

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 1105/Bang/2024
Assessment Year : 2018-19

Shri Ganesh Vasudeva Shet, Partner M/s. Ganesh Jewellers, Gandhi Bazaar, Shivamogga – 577 202. PAN: AJJPS1115J	Vs.	The Income Tax Officer, Ward – 1 & TPS, Shivamogga.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Sunaina Bhatia, CA
Revenue by	:	Shri Subramanian .S, JCIT-DR

Date of Hearing	:	10-07-2024
Date of Pronouncement	:	01-08-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 03.04.2024 passed by NFAC, Delhi for A.Y. 2018-19 on following grounds of appeal:

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity. weight of

evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] is not justified in sustaining the addition of Rs. 9,29,559/- out of agricultural income based on the remand report of the learned A.O. without appreciating that no addition could be made with reference to the said extent of agricultural receipts merely because the same were not supported by sale pattis considering that the receipts were from sale of minor crops at farm gate under the facts and in the circumstances of the appellant's case.

3. The learned CIT[A] is further not justified in holding that agricultural income to the extent of Rs. 13,58,740/- has to be disallowed on account of estimation of agricultural expenses at 25% of the agricultural income under the facts and in the circumstances of the appellant's case.

4. The learned CIT[A] is not justified in making the said addition which is in the nature of the enhancement of income without giving any notice to the appellant under the facts and in the circumstances of the appellant's case.

5. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-A, 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case and the same deserves to be cancelled.

6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."

2. Brief facts of the case are as under:

2.1 The assessee is an individual and is a partner in two partnership firms GANESH JEWELLERS and M G PALACE. The assessee is also an agriculturist and owns about 14 acres of arecanut plantation and growing minor crops as well. It is submitted that the assessee is regularly assessed to tax. The

assessee's sources of income is share of profit arising from partnership firms, interest income from bank deposits and agriculture income. The assessee for the year under consideration filed its return of income on 04.01.2019 declaring total income of Rs. 11,86,040/- and Net agriculture income of Rs.81,45,189/-. It is noted by the Ld.AO that the return was filed under section 139(4). The Ld.AO completed assessment under section 143(3) read with sections 143(3A) & 143(3B) of the Act on 17.02.2021, wherein Rs. 81,45,189/- claimed as agriculture income in the return was added as unexplained income from undisclosed sources. The gross total income computed by the Ld.AO is as under:

Gross Total Income as per ITR filed Rs. 13,02,589

Addition of agriculture income as mentioned above Rs. 81,45,489

Assessed income Gross Total Income Rs. 94,47,780

2.2 It is submitted that assessee is aged about 84 years and is suffering from health issues, known as D M type 2 disorder, Hypertension and heart disease. It is submitted that, the assessee sought an adjournment on 17.12.2020 as his health condition was not conducive to respond to any external matters. He has been under continuous medication since past several months and hospitalized on 25.01.2021 on account of illness. It is also submitted that he was admitted to hospital on 04.02.2021 on account of COVID 19 PNEUMONIA.

2.3 It is further submitted that, the assessee being computer illiterate, could not access notices on his own in ITBA, and in the meanwhile, there was change of Income tax consultant aggravating his problems and as such could not comply with the notices on time. It is submitted that, on account of the above said reasons the assessee could not comply with notices uploaded on ITBA. The Ld.AO passed assessment order making addition of Rs. 81,45,489/- declared as agriculture income in the Return of Income by the assessee.

Aggrieved by the order of Ld.AO, assessee preferred appeal before the Ld.CIT(A).

3. Before the Ld.CIT(A) the assessee submitted that, the assessee is also an agriculturist apart from being partner in two partnership firms and has 14 acres of agricultural land growing arecanut as major crop with other minor crops such as cocoa, coconut etc. The assessee submitted that, it used to hold stock of arecanut at APMC Yard with Malnad Arecanut Co-operative Society and sold the produce when there was favourable price. It is submitted that the agricultural income was declared on cash basis.

It was submitted by the assessee that this system was consistently followed by the assessee since past several years.

3.1 Before the Ld.CIT(A), assessee filed details of the crops sold to Malnad Arecanut Co-operative Society and to The CAMPCO

Ltd. situated at Government APMC Yard, Sagar Road, Shivamogga. Upon receipt of all these evidences the Ld.CIT(A) called for, remand report from the assessing officer. Before him the assessee filed bills and ledger account from CAMPCO Ltd. and Malnad Arecanut Co-operative Society.

3.2 The Ld.AO during remand proceedings verified all the details furnished by the assessee and the assessing officer accepted the details to the extent of Rs.75,30,548/- from MACOS and Rs. 2,78,638/- from CAMPCO Ltd. The Ld.AO noted that to the extent of produce worth Rs. 9,29,559/-, assessee did not produce any details / documentary evidences that was sold in the open market. The Ld.CIT(A) accordingly confirmed the addition of the sale of produce only to the extent of Rs.9,29,559/- for want of documentary evidences. The Ld.CIT(A) further disallowed expenditure to an extent of 25% of the gross receipts and made further addition of Rs.13,58,740/-.

Aggrieved by the order of Ld.CIT(A), assessee is in appeal before this *Tribunal*.

4. The Ld.AR submitted that to the extent of approximately Rs.78,09,186/-, the bills and other details have not been verified and accepted by the Ld.AO in the remand report. She submitted that to the extent of Rs. 9,29,559/- that was out of sales proceeds of coconut, arecanut and cocoa in the local market.

The assessee could not furnish any details as they were sold on day-to-day basis.

5. In respect of the adhoc disallowance of expenditure, the Ld.AR submitted that there was the expenditure incurred by assessee amounting to Rs.5,93,556/- towards fertilizer, transportation, manual laborers, payment towards laborers, fuel expenses that are identifiable for which assessee had all the details. She submitted that adhoc disallowance at 25% by holding that the actual expenditure incurred is less is merely on surmises and conjectures by the Ld.CIT(A)/Ld.AO.

6. We have perused the submissions advanced by both sides in the light of records placed before us.

7. We note that **Ground no. 2** raised by the assessee is in respect of addition that was sustained by the Ld.CIT(A) in respect of agricultural receipts that were not supported by any details / vouchers received from sale of minor crops.

7.1 It is noted that in any event, sale of coconut or any other agricultural products on day to day basis by an agriculturist locally, one cannot expect to maintain bills, vouchers, receipts etc. At this juncture, we refer to the provisions of section 44AA of the Act that fortifies further that an agriculturist is not required to maintain books of accounts. We further note that the revenue has anyway not brought anything on record to establish that the

assessee had any other source of income other than the agricultural income in order to disallow Rs. 9,29,559/- under any other head. Admittedly, assessee has established by way of documentary evidences the sale made to MACOS and CAMPCO Ltd. during the year. It is only to the extent of Rs.9,29,559/- that no documentary evidences could be furnished as the produce were sold in the open market. As the revenue has failed to establish anything contrary and that admittedly assessee only had agricultural income during the year, we do not find any reason to disbelieve the submissions of the assessee. Accordingly, we direct the Ld.AO to delete the addition made on this count.

Accordingly, ground no. 2 raised by the assessee stands allowed.

8. Ground no. 3 raised by the assessee is against the adhoc disallowance of expenditure based on the agricultural income. We draw reference to the discussion made in the preceding paragraphs regarding establishing agricultural income for the year earned by the assessee. There is no doubt that the expenditure made is out of agricultural income. Further there is no presumption that the expenditure has been made out of any other unknown sources. We note that the Ld.AO has disallowed 25% of the gross receipts towards expenditure on adhoc basis. There is no basis to determine the expenditure to the extent of 25% made out by the authorities below. Unless the revenue brings anything on record to show that the expenditure has been

made out of unknown sources, such adhoc disallowance cannot be permitted to be made. Accordingly, we direct the Ld.AO to delete the disallowance made which is purely based on surmises and conjectures.

Accordingly, ground no. 3 raised by the assessee stands allowed.

In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 01st August, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 01st August, 2024.
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore