

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "SMC" Bench, Mumbai.

Before Shri Prashant Maharishi (AM)

I.T.A. No. 1186/Mum/2024 (A.Y. 2014-15)

Kanji Ganesh Patel HUF 1905 Building No. 3 Raheja Classique Oshiwara, New Link Road, Andheri West Mumbai-400 053.  PAN : AAGHK3564D	Vs.	ITO, Ward 22(2)(1) Piramal Chamber Lalbaug, Parel Mumbai-400 012.
(Appellant)		(Respondent)

Assessee by	Shri Prakash G. Jhunjunwala
Department by	Shri R.R. Makwana
Date of Hearing	13.06.2024
Date of Pronouncement	24.06.2024

O R D E R

Per Prashant Maharishi

1. This appeal is filed by Kanji Ganesh Patel HUF (assessee/appellant) against appellate order passed by the National faceless appeal Centre (NFAC), Delhi (the learned CIT – A) for assessment year 2014 – 15 dated 16/1/2024 wherein the appeal filed by the assessee against the assessment order passed under section 143 (3) of the income tax act, 1961 (the act) by the deputy Commissioner of income tax 22 (2) (1), Mumbai (the learned AO) was dismissed.
2. The assessee is aggrieved with the same and has preferred appeal raising solitary ground about addition under section 68 of the income tax act wherein the exemption under section 10 (1) of agricultural income was denied to the assessee of Rs. 2,748,802/-.
3. The brief fact of the case shows that assessee is an HUF filed its return of income on 31/7/2014 at a total income of Rs. 321,608/- In the return of income assessee has claimed exemption under section 10

(1) of Rs. 2,748,802/- of agricultural income. The assessee was asked to support the claim of exemption. Assessee submitted that it is having agricultural income from sale of crops which include pulses and cash crop. Assessee enclosed form number 7/12 extracts along with the copies of bills for the sale of agricultural produce. Assessee also stated that agricultural land is received by the assessee under family arrangement by the grandparents of the Karta and therefore it is not appearing in the balance sheet. It also submitted that share of agricultural produce from the farmers who cultivated the land is received to the extent of 65% of agricultural produce sold by them. The learned AO held that the explanation of the assessee is very vague, and form 7/7 extracts were furnished for financial year 1994 - 1997 whereas no such details are furnished for the impugned assessment year. Assessee has also not furnished the profit and loss account showing the gross receipts of agricultural produce and the expenditure incurred, therefore. Assessee has also produced only the photocopies of the cash memo issued by the person to whom agricultural produce is sold. Therefore, he held that genuineness of the agricultural income is not proved by the assessee and the income declared by the assessee of Rs. 2,748,802/- is treated as unexplained cash credit under section 68. Accordingly, the assessment order was passed on 26/12/2016 at the total income of Rs. 3,070,410/-.

4. Aggrieved assessee preferred an appeal before the learned CIT - A on this ground. The learned CIT - A held that it is for the assessee to prove that the above income is an agricultural income is not for the revenue to prove that such income is not an agricultural income according to him the assessee has miserably failed in producing evidence like proof of claim of agricultural land owned by the assessee either before the AO or during the appellate proceedings. Though the assessee has filed an agreement with the cultivator of the learned, but assessee has not obtained details of the all the income and expenditure

statement from the said person for verification. The agricultural sale produce invoices are also in the name of the assessee then what is the role of the person cultivated the land. The person who is a cultivator has also failed to prove that he has indulged in such agricultural activities. Accordingly, he confirmed the denial of exemption of agricultural income to the assessee. Therefore, the assessee is in appeal before us.

5. The learned authorized representative submitted a 54 pages paper book. He submitted that it is not the first year in the case of the assessee where the agricultural income is claimed as exempt under section 10 (1) of the. Assessee is claiming such exemption for assessment year 2013 – 14 to assessment year 2020 – 21. The assessee has been granted on four occasions an exemption in assessment proceedings under section 143 (3) of the act. He produced such assessment orders. He further stated that a certificate of land holding is also provided in form number 7/12 which is held by the assessee for a long period. The form number 12 which shows the produce cultivated for the impugned assessment year as well as for past two different years. He also referred to the sales bill for agricultural produce sold in the local agricultural produce marketing committee. Such sale proceeds received in the bank account of the assessee. He further referred to the memorandum of understanding executive with the cultivator of land wherein the share of the assessee is mentioned. Therefore, he submitted that assessee's claim should not be denied.
6. The learned departmental representative supported the orders of the lower authorities.
7. We have carefully considered the rival contention and perused the orders of the lower authorities. The fact of the case shows that assessee is disclosing agricultural income since assessment year 2013 – 14 in the first instance where assessment made under section 143 (3)

of the act the agricultural income of the assessee was accepted to the extent of Rs. 2,833,845/-. Further for assessment year 2016 - 17 assessee has claimed exemption of Rs. 3,466,520/- as an agricultural income which is assessed under section 143 (3) of the act. Further for assessment year 2018 - 19 assessee has claimed exemption of agricultural income of Rs. 4,422,523/- and assessee is assessed for that year also under section 143 (3) of the act. F. Further for assessment year 2020 - 21 assessee has disclosed agricultural income of Rs. 4,207,140/- which is also assessed under section 143 (3) of the act. Therefore, agricultural income of the assessee is assessed by the learned assessing officer on several occasions and accepted the claim of the assessee in scrutiny assessment. Further for the other years such as assessment year 2014 - 15, 2015 - 16, 2017 - 18 and 2019 - 20, assessee has claimed exemption of agricultural income ranging from Rs. 27 lakhs to Rs. 46 lakhs and those returns are not disturbed. A further assessee has produced holding of the land and agricultural produce cultivated on such land for all these years including the impugned assessment year. The sales bill of agricultural produce is sold through agricultural market committee and appropriate markets assessee is also paid, sales consideration is received in the bank account of the assessee, for the purpose of sharing of the agricultural produce a memorandum of understanding executive with the farmers is also shown wherein it is stated that such land is with the same cultivator since financial year 2002 - 03. According to the agreement he was supposed to bear the expenditure of agricultural. The case of the assessee is that sale consideration of only 65% of the agricultural produce is with the assessee and the balance of 35% is with the cultivator of the land who is supposed to bear the expenditure. The identity card of the cultivator of the learned was also available. In view of such overwhelming evidence, we find that revenue cannot blow hot and cold in the same breath wherein in one

assessment year it accepts the claim of the assessee after scrutinizing the claim and in the second year it disturbs the same despite same evidence are produced. For the last several years the assessee is claiming exemption of agricultural income and this assessment year is the lowest amount of such exemption. Therefore, the orders of the lower authorities are reversed, and solitary ground of appeal is allowed directing the AO to consider Rs. 2,748,802/- as agricultural income of the assessee exempt under section 10 (1) of the Act.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 24<sup>th</sup> June 2024.

Sd/-  
(Prashant Maharishi)  
Accountant Member

Mumbai : 24.06.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

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BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS