

आयकर अपीलीय अधिकरण, पाटना पीठ, पाटना
IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH: PATNA
(VIRTUAL HEARING AT KOLKATA)

श्री दुव्वुरु आर. एल रेड्डी, उपाध्यक्ष एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
[Before Shri Duvvuru R. L. Reddy, Vice-President & Shri Rajesh Kumar, Accountant Member]

I.T.A. Nos. 125, 127 /Pat/2023
Assessment Years: 2000-01, 2001-02

Dr. Jagannath Mishra (HUF) (PAN: AACHJ 7816 H)	Vs.	ACIT, Central Circle-1, Patna
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

I.T.A. Nos. 126 , 128, 129 /Pat/2023
Assessment Years: 2000-01, 2001-02, 2002-03

Dr. Jagannath Mishra (HUF) Through L/H Nitish Mishra (PAN: AEGPM7446 G)	Vs.	ACIT, Central Circle-1, Patna
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

I.T.A. Nos. 130-132 /Pat/2023
Assessment Years: 2000-01 to 2002-03

Smt. Veena Mishra Through Nitish Mishra (PAN: AHYPM 2263 N)	Vs.	ACIT, Central Circle-1, Patna
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	12.11.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	27.11.2024
For the Appellant/ निर्धारिती की ओर से	Shri Ajay Jha, Advocate Shri Aman Raja, Advocate
For the Respondent/ राजस्व की ओर से	Shri Ajay Kr. Shukla, JCIT Sr. D.R

ORDER / आदेश

Per Bench:

These are the appeals preferred by the different assessee against the separate orders of the Ld. Commissioner of Income Tax (Appeals)-3, Patna (hereinafter referred to as the Ld. CIT(A)"] for AY 2000-01 to 2002-03 respectively. Since the issues are involved all the appeals are common , therefore, we are disposing of appeals by a common order for the sake of brevity and convenience. First of all, we shall take in **ITA No. 125/Pat/2023 for AY 2000-01.**

2. The common issue raised in the various grounds of appeal is against the order of Ld. CIT(A) upholding the assessment order wherein the AO has treated the made addition of Rs. 82,350/- by estimating the gross agricultural income and calculating the net agriculture income @ 30% of gross income and thus making the addition of the balance amount as unexplained income.

3. Facts in brief are that the assessee is an HUF with its karta Dr. Jagannath Mishra who is a former Chief Minister of Bihar. The assessee derived income from salary as well as income from agricultural operation. The assessee filed return of income on 29.12.2000 showing a total income of Rs. 90,006.93 and net agricultural income of Rs. 2,16,000/- . Besides the assessee had long term capital loss of Rs. 56,270/-. The case of

the assessee was selected for scrutiny and statutory notices were duly issued and served upon the assessee. During the assessment proceedings, the AO observed that the assessee has shown agricultural income from agricultural operation on land measuring 33.75 acres at Dahgama. According to AO, the assessee has not furnished any evidences qua agricultural expenses having been incurred for undertaking the agricultural operation despite several opportunities having been given to the assessee. The total agricultural land holdings of the family were 60 acres out of which 33.75 acre is treated as belonging to the HUF, 22.80 acres to Dr. Jagannath Mishra and 4.72 acres to Smt. Veena Mishra wife of Shri Jagannath Mishra. According to AO, on the basis of reports received from ITO, Saharsa and also the information furnished by the assessee, came to the conclusion that the assessee has not filed any evidences qua agricultural operation and also in respect of expenses incurred. The AO in para 4.4 noted that inspector deputed to conduct an on the spot enquiry also gave a report that expenses to be treated at 50% of the gross agricultural receipt which according to AO was not backed with any facts and figures. Thereafter, the AO came to conclusion that it would be reasonable if from gross agricultural revenue, 70% was allowed towards expenses and 30% was treated as agricultural income. Accordingly income was estimated by the AO based on the yield estimated by the Inspector in his report as discussed hereafter. Sale of Paddy Rs. 400 per Mann with average yield per acre of land was 24 Mann aggregating to Rs. 9,600 (24 x 400) (Inspector has estimated average yield of wheat from the lands to be about 1 Mann per katha in Dahgama and therefore the total yield for the land per acre would be 12 Mann and estimated value of wheat per moth at 300 with estimated value of sale of wheat at Rs. 3,600 (12x300). Therefore, the total estimated sale of paddy and wheat per acre in the FY 1999-2000 would be Rs. 13,200/-(9600 + 3600) and taking a net profit rate of 30% of gross agricultural income, a net income of Rs. 3,960/- per acre and estimated in respect of 33.75 acres by applying the same and the total agricultural income was calculated at Rs. 1,33,650/- and remaining of agricultural income of Rs. 82,350/- as shown by the assessee was treated as undisclosed source in the assessment framed u/s 143(3) of the Act dated 21.03.2003.

4. In the appellate proceedings, the Ld. CIT(A) dismissed the order of AO by simply noting that the assessee has failed to furnish any documentary evidences to support its claim to controvert the finding of AO and thus the order of AO was upheld.

5. After hearing the rival contentions and perusing the material on record, we find that the assessee has disclosed net agricultural income of Rs. 2,16,000/- for which the assessee could not furnish any evidences neither in respect of sales of wheat nor in respect of agricultural expenses incurred by the assessee. Therefore, the AO relied on the report of the AO, Saharsa and also the information made available by the assessee during the assessment proceedings in AY 1996-07 to 1999-2000. The AO noted that the assessee has not furnished any evidences qua his claim. In para 4.4. the AO also rejected the report of the Inspector who estimated agricultural expenses at 50% of the total receipt and he rather treated 70% as expenses and 30% as net income from agriculture. Thereby making an addition towards undisclosed source. He gave a mode of computation in para 4.4 of the assessment order wherein he computed the income from paddy at Rs. 9,600/- per acre whereas income from wheat at Rs. 3,600/- per acre. After applying the rate of 30% the net income was estimated at 3,960/- in FY 1999-2000. In our opinion, the said calculation of AO was not based on any scientific formula or facts on record. Therefore, in our opinion, it would be reasonable and fair estimation of net agricultural income if both net profit rate of 45% is applied and 55% is treated as agricultural expenses. Needless to say that if this rate is applied in respect of wheat, from paddy and wheat the same would be worked out as under:

Paddy 24 x 400 = 9,600 x 45% = 4,320/-

Wheat 12 x 300 = 3,600 x 45% = 1,620/-

Total Rs. 5,940/-

The total agricultural income in respect of 33.75 acre of land would be 5940 x 33.75 = 2,00,475/-. Considering the above facts and circumstances, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to make delete the addition to the extent of

Rs.66,825/- and addition to the tune of Rs. 15,525/- is sustained. The appeal is partly allowed.

Accordingly ground raised by the assessee is partly allowed.

ITA No. 126/Pat/2023 for AY 2000-01.

6. Issue raised in ground nos. 1 to 5 are general in nature and does not need any specific adjudication.

7. Issue raised in ground no. 6 to 8 is against the confirmation of addition of Rs. 1,45,602/- by the Ld. CIT(A) in respect of income from undisclosed sources on account of excess income shown by the assessee in respect of agricultural income. We have already decided the similar issue in ITA No. 125/Pat/2023 for AY 2000-01 wherein we have partly allowed the appeal of the assessee by estimating the expenses @ 55% of the gross receipts and treating the agriculture income @45%. Therefore, our decision in ITA NO. 125/Pat/2023 for AY 2000-01 would mutatis mutandis apply to this issue as well. Accordingly, this ground of appeal is partly allowed.

8. Issue raised in ground no. 9 to 15 is against the confirmation of addition of Rs. 1,81,930/- as made by the AO in respect of income in the name of Smt. Veena Mishra.

9. Facts in brief are that the AO in the assessment order in para 5 has observed that she was a house wife and did not have any independent sources of income and investment and therefore in his opinion, the income of Smt. Veena Mishra was belonging to Dr. Jagannath Mishra so the income was assessed in the hands of assessee whereas the same was added protectively in the hands of Smt. Veena Mishra. The ld CIT(A) also upheld the order of AO in the appellate proceedings.

10. After hearing the rival contentions and perusing the material on record including the evidences filed before us in the form of wealth tax assessment orders of Smt. Veena Mishra form AY 1986-87 to 1990-91 and similarly assessment orders u/s 143(1) of the Act from 1986-87 to 1988-89 which are available in the paper book, we find that the

Smt. Veena Mishra is an independently assessed to income tax and wealth tax. Besides we also note that the assessee Smt. Veena Mishra is also co-owner of the land and land measuring 4.72 acres belonged to Smt. Veena Mishra out of total family holding of 60 acres. Therefore, the AO has made the addition in the hands of the assessee only on the basis of presumptions and assumptions without any substantive basis and also without bringing any evidences on record to the contrary to justify the inclusion of the assessee's income in the husband's hand. Therefore, we are not in agreement with the conclusion drawn by the Ld. CIT(A) as the same is based upon in correction assumption and appreciation of facts and accordingly can not be sustained. At the same time, we would like to mention that this income is to be assessed in the hands of Smt. Veena Mishra. Therefore the addition made, is accordingly, directed to be deleted by setting aside the order of Ld. CIT(A). The ground is allowed.

11. In ground no. 17 that the assessee has assailed the AO has erred in not allowing the deduction u/s 80L of Rs. 12,000/- from the total income which was also confirmed by the Ld. CIT(A).

12. After hearing the rival contentions and perusing the material on record, we are of the view that the issue is required to be examined at the level of AO. Accordingly, the same is restored to the file of AO and the AO is directed to look into the matter as per facts available on record and decide the same in accordance with law. Ground no. 17 is allowed for statistical purposes.

13. Issue raised in ground no. 18 is consequential to the main grounds. Aimilarly issue raised in ground no. 19 to 21 needs no specific adjudication.

Accordingly the appeal is allowed for statistical purposes.

ITA No. 127/Pat/2023 for AY 2001-02.

14. The issue raised in the appeal in ground no. 6 to 9 are similar to one as decided by us in ground no. 6 to 8 in ITA No. 125/Pat/2023 for AY 2000-01. Therefore our

decision in ITA No. 126/Pat/2023 for AY 2000-01 would, mutatis mutandis, apply to ground no. 6 to 8 this appeal as well. Accordingly, the grounds are partly allowed.

15. The issue raised in the appeal in ground no. 10 is similar to one as decided by us in ground no. 9 to 15 in ITA No. 126/Pat/2023 for AY 2000-01. Therefore our decision in ITA No. 126/Pat/2023 for AY 2000-01 would, mutatis mutandis, apply to ground no. 9 to 15 this appeal as well. Accordingly, the grounds are partly allowed.

ITA No. 128/Pat/2023 for AY 2001-02 & .

16. The issue raised in the appeal in ground no. 6 to 8 are similar to one as decided by us in ground no. 6 to 8 in ITA No. 126/Pat/2023 for AY 2000-01. Therefore our decision in ITA No. 126/Pat/2023 for AY 2000-01 would, mutatis mutandis, apply to ground no. 6 to 8 this appeal as well. Accordingly, the grounds are partly allowed.

17. The issue raised in the appeal in ground no. 10 to 15 is similar to one as decided by us in ground no. 9 to 15 in ITA No. 126/Pat/2023 for AY 2000-01. Therefore our decision in ITA No. 126/Pat/2023 for AY 2000-01 would, mutatis mutandis, apply to ground no.10 to 15 this appeal as well. Accordingly, the grounds are allowed.

Accordingly, the appeal of the assessee is partly allowed.

ITA No. 129/Pat/2023 for AY 2002-03.

18. The issue raised in the appeal in ground no. 6 to 8 are similar to one as decided by us in ground no. 6 to 8 in ITA No. 126/Pat/2023 for AY 2000-01. Therefore our decision in ITA No. 126/Pat/2023 for AY 2000-01 would, mutatis mutandis, apply to ground no. 6 to 8 this appeal as well. Accordingly, the grounds are partly allowed.

19. The issue raised in the appeal in ground no.9 to 15 is similar to one as decided by us in ground no. 9 to 15 in ITA No. 126/Pat/2023 for AY 2000-01. Therefore our decision in ITA No. 126/Pat/2023 for AY 2000-01 would, mutatis mutandis, apply to ground no.9 to 15 this appeal as well. Accordingly, the grounds are allowed.

ITA No. 130/Pat/2023 for 2000-01.

20. Issue raised in ground no. 1 to 5 is general in nature and needs no specific adjudication.

21. Issue raised in ground no. 6 to 8 is similar to one as decided by us in ITA No. 126/Pat/2023 for AY 2000-01. Therefore our decision in ITA No. 126/Pat/2023 for AY 2000-01 would, mutatis mutandis, apply to this appeal as well. Accordingly, the appeal of the assessee is partly allowed.

22. Issue raised in ground no. 9 to 15 relates to protective addition made in the assessee's hand of Rs. 1,81,930/- whereas the substantive addition made in the hands of the assessee's husband Shri Jagannath Mishra. We have already decided the issue in ground no. 9 to 15 in ITA No. 126/Pat/2023 for AY 2000-01 wherein we have held that the assessee is having agricultural land of 4.72 acres and was owning a property independently as is apparent from the Wealth Tax returns for AY 1986-87 to 1990-91 and orders u/s 16 of the Wealth Tax Act which are available in the paper book. Similarly the orders u/s 143(1) of the Act for AY 1986-87 to 1988-89 are available in the paper book which sufficiently substantiates that the assessee was having her own income and assets which were accepted by the Department in the earlier assessment years. Similarly during the year, the assessee has earned a long term capital gain of Rs. 1,87,944/- which was claimed as exempt u/s 54 of the Act on sale of property. Therefore, the conclusion drawn by the AO that the assessee was simply a house wife and all the income of the assessee were belonging to the husband of the assessee was without any substantive evidences on record. Accordingly, we hold that income has to be assessed in the hands of the assessee only. Accordingly, the addition made by the AO of Rs. 1,13,040/- on protective basis is sustained in the hands of the assessee. Accordingly, ground nos. 9 to 15 are allowed.

23. Issue raised in ground no. 16 to 20 is general in nature and needs no specific adjudication.

ITA Nos. 131 & 132/Pat/ 2023 for AY 2001-02 and 2002-03.

24. The issue raised in the appeal in ground no. 6 to 8 are similar to one as decided by us in ground no. 6 to 8 in ITA No. 126/Pat/2023 for AY 2000-01. Therefore our decision in ITA No. 126/Pat/2023 for AY 2000-01 would, mutatis mutandis, apply to ground no. 6 to 8 this appeal as well. Accordingly, the grounds are partly allowed.

25. The issue raised in the appeal in ground no.9 to 15 is similar to one as decided by us in ground no. 9 to 15 in ITA No. 130/Pat/2023 for AY 2000-01. Therefore our decision in ITA No. 130/Pat/2023 for AY 2000-01 would, mutatis mutandis, apply to ground no.9 to 15 this appeal as well. Accordingly, the grounds are allowed.

Accordingly, the appeal of the assessee is partly allowed.

26. In the result, the appeals in ITA No. 125&127 to132/ Pat/2023 for AY 2000-01 to 2002-03 of the different assessees are partly allowed and the appeal in ITA No. 126/ Pat/ 2023 for AY 2000-01 is partly allowed for statistical purposes.

Order is pronounced in the open court on 27th November, 2024

Sd/-

Sd/-

(Duvvuru R. L. Reddy /दुव्वुरु आर. एल रेड्डी)

(Rajesh Kumar/राजेश कुमार)

Vice-President/उपाध्यक्ष

Accountant Member/लेखा सदस्य

Dated: 27th November, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Dr. Jagannath Mishra (HUF) & ors., 113/70B, Shastri Nagar, Patna-800023
2. Respondent – ACIT, Central Circle-6, Patna
3. Ld. CIT(A)-Patna-3, Patna
4. Ld. PCIT- , Patna
5. DR, Patna Bench, Patna

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata