

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No.263/Bang/2024
Assessment Year: 2017-18

Jacintha Prasad Panicker 3-5-502 Empress, Kadri Temple New Road Kadri Mangalore 575 004 Karnataka PAN NO : AACTS7624Q	Vs.	ITO Ward-2(4) Mangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri Ravishankar, A.R.
Respondent by	:	Shri V. Parithivel, D.R.

Date of Hearing	:	16.04.2024
Date of Pronouncement	:	16.04.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2017-18 dated 21.12.2023. The assessee has raised following grounds of appeal:

- The order of the learned authorities below in so far as it is against the appellant is opposed to law, equity, facts, weight of evidence, probabilities and circumstances of the case.*
- The appellant denies herself to be assessed to the income at Rs. 44,93,850/- as against the returned Income of Rs.12,02,850/- on the facts and circumstances of the case.*
- The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (hereinafter referred to as NFAC), is not justified in sustaining the addition made of the income of Rs.32,91,000/- by the learned Assessing Officer (AO) as against the returned Income of Rs. 12,02,850/- on the facts and circumstances of the case.*

4. *The learned Authorities below is not justified to consider the Agricultural income of Rs. ,000/- as Income from other sources, under the facts and in the circumstances of the appellant's case. Further, the learned authorities below failed to appreciate that the appellant reported the agricultural income erroneously and on estimate basis.*

5. *Without prejudice to the right to seek waiver with the Hon'ble ITAT, the appellant denies herself liable to be charged to interest u/s 234-A, 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.*

6. *The Hon'ble Commissioner of Income tax (Appeals) NFAC Delhi, failed in appreciating the evidence produced before him in as much as the learned Hon'ble Commissioner of Income tax (Appeals) NFAC Delhi agreed with the learned Assessing Officer that the appellant ought to have produced bills. In this regard, reliance is placed on the parity of the judgment of Hon'ble ITAT, Chennai in the case of Smt. Annakkalanjiam Mathivanan, ITA No.2451/Chny/2018 and hence the addition made by the learned AO deserves to be deleted in full.*

7. *The appellant craves leave to add, alter, amend, substitute, change and delete any of the grounds of appeal.*

8. *In view of the above facts the appellant pleads that this appeal may kindly be allowed for the advancement of substantial cause of justice.*

9. *For the above and other grounds that may be urged at the time of hearing of the appeal, the appellant prays that the appeals may be allowed and justice rendered.*

2. Facts of the case are that vide Assessment Order dated 13/12/2019, for the AY 2017-18, the AO had disallowed the agricultural income of Rs.83,91,000/- under the head Income from other sources. The assessee vide letter dated 15/02/2023 stated that the assessee erroneously declared income aroused out of sale of agricultural land situated at new Sy No.205, old sy.no. 107/p1, Shivapura Village, Kasaba Hobli, Doddaballapur Tq, Bangalore Rural Dist measuring to an extent of 1 Acre and 28 Guntas on 30.06.2016 as agricultural income. The property was a joint property held by the assessee along with three partners. Out of the total sale

consideration of Rs.1,53,00,000/- the assessee's share was Rs.51,00,000/-. The assessee claimed that they have wrongly shown the income received from the sale proceedings of agricultural land which is exempt from taxation as part of their agricultural income. The assessee claimed that the agricultural land sold was situated in rural area. In this connection, to verify the claim made by the assessee, whether the said land is situated in rural area or not, erstwhile office ie., ITO, W-2(4) had issued commission u/s.131(1)(d) of the Act to the Dy. Director of Income Tax (Investigation), Unit-3, Bangalore on 02.03.2020. Accordingly, the verification report from the Dy.DIT (Inv.), Unit-3, Bangalore received on 22/06/2020 stating that the Inspector of the Investigation unit-3, Bangalore visited the above mentioned locations and discrete enquiry was carried out. Land is situated in the Doddaballapur Taluk in Bangalore rural Dist in Kasaba Hobli. The exact land could not be identified owing to the nature of the enquiry, but could identify the adjoining lands based on the survey number written there in. Further, to verify the claims made by the assessee, the areal distance of the land sites from the local jurisdictional municipality i.e., Doddaballapur city municipality under which the land located were measured. At the official website of Doddaballapur city municipal was linked to Google map. From this website the minimum areal distance of kasaba hobli land from Doddaballapur city municipality was shown as approximately 4.5 Kms.

2.1 As per the population census of 2011, the population of Dodballapur city municipal council is 84642, which is less than 1 lakh. The population of Doddabalapur city municipal council is in the range between 10,000 to and as per the Sec. 2(14) of the IT Act, 1961 the land to be considered as agricultural land, the city municipality with a population range from 10000 to 1,00,000 should be more than 2 Kms away aerial out from the local limits of the municipality and the said land is situated more than 2 kms away

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from Doddaballapur City municipal council. Further, the Dy. DIT (Inv.), Unit-3, Bangalore has also stated that though the exact land pertaining to the assessee could not be identified however from the photos it can be seen that there was no cultivation activities carried out in any of the joining arrears of the survey numbers mentioned. The Id. AO observed that the sale of agricultural land located in rural area does not fall under any income of the assessee. However, as there was no agricultural activities carried out in any of the joining areas, the proof that this is an agricultural land cannot be ascertained. Further before the Id. AO, the assessee has also not submitted any proof that any agricultural activities has been conducted by her in the land. Thus, there is no information whether the land has been used for agricultural purpose or is converted into non-agricultural purpose. The only proof available is the sale deed which mentions that this is an agricultural land which is being sold. Hence, the Id. AO held that an amount of Rs.51,00,000/- received by the assessee on sale of agriculture land may be considered as income of the assessee.

2.2 Further, regarding the remaining part of agricultural income of Rs.32,91,000/- (Rs.83,91,000-51,00,000=Rs.32,91,000/-) shown in return of income for the A.Y 2017-18, the Id. AO sent letter to assessee on 28/12/2022 & 17/02/2022 to provide the bills and voucher in support of shown agricultural income. The assessee vide her letter dated 15.02.2023 has submitted various RTC's enclosing the proof agricultural land held by her. On going through the RTC's, the Id. AO observed that the assessee has agricultural lands at various places like Doddaballapura-Bangalore, Periapatna-Mysore, Kuloor, Ullal, Bolor-Mangaluru, Aramari-Kodagu on her name to an extent of 11.11 acres. The assessee has stated before him that in these agricultural lands she has grown areca-nut, Bananas, Vegetables, Coconut, Coffee, Jowar, Pepper, Raagi, Tender Coconut,

Tobacco, and other vegetables. The assessee has also given statistics of the crops grown at various location and yield per kgs.

2.3 The assessee vide ld. CIT(A)'s office letter in DIN no. ITBA/RCV/F/17/2022-23/1048297147(1) has been asked to submit documentary evidences of sale of agricultural proceeds supported by marketing society/third party contract etc. further also to submit evidences with regard to the expenses incurred on purchase of seeds, fertilizer, pesticides, labour charges, water, electricity, etc. The assessee in response to the above mentioned letter has stated before the ld. AO as follows:

"The Agricultural activities such as cultivating, maintaining, selling were delegated to the concerned Foremen at each location. By and large the Agricultural Produce was sold in the local market regularly as and when harvested, and the revenue was received by the Foremen, as such no specific marketing society or third-party contracts exist.

In every location, the Foremen were deployed to carry out the agricultural activities, and sell the agricultural produce. The Foremen used to look after the related expenses such as Wages, Seeds, Manure, Pesticides, Tools etc.

Further related expenses were incurred by the Foremen as and when required, and the regular books of accounts were not maintained as such the supporting documents, bills etc. are also not available.

As such while filing the Return of Income the Gross Approximate Agricultural Revenue was reported. "

2.4 The assessee has only stated before the ld. AO that she has grown the above mentioned crops but has not provided any proofs for the expenses incurred for growing of the crops and the sales expenses incurred on the sale of the produce. From the above statement of the assessee, it can be adhered that the foremen is the only person who carries out the agricultural activities and does the sale of produce. The assessee has not even submitted the bank statements showing any amount given to the foremen for expenses incurred w.r.t cultivation and also did not provided any bills and vouchers etc. for any purchase or sale. Further, the assessee has also not submitted any proofs like bank statement etc. showing

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agricultural income received. The assessee has also not maintained regular books of accounts. Further the agricultural income received of Rs.32 Lakhs does not also commensurate with the holdings which are scattered and are in total of only 11 Acres. From the above findings, ld. AO held that assessee had not proved her sources for agricultural income received to the extent of cash receipts of Rs.32,91,000/-. Therefore, the ld. AO submitted that remand report to the ld. CIT(A) NFAC for his further comments.

2.5 The assessee submitted its rejoinder report dated 06.10.2023 before the ld. CIT(A) which is reproduced below:

A. Additions amounting to Rs 51 Lacs received from the sale of Rural Agricultural Land:

Your kind attention is drawn to Serial No. 4.5 of the Remand Report supra where in it is concluded that land in question meets criteria as defined under section 2(14) of the Income Tax Act. Further the Certificate from Income Tax Department Registered Valuer, is enclosed for your kind perusal to justify the Status of the said Rural Agricultural Land.

In additions to the above we are providing the following assertions.

1. The Government's official Revenue Records (RTC and Mutation Register) unequivocally categorize the land as Agricultural Land; and it is clearly noted in the said documents that the Finger Millets were grown. The legally translated copies of the RTC and the Mutation Register forms additional proof besides the Sale Deed that the land was Agricultural land.

2. From the time of acquisition until the point of sale, the land has consistently and routinely been utilized for growing Finger Millets during the on season and vegetables and fruits during off season. Thus even at the time of the sale, official revenue records maintained its classification as Agricultural Land and therefore sale deed specifies the immovable property sold, was agricultural land.

3. The land has never been deviated from its Agricultural use, remaining untouched by the Non-agricultural activities. During the holding period of the said land, no land development was carried out except for a borewell, pump house etc. for irrigation purposes.

4. *As we could perceive from the Remand Report, the on-site inspection conducted by officials did not occur on the precise piece of the land in question. Assessing the land based on unrelated properties goes against the principles of Justice. Contrarily, the land in question is situated in an area where significant agricultural activities are conducted, with the specific crop of Raagi indicating a seasonal cultivation aligned with the monsoon.*

5. *Additionally, I possess Agricultural Land both in Karnataka and Kerala, and actively engage myself in Agricultural activities. The decision to sell the land was motivated by low yields, and it's crucial to note that the land retained its agricultural characteristics until the date of sale. Importantly, no permissions were sought for plot development, reinforcing the intent to maintain the land for agricultural purposes, as evidenced by the unaltered state in Sale documents.*

6. *Post-sale, the control over the land usage shifted to the transferee. Income Tax officials visited the land around the considerable time of four years after the sale transaction, making it unjust to declare it non-agricultural based solely on its condition during their visit.*

7. *Agricultural activity in the said land was undertaken by Mr. Lokesh, under my supervision and control. The yield from the said land was very meagre which was difficult to cover the expenses.*

8. *Since the yield in the said land was very low, the produce was sold to indigenous local Agri Traders.*

9. *I wish to annex Farmers Certificate, Agricultural Certificate, Witness Certificate Agricultural Professional Certificates held by myself, for your kind reference.*

10. *Your reference is also drawn to decision of the appeal in the attached order by the Honourable ITAT, D Bench Chennai in the case - The Income Tax Officer vrs Mrs. Chitra Rajendran & others ITA No 1097/Mds/2014 which closely resembles similar appeal.*

3. The Id. CIT(A) observed that the assessee has furnished what appears to be Government's Official Records and Mutation Register categorizing the impugned lands as lands. Therefore, prima-facie, it is acceptable that the lands in question are agricultural lands. The AO shall allow the claim of exemption of a sum of Rs.51 lakhs arising out of sale of the impugned agricultural land since the gains represent agricultural land which are not classified as capital assets u/s.2(14) of the IT Act. The Id. CIT(A) held that to this extent the

assessee is entitled to get relief. However, as regards the amount of Rs.32,91,000 claimed to be exempt, being agricultural income of the sale of agricultural products such as vegetables, coconuts, coffee, pepper etc., the ld. CIT(A) agreed with the AO's observations that assessee has failed to evidence in support of the same. Therefore, this amount shall be subject to taxation and the addition was sustained by the ld. CIT(A) and he partly allowed the ground of the assessee. Against this assessee is in appeal before us.

4. We have heard the rival submissions and perused the materials available on record. In this case, the assessee shown agricultural income to the tune of Rs.83.91 lakhs. Out of this an amount of Rs.51 lakhs arise out of sale of agricultural land which is not classified as a capital asset u/s 2(14) of the Act. The NFAC has gone through the revenue records and mutation register categorizing the impugned land as agricultural land and therefore, he allowed the exemption to the tune of Rs.51 lakhs arising out of sale of agricultural land since the gain represents sale of agricultural land though it was not classified as an agricultural land, which are not classified as capital asset u/s 2(14) of the Act. With regard to balance amount of Rs.32.91 lakhs, the ld. A.R. has explained that this amount is nothing but agricultural income derived from sale of agricultural products such as Vegetables, Coconut, Coffee, Flowers, Pepper, etc. However, this has not been treated as an agricultural income by the NFAC on the reason that no supporting evidence has been produced by the assessee explaining the agricultural income. Further, it was submitted before us that the assessee has declared agricultural income in earlier assessment years and also subsequent assessment years and prayed that average of immediate earlier 3 previous assessment years and subsequent 3 assessment years to be considered and the same to be determined for the assessment year under consideration. We accede to the request of the ld. A.R. Accordingly, the issue in dispute is remitted to the file of ld. AO to

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examine the agricultural income declared by the assessee in immediate 3 earlier assessment years and also immediate 3 subsequent assessment years and average the same and consider the average agricultural income of these 6 assessment years as agricultural income of this assessment year 2017-18. Ordered accordingly.

5. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 16th Apr, 2024

Sd/-
(Soundararajan K.)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 16th Apr, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.