

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM

**ITA No. 339/Mum/2024**

(Assessment Year: 2017-18)

Vivek Ram Kotak  
36, Sterliing Tower No.9,  
3<sup>rd</sup> Cross Road,  
Lokhandwala Complex,  
Andheri (W), Mumbai-400 053

**(Appellant)**

ITO, Ward 25(1)(4),  
Room No.206, 2<sup>nd</sup> Floor,  
Kautilya Bhavan, C-41 to 43,  
Vs. G-Block, BKC, Bandra (E),  
Mumbai-400 051

**(Respondent)**

**PAN No. BPBPK0060B**

**Assessee by** : Ms. Zarna Chandwani, AR  
**Revenue by** : Shri R.R. Makwana, DR

**Date of hearing:** 06.06.2024  
**Date of pronouncement :** 29.07.2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. ITA No. 339/Mum/2024 is filed by Mr. Vivek Ram Kotak (assessee /appellant), against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] for A.Y. 2017-18, dated 29<sup>th</sup> November, 2023, 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 Income tax officer, Ward 25(1)(4), Mumbai on 18<sup>th</sup> November, 2019, was dismissed.
02. Therefore, the assessee is in appeal before us, raising following ground of appeal:-

*"1. On the facts and circumstances of the case the learned CIT (A) has erred in making additions on account of unexplained money under Section 69 A of the Income Tax Act, 1961."*

03. Brief facts of the case shows that assessee is an individual, who filed his return of income on 15<sup>th</sup> July, 2017, declaring total income of ₹2,66,010/- and agricultural income of ₹44,08,600/-, was claimed as exempt. The case of the assessee was picked up for scrutiny by issue of notice under Section 143(2) of the Act on 20<sup>th</sup> August, 2018. The assessee was asked about the agricultural income claimed as exempt income of ₹44,08,600/- to submit various copies of the bills, agricultural land and observations of the agricultural income. Notice under Section 133(6) of the Act was issued on 19<sup>th</sup> September, 2019, to the various banks and submitted the bank accounts of the assessee. Based on this, it was found that assessee has deposited ₹40,15,000/- in Kotak Mahindra Bank, Mumbai. The learned Assessing Officer verified the income tax return for A.Y. 2016-17, wherein agricultural income shown by the assessee was only ₹80,000/- and for this year it is ₹44,08,600/-. As assessee failed to explain the same, the addition under Section 69A of the Act was made on the above sum and assessment order under Section 143(3) of the Act was passed determining the total income of the assessee at ₹46,74,610/-.



04. The assessee preferred the appeal before the learned CIT (A), wherein four opportunities was granted to him, but assessee did not avail any of the opportunities, therefore, the learned CIT (A) upheld the order of the learned Assessing Officer.
05. Assessee is in appeal before us. The learned Authorized Representative submitted that the notices received by the learned CIT (A) were through e-mail and none of such notices were received by the assessee. Assessee also submitted that the notices sent by the learned CIT (A) are not responded because these e-mails have gone into Spam Box or not received. It was stated that agricultural income is accepted by the learned Assessing Officer in A.Y. 2017-18, and therefore, there is no reason that the agricultural income for this year is not accepted.
06. The learned Departmental Representative submitted that assessee did not remain present before the learned Assessing Officer as well as before the learned CIT (A) and in absence of any information the agricultural income for this year could not be established by the assessee and therefore, there is no error in the orders of the learned lower authorities.
07. We have carefully considered the rival contentions and perused the orders of the learned lower authorities. We find that before the learned Assessing Officer, the assessee was given several opportunities and similarly before the learned CIT (A) also assessee was given several opportunities of hearing. Same were not availed by the



assessee. The reasons stated by the assessee is that e-mail, sent by the Assessing Officer as well as by the CIT (A) may have gone in the spam folder or not received. Therefore, assessee is not heard before both the authorities. We find that the learned Assessing Officer has accepted that for A.Y. 2016-17, assessee has earned agricultural income of ₹80,000/-. This is accepted fact. For A.Y. 2017-18, assessee has shown agricultural income of ₹44,08,600/- which is 55 times higher than the last year. Therefore, now the issue is what is the quantum of the agricultural income earned by the assessee. As the details of land holding, details of agricultural produce, invoices, electricity expenditure, etc. are not available before the learned lower authorities. Naturally, there could not have been estimate of the agricultural income earned by the assessee by us. The learned Assessing Officer has obtained the bank statement of the assessee from three different banks namely Yes Bank, Kotak Mahindra Bank and Axis Bank. Only one bank statement of Kotak Mahindra Bank shows that assessee has deposited ₹40,15,000/-. Thus, it is apparent that it is for the assessee to show that in fact assessee carried on agricultural activities by producing cogent evidence before the learned lower authorities. Therefore, in the interest of justice, one more opportunity is granted to the assessee to demonstrate before the learned Assessing Officer about the genuineness of the agricultural activity and income earned by the assessee by producing these evidences. The assessee is directed to produce these details within 90



days of the date of receipt of this order before the learned Assessing Officer, the learned Assessing Officer may examine the same and determine to the extent of genuineness of the agricultural income in the hands of the assessee and decide the issue afresh.

08. In the result, the solitary ground in this appeal is allowed as indicated above. The appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29.07.2024.

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Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 29.07.2024

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai