

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 362/Chd/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Kuldeep Singh H.No. 71, Village Mirpura Jarout SAS Nagar, Punjab- 140501	बनाम	The ITO Ward-2(5) Chandigarh-160017
स्थायी लेखा सं. / PAN NO: CSQPS4924P		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारित की ओर से/ Assessee by : Shri Dhruv Goel, C.A
राजस्व की ओर से/ Revenue by : Shri Danish Abdullah, JCIT, Sr. DR
सुनवाई की तारीख/ Date of Hearing : 03/09/2024
उद्घोषणा की तारीख/ Date of Pronouncement : 27/09/2024

आदेश/Order

PER PARESH M. JOSHI, J.M. :

This is an appeal filed by the Assessee under section 253 of the Income Tax Act, 1961 before this Tribunal as an by way of second appeal. The relevant A.Y is 2017-18 and the corresponding previous year period is from 01/04/2016 to 31/03/2017. The assessee is aggrieved by order No. ITBA/APL/S/250/2023-24/1060540572(1) dt. 06/02/2024 of Ld. CIT(A) which is hereinafter referred to as the impugned order passed under section 250(6) of the Act, in the first appellate proceedings under the Act.

Factual Matrix

2. The assessee filed return of income for the AY 2017-18 through e filing on 25/07/2017 declaring income of Rs. 1,76,720/- after claiming deduction under

chapter VI-A which was processed as such under section 143(1) of the Act. the case was selected for scrutiny through limited scrutiny having reasons "Large Agricultural Income".

3. Statutory notice under section 143(2) of the Act alongwith the reason was issued on 13/08/2018 and served upon the assessee through e portal.

4. Notices under section 142(1) alongwith questionnaire were also issued to the assessee on e filing portal. In response the assessee submitted his reply on e portal from time to time.

5. That the assessee vide reply dated 02/09/2019 has submitted all relevant information as was sought. The reply is at page 3 to 6 of paper book.

6. That the assessee has placed on record in paper book details of land ownership and the evidence which are at pages 7-17 of the paper book.

7. That during the period under consideration, the assessee is an agriculturist and derived income from other source at Rs. 1,85,804/- and net agricultural income of Rs. 31,95,210/- shown in the return. The assessee vide this office questionnaire dated 4.7.2019 was required to furnish details of land holding, copies of Form J and Income & Expenditure in respect of agricultural income. The assessee furnished copies of form J amounting to Rs. 32,67,810/- i.e. Rs. 14,16,084/- in respect of Wheat weighing 935.01 Quintal and Rs. 18,51,726/- issued in respect of Paddy crop weighing 720.375 quintal, issued by M/s. Ramdhan Praveen Kumar & others. Perusal of return shows that the assessee shown net agricultural income of Rs. 31,95,210/- whereas has furnished details of

agricultural receipts in the shape of Form J at Rs. 32,67,817/- which shows that the assessee incurred expenditure of Rs. 72,607/- to earn agricultural income of Rs. 32,67,817/-. Therefore, the assessee was required to give details of expenditure incurred to earn such huge agricultural income, with documentary evidence. The assessee was a show cause as under:

"Please refer to your reply date 2.9.2019 whereby you have furnished details of agricultural receipt at Rs. 32,67,817/- in the shape of form J. You have also furnished copy of fard, which shows that the land is jointly held. Please state the agricultural income shown by you pertain to the whole family or your individual income. Against the agricultural receipt of Rs. 32,67,817/-, you have shown agricultural income of 31,95,210/-. This shows that you incurred an expenditure of Rs. 72,607/- to earn agricultural receipt of Rs. 32,67,817/- which is very low. You were required to furnish detail of expenditure to earn agricultural income but you did not furnish the same. In your reply you have stated that source of expenditure was only from income earned from agricultural. From your reply, it is clear that the whole receipt from agricultural income is shown as agricultural income which is exempt. It is not acceptable that there was no expenditure incurred to earn such huge agricultural income. In the absence of any detail of expenditure, I proposed to disallow expenditure proportionately out of agricultural income and your agricultural income will be reduced and treated as income from other source. You are once again requested to furnish detail of expenditure with documentary evidence as requisitioned vide questionnaire dated 26.8.2019 along with bills and vouchers".

8. That In response to this the assessee furnished reply dated 4.11.2019 which is as under:

"He had incurred expenditure for producing wheat and paddy, exact details whether he had explained to us. Agricultural is said to be the primary occupation for the large rural population of India. The Government of India has given special exemption to agricultural promote the growth in this sector. Farmers are not much educated and very little knowledge about keeping bills and records of expenditure incurred in growing agricultural produce.

List of expenditure incurred and source from which expenditure is incurred.

1. Apart from J Form submitted earlier, there is one J Form which was missed earlier was wheat dated 13.04.2016 from M/s Manohar lal Baldev Parkash, commission agent, Lalru Mandi amounting to Rs. 1,18,763/-.

As per discussion with assessee, he had grown vegetables in his farms (1 acre approximate and in the free space available in farms along with wheat and paddy). To utilize the space and to earn more income he had grown (Cauliflower, Zucchini (Tori), Brinjal) in his fields. These vegetables are sold in market in cash for which he has no record available. As these are sold in cash.

3. For sowing wheat not much labour is required it is around (Rs. 15,000/-20,000/-) per season.

4. For growing Paddy Labour is required for which he had hired a person who provided labour and agreed to take away 20% approx. of Paddy instead of cash. I have sold net crops to market for which I have provided you J Form.

5. Electricity is provided free of cost by Punjab Government for agricultural. However there was some Diesel Expenses around (Rs. 20,000/-) which was incurred in cash.

6. Fertilizer is main expenditure to increase the fertility of land. It was purchased and payment was made through cheque (258793) dated 19.11.2016 amounting to Rs. 1,20,000/- and Rs. 21,000/- to Anshul Fertilizer dated 02.02.2017.

7. For cutting of crop he had paid to Malkit Singh Rs. 1,00,000/- through cheque No. (258795) dated 09.12.2016.

8. Hybrid Seeds are purchased around Rs. 50,000/- for wheat and Rs. 70,000/- (paddy).

9. Medicine and pesticides are used to protect the crops from pests. 3 quintal of Padan (medicine) @ 50 per kg is used. It amounting to rs. 15,000/- app.

10. He also owns tractor, he himself and his sons are actively engaged in running the tractor in fields for preparing the land for planting the crops.

Some of the expenditure is done in cash and some of the expenditure are done through bank. Cash received from selling vegetables was utilized for meeting out the dew of some expenditure for growing crops. However for labour of Paddy he has given 20% of produce to a person.

Assessee has no intention to hide any income and to divert the funds for other source into agricultural income. He is performing agricultural activities since long and has no other source income. Being honest citizen of India and contributing to agricultural sector with hard work and dedication kindly consider it."

9. The reply of the assessee has been considered carefully. The assessee did not furnish any income and expenditure account in respect of agricultural income. The assessee shown the full receipt of agricultural as agricultural income since it is exempt having no tax implications. In the reply the assessee

stated that he had no record/details of expenditure. The assessee further stated that the assessee grown vegetables which were sold in market in cash for which no records was maintained. This is an afterthought since the assessee in his original reply never mentioned that he grown any other crop except wheat and paddy crops. The assessee also failed to furnish copy of girdwari which shows that the assessee grown vegetables also. The assessee in his reply stated that he paid diesel expenses around Rs. 20,000/-, sowing wheat Rs.15,000/- per season, Rs. 1,20,000/- as fertilizer expenses and Rs. 1,20,000/- for hybrid seeds and thus has given details of Rs. 4.00 lacs approximately as expenditure to earn agricultural income. But the assessee did not mention the source from which he incurred such amount as expenditure because the assessee shown net agricultural income of Rs. 31,95,210/-. Since the assessee failed to furnish details of income & expenditure, information u/s. 133(6) of the IT Act has been called for from the Director Agriculture & Farmer Welfare, Punjab. The office of the Director Agricultural furnished the information as under:

"Memo no. JDA(Stat)/10 dated 7.11.2019

Sub: Calling information u/s. 133(6) I the ase of Kuldeep Singh, H.No.71, Vill. Mirpura, Jarout, Tehsil Derabassi AY 2017-18 - PAN CSQPS4924P - reg.

Keeping in view the above cited reference, it is intimated that Statistical Wing of Agricultural department of Punjab conducted the Crop cutting experiments of various agricultural crops in 20% randomly selected villages of the state every year in kharif & rabi season to get the Block/tehsil/district level yield rate of crops. As per record village Mirpur&Jarout of block Derabassi are not selected for this purpose during

2017-18. So the yield of block Derabassi for paddy and wheat crop is detailed below:-

Sr. No.	Crop	Average Yield Kg/ Acre	MSP Rs/Qts.	Total Value (Rs./Acre)	Total Variable Costs (Rs./Acre)	F
1	Paddy	2416	1590	38,144	17470	
2	Wheat	1910	1735	33,139	11974	

Total variable cost Rs/acre incurred to earn paddy and wheat includes labour and inputs cost etc. denotes to state as calculated by PAU, Ludhiana.

10. That from the information supplied, it is clear that a person yield 2416 kgs. per acre of paddy and 1910 kgs. of wheat and the cost shown at Rs. 17470/- per acre in respect of paddy and Rs. 11,974/- per acre in respect of wheat, giving net return of Rs. 20,674/- per acre in respect of Paddy and Rs. 21,165/- in respect of wheat. The assessee is having 36 acres of land from which he shown a net agricultural receipt of Rs. 31,95,210/- but furnished form J for Rs. 32,67,817/- as gross receipt. Therefore, by applying the ratio given by the Director of Agricultural, Punjab the expenditure incurred by the assessee comes to Rs. 6,28,920/- (Rs. 17470 x 36) for Paddy crop and Rs. 4,31,064/- for wheat crop. Therefore, the total expenditure incurred by the assessee to earn agricultural receipt comes to Rs. 10,59,984/- which has not been disclosed by the assessee. Therefore, after considering the expenditure of Rs. 10,59,984/-, the agricultural income of the assessee is taken at Rs. 22,07,833/- (Rs. 32,67,817 minus 10,59,984). The assessee did not disclose the expenditure to earn agricultural income, therefore, it is clear that the assessee incurred expenditure from the undisclosed

source and the same is treated as income from other source. Addition of Rs. 10,59,984/- is made to the income of the assessee as income from other source being unexplained expenditure. I am also satisfied that the assessee under reported his income as per sub section (2) of section 270A. Therefore, penalty proceedings u/s. 270A of IT Act are initiated for under reporting the income.

11. The Ld. AO in view of aforesaid determined the income of the assessee vide order No. ITBA/AST/S/143(3)/2019-20/1020203804(1) dt. 11/11/2019 as follows:

6. *In view of the above, income of the assessee is computed as under:*

<i>Income returned</i>	<i>Rs. 1,76,720/-</i>
<i>Add: Addition as discussed above</i>	<i>10,59,984/-</i>
<i>Total Taxable Income:</i>	<i>12,36,704/-</i>
<i>Agricultural income</i>	<i>Rs. 22,07,833/-</i>

Assessed. Issue requisite documents. Charge interest as applicable, penalty proceedings u/s. 270A of IT Act are initiated for under reporting the income A copy of this order alongwith demand notice is sent to the assessee.

12. The assessee being aggrieved by the aforesaid assessment order dt. 11/11/2019 filed first appeal before the Ld. CIT(A) under section 246A of the Act who by impugned order has sustained the findings of the Ld. AO (supra) by observing as under in para 6 to 8 of the impugned order:

6. In view of the above, the undersigned is left with no option but to decide the case on the basis of material on record. Bare perusal of the facts shows that the appellant has not pursued the appeal despite being granted several opportunities as elaborated supra. The assessee has further jeopardized its case by not responding despite several opportunities that were provided. I am

constrained to agree with the approach adopted by the AO in making addition. The AO has passed a reasoned and speaking order considering all the facts and the circumstances of the case and no interference with the order of the AO is called for. The grounds of appeal are therefore dismissed.

7. Thus, in view of the facts and circumstances of the case, the order passed u/s 143(3) of the Income Tax Act, 1961 passed on 11.11.2019 by the AO is upheld.

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

13. The assessee being aggrieved by the impugned order has preferred second appeal before this Tribunal and has raised following grounds of appeal in Form No. 36

1. That authorities below have erred in law and facts in making an addition of Rs. 10,59,984/- by estimating agriculture expenses and treating the same as Income from other sources being unexplained expenditure.

2. That authorities below have erred in law and facts in not reducing agriculture expenses against agriculture Income for the year.

3. That the appellant craves leave to add, alter, and amend or to substitute the above grounds of appeal before disposal of the appeal

Record of Hearing

14. The hearing in the matter took place on 03/09/2023 when both the parties appeared before us. The Ld. AR has placed on record of this Tribunal a paper book containing page 1 to 61. The Ld. DR has placed reliance on the impugned order. The Ld. DR has contended that the assessee did not appear and pursued his remedy of first appeal at all before the Ld. CIT(A) despite opportunities on 04/03/2021, 22/12/2023 and 03/01/2024 as is recorded in para 4.1 of the impugned order.

Findings and Conclusions

15. We hold that in the entire appeal memo there is no whisper by the assessee as to why he did not avail the opportunity of first appeal given to him on 04/03/2021, 22/12/2023 and 03/01/2024 by the Ld. CIT(A). There is a studied silence on this aspect. In the absence of any finding on merits by the Ld. CIT(A). We are shocked how any ground of appeal can be formulated in Form 36 which is form of appeal to this Hon'ble Tribunal. The assessee ought to have diligently pursued first appeal before the Ld. CIT(A) or ought to have communicated to us why he did not pursue the appeal on aforesaid dates despite opportunities after opportunities. Be it noted Tribunal is last fact finding authority and not first fact finding authority or first appellate authority. We examine the legality, validity and propriety of orders of Appellate Commissioner of Income Tax under section 250(6) of the Act provided there is a finding on merits. This is a classic case where assessee does not pursue his first appeal; offers no explanation to us but needs a decision by us on merits of the case when admittedly the Ld. CIT(A) was left with no other alternative but to sustain the order of Ld. AO as assessee for reasons best known to him did not pursue his first appeal before Ld. CIT(A). We deprecate and denounce such practice. This is not a mechanism provided for under the Act. There are ladders in redressing the grievances of the assessee. No one can jump the ladder or queue. Therefore we caution the assessee and admonish him. In the circumstances, we set aside the impugned order and direct the assessee to pursue his first appeal on merits and thereafter if required and necessary

approach us afresh on a fresh order to be passed by the Ld. CIT(A) on denovo basis.

Order

16. The impugned order is set aside as and by way of remand on denovo basis with liberty to assessee to urge contention on merits, basis paper book filed before us (supra) so also such other contentions as he deem fit and proper. The assessee is directed to be vigilant in pursuing his first appeal before the Ld. CIT(A) and to cooperate with the Department. The Ld. CIT(A) to pass a speaking and well reasoned order on merits as expeditiously as possible.

17. Appeal allowed for statistical purposes.

Order pronounced in the open Court on 27/09/2024

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar