricultural income of Rs.1,80,259/-. Taking note of all these previous assessment years, we deem it fit to estimate the agricultural income of the assessee for the present assessment year as Rs.2,50,000/- and treat the balance amount of Rs.7 lakhs as "income from other sources". Thus, the grounds raised by the assessee is hereby partly allowed.

8. Remaining grounds are charging of interest u/s.234A, 234B and 234C of the Act and initiation of penalty u/s.271(1)(c) of the Act are consequential in nature, which does not require separate adjudication.

9. In the result, the appeal filed by the assessee is partly allowed.

**Order pronounced in the Court on 13<sup>th</sup> March,2024 at Ahmedabad.**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

**Sd/-  
(T.R. SENTHIL KUMAR)  
JUDICIAL MEMBER**

Ahmedabad, Dated 13/03/2024

*टी.सी.नायर, व.नि.स।T.C. NAIR, Sr. PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-7, Ahmedabad
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजोक्त/DR,ITAT, Ahmedabad,
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आयकर अपीलीय अधिकरण, ITAT, Ahmedabad