

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.460 & 461/CTK/2024

(निर्धारण वर्ष / Assessment Year : 2017-2018)

Arya Agri & Aqua Private Limited Plot No.A/10, Mancheswar Industrial Estate, Bhubaneswar	Vs	DCIT, Circle-1(1), Bhubaneswar
PAN No. : AAJCA 5847 R		

(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से / Assessee by	:	Shri P.R.Mohanty, Advocate
राजस्व की ओर से / Revenue by	:	Shri S.C.Mohanty, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	23/01/2025
घोषणा की तारीख / Date of Pronouncement	:	23/01/2025

आदेश / ORDER

Per Bench :

These two appeals are filed by the assessee against the order of Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, passed in IT Appeal No.CIT(A), NFAC/2017-18/10048149 & CIT(A), Bhubaneswar-1/10537/2018-19, vide DIN & Order No.ITBA/NFAC/S/250/2024-25/1068127205(1) & ITBA/NFAC/S/250/2024-25/1065677607(1), both dated 29.08.2024 & 14.06.2024 for the assessment year 2016-2017 & 2018-2019.

2. At the outset, on perusal of the appeal record, it is found that appeal of the assessee for A.Y.2018-2019 is filed belatedly by 12 days and appeal of the assessee for A.Y.2016-2017 is filed belatedly by 73 days. In both the appeals, the assessee has filed condonation applications along with affidavit stating sufficient reasons for delay in filing both the appeals. Ld. Sr. DR did not object to condone the delay. Accordingly, we condone the respective delay in filing both the appeals and appeals are heard finally.

3. First, we shall take up the appeal of the assessee in ITA No.461/CTK/2024 for A.Y.2016-2017, wherein the assessee has raised the following grounds :-

1. *That the impugned Appellate Order by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Income Tax Department, Govt. of India is bad in law and without application of mind.*
2. *That the Ld. CIT(A) has erred in confirming the order of the Assessing Officer assessing the taxable income of the assessee based on erroneous facts and without applying his mind while considering the agricultural income as unexplained credit u/s 68 and accordingly made the addition of Rs.1,88,34,720 and raised the demand against the assessee. The assessee vehemently opposes such action of the Assessing Officer and also aggrieved by the CIT(A) for not allowing the appeal adjudicated in favour of the assessee based on the facts of the case and consistent in recognizing the income by the assessee for last several years. The assessee prays before the Hon'ble Income Tax Appellate Tribunal to reject the addition made by the AO and allow the income as agricultural income and accordingly adjudicate the matter in favour of the assessee. Therefore, the addition of Rs.1,88,34,720 be deleted on the facts and circumstances of the case.*
3. *That the Appellant craves the leave of the Hon'ble Bench to add, alter, amend, modify, substitute, delete and/or rescind all or any of the grounds of appeal, submit written submissions, paper book and such other facts and figures before or at the time of hearing of the case, if necessity so arises.*

4. Brief facts of the case are that the assessee is a private limited company, engaged in the business of cultivation of agriculture produce and fishery products. The case of the assessee was selected for limited scrutiny to verify the agriculture income claimed as exempt and the assessment was completed vide order dated 29.12.2018, wherein the addition of Rs.1,45,00,000/- was made u/s.68 of the Act by holding that the agricultural income declared by the assessee is unexplained cash credit. The assessee has claimed net agriculture income of Rs.96,28,307/-

out of gross receipt of Rs.1,45,40,415/- as exempt, however, since the AO was of the opinion that no agriculture activity was carried out, he held the agriculture income as unexplained and made the addition on the gross agriculture income of Rs.1,45,00,000/- as unexplained cash credit u/s.68 of the Act. In first appeal, Id. CIT(A) confirmed the addition. Thus, the assessee is in appeal before us.

5. During the course of hearing, Id. AR of the assessee submitted that the assessee is having total approx 200 bighas of land situated in two different areas and undisputedly the land in question is agricultural in nature. On both the pieces of land, the assessee is having many ponds where fishery products are produced and besides this agricultural produce are also cultivated on the remaining part of the land. During the year out of the total receipts of Rs.6,78,95,547/-, the sale of fishery products was of Rs.5,33,55,132/- and sale of agricultural produce was of Rs.1,45,40,415/-. The Id. AR submitted that the AO has not doubted the income from fishery products, however, has doubted the agricultural activity and made the addition on Rs.1.45 crores out of total agriculture receipts holding the same as unexplained cash credit. The Id. AR submitted that the assessee has claimed expenses which includes the expenses on purchase of seeds for both the activities and while alleging the agricultural income as unexplained, the AO observed that the assessee has failed to produce the bills of seeds purchased. However, while alleging so, the AO has adopted double standards where on one hand he allowed the deduction towards purchase of seeds for fishery products and

on other hand has doubted the purchase of seeds for agricultural products. He further submitted that during the course of assessment proceedings the Ward Inspector visited the land of the assessee to verify as to whether the agricultural activities were actually carried out or not. He further submitted that no order authorizing the inspector to make such verification is made as is evident from the perusal of order sheet which is placed in paper book. Ld. AR stated that as per the Inspector's report, he observed that there were no trees etc. were available as claimed by the assessee for having agricultural income at the time of his visit which was carried out in October, 2018. As per the Ld. AR the Inspector visited the land in October, 2018 when the assessee has almost shut down the agricultural activity, therefore, when the Inspector visited lands of the assessee, he could not find the trees from which the assessee has claimed the agricultural income. Ld. AR stated that the visit of Inspector was after more than 2 years from the end of previous year relevant to assessment year under appeal. He further submitted that the inspector has made verification from the local villagers, however, no enquiry whatsoever was made from the employees of the assessee, who were available at the premises and were involved in agricultural activity. Since the local villagers are totally unrelated and outsiders, were not aware of activity that was carried out by the assessee, thus, their version could not be relied upon. Had the Inspector made the enquiry from the correct persons, the true picture of the real nature of the activity carried out by the assessee would come to surface. Ld. AR also filed certain photographs in the paper

book which are placed at pages 103 to 108 containing the photos of ponds as well as agricultural produces are clearly visible. Moreover, during the course of hearing, a pen drive containing the video of total land owned by the assessee was also submitted, which were played during the course of hearing through computer and both the parties i.e. the Id. AR of the assessee and the Id. Sr. DR had a look on the video. As per the said video it is clearly visible that both agricultural as well as fishery production activities were carried out by the assessee. These pen drives are placed on record. The Id. AR also drew our attention to the report of Inspector where he observed that some standing crop of paddy is there at the land of the assessee in isolation patches which further established that agricultural activities were carried out on the said land while the Inspector has visited. Id. AR further drew our attention to the sanctioned letter issued by the Bank of India, Jaydev Vihar Branch, Bhubaneswar where the bank has allowed the credit facility to the assessee on the said land and the funds were allowed to the production used for fisheries, agricultural etc. From the perusal of the balance sheet also it appears that during the year under appeal, there were outstanding balance of the bank loan and it is an admitted fact that when a nationalized bank had made the advances it had carried out the periodical visits to the borrowers premises to confirm that the funds were utilized for which they were granted and further periodic stock statements were also obtained by the bankers to ensure that the credits facility was properly utilized and duly supported by the securities. In view of these facts, the Id. AR prayed that

assesee was actually carried out agriculture activity on the land besides having fishery production, thus, the addition made by the AO holding agricultural income as unexplained cash credit deserves to be deleted.

6. On the other hand, Id. Sr. DR vehemently supported the orders of the lower authorities and submitted that the assessee has failed to controvert the finding of the AO with regard to the agricultural activity carried out at the land which are based on spot enquiry by Inspector. Further the assessee has not produced entire bills & vouchers of expenses claimed against agriculture income. Therefore, he requested for the confirmation of the addition so made and confirmed by the lower authorities.

7. We have heard the rival submissions and perused the material available on record. In the instant case, one thing is not disputed by either of the party that the land in question was agricultural land and is used for agricultural purpose only. This fact is further confirmed by the Ward Inspector, who visited the land for verification of the agricultural activities. The report so submitted by the Inspector is reproduced as under :-

INSPECTOR'S REPORT

On being directed by the DCIT, Circle-1(1), Bhubaneswar I went for conducting a filed inquiry in the case of M/s. Arya Agri & Aqua Pvt Ltd. The lands claimed to be used for agricultural operations by the assessee are located at Jamarsuan, Staro and Parisogena, Puri Tahasil, District of Puri. The lands are located at a distance of 20 KM from Puri Town. As per google map, the areal distance of the lands from the District Headquarter of Puri which is a municipality having population of 2,00,564 as per last census conducted in 2011.

Approximately 200 acres of lands are owned by the assessee. On field verification I found that not a stand of tree such as Papaya, Moringa or horticultural crops like lady finger, Brinjal, Tomato etc. or floricultural crop such as Marigold are found to be existing in the lands of the assessee. There are isolated patches where standing crops of paddy is there. However, that represents a negligible percentage in comparison to the total land owned by the assessee.

However, there are 9 no of ponds in these lands owned/ leased by the assessee. According to locals, the assessee company uses these ponds for fish cultivation.

In the matter of production and selling of agricultural crops, the local people told that at no point of time any agricultural horticultural/floricultural crops are grown in these lands.

Submitted to DCIT, Circle-1(1), Bhubaneswar for kind information

(Alok Chandra Moharana, III)

Certified to be True Copy

16/12/24
 बिल रॉय/Bitan Roy
 Assistant Commissioner of Income Tax
 Circle-1(1), Bhubaneswar

8. From the perusal of the report of the Inspector, it is seen that he admitted that in isolated patches standing crop of paddy is available. Moreover, from the perusal of the report, we find that the Inspector has failed to make proper and adequate enquiry nor had recorded statements of any person. Further the Inspector had made enquiries from the local villagers and had not confronted the employees of the assessee who were not only taken care of the land but also actively engaged in the agricultural activities and were available when he visited the land. It appears that the Inspector chose not to make any enquiry from them to ascertain true nature of the activity carried out. It is further seen from the copy of the order sheet placed in the paper book pages 73 to 74 where there is no entry of the AO deputing the Inspector for making spot verification nor any entries made for submission of the report to the AO or its further examination. The said order sheet is reproduced as below :-

Page-01

21.07.2017

ARYA AGRI & AQUA PRIVATE LIMITED
PLOT NO. A/10, MANCHESWAR I.E.
RASULGARH
B. BUBANESWAR -751010

PAN : AAJCA5847R
Asst. Year : 2016-17
Status : Company

The assessee has e-filed return of income for the Assessment Year 2016-17 on 17/10/2016 disclosing total loss of Rs.40,09,417/-.

The above case has been selected for scrutiny assessment through CASS under "Limited" category. Accordingly notice u/s 143(2) is issued to the assessee fixing the date of compliance on 29/08/2017 at 01:00 P.M.

Smt
21/10/17
IIQ

The case to be transferred to the DCIT
Circle - I (C) BBLR.

Smt
04/04/18
130.

NOTE SHEET

04.05.2018 The digitally signed notice u/s.142(1) dtd.04.05.2018 generated from the ITBA and issued to the assessee through email fixing the date of compliance on dtd.11.05.2018.

AT
DCIT

27/11/2018 A/R of the assessee Smt. B.S. Subudhi Pdt appeared for hearing and submitted documents in support of her contention. He is asked to submit the expenditures details related to agricultural income in the next date of hearing.

Adopt to 29/11/2018

AT
12/1

Certified to be True Copy
Smt. B.S. Subudhi Pdt
12/11/21
Bita Roy
Joint Secretary

7/12/2018 ~~AP~~ The assessee is issued show cause notice to appear on 21/12/2018.

AP
Devt

21/12/2018 A/R of the assessee Sri. B.S. Subudhi FCA appeared for hearing on exhibit written explanation. The case is discussed with him.

AP
Devt

Dr
21/12/18

20.12.2018
20/12/2018 No. 510
NOTE SHEET

Annexed w/o 148(3) of the IT Act, 1961 on a total income of Rs. 1,04,90,580/-, raising demand of Rs. 45,27,815/-. Demand Notice w/o 166 of the IT Act, 1961, copy of amendment order, computation sheet is issued to the assessee. Notice w/o 274 w/o 271(1)(c) of the IT Act, 1961 is issued to the assessee for furnishing inaccurate particulars of income.

27.03.2019 Penalty show cause notice is issued to the assessee. ~~AP~~ JCTT. date of compliance on 15.03.2019.

AP
JCTT(OSD)

15.03.2019 Keeping in view of the submission of the assessee the penalty proceeding u/s 271(1)(c) of the I.T Act initiated on 29.12.2018 is kept in abeyance till disposal of 1st appeal.

AP
JCTT(OSD)

Certified to be True Copy
बिल रॉय/Bitan Roy 16/12/24
आपकर सहायक आयुक्त
Asst Commissioner of Income Tax
सर्किल-1(1), पुल्नेश्वर, C.O-1(1), Bhubaneswar

9. The assessee has claimed expenses towards purchases of seeds. The expenses pertaining to fishery business were allowed as claimed, however, the AO has doubted the expenses claimed against agricultural income by alleging that the same were without any supporting. Further from the perusal of the video clip submitted by the assessee, the Id. Sr. DR

has not doubted the agricultural activities carried out at the land. From the perusal of the photographs also we found that the agricultural activities were carried out on the said land. The Id AR also drew our attention to few copies of the bills for purchase of fertilizers which are in paper book placed before us. As perusal of the bills, it is seen that the bills are relating to DAP, UREA, pesticides etc. which could only be used for agricultural production and not for fishery production. All these facts lead to believe that assesee was actively engaged in the agricultural activity and, therefore, the receipts from the agricultural produce cannot be doubted. This view is also supported by field enquiry report of the Inspector where he very categorically observed that paddy was available in patches at the land of assesee. Under these circumstances, we are of the view that the assesee has been able to establish that agricultural activity was carried out by it and further able to substantiate the agricultural income earned from the sale of agricultural produce which were cultivated on the land owned by it with all plausible evidences and, therefore, the addition made on this account is hereby deleted and the grounds of appeal of the assesee are allowed.

10. Now, we shall take up the appeal of the assesee for A.Y.2018-2019 filed in ITA No.460/CTK/2024, wherein the facts are *pari materia* to the facts discussed in the appeal for A.Y.2016-2017. As the arguments put forth by both the parties are identical to the grounds raised for both the years under consideration, except different in figures, therefore, the reasoning given by us in the appeal i.e. ITA No.461/CTK/2024 shall apply

mutatis mutandis to the appeal of the assessee for A.Y.2016-2017 also. Accordingly, we hold that the agricultural income declared by the assessee is genuine and addition made in this regard is hereby deleted. Thus, grounds of appeal of the assessee for this year also are allowed.

11. In the result, both appeals of the assessee are allowed.

Order pronounced in the open court on 23/01/2025.

Sd/-
(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 23/01/2025

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Arya Agri & Aqua Private Limited
Plot No.A/10, Mancheswar Industrial Estate,
Bhubaneswar
2. प्रत्यर्थी / The Respondent-
DCIT, Circle-1(1), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT,
Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack