

**आयकर अपीलीय अधिकरण, सूरत न्यायपीठ, सूरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER  
आयकर अपील सं./**ITA No. 685/SRT/2024** (AY 2018-19)  
(Physical court hearing)

Munir Ahmed Shaikh Maru Street Hansot, Bharuch-393 030 <b>[PAN : CFWPS 1599 M]</b>	बनाम Vs	Income Tax Officer, Ward-1(1), Bharuch, 1 <sup>st</sup> Floor Station Road, Near Panchwati Chowk, Bharuch-392 001
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Jigar Adhyaru, CA
राजस्व की ओर से /Revenue by	Shri Mukesh Jain– Sr-DR
सुनवाई की तारीख/Date of hearing	06.01.2025
उद्घोषणा की तारीख/Date of pronouncement	29.01.2025

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as "NFAC/Ld.CIT(A)] dated 15.05.2024 for assessment year (AY) 2018-19, which in turn arises out of assessment order passed by Assessing Officer under section 143(3) r.w.s. 143(3A) & 143(3B) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') 07.04.2021.

The assessee has raised following grounds of appeal:

*"1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has grossly erred in making addition of Rs.24,80,726/- to the total income of the assessee by making the additions, as against actual return of income of Rs.62,970/-. It is pleaded that this addition of Rs.24,80,726/- being bad in law and devoid of any merit be deleted.*

*2. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has grossly erred in rejecting the additional evidences as filed under Rule 46A of the IT Rule on the ground that the appellant has not*

*been able to show that there was any sufficient cause which prevented the appellant from filing of additional evidences. The Id.CIT(A) has failed to appreciate the fact that the additional evidences could not be filed to the AO at the time of assessment proceedings because of failure on the part of earlier tax consultant. This is now a settled legal position that if the assessee is prevented to file additional evidences/any evidences to the AO because of failure on the part of tax consultant, then the same has to be considered as sufficient cause for not producing such evidences. In view of this, the Hon'ble Bench is requested to delete the addition of Rs.24,80,726/-.*

*3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has grossly erred in rejecting the additional evidences as filed by the appellant under Rule 46A of the IT Rule to him. The Id. CIT(A) while rejecting this additional evidences as filed to him under Rule 46A of the IT Rule, totally ignored that fact that such additional evidence has direct bearing on the merit of the case and therefore the same was required by him for deciding the grounds of appeal of the appellant on merits. In view of this, the Hon'ble Bench is requested to delete the infructuous addition of Rs.24,80,726/- by admitting the additional evidences as filed under Rule 46A of the IT Rule.*

*4. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has grossly erred in not admitting the additional evidence/evidence as filed by the appellant to him under Rule 46A of the IT Rule. Id.CIT(A) has failed to consider that fact that the case of the appellant is clearly falling under the clause-(b) of Rule 46A(1) of IT Rule which says that the appellant was prevented by sufficient cause from producing the evidence which he was called upon produce by the AO. In view of this, the Hon'ble Bench is requested to delete the addition of Rs.24,80,726/- by considering the additional evidences as filed under Rule 46A of the IT Rule on merit.*

*5. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has grossly erred in not admitting the additional evidence i.e., certificate of gram panchayat, Abheta with regard to carrying out agricultural activities on the rented area of land of 11.87 hectares. The Id. CIT(A) has failed to appreciate the fact that this additional evidence*

*was filed by the appellant to him under rule 46A of the IT Rule after obtaining from gram panchayat which is a government body. The Id. CIT(A) has grossly violated the principle of natural justice by rejecting such vital evidence which has direct bearing on merit of the case.*

*6. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has grossly erred in making the addition of Rs.24,80,726/- to the total income of the assessee as such addition has been made without bringing any material on record and merely on presumption basis. This addition of Rs.24,80,72/- being bad in law be deleted.*

*7. The appellant craves leave to add, alter or amend any of the aforesaid ground or grounds if necessary."*

2. Rival submissions of both the parties have been heard and record perused.

The Ld. Authorized Representative (Ld.AR) of the assessee submits that assessee is farmer engaged in agricultural activities. For assessment year, 2018-19, the assessee filed return of income declaring income of Rs. 62,970/- . In the computation of income, assessee has shown net agricultural income at Rs.36,28,010/-. The case of assessee was selected for scrutiny on the issue of agricultural income. During assessment, assessee explained that only source of income of assessee is agricultural income and to substantiate such agricultural income, he furnished bills of sugarcane, bank statement and record of landholding and such evidences were taken on record by Assessing Officer. However, Assessing Office rejected the contention of assessee and allowed agricultural income of Rs.11,47,284/- for rate purpose. The Assessing Officer made addition of Rs.24,80,726/- on account of excess claimed of exempt income, the Assessing Officer has not considered the area of land, assessee has taken land on rent from various persons for agricultural purpose and furnished evidence during assessment. The assessee was having 8.87

hectare of land, copy of evidence of such land holding was filed along with reply dated 08.03.2021. The Assessing Officer considered land holding of 4.04 hectare and on the basis of rate of Ministry of Agriculture and Farmers Welfare, Government of India, computed revenue from agriculture operation to the extent of Rs.11,47,284/- only. Aggrieved by the addition made in the assessment order, the assessee filed appeal before Ld. CIT(A). Before Ld.CIT(A), assessee along with his submission filed requisite evidence. The assessee also filed application under Rule 46A of the Income Tax Rule, 1962 along with certain additional evidence. By way of additional evidences, the assessee filed certificate of Gram Panchayat, certifying that assessee was carrying agricultural activities on land taken on rent of 11.87 hectare. The additional evidence was not admitted by Ld.CIT(A). The Ld. AR of the assessee further submits that to substantiate his agricultural income, assessee furnished bank statement, extract 7/12, bills of sugarcane and certificate of Gram Panchayat, Abheta, Bharuch. The Assessing Officer arbitrarily computed the agricultural income without considering area of land. The bank statement clearly shows the credit of Rs.52,67,378/- in the account of assessee, being agricultural income, which is duly disclosed in the return of income. The agricultural activities are not disputed by lower authorities. The lower authorities only disputed the income from agricultural activities. The assessee furnished complete details. The lower authorities failed to appreciate the fact that assessee was carrying out agricultural activities on "ganot" basis on a land of 11.87 hectare and consent of letters of different persons were filed before Ld.CIT(A). In furnishing the relevant evidence, no prejudice resulted

to the Revenue by considering the material produced by assessee. The assessee's case is squarely falls within four exceptions as mentioned in Rule-46A of the Income Tax Rules, 1962. So far as admission of additional evidence is concerned, Ld. AR of the assessee relied upon following case law:

- ❖ Sri Shankar Khandasari Sugar Mills vs. CIT (1982) 193 ITR 669 (Kar)
- ❖ DCIT vs. New Manas Tea Estate (P.) Ltd. 73 ITD 157 (Gauhati-Trib.)
- ❖ Smt. Prabhavati S Shah (1998) 231 ITER 1 (Bom)
- ❖ ITO vs. Bajoria Foundatino (2001) 71 TTJ 343 (Kolkata Trib.)

3. The Ld. AR of the assessee also filed copy of certificate issued by Abheta, Gram Panchayat, Bharuch and one consent letter of Saiyad Mehboobali Gulamnabi.
4. On the other hand, Ld. Senior Departmental Representative (Ld. Sr.DR) for the Revenue supported the order of lower authorities. The Ld. Sr-DR for the Revenue submits that assessee right from the beginning frequently changing his stand and has not furnished details of ownership of land nor any agreement with the alleged landowners from whom the assessee has taken land on rent. The assessee is relying upon self-serving document to substantiate the claim of agricultural income. The Assessing Officer has fairly allowed the agricultural income on the basis of evidence furnished before Assessing Officer. Before Ld.CIT(A) assessee filed application for additional evidence and claimed that he is carrying agricultural activities by taking land on rent from other agriculturists and at the present was having holding 11.87 hectare of land though before Assessing Officer assessee claimed of land holding of 4.04 hectare. The Ld. CIT(A) considered the plea of assessee for admission of additional evidence under Rule-46A, which was not found within

conditions prescribed under clause-(a) to (d) of sub-Rule 46A. The Id. Sr-DR for the Revenue submits that assessee is not eligible for further relief. In alternative and without prejudice submission, the Ld. Sr-DR submits that in case this Bench is of the view to allow additional evidence furnished by assessee required consideration, the same may be restored back to the file of Ld.CIT(A) to obtain remand report call for from Assessing Officer and to decide the issue afresh in accordance with law.

5. We have heard the submission of both the parties and have gone through the orders of lower authorities carefully. We have also deliberated the case law relied upon by Ld. AR of the assessee. Besides challenging the addition on merit, assessee has raised specific grounds of appeal while Ground No.3 to 5 which relate to non-admitting additional evidence under Rule-46A by Ld.CIT(A). We find that no separate application under Rule-29 of the Income Tax (Appellate Tribunal) Rules, 1963 is filed before us for consideration and admission of such additional evidence, which was not admitted by Ld. CIT(A), yet keeping in view the principle of natural justice to avoid technical issue, we considered the contention raised by Ld. AR of the assessee about area of land and further taken land on rent basis from other/various persons. The assessee has filed certificate of Gram Panchayat, Abheta, Bharuch though such certificate has no authenticity under any Rule or Law. Such certificate is issued by third-party who is neither owner nor responsible in maintaining record of landowners. This certificate contains the reference of several land owners, without their signature or acknowledgement. We are conscious of the fact that no contract or agreement with such persons are filed before us. However,

keeping in view that sole contention of assessee is about holding of land, therefore keeping the relevance of fact that assessee claimed to have taken land on contract. Hence, the issue is restored back to the file of Assessing Office to consider the issue afresh by considering the evidences filed by the assessee and to decide the issue afresh and in accordance with law. Needless to direct Assessing Officer before passing the order afresh, the Assessing Officer shall give reasonable opportunity of being heard to assessee and to file requisite as required and explanation and evidence as and when called for. The assessee is also directed to provide complete details of his agricultural activities, holding of land on rent either owner or evidence taken on rent a valid document of such contract and confirmation with complete details of such persons to the satisfaction of Assessing Officer.

6. Considering the facts that we have restored the matter back to the file of Assessing Officer, therefore adjudication of other various grounds of appeal have become academic. In the result, the grounds of appeal raised by the assessee is allowed for statistical purposes.
7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29/01/2025.

Sd/-  
(BIJAYANANDA PRUSETH)  
लेखा सदस्य/Accountant Member

Sd/-  
(PAWAN SINGH)  
न्यायिक सदस्य/Judicial Member

सूरत / Surat Dated: 29/01/2025

Dkp Outsourcing Sr.P.S\*

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

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By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण, सूरत