

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C”BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1434/Bang/2024
Assessment Year: 2016-17

Babu Thomas Agriculturist Navatur, Ripponpet Hosanagara Taluk Karnataka 577 426 PAN NO :AVHPB4165F	Vs.	ITO Ward-4 Shivamogga
APPELLANT		RESPONDENT

Appellant by	:	Sri Varun Bhat, A.R.
Respondent by	:	Shri V. Parithivel, D.R.

Date of Hearing	:	05.09.2024
Date of Pronouncement	:	17.10.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal by assessee is directed against order of CIT(A)/NFAC dated 7.6.2024 vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1065466933(1) passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”) for the AY 2016-17.

2. The assessee has raised following grounds of appeal:

- 1. That the ld. CIT(A) NFAC has erred on facts and circumstances of the case and in law so far as the first appellate order passed by him/her is prejudicial to the interest of the appellant.*
- 2. The CIT(A) erred in confirming the addition of 50% of agricultural income as income from other sources without adequate consideration of the explanation and supporting documents produced at the time of assessment as well as appeal proceedings*
- 3. The appellate authority failed to provide sufficient opportunity to produce documentary evidence supporting the claim of agricultural income.*

4. *The CIT(A) misinterpreted the evidence provided, including lease agreements and land details, which clearly established the extent and nature of my agricultural activities.*
5. *The assertion that no documentary evidence was provided regarding the land holding, crop grown, and income received is incorrect. The necessary documents were submitted, but their relevance and adequacy were overlooked by the appellate authority.*
6. *The appellant prays for leave to add, modify, delete, or introduce additional grounds of appeal at any time before the appeal is disposed of.*

3. Brief facts of the case are that the assessee is an agriculturist. He undertakes agricultural activities in Shivamogga district in the state of Karnataka. The crop he grows is ginger. He undertakes agricultural activities such as ploughing the land, seeding, weeding, manuring, harvesting etc. He takes lands on lease from the landlords and cultivate ginger on those lands. The assessee sells the agricultural produce to the wholesale dealers.

3.1 For the Asst. year 2016-17, the assessee had filed his return of income on 30.3.2018 declaring total income of Rs.2,48,110/- and net agricultural income of Rs.98,87,020/-. Thereafter, the case was selected for scrutiny under CASS. Accordingly, notices u/s 143(2) of the Act as well as notice u/s 142(1) of the Act were issued calling for certain details. During the course of assessment proceedings, the assessee submitted a letter written in Malayalam language and another letter along with xerox copy of sale bills. As the assessee had failed to furnish any details of land holdings, crops grown and quantity of agricultural produce grown, books of accounts and financial statements in support of the claim of agriculture income, the AO was of the opinion that the claim of agricultural income is not acceptable and therefore, concluded the assessment by adopting 50% of net agricultural income of Rs.98,87,020/- which works out to Rs.49,43,510/- as “income from other sources” and

the balance of Rs.49,43,510/- was adopted as net agricultural income for rate purposes.

4. Aggrieved by the order of the AO passed u/s 143(3) of the Act dated 19.12.2018, the assessee has preferred an appeal before the ld. CIT(A)/NFAC. During the course of the First Appellate proceedings the assessee had submitted the copies of lease agreements, Land Holding details, bills issued by buyers, Details of Agriculture expenses as well as copy of Bank Statements. The ld. CIT(A)/NFAC also observed that the assessee has established the total land used for the cultivation either his own or by taking lease. Further the assessee also established that he had undertaken the cultivation on those lands. However the ls. CIT(A) dismissed the appeal of the assessee on the ground that the assessee had not produced any documentary evidence in this regard. Further, the assessee neither produced the certificate for crop grown nor the details of consideration received on sale of ginger. Further, as the assessee has failed to produce the details of land holding such as extent of agricultural land held, location, details of sources of water and supporting documents, the ld. CIT(A)/NFAC was of the view that the correctness of claim of agricultural income not proved by the assessee along with supporting documents either before the ld. AO or during the course of first appellate proceedings and accordingly, dismissed the appeal of the assessee.

5. Aggrieved by the order of ld. CIT(A)/NFAC, the assessee has filed the present appeal before this Tribunal. The assessee has filed the paper book-1 comprising 14 pages consisting of written submissions, assessment order for assessment year 2018-19 & assessment order of assessment year 2020-21 of assessee's own case. The paper book-2 comprising 258 pages were also filed enclosing therein, the copies of land holding details, bills issued by

the buyers, bank statements, agricultural expenses bills as well as copy of lease agreements.

6. The solitary issue that is raised whether the Id. CIT(A) is justified in confirming the 50% of Net agricultural income declared as “income from other sources” without any adverse material ?

7. Before us, the Id. A.R. of the assessee vehemently submitted that the Id. CIT(A) grossly erred in confirming the addition of 50% of agriculture income as income from other sources especially when during the course of assessment proceedings the copies of the sales bills of ginger were produced. Further, the Id. AO himself after verification of the assessment records of earlier years had observed that assessee entered into agreement for harvest of standing crops and for growing one crop in the land of the parties and the agreement was for one harvest or for one crop only. Further the AR of the assessee submitted that the assessee has also uploaded the copies of lease agreements, Land Holding details, bills issued by buyers, Details of Agriculture expenses as well as copy of Bank Statements before the first appellate authority. Both the authorities below on the one hand doubted the claim of entire agricultural income declared by the assessee, however, they have treated 50% of the net agricultural income declared as “income from other sources”, which is based on pure guess and surmises and without any adverse material on record.

8. The Id. D.R. on the other hand vehemently supported the order of the authorities below and submitted that the details of agricultural land holding, survey number, extent of land and village, details of crops grown, details of gross agricultural income and expenses incurred, etc. along with supporting documents/evidences were not produced before the AO and

therefore, the authorities below are justified in treating the 50% of the agricultural Income as “income from other sources”.

9. We have heard the rival submissions and perused the materials available on record. The assessee is an agriculturist and the crops he grows is ginger. The foremost source of his income is from agricultural activity. In the present case, the assessee has declared gross agricultural income of Rs.1,90,13,500/-.The assessee has also claimed expenditure on the said agriculture activity amounting to Rs.91,26,480/- and accordingly, declared net agricultural income of Rs.98,87,020/-. The AO vide assessment order dated 19.12.2018 has adopted Rs.49,43,510/- i.e. 50% of the net agriculture Income amounting to Rs.98,87,020/- as ‘Income from Other Sources’ and accordingly, computed the balance as agricultural income amounting to Rs.49,43,510/- only instead of net agriculture Income of Rs. 98,87,020/- as declared by the assessee in his return of income. We could not understand that on the one hand both the authorities below have observed that the claim of agricultural income is not acceptable/correctness of the claim of agriculture income not substantiated by the assessee and on the other hand, concluded the proceedings by adopting Rs.49,43,510/- i.e. 50% of the net agriculture Income amounting to Rs.98,87,020/- as income from agriculture and balance Rs.49,43,510/- as “income from other sources”. Therefore, we are of the view that although the authorities below have accepted the source of Income from the agriculture activities but reduced the net agriculture income to 50% without any basis that too on their own estimation & presumption”.

9.1 We are of the opinion that the assessee has established the sources as Agriculture as during the course of assessment proceedings, the assessee had filed the copies of sales bills of

ginger. Further, during the course of first appellate proceedings, the assessee had also filed land holding details, bills issued by buyers, copies of lease agreements, details of agricultural expenditures as well as bank statements on 1.5.2024 vide acknowledgement no.196225271010524.

9.2 Further the Chapter-II of the Income Tax Act, 1961 contend with “basis of charge”.

As per section 4(1) of the Act “where any Central Act enacts that income tax shall be charged for any assessment year at any rate or rates, income tax at that rate or those rates shall be charged for that year in accordance with, and (subject to the provisions (including provisions for levy of additional income tax) of, this Act] in respect of the total income of the previous year of every person: Provided that where by virtue of any provision of this Act income tax is to be charged in respect of income of a period other than the previous year, income tax shall be charged accordingly”.

Thus, a plain reading of above clearly shows that the charge of tax is in respect of the total income. Agricultural income is exempt u/s 10(1) of the Income Tax Act, 1961 which falls in Chapter-III of the Act. Heading of the Chapter-III is “incomes which do not form part of total income”. Thus, the item of income specified in section 10(1) of the Act or Chapter-III of the Act would not be part of the total income. There cannot be a charge of tax u/s 4(1) of the Act other than the total income. We could not understand how by reducing the Net agricultural income which are exempted u/s 10(1) of the Act would give rise to total income chargeable to tax u/s 4(1) of the Act under the head “income from other sources”. We are of the opinion that the question of increasing or decreasing of any agricultural income may become irrelevant if income of the assessee is considered solely agricultural in nature and therefore, merely by

reducing the exempted Net agricultural income declared by the assessee will not automatically resulted in Income under the head “income from other sources” unless the AO brought some material on record to show that assessee earns any other income in the nature of “income from other sources” also. It is also well settled that the AO cannot “step into the shoes of an assessee”, or question or even sermons to his beleaguered assessee on the conduct of the business. This is more particularly so, when there is nothing in the enacted laws, that requires an assessee to conform to a particular set of business practices.

9.3 In our considered view, merely on the basis of some estimation & assumption of the Id. AO, reducing the agricultural income will not automatically commute into any income under head “income from other sources” without any specific material being brought on record to show that agricultural Income were inflated in order to escape the assessment under head “Income from Other sources”. In our opinion, the AO has merely acted on the basis of surmises and conjectures in adopting the estimation of 50% of Net agricultural income as “income from other sources” without any basis & without carrying out any further verification.

The suspicion however strong cannot take the place of proof. In this case, none of the authorities below have brought any substantial material on record to demonstrate that assessee has not earned Income through agricultural sources but from “income from other sources”. Our view also supports from the fact that AO in the assessee’s own case for the AY 2018-19 as well as for AY 2020-21 accepted the source as agricultural income by passing the assessment order u/s 143(3) of the Act accepting the returned Income and no adverse inference was drawn by the Id. AO in both these years. Therefore, we set aside the order of the Id. CIT(A) by allowing the appeal of the assessee.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 17th Oct, 2024

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 17th Oct, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.