

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 590/JP/2024
निर्धारण वर्ष / Assessment Year : 2020-21

Shri Govind Sharan Rawat 1, Bhagat Niwas, Sardar Patel Marg C-Scheme, Jaipur 302 001	बनाम Vs.	The ITO Ward- 1 (2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABRPR 3764 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.R. Sharma, CA &
Shri R.K. Bhatra, CA

राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 20/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 10/07/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 29-02-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2020-21 raising therein following grounds of appeal.

"1. That on the facts and in the circumstances of the case, the ld CIT(A) is wrong, unjust and has erred law in confirming action of the AO in charging agricultural income of Rs.35,86,476/- out of declared total agricultural income of

Rs.67,37,030/- as income from other sources u/s 56 of the I.T. Act, 1961.

2. That on the facts and in the circumstances of the case, the ld CIT(A) is wrong, unjust and has erred law in upholding disallowance made by the AO of expenses of Rs.2,84,334/- which was claimed by the appellant against income of Rs.5,00,500/- delivered from sub letting of property.’’

2.1 As per the facts of the present case, the assessee being an individual filed his return of income for the year under consideration declaring income which includes Agriculture Income. Initially the same was processed under section 143 (1) of the Income Tax Act. But subsequently the case of the assessee was selected for scrutiny under CASS. However the AO being dissatisfied with the explanation put forth by the assessee, made additions.

2.2 Further ld. CIT (A) while dismissing the Appeal of the assessee confirmed the additions made by the AO.

2.3 Now the assessee has preferred the present appeal before me on the grounds mentioned here in above.

2.4 Ground number 1: this ground raised by the assessee relates to challenging the order of ld. CIT(A) in confirming the action of AO in charging Agriculture Income of Rs. 35,86,476 out of declared total agriculture income of Rs. 67,37,030 as income from other sources under Section 56 of the Income Tax Act

2.5 In this regard learned AR apart from reiterating the same arguments as were raised by him before the lower authorities relied upon his written submissions which are reproduced here in below portion

“1.1 It is submitted that in the course of assessment proceedings the A.O. required from the assessee its explanation on CASS reason large agricultural income and in response to that submitted following details/documents.

- a. Copy of Khatouni (land record).
- b. Copy of title deed of agricultural land owned by assessee.
- c. Documentary evidence of electricity and other expenses incurred on agricultural activities.
- d. The assessee regularly showing agricultural income. The submission is verifiable from the return of income of preceding assessment years filed by assessee.
- e. Copy of bank statement.
- f. Proof of sale of agricultural income.

The A.O. after pursuing documents furnished by assessee was satisfied “that the assessee is earning income from selling fruits, milk and vegetables almost during 365 days. Further on perusal of title deeds regarding coverage area of agricultural land furnished by assessee it is noticed that agricultural land is on *barani land* (dry land) and it is not possible to generate such huge income from that small piece of land (17 Bigha 17 biswa). In this connection it is submitted that A.O. is wrong in considering the land as a small piece of land the area of land being 17 Bigha 17 biswa is huge piece of land (about 54125 Sq.yds.). The land is classified as *barani land* which means it is in dry area where rain average is low and so crops can be irrigated with proper water supply or on happening average rain. The assessee has proper water supply on his land from underground water boring and so even *barani land* can be irrigated for all 12 months in year for agricultural purposes. In earlier years the entire land was not used for agricultural purpose and so agricultural income was about 20-25 lacs. In A.Y. 2019-20 the net agricultural income was Rs. 25,08,310/- and in this year net agricultural income declared was Rs. 61,36,226/- which includes income from milk Rs. 9,00,554/- which is earned from

this year and not considered as agricultural income and so net agricultural income from 17 bigha 17 biswa land is Rs. 52,35,672/- as compared to last year of Rs. 25,08,310/- which is by using all land area in cultivation and further due to dairy farming in same agricultural land good manuring could be done from cow dung resulted from dairy farming activity which resulted in high yields and high income. Further due to increase in prices of fruits, vegetables and grains the total sale price of agricultural produce increased in the year resulted in overall high agricultural income as declared by assessee which deserves to be accepted.

1.2 Without prejudice to above it is submitted that net agricultural income declared by assessee is Rs. 61,26,226/- out of which milk sale of Rs. 9,00,554/- included therein has separately been disallowed leaving net agricultural income Rs. 52,35,672/- declared for the year as against Rs. 25,08,310/- net agricultural income declared and accepted in assessment of last year. The A.O. has estimated agricultural income for the year at Rs. 22,50,000/- which is lower than from last year though it should be higher than last year due to every year increase in prices of agricultural produces and other reasons explained above. The A.O. on wrong calculation in working made disallowances of Rs. 35,86,476/- which is apparently wrong as explained above. The net agricultural income declared for the year is Rs. 52,35,672/- and from that proper and reasonable estimated income for the year is to be reduced and disallowance could be made which only can be made for the reason that assessee has not maintained proper and complete verifiable record for his agricultural income which though he has correctly declared in his return of income.

1.3 It is submitted that the Ld. A.O. in a arbitrary manner by making an estimated working as given in assessment order estimated agricultural income of the assessee for the year at Rs. 22,50,000/-. The agricultural income from a land can be estimated from the factors such as quality of land, availability of abundant water resources and crops grown etc. The Ld. A.O. has not taken into consideration any fact or made any enquiry or brought on record any comparable instance but arbitrarily based on surmises and conjectures and guess work estimated agricultural income of assessee for the year at Rs. 22,50,000/-. In view of the above facts and circumstances the

agricultural income declared by assessee deserves to be accepted unless some otherwise proved from the available material or record.

1.4 Without prejudice to the above submission it is further submitted that primary purpose of keeping the cows are not running a dairy farm. The assessee kept four-five cows primarily for the purpose of manure he could get out of them, milk for caretaker family and also other purposes connected with agriculture. Only surplus milk after satisfying needs/self consumption sold to outsiders in the market by the caretaker. It is a fact that entire sale price of milk has been taxed. The said action is grossly wrong as entire sale amount could not be an income of the seller. For earning such revenue/receipts, expenses on cattle feed, oil cake and maintenance of cows etc. were incurred by appellant and this fact cannot be denied. In absence of other relevant factor/proof only profit element part of the receipts from sale of milk can be taxed. The only profit margin embedded in the said sale is taxable income. In this case as no regular books of accounts maintained accordingly rate of profit @ 8% may be applied as provisions of section 44AD of the IT Act, 1961 if the income is considered as business income.

view of the above submission it is prayed that declared agricultural income by assessee at Rs. 61,26,226/- may kindly be accepted.”

2.6 Whereas on the contrary learned DR relied on the orders passed by the revenue authorities and it was submitted that the claim raised by the Appellant is not sustainable in the eyes of law and hence, needs to be dismissed.

2.7 I have heard the counsels for both the parties and I have also perused the material placed on record, judgement cited by the respective parties and the orders passed by the revenue authorities. From the records I noticed that the claim of the assessee with regard to large Agriculture Income was rejected by the revenue

authorities by holding that agriculture land owned by the assessee is in the nature of Barani land i.e. dry land and it is not possible for the assessee to generate such huge income from that small piece of land. Apart from this it was also held that the assessee had not supplied any documents in support of Agriculture Income like documents such as certificate from the revenue officer, holding details of agriculture land, passbook and Patta and in the absence of these documents, the claim of Agriculture Income cannot be ascertained. However from the records I noticed that during the course of assessment proceedings, the assessee had submitted the following documents.

- a) copy of Khatauni i.e. Land record
- b) copy of title deed of agriculture land owned by the assessee.
- c) documentary evidence of electricity and other expenses incurred on agriculture activity.
- d) the assessee regularly showing Agriculture Income. The submission is verifiable from the return of income of preceding assessment years filed by the assessee .
- e) copy of bank statement.
- f) proof of sale of Agriculture Income.

From the title deeds, I noticed that the AO was wrong in considering the land of the assessee as a small piece of land whereas, the area of the land owned by the assessee is 17 Bigha 17 biswa which is a huge piece of Land of approximately 54125 square. Yards. Now as for as the observation of AO with regard to the

nature of Land of the assessee as Barani land is concerned, in this regard the land is classified as barani land which means it is in dry area where rain average is low and so crops can be irrigated with proper water supply or on happening average rain. The assessee has proper water supply on his land from underground water boring and so even barani land can be irrigated for all 12 months in year for agricultural purposes. In earlier years the entire land was not used for agricultural purpose and so agricultural income was about 20-25 lacs. In A.Y. 2019-20 the net agricultural income was Rs. 25,08,310/- and in this year net agricultural income declared was Rs. 61,36,226/- which includes income from milk Rs. 9,00,554/- which is earned from this year and not considered as agricultural income and so net agricultural income from 17 bigha 17 biswa land is Rs. 52,35,672/- as compared to last year of Rs. 25,08,310/- which is by using all land area in cultivation and further due to dairy farming in same agricultural land good manuring could be done from cow dung resulted from dairy farming activity which resulted in high yields and high income. Further due to increase in prices of fruits, vegetables and grains the total sale price of agricultural produce increased in the year resulted in overall high agricultural income as declared by assessee.

2.7.1 I have also considered the submissions of the assessee wherein he has categorically submitted that net agricultural income declared by assessee is Rs. 61,26,226/- out of which milk sale of Rs. 9,00,554/- included therein has separately

been disallowed leaving net agricultural income Rs. 52,35,672/- declared for the year as against Rs. 25,08,310/- net agricultural income declared and accepted in assessment of last year. The A.O. has estimated agricultural income for the year at Rs. 22,50,000/- which is lower than from last year though it should be higher than last year due to every year increase in prices of agricultural produces and other reasons explained above. The A.O. on wrong calculation in working made disallowances of Rs. 35,86,476/- which is apparently wrong as explained above. The net agricultural income declared for the year is Rs. 52,35,672/- and from that proper and reasonable estimated income for the year is to be reduced and disallowance could be made which only can be made for the reason that assessee has not maintained proper and complete verifiable record for his agricultural income which though he has correctly declared in his return of income. It is submitted that the A.O. in a arbitrary manner by making an estimated working as given in assessment order estimated agricultural income of the assessee for the year at Rs. 22,50,000/-. The agricultural income from a land can be estimated from the factors such as quality of land, availability of abundant water resources and crops grown etc. The A.O. has not taken into consideration any fact or made any enquiry or brought on record any comparable instance but arbitrarily based on surmises and conjectures and guess work estimated agricultural income of assessee for the year at Rs. 22,50,000/-. In view of the above facts and

circumstances the agricultural income declared by assessee deserves to be accepted unless some otherwise proved from the available material or record.

2.7.2 After having gone through the entire facts and after considered the submissions of both the parties, I find that the assessee produced certain evidences in support of his claim regarding earning of Agriculture Income however the AO without verifying the correctness of the claim and rebutting the evidences, based his findings on certain statistical data or his observations. However no cogent material has been brought on record by the revenue to rebut the claim of the assessee, regarding having higher yield of crops. In my considered view, the statistical data or observations of the AO may reflect the trend, but cannot be a conclusive proof regarding crop yield. There remains a sharp decline and rice in the yield of crops influenced by various factors. More particularly when the assessee has specifically submitted that the assessee has proper water supply on his land from underground water boring and so even Barani land can be irrigated for all 12 months in a year for agriculture purposes. The assessee had also placed on record documentary evidences to demonstrate his Agriculture Income from the part of the big chunk of land in the earlier years. In my view the agriculture income from a land can be estimated from the factors such as quality of land, availability of abundant water resources and crops grown their own. The AO ought to have verified by making necessary enquiries about the correctness of the claim of the

assessee. No finding is given on the evidences filed by the assessee regarding the genuineness of evidences filed by the assessee. I find that similar issue has already been decided by the co-ordinate bench of ITAT Delhi in the case of Kulbir Katiyar versus acit, ITA 4132/Del/2019 where in it was held as under:-

“9 In my considered view, the statistical data may reflect trend but cannot be a conclusive proof regarding crop yield. There remains a sharp decline and rise in the yield of crops influenced by various factors. The AO ought to have verified by making necessary enquiry about the correctness of claim of the assessee. No finding is given on the evidences filed by the assessee regarding the genuineness of evidences filed by the assessee. Hence, looking to the totality of facts, the addition was made purely on the basis of conjectures and surmises. Such action is not permissible under law. The Revenue ought to have brought adverse material on record to rebut the claim of the assessee. In the absence of such evidence, the impugned addition cannot be sustained. Hence, the AO is hereby directed to delete the addition. The grounds raised in the assessee’s appeal are thus, allowed.”

Hence, in view of the above facts and circumstances of the case, the Bench noted that in the present case the addition was made purely on the basis of conjecture and surmises therefore such action is not permissible under law. The revenue ought to have brought adverse material on record to rebut the claim of the assessee and in the absence of such evidence the impugned additions cannot be sustained therefore the AO is directed to delete the same. Consequently this ground No. 1 raised by the assessee is allowed.

3.1 This ground No. 2 raised by the assessee relates to challenging the order of Ld CIT(A) in confirming the action of AO in disallowing expenses claimed under section 57 of IT Act.

3.2 In this regard Ld AR while reiterating the same arguments as were raised by him before the lower authorities, relied upon his written submissions which are reproduced here in below :-

“It was submitted to Ld. A.O. that assessee took a flat on rent from Digamber Jain Atishya Chetra, Shri Mahavirji (Rajasthan) on a yearly rent of Rs. 2,84,334/-. The said flat was onwards sublet to M/s Life Style P. Ltd. for a yearly rent of Rs. 5,05,064/-. Thus assessee being not owner of flat showed the said rental income received under the income from other sources and rent paid to land lord by him was deducted as expenses. The assessee deposits rent payable to owner in his Bank A/c of directly and due to dispute with land lord receipts are not being given. The above income from subletting is shown from year to year by assessee in earlier years and being accepted every year in assessment completed. The Ld. CIT(A) without giving any finding simply mentioned in the order that reply filed by appellant not found to be tenable. Thus there being no new facts the declared income deserves to be accepted and disallowance of Rs. 2,84,334/- made by A.O. disallowing claimed expenses of rent paid for subletted property deserves to be deleted. Copy of relevant Bank statement highlighting the entries of rent deposited directly in bank account of owner is enclosed herewith.”

3.3 On the contrary learned DR relied upon the orders passed by the revenue authorities.

3.4 After having heard the counsels for both the parties and perusal of the records I noticed that the assessee had taken a flat on rent from Digambar Jain on yearly rent and subsequently the flat was sublet thereafter and in this way the assessee being not owner of the flat showed the said rental income received under the head income from other sources and rent paid to landlord by him was deducted

as expenses. This income of subletting was also shown from year to year in earlier years also and was being accepted by the revenue therefore in order to maintain consistency the declared income deserve to be accepted and disallowance made by the AO deserve to be set aside as in the year under consideration there is no change in the fact and circumstances from that of earlier years. Hence this ground No. 2 also stands allowed.

4.0 In the result, the appeal of the assessee stands allowed with no orders as to costs.

Order pronounced in the open court on 10 /07/2024.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10 /07/2024

***Mishra**

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

1. The Appellant- Shri Govind Sharan Rawat, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 1(2), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 590/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar