

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री ललित कुमार, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य
BEFORE: SHRI. LALIET KUMAR, JM & SHRI. MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. / ITA No. 229 & 230/Chd/ 2023
निर्धारण वर्ष / Assessment Year : 2012-13 & 2013-14

Laiq Ram S/o Shri Tulsi Ram, VPO Addu, Danwali, Tehsil Nankhari, Dist: Shimla, H.P.-172021	बनाम	The ITO Ward-Rampur, Khaneri Rampur Bushehar, Shimla, H.P
स्थायी लेखा सं. / PAN NO: BHTPR2834L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Vishal Mohan, Sr. Advocate with
Shri Vinay Sharma, Advocate (Virtual)
राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, Addl. CIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 24/04/2025
उदघोषणा की तारीख/Date of Pronouncement : 14/05/2025

आदेश/Order

PER LALIET KUMAR, J.M:

Both the above appeals have been filed by the Assessee against the separate orders of Ld. CIT(A)/NFAC, Delhi each dt. 27/02/2023 pertaining to Assessment Years 2012-13 & 2013-14 respectively.

2. Since the issues involved in both the above appeals are common and were heard together so they are being disposed off by this consolidated order for the sake of convenience and brevity.

3. Firstly, we shall take up the appeal in ITA No. 229/Chd/2023 for the Assessment Year 2012-13 as a lead case for discussion, wherein assessee has raised the sold effective ground which read as under:

"That the Ld. Commissioner of Income Tax (Appeal) is not justified in upholding the order of the Ld. Assessing Officer, whereby the Ld. AO has treated the gross agricultural receipt of Rs. 60,25,751/- as income from undisclosed sources under section 69 of the Income Tax Act, 1961."

4. The facts in brief are that the assessee filed a return of income declaring exempt income on account of agricultural activity. In the

subsequent year too, a similar claim was made. The case was selected for scrutiny, and the Assessing Officer required the assessee to substantiate the claim of agricultural income.

4.1 Upon verification, it was found by the AO that the assessee neither owned nor cultivated any agricultural land. Consequently, the Assessing Officer treated the claim as untenable and added the corresponding income to the total income of the assessee.

5. Feeling aggrieved by the order the assessee preferred the appeal before the Ld. CIT(A). During appellate proceedings, the assessee submitted an affidavit asserting that the claim of agricultural income was made due to an inadvertent error. A supporting affidavit from the Chartered Accountant was also filed. However, the Ld. CIT(A) noted that the claim had been made repeatedly, and no evidence whatsoever was furnished to establish ownership, possession, or agricultural activity. He accordingly confirmed the additions.

6. Feeling aggrieved by the order passed by the Ld. CIT(A), the assessee is in appeal before us, on the ground mentioned hereinabove.

7. Before us, the Ld. AR reiterated that the claim was made by mistake and should not have been treated adversely in the assessment. Reliance was placed on CIT v. Reliance Petroproducts Pvt. Ltd. [(2010) 322 ITR 158 (SC)], wherein the Hon'ble Supreme Court held that a mere incorrect claim does not ipso facto amount to furnishing of inaccurate particulars.

8. The Ld. Sr. Advocate for the assessee had submitted that there was inadvertent mistake / error on the part of the assessee as well as the ITP who had filed the return of income of the assessee. In support the assessee. In support of the above the Ld. Sr. Advocate had drawn our attention to the Affidavit filed by both assessee as well as by the ITP which are available at page 25 & 26 of the paper book which are to the following effect:

Deliberately left

(95)

पचास
रुपये
रु.50

FIFTY
RUPEES
Rs.50

INDIA NON JUDICIAL

Dev Kumar Sharma
S/O Late Sh. Ram
Regd. No. 232
D.O. of 01.07.20

हिमाचल प्रदेश HIMACHAL PRADESH
AFFIDAVIT

Dish. No. 1
Regd. No. 232
D.O. of 01.07.20

A-817824

18A-230/c/2023
AY. 18.14

Affidavit of Sh. Laiq Ram S/O Late Sh. Tulsī Ram, aged about 36 years, resident of VPO Addu, P.O. Dhanawali, Sub-Tehsil Nankhari, Tehsil Rampur., Distt. Shimla

I, the abovenamed do hereby solemnly affirm and declare as under:

That I am a permanent resident of VPO Addu, Sub Tehsil Nankhari, Tehsil Rampur, Distt. Shimla H.P.

That I had filed my first ITR for the Asstt. Year 2013-14 on 20.11.2013 through one TRP Sh. Ketan Sharma having identification no. 013037 at Khalani Shimla.

That agriculture income from sale of apples at Rs. 65,75,300/- was wrongly reflected in this return as I was not having any agriculture income during the above period.

That I neither received this amount in cash or in any any manner and nor it was credited in to my any bank account during the year.

That I have not used this ITR for any purpose whatsoever and not received any un- due benefit out of this ITR.

Deponent

I, the above named do hereby verify that the contents of my above affidavit are true and correct to the best of my knowledge and nothing has been concealed there from.

Verified this today on 11th day of April, 2017.

ATTESTED
Dev Kumar
Advocate cum No. (H.P.)
Sub-Divn. Rampur Bst (H.P.)

Deponent
(Advocate)

Certified to be true copy

Aphwanu K/L
(Advocate)

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भारतीय गैर न्यायिक

INDIA NON JUDICIAL

हिमाचल प्रदेश HIMACHAL PRADESH **AFFIDAVIT** **A 817825** **A-4.13.14**

Dev Kumar Sharma
S.O. in Rampur
Distt. Shimla
H.P. 171002

SHARMA

Affidavit of Sh. Ketan Sharma S/O Sh. Kulbhushan..... aged about 39... years, resident of VPO
SALIGRAM BHAWAN, KHALINI, SHIMLA, H.P. 171002

I, the abovenamed do hereby solemnly affirm and declare as under:

That I am a Tax Return Preparer with my identification no. 0132037 and working at Khalini Shimla under the name and style BIZACC ASSOCIATES, SALIGRAM BHAWAN, OPP. SHIMLA PUBLIC SCHOOL, KHALINI SHIMLA.

That I had filed the ITR for the Asstt. Year 2013-14 of Sh. Laiq Ram S/O Sh. Tuisi Ram, VFO Addu, Sub Tehsil Nankhari, Distt. Shimla H.P. on 26.11.2014.

That agriculture income from sale of apples at Rs. 65,75,300/- was wrongly reflected in this return.

That it was either a mistake of copy/paste or mis communication between me and Sh. Laiq Ram, otherwise no details were furnished to me regarding such agriculture income.

Ketan
Deponent

I, the above named do hereby verify that the contents of my above affidavit are true and correct to the best of my knowledge and nothing has been concealed there from.

Verified this today on 11th day of April, 2017.

ATTESTED
Dev Kumar Sharma
S.O. in Rampur
Distt. Shimla
H.P. 171002

Ketan
Certified to be true copy
Akhwami k. L
(Advocate)

9. Based on the above, it was submitted that the error had been committed by the Income Tax Practitioner (ITP), who has duly acknowledged in an affidavit that, due to a mistake in the return of income filled by him, the

assessee had wrongly claimed certain income as agricultural income. Therefore, it was contended that the benefit of such a mistake should not enure to benefit of the revenue and must be decided in favour of the assessee. It was further submitted that the assessee may be permitted to withdraw his claim of having earned agricultural income during the relevant assessment years. The Ld. Sr Advocate had also relied upon the decision of the Hon'ble Supreme Court in the case of CIT, Bombay City I Vs. Messrs. Shoor Ji Vallabhdas And Co. dt. March 27 1962 wherein our attention was drawn to the following :

"In Chamanlal Mangaldas & Co.'s case (supra), the assessee was also the managing agent of a company, and under the agreement was entitled to receive commission at a certain rate. By another agreement, the commission earned by the managing agent for the calendar year 1950 was reduced by Rs. 1 lakh. That agreement took place during the previous year, and the resolution of the board of directors of the managed company was also in the previous year. It was, however, made final on April 8, 1951, at a meeting of the board of directors, but that was beyond the previous year. The High Court of Bombay held that by reason of the resolution during the currency of the previous year, the right of the assessee to commission ceased to be under the original agreement and depended upon and arose only after the decision of the board of directors to reduce the commission. The assessee was, therefore, not held liable on the larger sum which, it was held, was only a hypothetical income, which it might have earned if the old agreement had continued to subsist. The facts of the present case are almost identical, and the principle applied by the Bombay High Court governs this case. The reason is plain. Income-tax is a levy on income. No doubt, the Income-tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a "hypothetical income", which does not materialise. Where income has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account. This is exactly what has happened in this case, as it happened in the Bombay case Commissioner of Income-tax v. Chamanlal Mangaldas & Co. [1956] 29 ITR, which was approved by this court. Here too, the agreements within the previous year replaced the earlier agreements, and altered the rate in such a way as to make the income different from what had been entered in the books of account.' A mere book-keeping entry cannot be income, unless income has actually resulted, and in the present case, by the change of the terms the income which accrued and was received consisted of the lesser amounts and not the larger. This was not a gift by the assessee firm to the managed companies. The reduction was a part of the agreement entered into by the assessee firm to secure a long-term managing agency arrangement for the two companies which it had floated."

10. The Sum and substance of the submission of the Sr. Advocate was that the Revenue should not gain out of the mistake committed by the assessee, and the tax should be levied on the real income.

11. Per contra, the Ld. Senior Departmental Representative (Sr. DR) drew our attention to the assessment order dated 01/12/2016, specifically to page 3 thereof, which records the following findings:

(93)

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AY: 2013-14 (77)

Sh. Laiq Ram BHIPR2834L AY 2014-15

whereas he was required to file the same by 31.03.2015, hence it attracts the penal provisions for late filing of the Return.

Penalty proceedings u/s 271F of the Income Tax Act, 1961 are being initiated separately.

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

(Rs.)	
Income returned	2,58,600 + Agri. 3,29,347/-
Add : As per para 3 above	<u>8,961</u>
Income assessed	2,67,561+ Agri. 3,29,347/-
R/off	: Rs.2,67,560/- + Agr.3,29,347/-

Issued penalty notice u/s 271(1)(c) of the Income Tax Act, 1961.
 Issued penalty notice u/s 271B of the Income Tax Act, 1961.
 Issued penalty notice u/s 271F of the Income Tax Act, 1961.

Assessed. Issue Demand Notice and Challan alongwith a copy of this order, and the penalty notices mentioned above for service upon the assessee.

Sd/-
 (Ashwani Bansal)
 Income Tax Officer,
 Rampur Bushahr.

Copy to the assessee.

ITO

12. On the basis of the above, it was submitted that the assessee, for A.Y. 2012-13 and the subsequent A.Y. 2013-14, consistently claimed to have earned agricultural income. However, when the assessee's case was selected for scrutiny assessment, the assessee reiterated during the assessment proceedings that the income declared was indeed agricultural.

13. Since the assessee failed to produce any evidence or proof of agricultural activities or ownership of agricultural land, the Ld. AO treated the said income as income from undisclosed sources.

14. The Ld. DR submitted that both at the time of filing the return of income and during the assessment proceedings, the assessee consistently maintained the stand that the income was agricultural. Ironically, when the AO decided the issue against the assessee by treating the income as non-agricultural, the assessee, feeling aggrieved by the order, preferred the present appeal before the Ld. CIT(A). In the appellate proceedings, the assessee filed a self-serving affidavit, seeking to justify that the claim of agricultural income was based on independent earning.

14.1 The Ld. DR submitted that the Hon'ble Supreme Court, held that an explanation for a false claim made by the assessee in the return of income must be substantiated by facts, and the onus is on the assessee to prove the same. It was further held that merely filing an incorrect audit report, without any corroborative evidence, is not sufficient to establish a bona fide error.

14.2 The Ld. DR, further submitted that the assessment proceedings are distinct from penalty proceedings, and where the assessee makes a claim completely unsupported by any fact, the AO is fully justified in rejecting the same and making the addition. He relied on *Durga Kamal Rice Mills v. CIT* [(2004) 265 ITR 25 (Cal)] where the Hon'ble Calcutta High Court held that where a claim is found to be patently false on examination of facts, the AO can disallow such claim even in assessment.

15. In rebuttal, the Ld. Senior Advocate submitted that the errors were inadvertent, and the only available recourse for the assessee was to rectify the same at the appellate stage. Therefore, it was urged that a lenient view may be taken in the interest of justice.

16. We have heard the rival contentions and perused the material on record. In the present case, the chronology of key events leading to the assessment is as under:

- Date of death of the father of the assessee: 04/04/2013
- Date of filing of the return of income for A.Y. 2012-13: 22/11/2013
- Date of filing of the return of income for A.Y. 2013-14: 26/11/2013
- Date of notice under section 143(2): 12/09/2014

- Date of notice under section 142(1): 19/12/2014
- Date of passing of the order 24/03/2015
- Date of filing of the appeal 05/05/2015
- Date of filing of the Affidavit of assessee 11/04/2017
- Date of filing of the Affidavit by Shri Ketan Sharma (ITP) 11/04/2017

17. From a conjoint reading of the dates mentioned hereinabove, it becomes abundantly clear that the assessee had claimed exempt agricultural income while filing the return of income on 22.11.2013. Thereafter, after a nearly four-year lapse, the assessee filed an affidavit during the appellate proceedings on 11.04.2017. Notably, the affidavits filed by both the individual and ITP, failed to provide any explanation for the inordinate delay in filing such affidavits. While the law indeed permits an assessee to rectify mistakes made in the return of income, it does not countenance a situation where a person plays hide and seek with the legal process and seeks to benefit from a calculated risk especially when the false claim made by the assessee has been detected and scrutinized by the Revenue authorities. Given the limited number of scrutiny assessments conducted, if such self-serving affidavits are accepted without credible justification, it would undermine the integrity of the system, disincentivise the Revenue authorities from diligently detecting wrong claims, and incentivise unscrupulous assessee to make false declarations. Such conduct, aimed at subverting the purity of the legal and tax administration system, cannot be approved.

17.1 Further, the issue before us is whether the claim of agricultural income, unsupported by evidence of landholding or agricultural activity, was rightly disallowed in assessment proceedings. It is settled law that an assessee is duty-bound to furnish correct particulars of income in the return and substantiate all exemptions or deductions claimed therein. While the Hon'ble Supreme Court in *Reliance Petroproducts* (supra) clarified that a wrong claim per se does not attract penalty, it does not mean that the AO is bound to accept such a claim in assessment if it is not supported by facts.

17.2 In the present case, the assessee has not produced any land records, khasra girdawari, or any agricultural produce sale evidence. The repeated

claim of agricultural income, even in the subsequent year, belies the plea of inadvertent error. The affidavits filed are self-serving and not corroborated by independent evidence. In our view, the ratio in Durga Kamal Rice Mills (supra) aptly applies, wherein it was held:

“The AO is entitled to draw an inference from the facts before him and reject a claim which is unsupported and factually untenable, even if there is no penalty consequence.”

18. Given the above facts and judicial precedents, we find no infirmity in the order of the CIT(A) confirming the addition.

19. In the result, the present appeal of the Assessee is dismissed.

20. Both the parties fairly submitted that the facts and circumstances of other appeal i.e ITA No. 230/ Chd/2023 are exactly identical to the Appeal in ITA No. 229/Chd/2023 and similar contentions raised therein may be considered, therefore, our findings and directions given in ITA No. 229/Chd/2023 shall apply mutatis mutandis to other appeal also.

21. In the result, both the above appeals filed by the Assessee are dismissed.

Order pronounced in the open Court on 14/05/2025

Sd/-

मनोज कुमार अग्रवाल
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

ललित कुमार
(LALIET KUMAR)
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. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar