

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA Nos. 2093 & 2092/MUM/2024
Assessment Year: 2015-16 & 2016-17**

Florence Agro Farms,
F-11, 3rd floor, Manek Mahal, 90,
Veer Nariman Road,
Churchgate,
Mumbai-400020.

**PAN NO. AABFF 5181 C
Appellant**

ITO Ward 23(1)(6),
Piramal Chambers,
Mumbai-400020.

Vs.

Respondent

Assessee by : Mr. J B Bairagra/Ms. Rupa Nanda
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 09/07/2024
Date of pronouncement : 23/09/2024

ORDER

PER OM PRAKASH KANT, AM

These appeals by the assessee are directed against order dated 31.03.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment years 2015-16 and 2016-17, raising following grounds:



1. *The Learned CIT(A) erred in confirming the addition of Rs.40,34,970/- u/s 68 of the Income Tax Act.*
2. *The Learned CIT(A) further erred in holding that sale of the agriculture produce credited in the books of accounts of Rs.40,34,970/- is not genuine.*
3. *The Learned CIT(A) further erred in holding that the assessee could not establish carrying out of agricultural activity for earning the income of Rs 34,00,001 on the agricultural land of 17.5 acres Situated at agriculture belt Mahadevpur Ganganagar, Nashik near the Gangapur dam.*
4. *The Learned CIT(A) further erred in confirming the finding of the AO in making the addition u/s 68 purely on the basis of assumptions and suspicion and as per some vague data of Census 2011 without considering the facts of the case even with these data which proved that area where land is situated is an agriculture belt and in all the adjacent plots of land agricultural operations are carried out.*
5. *The Learned CIT(A) further erred in confirming the sale of agricultural produce of Rs. 40,34,970/- u/s 68 of IT Act and not allowing the exemption u/s 10(1) by ignoring the factual facts that the assessee firm owns agricultural land of 17.5 acres at Mahadevpur Ganganagar, Nashik near the Gangapur dam and it is an irrigated land where the assessee firm has been carrying on agricultural activities since last number of years.*
6. *The Learned CIT(A) further erred in confirming the finding of the AO in holding that even if the sales is valid on the basis of cash memos submitted by the assessee, the assessee has still not discharged its onus to substantiate the expenses claimed and therefore the assessee's claim of carrying out agricultural activity is rejected and sales are taxed at normal rates.*
7. *The Learned CIT(A) further erred in not appreciating the fact that the caretaker and supervisor of the assessee firm had left the job and the hence the bills and vouchers necessary to substantiate the expenses claimed were not available.*
8. *The Learned CIT(A) further erred in confirming the action of the AO in treating the sale proceeds of agriculture product as income under section 68 without issue of any show cause notice and calling for submission on the treatment given by Ld AO.*
9. *The Learned CIT(A) further erred in not considering the bare facts that assessee owned the irrigated land of 17.5 acres situated in the agriculture belt where surrounding land are used for agricultural activity and grapes and vegetable can give the agriculture income of Rs 34,00,001/-per year.*



10. The Learned CIT(A) further erred in rejecting the claim of the assessee for carrying of the agricultural activity, relying on the decision of Apex court in the case of CIT v. Durga Prasad More [1971] 82 ITR 540 and Sumati Dayal v. CIT [1995] 80 Taxman 89/214 ITR 801 (SC) while both the decisions support the case of the assessee as in these decisions finding was given that revenue authorities are supposed to consider the surrounding circumstances and apply human probability'.

11. The Learned CIT(A) further erred in holding that sale of agricultural products are not genuine as assessee has not submitted the address of the purchaser to whom the agriculture product has been sold and not considering the decision of Hon'ble Bombay High Court in the case of R. B. Jessaram Fatehchand (Sugar Dept) vs. CIT (75 ITR 33) wherein it has been held that there was no necessity whatsoever for assessee to maintain addresses of cash customers

12. The Learned CIT(A) further erred in not considering the decision of Hon'ble Supreme Court in the case of Omar Salay Mohamed Salt v. CIT [1959] 37 ITR 151 (SC), Uma Charan Shaw & Bros. v. CIT (1959) [1959] 37 ITR 271 (SC), Lalchand Bhagat Ambica Ram v. CIT (1959) 37 ITR 288 (SC) and decision of Hon. Kolkata High Court in the case of CIT v. Lakshmangarh Estate & Trading Co Ltd. (220 Taxman 122) that no addition can be made on the basis of surmises, suspicion and conjectures.

13. The Learned CIT(A) further erred in relying on the decision of Hon'ble Bombay High Court in the case of Orient Trading Co. Ltd, 49 ITR 723 for making addition in section 68, as in this case, the credit entry stands in the name of the third party on account of loan taken and the assessee fails to satisfy the identity of the third party and also supply such other evidences which prima facie show that entry is not fictitious.

14. The Learned CIT(A) further erred in holding that assessee had not submitted the proof of expense incurred i.e. labour charges, repairs and maintenance, salary and services rendered, seeds, fertilizers and pesticide, evidence for stores and spare parts and tractor hire charges by not considering the fact that assessee is not running business activity and do not have trained staff to maintain these evidences for small activities of agriculture operations.

2. Briefly stated facts of the case are that the assessee, a partnership firm, owned agricultural land around 17 acres in Nasik district of Maharashtra. The assessee filed return of income for the year under consideration on 21/08/2015 declaring total income at rupees nil. In the return of income filed the assessee had shown



income under the head 'profit and gains of the business or profession' by way of sales of agricultural products amounting to ₹ 40, 34, 970/-and claimed deduction of ₹ 34, 00, 001/-under section 10(1) of Income-tax Act, 1961 (in short 'the Act'). The return of income filed by the assessee was selected for scrutiny assessment and the statutory notices were issued and complied with. In the course of scrutiny proceeding, the Assessing Officer for justifying income from agriculture operation, asked the assessee to file detail of expenses as well as sales of agricultural products. *Firstly*, regarding , the expenses incurred , the Assessing Officer asked the assessee to file detail of expenses along with copy of the bills , *inter-alia*, labour charges, repair and maintenance expenses, salary and services rendered, expenses for seeds, fertilizers and pesticides, stores and store parts, tractor hire charges etc. In response, the assessee submitted copies of ledger accounts in respect of the expenses, but regarding the copies of bills, it was submitted that caretaker and supervisor of the farms , 'Mr Lokhande' had left the job and therefore files of vouchers were not available, therefore same could not be furnished. The Assessing Officer did not find the above reply of the assessee satisfactory and held that the agriculture farm of the assessee was located in a small town, and population of the same being small, the assessee could have easily provided details of the labourers including their name and address in view of the limited labour having a specialized knowledge of the grape cultivation in the town. The reply of the assessee in respect of



other expenses was also rejected by the Assessing Officer. Secondly, regarding the sale of agricultural product, the assessee submitted cash bills issued to various parties. The assessee submitted bills of cash sale of agricultural products to two parties namely Sh Dilip Dere and Sh Dattatray Gabaji Kanse. The Assessing Officer issued summons under section 131 of the Act to those persons and recorded their statements, wherein they denied of any such purchase from the assessee firm. In view of the no bills in support of expenses as well as unverifiable cash sales, the Assessing Officer, in assessment order dated 29/11/2017 passed under section 143(3) of the Act, held the source of deposits of ₹40,34,970/- as unsatisfactory and accordingly treated the said sum of ₹40,34,970/- as unexplained cash credit, taxable under section 68 of the Act. In support of his finding the Assessing Officer relied on the decision of Hon'ble Supreme Court in the case of **Sumati Dayal Vs CIT (supra)**, **CIT Vs Durgaprasd More (supra)**, **CIT vs M Ganapathi Mudaliar (supra)** and **Orient Trading Cp.ltd, Vs CIT(supra)**.

2.1 On further appeal, Ld. CIT(A) observed that assessee had not filed any proof of expenses either before the Assessing Officer or before him except ledger account of the expenses on the pretext that the caretaker had left the job, the security guard Changing and no logbook for their labourers was maintained as daily wage



labourers kept changing. The Ld. CIT(A) accordingly upheld the finding of the Assessing Officer observing as under:

“3.5 Nothing has been produced before me by the appellant to counter the above findings of fact by the Assessing Officer. The Ld. AO has rightly observed that the assessee not only has to give explanation about nature & source of the credit entries in his books, the explanation has to be proper, reasonable & acceptable. While discussing the phrases proper, reasonable & acceptable, Hon'ble Apex Court in case of CIT v. Durga Prasad More [1971] 82 ITR 540 (SC) has pronounced that "Science has not yet invented any instrument to test the reliability of the evidence placed before a Court or Tribunal. Therefore, the Courts and Tribunals have to judge the evidence before them by applying the test of human probabilities". Thus, here, Hon'ble Court has laid down the test of human probability. This test of human probability has again been reiterated by Hon'ble Apex Court in the case of Sumati Dayal v. CIT [1995] 80 Taxman 89/214 ITR 801 (SC), wherein it was specifically pronounced that revenue authorities are supposed to consider the surrounding circumstances and apply human probability.

3.6 In view of the above discussion, since no evidence has been produced before me during the appellate proceedings to counter the findings of the AO, I am not inclined to interfere in the order of Ld. AO. Accordingly, the addition made in the assessment order is sustained and consequently the grounds of appeal are dismissed.”

3. Aggrieved with the finding of the Ld. CIT(A), the assessee is in appeal before the Income-Tax Appellate Tribunal (short the Tribunal) by way of raising grounds as reproduced above.

4. Before us learned counsel for the assessee filed a paperwork containing page 1 to 386 in respect of the year under consideration. An additional paperbook combined for assessment 2015-16 and 2016-17 containing pages 1 to 35 was also filed.

5. The learned counsel for the assessee submitted that agricultural land measuring 17.15 was purchased by the assessee



by way of two agreements dated 16/05/2006, which have not been disputed by the Assessing Officer. In support of the claim of the agricultural operation carried out, the learned counsel referred to page n. 98 to 104 of the paper, which are copies of land revenue records maintained by the Land Revenue Authorities i.e. 'talathi', showing landholding of the assessee and crops sown on the land during the year under consideration including 'Grapes', 'Soyabean', 'Vegetables', 'Flowers' etc. He further referred to pages 105 to 115 of the paper book, which are cash memo of sales of agricultural products. The learned counsel also filed copy of the electricity bills for the electric connection installed on the agriculture farm. Further, the learned counsel submitted that partner of the assessee firm resides in Mumbai and carry on the business and therefore they were not involved in carrying out day-to-day agricultural operation on the land. The learned counsel submitted that land purchased by the assessee was given on "Bataidari" (i.e. yield sharing) to the local farmers of surrounding area as the land is situated in agricultural belt near of 'Gangapur' Dam. It was submitted that "Bataidari" i.e. crop sharing system, is an agricultural practice where the landowner make available land to another person, who bears the expenditure of labour and the produce is shared by the owner and the tenant. The learned counsel submitted that as per the system, the farmer used to handle the agricultural activities of growing various agriculture produce and sale the same in the market and incurred the



agricultural expenditure as required and gave the assessee firm 25% of their income from the sale of agricultural products and other expenses such as electricity and Gram panchayat taxes were born by the assessee firm. However, for the assessment years 2014-15, 2015-16 and 2016-17, the assessee firm decided to carry out the agricultural activity at its own and thus appointed, a manager namely mr Lokhande in order to handle and supervise the agricultural activity by hiring the labourers. The system continued for three years i.e. for assessment 2014-15, 2015-16 and 2016-17 and thereafter he left the job, thus, the land was again given to local farmers under the “ Bataidari System”. The assessee filed complete chart of year -wise agricultural income declared, which is reproduced as under:

Assessment Year	Amount of Agricultural Income declared by the appellant firm in the income tax return (Rs.)
2012-13	30,176
2013-14	8,80,094
2014-15	37,21,020
2015-16	34,00,001
2016-17	45,19,566
2017-18	12,28,810
2018-19	11,82,252
2019-20	14,52,020
2020-21	6,84,580



5.1 The learned counsel for the assessee referred to the above chart and submitted that during the assessment years 2012-13, 2013-14 , 2017-18 , 2018-19 , 2019-20 and 2020-21, the land remain under “ Bataidari System” and agricultural income in the range of ₹ 10 lakh to 40 lakh was declared, however for the three assessment years i.e. AY 2014-15 to 2016-17, when the operation were carried out by the assessee itself and the agricultural income was comparatively higher than the ‘Bataidari system’. The learned counsel for assessee referred to income and expenditure account and balance sheet for all the relevant years, which are available on paperbook pages 10 to 31 of paperbook No. II. The learned counsel submitted that agricultural income declared by the assessee, except for the assessment years 2014-15, 2015-16 and 2016-17 has been accepted by the Department.

5.2 The learned counsel accordingly submitted that merely for the reason that vouchers for expenses are not maintained and agricultural products have been sold in cash, the Assessing Officer cannot ignore the fact of land situated in irrigated area and the land revenue record shows crop grown on the agricultural and the only issue which could be left could be of the estimation of the agricultural income, which can be reliably estimated keeping in view the agricultural income declared under “bataidari” system by the assessee in earlier years, which has been duly accepted by the income tax department. The ld Counsel further submitted that if



the Assessing Officer was not satisfied with the quantum of the agricultural income shown by the assessee, he could have sent inspector of his office for physical verification of the agricultural and of the assessee.

6. The learned DR on the other hand relied on the order of the lower authorities and submitted that in view of no vouchers maintained for expenses incurred, the claim of the assessee of earning agricultural income has been rightly rejected by the lower authorities.

7. We have had rival submission of the parties and perused the relevant material on record. The assessee firm purchased the agricultural land in the year 2006, in the irrigated belt of Nasik district of Maharashtra, on the bank of the 'Godavari River" (PB-102). In support of the agricultural activity carried out, the assessee has filed land revenue records, which establish that different crops including grapes, soyabean, vegetables, flowers etc. were sown on the land. The assessee has also filed copy of electricity bills and Gram Panchayat tax paid (PB-II/7-9), which are available in the paperbook filed before us. The assessee has also filed income and expenditure account and balance sheet for earlier years along with return of income, wherein the agricultural income from the land has been declared by the assessee, which has not been disturbed by the Income-tax department. On the other hand, the Assessing Officer found that the assessee has maintained ledger accounts for



various expenses, but, no copies of the bills of expenses were produced on the pretext that the manager carrying out the agricultural activity had left the job and therefore the bills were not traceable and therefore rejected the claim of the assessee of carrying out any agricultural activity. He also rejected the claim of sale of agricultural products in view of the cash vouchers and denial of purchase of the product by two parties. In view of the above factual observations, the core question before us is whether any agricultural activity was carried out by the assessee. In our opinion, the land revenue authorities, who maintain the record of crops sowed on the agricultural land, has duly certified that crops including grapes, soyabean and flowers had sown. Thus, the fact that agricultural operation was carried out by the assessee on the land cannot be brushed aside only for the reason that assessee failed to produce copy of the bills of expenses particularly labour, seeds, fertilizers etc. and ignoring that agricultural income from the same land declared by the assessee was not disturbed by the income-tax department in earlier years. The only issue in dispute the year under consideration could be of estimation of quantum of agricultural income. The assessee submitted that agricultural income in the range of Rs. 10.00 lakhs to Rs. 14 lakh declared by the assessee at the rate of 25% of the value of total agricultural produce under the “ bataidari system” has been accepted by the Department in earlier years, whereas in the assessment years from 2014-15 to AY 2016-17 including assessment year under



consideration, the assessee carried out agricultural operation engaging the manager and therefore the entire income from the agricultural activity arose to assessee without sharing 75% of the value of the agricultural produce. The agricultural income declared in the year under consideration is in the range of Rs. 34 lakhs and in assessment year 2016-17, it is in the range of Rs. 45 lakhs, which is not excessive in comparison to the income shown under the 'Bataidari' System in assessment year prior to 2014-15 and subsequent to 2016-17. In view of above discussion, the finding of the lower authorities on the issue in dispute is set aside and the addition made by the Assessing Officer is deleted. The grounds of the appeal of the assessee accordingly allowed.

7.1 The issue in dispute raised an assessment year 2016-17 is identical to the issue in dispute raised in assessment year 2015-16, therefore following our finding in assessment year 2015-16, the grounds raised in assessment year 2016-17 are accordingly decided *mutatis mutandis*.

8. In the result, the appeals of the assessee for assessment year 2015-16 and 2016-17 are allowed.

Order pronounced in the open Court on 23/09/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 23/09/2024



Dragon Legal/Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai