IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Sanjay Arora, Accountant Member and
Dr. Seethalakshmi, Judicial Member

ITA No. 657/Coch/2022
(Assessment Year: 2013-14)

Dr. C. Usha Modern Hospital Guruvayur Road, Koottanad Palakkad 679533 [PAN:AAFPU8363H]	vs.	Income Tax Officer Ward -3, Palakkad
(Appellant)		(Respondent)

Appellant by:	Shri K.V. Venkitaraman, CA
Respondent by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	22.12 .2023
Date of Pronouncement:	15.03.2024

O R D E R

Per: Sanjay Arora, AM

This is an Appeal by Assessee agitating the dismissal of her appeal contesting her assessment under section 143(3) of Income Tax Act, 1961 (hereinafter "the Act"), dated 09.03.2016 for Assessment Year (AY) 2013-14 by the Commissioner of Income Tax (Appeals), Income Tax Department [CIT(A)] vide order dated 08.04.2022.

2.1 The only issue arising in the appeal is *qua* the non-acceptance by the Revenue of the assessee's claim for agricultural income, returned for the year at Rs.45 lakhs, to an extent of Rs. 9 lac, which, accordingly, gets assessed as income from other sources. The reason for the same is the non-substantiation of her claim for exemption by the assessee, constraining the Assessing Officer (AO) to make an estimate, for the purpose of assessment, which he does by adopting the returned sum @ 80% thereof. The primary facts of the case are not disputed. The assessee – a doctor by profession, and

her family, i.e., Dr. B. Radhakrishnan (husband), C. Arvind (son) and Anupama (daughter) have large agricultural holdings, which are being managed by Dr. Radhakrishnan, i.e., for and on behalf of the family, maintaining, as stated by Shri Venkitaraman, the learned counsel for the assessee, a common bank account with Federal Bank, Ottapalam, Dist. Palakkad, in which receipts and sales of agricultural produce are banked. The said bank account has not been produced at any stage, and of which there is, therefore, no reflection in their orders by the Revenue authorities. It cannot, therefore be stated if the actual accretion therein for the year agrees, even if broadly, with the agricultural income returned by the family members. It was though clarified by Shri Venkitaraman during hearing that the related expenditure being in cash, it is only the receipt, net of expenditure, that is deposited in bank. The assessee's holding is 45.325 acres and 10.60 acres of rubber and coconut plantation respectively. No books of account, as in the past; the assessee returning agricultural income since 2004 – with that for AY 2004-05 being Rs.3 lakh, stands maintained. The assessee's computation of income, furnished during assessment proceedings, through which we were taken during hearing, reads as under:

DR.C.USHA, KOOTTANAD, PALAKKAD.

COMPUTATION OF AGRICULTURAL INCOME FOR FY 2012-13.

RUBBER

Yield from 45.32 acres of rubber@800 kg/acre valued @ Rs.168.8/kg		Rs. 61,20,012.00
Less: cultivation expenses @25%		Rs. 15,30,003.00
	Net Income	Rs. 45,90,010.00

COCONUTS

% share in 15 acres of coconut garden at Muthalamada and % share in 3.10 acres of coconut garden at Desamangalam.

Yield estimated at 80 trees per acre, 120 nuts per tree per year, valued at Rs.12/nut

(9.05X80X12X12)		Rs. 10,42,560.00
Less cultivation expenses @25%		Rs. 2,60,640.00
	Net Income	Rs. 7,81,920.00

MISCELLANEOUS INCOME.

Sale of Matti trees from rubber estate		Rs. 2,00,000.00
Sale of coco, plantains (inter crop for coconut trees)		Rs. 3,00,000.00
	Total Income	Rs. 58,71,930.00
	Rounded off and returned as	Rs. 45,00,000.00

2.2 The statistics provided by the Rubber Board to the AO vide letter dated 01.01.2014 (copy on record) are at 1913 kg/ha (or 770 kg/acre) and the sale price at an average of Rs.176.82 per kg. The income stands thus estimated very conservatively, no defect in which in fact has been pointed out by the AO, whose only grievance is the non-maintenance of accounts.

2.3 This sums up the assessee's case, with the Revenue before us relying on the orders by the Revenue authorities; the assessment order having received approval in first appeal, and for the same reasons as appealed to the assessing authority.

3. We have heard the parties, and perused the material on record.

3.1 It is, firstly, incorrect to say that the Revenue's only grievance is non-maintenance of books of account by the assessee, which we restate as a complete un-substantiation of her case by the assessee. Her claim of agricultural income is not supported by any material toward actual conduct of agricultural operations, the produce of which would, without doubt, vary from year to year, as indeed the price realised. Why, we wonder, sales in such large volumes is not through banking channel and, further, even in part. The same, presumably, would only be to, as confirmed by Shri Venkitaraman, rubber factories, who are by law (Kerala Agricultural Income Tax

– KAITA) obliged to issue purchase bills to the seller, again absent. Why? Rather, as explained by him on enquiry, the purchase attracts tax and, besides,production of rubber would yield business income, liable to tax under the Act, so that it is incumbent under law to maintain accounts. Sale, he would explain,is made in a manner to fetch 'best'price. That, however, does not explain the absence of purchase bills, which would evidence agricultural produce by the assessee and it's sale. Why, agricultural income being subject to income-tax under the state enactment, again obliges the assessee to maintain proper records. The conduct of agricultural operations would, in our view, generate the host of contemporary evidences, while the instant case is *sans* any. Why, for all we know, produce of rubber attracting income-tax under the Act, the assessee may well be processing latex to produce and sell rubber. The assessee's case rests on bald claims.

3.2 We may though clarify that the physical inspection conducted by the AO through his Inspector, radically alters the scenario; the actual conduct of agricultural operations, and their being managed by Dr. Radhakrishnan, gets established. A physical count of the number of rubber trees tapped is also stated to have been taken, yielding a figure of 20,962, working to an average to 159 trees per acre, which finds mention in assessee's letter dated 12.03.2014 to the AO. The second thing that the physical verification clarifies is that the assessee is indeed selling only latex, in the form of rubber sheets though, which, it is not in dispute, does not involve any manufacturing process, so that the assessee is selling only agricultural produce, and r.7A, i.e., in case of a composite operations leading to sale of rubber, is not applicable. As afore-noted, we observe no dispute in this regard, for which reference is made to the claims made per representations dated 17.02.2015 and 12.03.2015 (copy on record). The assessee's claim *qua* agricultural operations and, thus, agricultural income from rubber plantation is, thus, proved. The only issue that thus survives, in respect of latex, is the quantification of income there-from.

Quantification

3.3 In the absence of any comparable cases cited by the assessee or by the AO, her claim alluding to the statistics in the public domain would have to be accepted, particularly in the absence of any rebuttal thereof by the AO. The only reservation would be that, as it is on an aggregate data base, where in the form of, or spread over, a range, it is open for the Revenue to adopt the lower of the two estimates. The yield for fy 2012-13, the relevant year, is 913700 tons for 757520 hectors, i.e., 488.3 kg/acre (1 hector = 2.47 acres). It translates to 734 kg/acre (tapped area). It is broadly in agreement with 774.5 kg/acre as per the provisional data for the Palakkad District which, being more specific, is to be preferred. Sure, the figure is provisional, but it would be seen that the difference to that extent (i.e., 40.3 kg/hector) obtained for FY 2011-12 as well. The yield be adopted at 775 kg/acre of tapped area, which area though is not specified by the assessee. The selling price adopted by the assessee (Rs.168.80/kg) is lower than the all-India stat of Rs.176.82/kg. The Board specifies an expenditure of 30% to 35%. The lower of 30%, as admitted per her letter dated 12.3.2015, would translate into a net income of Rs.118/kg., which we direct for adoption. The tapped area is now the only variable that needs to be ascertained. In the absence of the assessee providing any information thereon, at any stage, the same be taken in the same ratio as obtaining, on an average, i.e., 66.5% of the rubber area (which may/may not be the total area). The same works to 2756102 (45.32 acres x 66.5% x 775/kg./acre x Rs.118/kg.(Rs. 168.80 x 70%)). Though we entertain no doubt with regard to this working, being the same manner in which the assessee has computed her income and, further, adopting the data relied upon by her, we, yet, in the interest of justice, restore the matter to the file of the AO to allow the assessee an opportunity to, where not in agreement, present the AO with evidence to establish her case, i.e., income as returned. We may though clarify that no evidence in contradiction and inconsistent with that submitted earlier would be entertained by him. The AO, where satisfied, shall, modify the said figure, either way, per a speaking

order, issuing his definite findings of fact, i.e., on the evidence found credible and, therefore admitted by him. Needless, he shall do so per a speaking order allowing reasonable opportunity to the assessee.

3.4 As regards the income from coconut plantation, the assessee has not stated any basis, much less led evidence, as it has for the rubber plantation. The matter, accordingly, goes back to the file of the AO for determination of some definite basis. As regards income from other crops, the same is taken at Rs.3.75 lakhs, i.e. as per the assessee's note dated 16.12.2014.

3.5 As regards the Tribunal's order/s relied upon, the same refer to the principle of consistency, even as it's order is not based thereon, but on the basis of the assessee having demonstrated a reasonable basis of her estimate for her returned rubber income. We have in fact independently expressed the same view, even as the Tribunal's order is *sub-silentio qua* any other income. As regards consistency, though the principle of *res judicata* is not applicable to the proceedings under the Act, in the instant case, it is, on the contrary, the assessment for AY 2014-15 that ought to be based on that for the earlier years. There is in fact no reference in the Tribunal's order to the finding for the earlier years and, as afore-noted, it's order based on that for the current year. The Tribunal's order also states the absence of any other source of income for the assessee. The assessee before us is a medical practitioner. There is nothing on record to show that the same is through salary income or through salary income alone. That apart, the law does not oblige the Revenue to show the source from where the receipt representing income may have been earned, which is squarely on the assessee. The law in the matter is trite, for which one may refer to *CIT v. Joseph John* [1968] 67 ITR 74 (SC); *Kalekhan Mohammed Hanif (Seth) v. CIT* [1963] 50 ITR 1(SC); *CIT v. Ganapathi Mudaliar(M.)* [1964] 53 ITR 623 (SC); *CIT v. Deviprasad Vishwanathprasad* [1969] 72 ITR 194 (SC)

In Sum

4. The assessee admittedly not maintaining any record, or otherwise leading any evidence in respect of agricultural income, returned on estimate basis, the Revenue, on verification of the conduct of agricultural operations, estimated it at a lower sum which, on confirmation in first appeal, results in the instant appeal. The assessee though returning income in the same manner as in the past, the only year for which her assessment was made under the verification procedure under the Act, is for AY 2012-13, which is per an identical order (copy on record), stated before us to be, filed subsequently, outstanding before the Tribunal. The assessment for AY 2014-15, though a regular assessment, is per a non-speaking order, without any finding and, therefore, of no assistance. The proceedings under the Act, a public law, it may be appreciated are not adversarial proceedings, in the nature of lis (see: *Gadgil (S.S.) v. Lal & Co*. [1964] 53 ITR 321 (SC)), but toward assessment of income chargeable to tax for the year. Assessment of income for that year at Rs.36 lakhs, as against returned Rs.40 lakhs, as for the current year, per a non-speaking order, would be of no consequence. The burden to prove that a receipt is in the nature of income is on the Revenue. However, once that is not in dispute, as in the instant case, the burden to prove that the same is exempt from tax, i.e., satisfying the condition for exemption, is on the assessee. The law in the matter is well-settled, for which we may refer to *Parimisetti Seetharamamma v. CIT* [1965] 57 ITR 532 (SC); *H.E. Nizam Religious Endowment Trust v. CIT* [1966] 59 ITR 582 (SC); *Commissioner of Customs v. Dilip Kumar & Co*. [2018] 6 GSTR-OL 46 (SC), to cite some; and accords that the principle that it is the assessee who is to prove it's return and the claims preferred thereby, being in the intimate know of its affairs ((*CIT v. Calcutta Agency Ltd*. [1951] 19 ITR 191 (SC)(also see: *Lakshmiratan Cotton Mills Co. v. CIT* [1969] 73 ITR 634 (SC);and which can further only be on the basis of proper materials (*CIT v. R. Venkataswamy Naidu* [1956] 29 ITR 529 (SC)). Further, the same would extend to the entire income claimed exempt. The Tribunal in the case of the assessee's daughter

(ITA No. 26 & 27/Coch/2022 dated 02.1.2023), as indeed in some others, allowed the assessee benefit by throwing this primary burden on the AO, contrary to the settled principles of law.

The matter was accordingly heard at length. The assessee has claimed before us to have not returned any agricultural income under the Kerala Agricultural Income Tax (KAIT) availing the composition scheme u/s. 13 of the said Act, providing for payment of tax on the basis of land holding. No evidence in this respect, stated to be rs. 25,030, however, is brought on record. Further, even so, the same would only prove the nature of income, but not its extent, which the dispute essentially is about. This is as a physical verification caused by the AO proves conduct of agricultural operations, i.e., as far as rubber plantation is concerned. The assessee's burden gets discharged to that extent. On quantum, the assessee's reliance on data released from authentic sources is found acceptable, with the caveat that in the case of a range, conservative estimate shall prevail. The Revenue cannot deny the same without stating cogent reasons. The same has therefore found our acceptance, as indicated hereinabove. The yield declared, however, is with reference to tapped area, which varies significantly from the rubber area, on which the former has been applied. The matter, with a view to eliminate any prejudice being caused, is restored to the file of the AO, who shall decide per a speaking order, upon allowing the assessee a reasonable opportunity to present her case. As regards coconut plantation, as indeed for other crops, the assessee's case continues to be wholly unproved, i.e., both as regards the nature and extent of income. The matter having been restored to the AO's file *qua* rubber income, in the interest of justice it is for balance income as well, with that the caveat that the income of miscellaneous crops cannot exceed that admitted in assessment. The matter, with like directions, is restored to the file of the AO, making it clear that the burden of proof is on the assessee, even as the Revenue cannot, acting unreasonably, convert good evidence to no evidence (*Sreelekha Banerjee And Others v.CIT* [1963] 49 ITR 112 (SC)). We decide accordingly.

5. In the result, the assessee's appeal is partly allowed and partly allowed for statistical purposes.

Order pronounced on March 15, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-	Sd/-
(Dr. Seethalakshmi)	(Sanjay Arora)
Judicial Member	Accountant Member

Cochin, Dated: March 15, 2024
n.p.

NB: This is the corrected version of the order passed on 15/3/2024, i.e., after giving effect to the corrigendum dated 23/4/2024, being also uploaded alongwith.

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COCHIN BENCH, COCHIN

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(Assessment Year:2013-14)

Dr. C. Usha Modern Hospital Guruvayur Road, Koottanad Palakkad 679533 [PAN:AAFPU8363H]	vs.	The Income Tax Officer Ward – 3, Palakkad
(Appellant)		(Respondent)

CORRIGENDUM

Order under section 254(1) of the Income Tax Act, 1961 ('the Act') in the captioned appeal was passed on 15.03.2024. It is, however, found that there have occurred certain typing errors and omissions in the said order, which are, therefore, sought to be rectified through this corrigendum order. The same being only a correction of those errors, with no implication on the rationale or the result of the order, do not therefore cause any prejudice to either party. The details are as under:

1. The date of hearing be read as '22.12.2023' instead of '21.12.2023'.
2. In paragraph 2.1 (pg. 1), the word 'he' be read between the words "which" and "does" in line 6 of the para.
3. Para 3.1 (pg. 4): The word "claimss" in the last line be read as "claims".
4. Para 3.2 (pg. 4): In the sentence beginning with the word "The second thing..", the word 'is' after the word "thing", be omitted.
5. Para 3.3 (pg. 5)
   (a) The word "a" before the words "aggregate data base" (at line 4), be read as 'an'.

(b) In the sentence beginning the words "The yield be adopted at 775 kg/acre ....", the word 'area' be read after the word "which".

(c) In the sentence beginning with the words "In the absence of -----", the word 'in the' be read instead of the word "a" prior to the words "same ratio as obtaining".

(d) In sentence beginning with the words "Though we entertain no……..", the word "to" before the words " present the AO", be omitted.

6. Para 3.5 (pg. 6):

(a) In sentence beginning with the words "As regards the Tribunal's order/s……..", the word 'a' be read before the words "reasonable basis"

(b) In sentence beginning with the words "As regards consistency, -------", the word "principles" be read as 'principle'; and a coma (,) be read after the words "it is", in the said sentence.

7. Para 4 (pg. 8):

(a) A full stop '.' be read instead of coma "," after the word "applied" in the sentence beginning with the words "The yield declared, ----- "

(b) In the sentence beginning with the words "The matter, with a view to….", the words 'the' and 'a' be read before the words "assessee" and "reasonable opportunity" respectively.

(c) The word 'is' be read instead of the word 'was" in the sentence beginning with the words "The matter having been restored --------"

(d) The words 'acting unreasonably' be read instead of the words "merely by adopting" in the sentence beginning with the words "The matter, with like directions, ---------"

Sd/-	Sd/-
(S. Seethalakshmi)	(Sanjay Arora)
Judicial Member	Accountant Member

Cochin, Dated: April 23, 2024
n.p.

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agricultural income from rubber plantation is, thus, proved. The only issue that thus survives, in respect of latex, is the quantification of income there-from.

Quantification

3.3 In the absence of any comparable cases cited by the assessee or by the AO, her claim alluding to the statistics in the public domain would have to be accepted, particularly in the absence of any rebuttal thereof by the AO. The only reservation would be that, as it is on a aggregate data base, where in the form of, or spread over, a range, it is open for the Revenue to adopt the lower of the two estimates. The yield for fy 2012-13, the relevant year, is 913700 tons for 757520 hectors, i.e., 488.3 kg/acre (1 hector = 2.47 acres). It translates to 734 kg/acre (tapped area). It is broadly in agreement with 774.5 kg/acre as per the provisional data for the Palakkad District which, being more specific, is to be preferred. Sure, the figure is provisional, but it would be seen that the difference to that extent (i.e., 40.3 kg/hector) obtained for FY 2011-12 as well. The yield be adopted at 775 kg/acre of tapped area, which though is not specified by the assessee. The selling price adopted by the assessee (Rs.168.80/kg) is lower than the all-India stat of Rs.176.82/kg. The Board specifies an expenditure of 30% to 35%. The lower of 30%, as admitted per her letter dated 12.3.2015, would translate into a net income of Rs.118/kg., which we direct for adoption. The tapped area is now the only variable that needs to be ascertained. In the absence of the assessee providing any information thereon, at any stage, the same be taken as same ratio as obtaining, on an average, i.e., 66.5% of the rubber area (which may/may not be the total area). The same works to 2756102 (45.32 acres x 66.5% x 775/kg./acre x Rs.118/kg. (Rs. 168.80 x 70%)). Though we entertain no doubt with regard to this working, being the same manner in which the assessee has computed her income and, further, adopting the data relied upon by her, we, yet, in the interest of justice, restore the matter to the file of the AO to allow the assessee an opportunity to, where not in agreement, to present the AO with evidence to establish her case, i.e.,

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Ganapathi Mudaliar (M.) [1964] 53 ITR 623 (SC); *CIT v. Deviprasad Vishwanathprasad* [1969] 72 ITR 194 (SC)

In Sum

4. The assessee admittedly not maintaining any record, or otherwise leading any evidence in respect of agricultural income, returned on estimate basis, the Revenue, on verification of the conduct of agricultural operations, estimated it at a lower sum which, on confirmation in first appeal, results in the instant appeal. The assessee though returning income in the same manner as in the past, the only year for which her assessment was made under the verification procedure under the Act, is for AY 2012-13, which is per an identical order (copy on record), stated before us to be, filed subsequently, outstanding before the Tribunal. The assessment for AY 2014-15, though a regular assessment, is per a non-speaking order, without any finding and, therefore, of no assistance. The proceedings under the Act, a public law, it may be appreciated are not adversarial proceedings, in the nature of lis (see: *Gadgil (S.S.) v. Lal & Co*. [1964] 53 ITR 321 (SC)), but toward assessment of income chargeable to tax for the year. Assessment of income for that year at Rs.36 lakhs, as against returned Rs.40 lakhs, as for the current year, per a non-speaking order, would be of no consequence. The burden to prove that a receipt is in the nature of income is on the Revenue. However, once that is not in dispute, as in the instant case, the burden to prove that the same is exempt from tax, i.e., satisfying the condition for exemption, is on the assessee. The law in the matter is well-settled, for which we may refer to *Parimisetti Seetharamamma v. CIT* [1965] 57 ITR 532 (SC); *H.E. Nizam Religious Endowment Trust v. CIT* [1966] 59 ITR 582 (SC); *Commissioner of Customs v. Dilip Kumar & Co*. [2018] 6 GSTR-OL 46 (SC), to cite some; and accords that the principle that it is the assessee who is to prove it's return and the claims preferred thereby, being in the intimate know of its affairs ((*CIT v. Calcutta Agency Ltd*. [1951] 19 ITR 191 (SC) (also see: *Lakshmiratan Cotton Mills Co. v. CIT* [1969] 73 ITR 634

(SC); and which can further only be on the basis of proper materials (*CIT v. R. Venkataswamy Naidu* [1956] 29 ITR 529 (SC)). Further, the same would extend to the entire income claimed exempt. The Tribunal in the case of the assessee's daughter (ITA No. 26 & 27/Coch/2022 dated 02.1.2023), as indeed in some others, allowed the assessee benefit by throwing this primary burden on the AO, contrary to the settled principles of law.

The matter was accordingly heard at length. The assessee has claimed before us to have not returned any agricultural income under the Kerala Agricultural Income Tax (KAIT) availing the composition scheme u/s. 13 of the said Act, providing for payment of tax on the basis of land holding. No evidence in this respect, stated to be rs. 25,030, however, is brought on record. Further, even so, the same would only prove the nature of income, but not its extent, which the dispute essentially is about. This is as a physical verification caused by the AO proves conduct of agricultural operations, i.e., as far as rubber plantation is concerned. The assessee's burden gets discharged to that extent. On quantum, the assessee's reliance on data released from authentic sources is found acceptable, with the caveat that in the case of a range, conservative estimate shall prevail. The Revenue cannot deny the same without stating cogent reasons. The same has therefore found our acceptance, as indicated hereinabove. The yield declared, however, is with reference to tapped area, which varies significantly from the rubber area, on which the former has been applied, The matter, with a view to eliminate any prejudice being caused, is restored to the file of the AO, who shall decide per a speaking order, upon allowing assessee reasonable opportunity to present her case. As regards coconut plantation, as indeed for other crops, the assessee's case continues to be wholly unproved, i.e., both as regards the nature and extent of income. The matter having been restored to the AO's file *qua* rubber income, in the interest of justice it was for balance income as well, with that the caveat that the income of miscellaneous crops cannot exceed that admitted in assessment. The matter, with like directions, is restored to the file of the AO, making

it clear that the burden of proof is on the assessee, even as the Revenue cannot, merely by adopting, convert good evidence to no evidence (*Sreelekha Banerjee And Others v. CIT* [1963] 49 ITR 112 (SC)). We decide accordingly.

5. In the result, the assessee's appeal is partly allowed and partly allowed for statistical purposes.

Order pronounced on March 15, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-	Sd/-
(Dr. Seethalakshmi)	(Sanjay Arora)
Judicial Member	Accountant Member

Cochin, Dated: March 15, 2024
n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin