

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri Laliet Kumar, Judicial Member
And
Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं / **ITA Nos.523 to 526/Hyd/2023**
(निर्धारण वर्ष/Assessment Years: 2014-15 to 2017-18)

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| Shri Udaya Sridhar Reddy Siddareddy Visakhapatnam PAN:AIYPS1063R (Appellant) | Vs. | Dy. C. I. T. Central Circle 2(4) Hyderabad (Respondent) |
| निर्धारिती द्वारा/Assessee by: | N O N E | |
| राजस्व द्वारा/Revenue by: | Shri Rahul Singhani, DR | |
| सुनवाई की तारीख/Date of hearing: | 16/05/2024 | |
| घोषणा की तारीख/Pronouncement: | 17/05/2024 | |

आदेश/ORDER

Per Laliet Kumar, J.M

These 4 appeals filed by the assessee are directed against the separate order dated 30.08.2023 of the learned CIT (A)-12, Hyderabad, relating to A.Ys.2014-15 to 2017-18.

2. At the time of hearing, none appeared on behalf of the assessee on 15.5.2024 as well as on 16.05.2024. Hence, we are

left with no option but to take these matters as heard after hearing the learned DR.

3. First, we take appeal in ITA No.523/Hyd/2023 for the A.Y 2014-15. The grounds raised by the assessee read as under:

General grounds

1. The order of the Learned Commissioner of Income Tax Appeals (“CIT(A)”) is erroneous as per law and on facts of the case.
2. The Ld. CIT(A) ought to have accepted the return of income filed by the appellant in response to notice u/s 153A of the Act and concluded the assessment proceedings accordingly.

Grounds on agricultural income

3. The Ld. CIT(A) has erred in law and on facts of the case by upholding the order of the Ld. AO which considered the income from fish farming as “income from business and profession” failing to appreciate that income from fish farming is agricultural income and thereby completely exempt from tax under section 10(1) of the Act.
4. Without prejudice to the above grounds or any other grounds which may be raised, the Ld. CIT(A) has erred in law and on facts of the case by

upholding the order of Ld. AO in regards to adopting a completely wrong methodology of estimation of income from fish farming.

5. Without prejudice to the above grounds or any other grounds which may be raised, the Ld. CIT(A) has erred in law and on facts of the case in wrongly interpreting the CBDT Instruction No. 08/2014 dated October 27th, 2014 and accordingly finalising the assessment taking such wrong interpretation into consideration.
6. Without prejudice to the above grounds or any other grounds which may be raised, the Ld. CIT(A) has erred in law and on facts of the case by upholding an order which has a high pitched assessment in the case of the appellant by making an addition to the magnitude of more than 20 times the amount of income offered by the appellant thereby causing harassment and serious grievance to the appellant.
7. Without prejudice to the above grounds or any other grounds which may be raised, the Ld. CIT(A) is not legally justified in using the cost inflation index used for the purposes of computation of capital gains for the purposes of estimating income from fish farming, failing to understand that cost inflation index is to be used for a cost component and definitely not for estimating a component of income.

Grounds on computation, interest and penalty

8. The Ld. CIT(A) has erred in law and on facts of the case in the arithmetic of the computation for arriving at the taxable income and tax thereon.
9. The Ld. CIT(A) erred in law and on facts of the case by upholding the levy of interest under Section 234A & 234B of the Act.

10. The Ld. CIT(A) erred in law and on facts of the case by upholding the initiation of penalty proceedings under Section 271(1)(C) read with Section 274 of the Act.

11. Any other ground that may be urged at the time of hearing with the approval of Hon'ble Income Tax Appellate Tribunal.

4. Facts of the case, in brief, are that the assessee has filed his return of income on 23.12.2014 for the AY 2014-15 by admitting a total income of Rs.8,65,410/-. During the course of survey operations in the case of M/s Venkata Srinivas Infracon Pvt. Ltd on 26.10.2018, certain incriminating material was impounded vide order u/s 133A(3)(ia) dated 26,10.2018. As per impounding material in Annexure A/VSPL/2, several fish farm lease agreements have been found in the name of assessee. However, the assessee has not shown any income from fish farming during the year. A show-cause notice dated 15.04.2021 was issued to the assessee regarding the same. During the relevant financial year, the assessee has shown agricultural income as Rs. 2,00,000/-. As the assessee has not provided any details of land holdings, or agricultural activity performed by him, another show-cause notice was issued to the assessee asking him to show cause as to why the said amount should not be treated as unexplained income.

4. The assessee submitted his reply on 19.04.2021 stating that he was into the business of fish farming during the year and that he had taken 348.25 Ac of land for lease for fish farming during the year. A search and seizure operation was conducted in the case of M/s. RVR Projects Private Limited & others Group in which the assessee was also covered. Subsequently, the case of the assessee was selected for scrutiny and the Assessing Officer has issued notice u/s 153A of the Act to furnish true and correct return of the total income of the assessee for the AY 2014-15. In response to the same, the assessee has filed his return of income on 16.02.2021 by admitting a total income of Rs.8,65,410/-. After verification of the information available on record, the Assessing Officer rejected the submission of the assessee and completed the assessment by making an addition of Rs.41,05,987/- as income from business of the assessee in the current A.Y under consideration.

5. Aggrieved by the order of the learned CIT (A) the assessee is in appeal before the Tribunal who dismissed the appeal filed by the assessee.

6. Ground No.2 of the assessee's appeal deals with the issue whether the income arrived from the fishing activity is an agricultural income or not from the commercial activities.

7. The learned DR drew our attention to the finding of the learned CIT (A) which is to the following effect:

6. Decision: I have gone through the grounds of appeals, statement of facts, assessment order and the submissions made by the appellant. The only issue involved in the present appeal is addition of Rs.41,05,987/- made on account of income from fish farming.

The appellant is into the business of Civil Engineering and Mechanical projects work. The appellant has filed the original return of income for the AY 2014-15 on 23.12.2014 declaring total income of Rs.8,65,410/-. A search & seizure operation u/s 132 of the Act was conducted in the case of M/s. RVR Projects Pvt. Ltd. & Others in which the case of the appellant was also covered. Subsequently, the case of the appellant was selected for scrutiny and notices u/s 153A and 142(1) of the Act were issued. In response, the appellant has furnished the information called by the Assessing Officer.

During the course of assessment proceedings, the Assessing Officer has observed that during survey proceedings in the case of M/s. Venkhata Srinivasa Infracon Pvt. Ltd., certain incriminating material containing several fish farm lease agreements, was found and impounded vide Annexure A/VS IPL/2. However, the appellant has not shown any income from fish farming during the AY 2014-15. The appellant was asked to show cause, why no income from fish farming was shown in the return of income for AY 2014-15. In response, the appellant has submitted that he has shown agricultural income of Rs.2,00,000/- in the return of income, but the appellant did not provide any details of land holdings or agricultural activity performed by him.

Further, the appellant was asked as to why income from fish farming for the current AY should not be treated as unexplained income. In response, the appellant has stated that he had taken 348.25 Acre of land for fish farming during the current year and out of this, 70% of total land i.e. 243.78 Acres was water spread area and as per CBDT Instruction No.08/2014 dated 27.10.2014, the presumptive income per Acre of water spread area was Rs.4000/- net of all deductions. The appellant also stated that the agricultural income of Rs.2,00,000/- shown by him was nothing but income from fish farming. The Assessing Officer has perused the submissions of the appellant and found below discrepancies:

- (i). Despite knowing that income from fish farming is business income, the appellant has deliberately shown the same as agricultural income in order to evade taxes,
- (ii). The appellant had done fish culture in 243.78 Acres of water spread area and as per the CBDT Instruction, assuming the rate as Rs.4000/- per water spread area, then the net income from fish culture should be Rs.9,75,120/- ($243.78 * \text{Rs.}4000/\text{- per Acre}$), however, the appellant had only declared income of Rs.2,00,000/-, thus concealed the remaining income, and
- (iii). The CBDT Instruction No.08/2014, clearly states that the rate of Rs.4000/- per water spread area was fixed as per the earlier circular dated 19.10.1993 for the AY 1993-94 and also stated that the current value should be computed after due consideration of price index for the relevant year.

In view of the above discrepancies, the Assessing Officer has considered the cost inflation index used for computation of capital gains as most appropriate for determining the price index for fish farming income for the relevant year. Accordingly, the Assessing Officer calculated the price per acre at Rs.16,843/- ($\text{Rs.}4000/\text{-} * 939/223$) and income from fish farming at Rs.41,05,987/- (price per acre of Rs.16,843/- * water spread area of 243.78

acres) and added the same as business income of the appellant for the current year under consideration.

During the course of appeal proceedings, the appellant has submitted that the income from fish farming should be considered as agricultural income and not the business income. The appellant further submitted that the CBDT Instruction No.08/2014 merely reiterated the prescribed rate of Rs.4000/- per water spread area as income from fish farming and has constituted a committee for opinion, the decision of which is still pending. Further, the appellant has requested not to consider the cost inflation index used for the purpose of capital gains as price index for the purpose of inflation in calculating the income from fish farming.

I have considered the submissions of the appellant and the order of the Assessing Officer. The Assessing Officer made the addition of Rs.41,05,987/- on account of income from fish farming during the current AY 2014-15. For calculation of income from fish farming, the Assessing Officer has relied on the CBDT Instruction No.08/2014 dated 27.10.2014, the relevant portion of which is reproduced as under:

"2. While conducting scrutiny in such cases, issue arises about quantification of income from activity of fish farming during the relevant financial year. As the books-of-accounts are unavailable, an Assessing Officer is required to assess the income from activity of fish farming on estimated basis. While making such estimates on basis of 'per Acre water spread area', it has been reported that there are wide disparities in the figure of income being so estimated as non-uniform yardsticks/benchmarks are being adopted by the different Assessing Officers. Likewise, in such cases, taxpayers estimate their income on basis benchmarks prescribed in earlier circular of the Board in P. No. 225/222/93/ITA.II dated 19.10.1993 which for the Assessment Year 1993-94, on 'per Acre water spread area' basis, prescribed a rate of Rs. 4,000/- as income from activity of fish culture in Andhra Pradesh. On the basis of this limit, taxpayers claimed that their income is computable after due consideration of the price index for the relevant year. While this approach in estimating the income on basis of parameter determined way back in the year 1993 by merely accounting for the inflation as suggested by the Farmers association, may be a ready and rough method, it may not represent the current situation and business reality. It is also apparent that conflicting views of the Assessing Officers lead to framing of subjective and high pitched assessments, which besides leading to infructuous work for the Department, causes harassment and grievances to the taxpayer concerned.

3. Therefore, considering the genuine difficulties (business located in far off and interior areas lacking banking facilities, vagaries of nature including availability of water, lack of education and knowledge of accounting, etc.) being faced, for proper administration of relevant provisions of the Income-tax Act, 1961 ('Act') to cases of fish farmers, Board is of the view that uniform and appropriate norms may be applied while computing income from fish culture on basis of 'per Acre of water spread area'. **To ensure consistency in approach, a committee comprising of two Commissioners and two representatives of the fish farmers or fish farmers' association may be constituted by the Pr. Chief-Commissioner to determine reasonably the income that may be estimated for the financial year. In making such a determination, due consideration of various local factors and inputs from the concerned agency of the State Government may also be obtained.** A Suitable standard benchmark may also be adopted for estimating water spread area as a percentage of total land area. While passing scrutiny assessments in cases of fish farmers, Assessing Officers may apply the benchmarks as prescribed by the committee, to cases falling under their respective jurisdiction. In the scrutiny assessments, no further deduction under sections 30 to 38 of the Act shall be allowed to the taxpayer concerned as the income from activity of fish farming is being on net basis after due consideration of allowable business expenses in such an estimation.

4. Further, section 133A of the Act may not be invoked in discriminately for purposes of mere estimation of the income of fish farmers and may only be undertaken in those cases where the Department has credible and verifiable information about taxes being evaded by the person engaged in business or profession of running inland fresh water fish tanks.

5. It is reiterated that the above guideline applies only to cases of fish farmers running inland fresh water fish tanks, who are not maintaining books-of-accounts in the regular course of business as per the requirement of section 44AA(2) of the Act."

On plain reading of the above Instruction, it is clear that rate of income from fish farming of Rs.4000/- per acre water spread area, was fixed as per circular of the Board in P.No. 225/222/93/ITA.II dated 19.10.1993 for the AY 1993-94 only, and not for the subsequent assessment years. In the said Instruction, it is also mentioned that estimation of fish farming income on basis of Rs.4000/- per acre water spread area after accounting for the inflation, may be a ready and suitable method and, for actual estimation of income & to ensure consistency in approach, a committee comprising of two Commissioners and two representatives of the fish farmers or fish farmers' association may be constituted by the Pr. Chief-Commissioner to determine reasonably the income that may be estimated for the financial year.

Applying the provisions of said Instruction to the facts of the present case, in absence of any committee constituted by the Pr. Chief Commissioner, the income from fish farming in the case of the appellant needs to be calculated

at the rate of Rs.4000/- per acre water spread area after accounting for the inflation up to the current AY 2014-15. Since Income Tax Act already provides cost inflation index for purposes of capital gains, in my opinion, the Assessing Officer has rightly considered the same as the most appropriate index for accounting the inflation. Therefore, the income from fish farming in the case of the appellant is to be calculated by the below formula:

*“Rs.4000/- per acre water spread area * Cost Inflation Index for the FY 2013-14/Cost Inflation Index for the FY 1992-93) * Water Spread Area in Acres”*

Since the appellant has done fish farming in the water spread area of 243.78 acres, the income from fish farming in the case of the appellant is to be determined at Rs.41,05,987/- ((Rs.4000*939/223) * 243.78).

Further, as against the appellant's claim that fish farming income by the rate of Rs.4000/- per acre water spread area is appropriate for the current AY 2014-15, the **Hon'ble ITAT, Visakhapatnam in the case of M/s. Krishna Fisheries, Vijayawada in ITA Nos.325 to 330/Vizag/2015** has held, the rate per acre water spread area of Rs.13,300/- reasonable for the AY 2006-07. The relevant portion of the said decision is reproduced as under:

“We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The assessee is cultivating the fish ponds in 86.47 acres and no books were maintained by the assessee and hence the assessing officer estimated the income @ ` 22,000/- per acre on entire 86.47 acres without giving deduction for bunds. While estimating the income, the assessing officer said to have collected the information from the Fisheries Department. The assessing officer held that as per the information collected from Fisheries Department the reasonable estimation of income would be ` 30,000/- per acre including the bund area and after exclusion of bunds the estimation of ` 22,000/- per acre is fair and reasonable. Though the A.O. stated in the assessment order that he has made enquiry with Fisheries Department and collected the information, details of the information collected from the Fisheries Department with regard to the income and expenditure, yield per acre year-wise estimated sales and the sale value per tonne, etc. was not discussed in the assessment order and not made available to the assessee. Hence the reliance placed by the AO on the information of Fisheries Department for estimation of income cannot be used against the assessee without giving opportunity to the assessee and the same is against the principles of natural justice and accordingly rejected. As per the board circular the estimated income per acre was ` 4000/- on water spread area of 70% of the Fish pond for the year 1993-94 and the same cannot be said to be reasonable for the assessment year 2006-07, which is after 13 years. However, with regard to water spread area of 70% remained unchanged. The Ld. CIT(A) confirmed the estimation of

income @ ` 22,000/- per acre inclusive of bunds and ` 13,300/- for 70% of water spread area since the assessee is not maintaining the books of accounts. The Ld. A.R did not place any evidence to disprove the estimation confirmed by the Ld. CIT(A). The revenue also did not place any evidence to show that the estimation of income @ ` 13,300/- is not reasonable. **Therefore, in the absence of books of accounts we hold that ` 13,300/- per acre of water spread area appears to be reasonable** and accordingly we uphold the order of the Ld. CIT(A). The estimation of water spread area and the bund area is in accordance with the circular issued by the CBDT. Accordingly, we uphold the order of the Ld. CIT(A) and the revenue's appeal on this ground is dismissed."

The above judgment where the Hon'ble Jurisdictional ITAT has held the rate per acre water spread area of Rs.13,300/- as reasonable pertains to AY 2006-07. In the present case, the relevant Assessment Year is 2014-15, which is almost 8 years after the Assessment year in the above mentioned judgment. In the FY 2005-06 relevant to the AY 2006-07, the Cost inflation index was 497 and the cost inflation index for the FY 2013-14 relevant to AY 2014-15 is 939, which is about 1.90 times of Cost Inflation Index of AY 2006-07. Therefore, going by the decision of the Hon'ble Jurisdictional ITAT, the AO could have adopted about Rs.25,270/- per acre (13300*1.9). However, the AO has been quite reasonable in considering the rate of Rs.16,843/- per acre water spread area for the AY 2014-15.

In view of the above, the addition of Rs.41,05,987/- made by the Assessing Officer by considering the fish farming income at the rate of Rs.16,843/- per acre water spread area is upheld and accordingly, the grounds no.4, 5, 6, 7 & 8 of the appeal are **dismissed**.

8. We have perused the material available on record. A perusal of the order of the learned CIT (A), it is abundantly clear that the learned CIT (A) while adjudicating the issue whether the income from fishery is an agricultural income or not as he relied on the definition of agriculture given in section 2(1A) and also to the judgment of the Hon'ble Supreme Court in the case of Maheshwary Fish Seed Farm vs. Tamil Nadu Electricity Board

and Anr dated 16.04.2004 and decision of the Tribunal in the case of Krishna Fisheries (Supra). We do not find any reason to deviate from the findings given by the learned CIT (A). Accordingly, we decide against the assessee on the ground No.2 raised by the assessee and we hold that carrying out of the fishing activity is a commercial activity and the profit & loss arising from the fish farming activity is required to be computed as per the stipulations given in Chapter IV of the I.T. Act.

9. The other grounds relating to the computation of income by the Revenue authorities are concerned, we have noted down that the Revenue while computing the income of the assessee has made addition on the basis of lumpsum coverage of the land with water.

10. We have perused the material available on record. Undoubtedly while computing the business income arising out of carrying out of the fishing activity, the authorities below have applied thumb rule as mentioned in the CBDT Circular No.08/2014 dated 27.10.2014. However, the assessee throughout the appellate/assessment proceedings were only making a submission that the fishing activity is an agricultural activity and therefore, the income arising from the fishing activity is a commercial income.

11. As we have decided the first issue against the assessee whereby, we have already held that the income arising from a fishing farming activity is a business income, therefore, the provisions as applicable to the business income as mentioned in Chapter IV of the Income Tax Act are required to be applied for computing the correct income of the assessee. In the light of the above, we deem it proper to remand the matter to the file of the learned Assessing Officer with a direction to treat the income of the assessee as business income and thereafter compute the correct business income of the assessee by giving an opportunity of being heard to the ass. The assessee shall file all the necessary documents/ evidences for claiming deduction etc., for correct assessment of the business income.

12. In the light of the above, the appeal filed by the assessee for the A.Y 2014-15 is partly allowed.

ITA Nos. 524 to 526/Hyd/2023

13. We find that the assessee has raised identical grounds to the appeal in ITA No.523/Hyd/2023 for the A.Y 2014-15. We have already decided the issues and partly allowed the appeal of the assessee. Following similar reasonings in the above appeals filed by the assessee for the A.Ys 2015-16 to 2017-18 are also partly allowed with similar instructions.

14. In the result, appeals filed by the assessee are partly allowed.

Order pronounced in the Open Court on 17th May, 2024.

Sd/-

Sd/-

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| (MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER | (LALIET KUMAR) JUDICIAL MEMBER |
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Hyderabad, dated 17th May, 2024

Vinodan/sps

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By Order