

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, BANGALORE**

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

ITA No. 75 & 89/Bang/2025
Assessment Years: 2012-13 & 2015-16

Premakumari, 101 101, Nesara Nilaya, Anekal Main Road, Bannerghatta, Bangalore – 560 083.  <b>PAN – AZNPP 0270 B</b>	Vs.	The Income Tax Officer, Ward - 2(2)(1), Bangalore.  The ACIT, Circle-4(3)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Sheetal, Advocate
Revenue by	:	Shri Subramanian S, JCIT (DR)

Date of hearing	:	25.06.2025
Date of Pronouncement	:	05.08.2025

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

These are the appeals filed by the assessee against the order passed by the NFAC, Delhi vide order dated 09/02/2024 and 13/02/2024 for the assessment years 2012-13 and 2015-16.

2. First, we take up ITA No. 89/Bang/2025, an appeal by the assessee for A.Y. 2012-13

3. The issues raised by the assessee through ground Nos. 1 & 2 of appeal are general in nature and do not require any separate adjudication. Accordingly, the same are dismissed as infructuous.

4. The next issue raised by the assessee through ground No. 3 of its appeal is that the learned CIT(A) erred in treating the surplus arising from sale of agricultural land as business income instead of exempted income.

5. The assessee is an individual who was the President of the Bannerghatta Village Panchayat Committee and was also engaged in development and sale of land. The assessee was also supplying food items to Bannerghatta Biological Park. During the year, the assessee purchased land and developed it into 50 plots, out of which 19 were sold. The assessee declared capital gains of ₹15,17,442.00 only. However, the AO treated the sale proceeds as business income based on the scale and nature of activity. The AO also recomputed the sale consideration based on the market value of ₹400 per sq. ft. and made additions. Additionally, he disallowed 50% of development expenses for lack of documentation and finally added the sum of ₹29,28,660 as business income.

6. Aggrieved assessee preferred an appeal to the learned CIT-A who upheld the finding of the AO by observing as under:

*"6.1.1 I have gone through all the above contentions — the Assessment Order, the Remand Report and the rival submissions. The appellant was engaged in developing of land into plots and selling to various entities. By sheer logic, this falls within the ambit of business venture. The appellant in her sole submission found on record has stated at one point that 'the said agricultural land might not fall under the*

*definition of Capital Asset as it is situated beyond 8 kms from the municipal limit' and at another point in the same submission stated that 'the land is situated within 8 kms from Municipal limit.' In any case, she failed to explain how the land and the plotting activity followed by its sale to various parties did not form business activity. During appellate proceedings the appellant failed to corroborate her contention with cogent documents/evidence. The cryptic findings of the AO in the Remand Report with regard to the land survey numbers falling under the ambit of Section 2(14) and the registered sale deed showing the sale price per se does not provide any basis or reasoning for accepting the claim of the appellant regarding the income not being in the nature of business income. The Remand Report has to be a speaking one and should clearly bring out not only the documents/evidence relied upon, but also the details contained therein and the reasons for arriving at a conclusion. In the Assessment Order the AO has given detailed findings based on diligent examination of all aspects of the issues and the documents filed. The appellant has been unable to controvert these findings during appellate proceedings. The Remand Report also has not addressed all these issues raised. As apparent from record, the entire arrangement amounted to business activity carried out with the intention to earn profit, tantamount to adventure in the nature of trade as defined in Section 2(13) of the Act. Section 2(13) of the Act states that — "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.'*

*6.1.2 In view of the factual matrix discussed above and the findings of the AO in the Assessment Order, the addition made is not interfered with and the grounds of appeal raised with regard to this issue are dismissed."*

7. Being aggrieved by the order of the Id. CIT-A, the assessee is in appeal before us.

8. The learned AR before us filed a paper book running from pages 1 to 23 and contended that the AO in the remand report vide letter dated 13 March 2019 has clearly admitted that the plots in dispute fall within the specified limit as provided under section 2(14) of the Act being agricultural land. Likewise, the AO in the remand report also admitted the sale price declared by the assessee and the development cost incurred by the assessee in the return of income. Accordingly, the

Ld. AR contended that no addition is warranted in view of the remand report filed by the AO.

9. On the other hand, the learned DR vehemently supported the order of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials available on record. We observe that the AO initially treated the transaction as a business activity based on the scale of operations and development undertaken by the assessee. However, during the remand proceedings, the same AO accepted that the land falls within the agricultural limits specified under section 2(14) of the Act and also accepted the sale value and development costs as declared by the assessee in the return of income. This contradiction is crucial. The Id. CIT(A), despite noticing the remand report, did not conduct any further verification and upheld the original addition. In our considered view, the Id. CIT(A) failed to examine the factual inconsistency between the assessment order and the remand report.

10.1 The remand report is a vital piece of evidence as it reflects the AO's revised view after further inquiry. Once the AO accepted the land as agricultural in nature and agreed with the income classification under "Capital Gains," the Id. CIT(A) ought to have given proper weight to such findings. In the absence of any material to contradict the findings of the remand report, the addition made by the AO and sustained by the CIT(A) cannot be justified. Therefore, we hold that the treatment of the surplus as business income is not tenable in the facts of the case. Accordingly, we set aside the order of the Id. CIT(A) and direct the AO to

delete the addition made by him. Hence, this ground of appeal of the assessee is allowed.

11. The next issue raised by the assessee is that the learned CIT-A erred in concluding that the income from sale of agricultural produce to M/s Bannerghatta Biological Park as non-agricultural.

12. The assessee received ₹33 lakhs from M/s Bannerghatta Biological Park for supply of agricultural produce. The AO treated it as business income due to lack of supporting evidence. However, in the remand report, the AO accepted that the income arose from agricultural operations and recommended treating it as agricultural income. However, the Id. CIT(A) still sustained the AO's original addition.

13. Being aggrieved by the order of learned CIT-A, the assessee is in appeal before us.

14. The learned AR before us submitted that the AO in the remand report has clearly admitted that the assessee has carried out agricultural operations and supplied the agricultural produce to M/s Bannerghatta Biological Park. Accordingly, the AO recommended in the remand report to treat the income of ₹ 33 lakhs from the agricultural operations.

15. On the other hand, the learned DR vehemently supported the order of the authorities below.

16. We have heard the rival contentions of both the parties and perused the materials available on record. On perusal of the remand

report furnished by the AO, we note that the AO's findings in the remand report clearly admit that the income earned was from supply of agricultural produce. This is a crucial admission and aligns with the nature of the assessee's activity as reported. The Id. CIT(A) has not provided any basis for discarding the AO's revised stand. It is settled law that once the AO, after verification, accepts a certain factual position in the remand report, such finding carries considerable weight unless contradicted by new material. The Id. CIT(A) neither made any fresh verification nor brought any contrary material on record.

16.1 Further, in a later assessment year (A.Y. 2015-16) in ITA 75/Bang/2025, this very Bench of the Tribunal has accepted similar income from the same party as agricultural income. Therefore, following the rule of consistency, we find merit in the claim of the assessee. Accordingly, we direct the AO to delete the addition. Hence, this ground of appeal is also allowed.

17. The next issue raised by the assessee is that the learned CIT-A erred in treating the rental income of ₹ 2 lakhs under the head income from other sources and further disallowing the statutory deduction for the interest of Rs. 29,19,446 under section 24(b) of the Act.

18. The AO during the assessment proceedings found that the assessee has not furnished the supporting documents for the income offered for ₹ 2 lakhs under the head house property and therefore the AO treated the same as income from other sources and consequently denied the benefit of interest expenses 29,19,446.00 claimed under section 24(b) of the Act.

19. On appeal, the learned CIT-A again confirmed the order of the AO in the absence of supporting documents from the side of the assessee.

19.1 Being aggrieved by the order of learned CIT-A, the assessee is in appeal before us.

20. The learned AR before us submitted that the AO in the remand report has clearly opined that the income of ₹ 2 lakhs represents the income under the head house property and furthermore such house property was constructed out of the borrowed funds. Accordingly, the assessee is eligible for the interest expenses amounting to Rs. 29,19,446 as deduction under section 24(b) of the Act.

21. On the other hand, the learned DR vehemently supported the order of the authorities below.

22. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the AO in the remand report has clearly observed that the income is chargeable under the head "House Property" and that the property was financed from borrowed funds. Accordingly, the interest deduction under section 24(b) of the Act is allowable. The Id. CIT(A), however, failed to appreciate this factual position and confirmed the disallowance without any valid reasoning or verification. Hence, we hold that once the AO has admitted the fact in the remand proceedings and no contrary evidence is brought by the CIT(A), the disallowance of the interest deduction is unjustified. Accordingly, we set aside the Id. CIT(A)'s finding and direct the AO to allow the interest deduction and delete the addition by treating the

income under the head house property. Hence, this ground of appeal of the assessee is allowed.

23. In the result, the appeal of the assessee is hereby partly allowed.

**ITA 75/Bang/2025, an appeal by the assessee for the AY 2015-16**

24. The issue raised by the assessee through ground Nos. 1 to 5 are that the learned CIT(A) erred in confirming the view taken by the AO for treating the agricultural income as business income.

25. The facts in brief are that the assessee is an individual. For the year under consideration, she filed return of income declaring total income of Rs. 48,80,640/- only which was claimed to be derived from house property, capital gain and from other sources. She also claimed gross agricultural income of Rs. 1,14,61,407/- on account of supply of cattle feed and grass to the M/s Bannerghatta Biological Park. As such, the assessee has entered into an agreement with M/s Bannerghatta Biological Park for supply of food grains, pulses, and feeds etc. at the accepted tender rate. During the year under consideration, the said party M/s Bannerghatta Biological Park also deducted tax at source under section 194C of the Act on amount of Rs. 1,27,77,813/- by treating the assessee as contractor.

26. The AO, to verify the claim of agricultural income, issued notice under section 133(6) of the Act to the director of Bannerghatta Biological Park who replied that the assessee has supplied balanced feed

containing 18% protein and total digestible nutrients 70% in 50KG bag but no grass was supplied in the year under dispute. The director of Bannerghatta Biological Park also furnished copy of some bills and tender agreement.

27. In view of the above, the AO was of the opinion that the assessee in the year under consideration has supplied items to M/s Bannerghatta Biological Park like foodgrains, jaggery etc which were purchased from the outsides. Accordingly, the AO proposed to treat the contract receipts for ₹ 63,37,910 from M/s Bannerghatta Biological Park as business income instead of agricultural income by issuing a show cause notice to the assessee. The AO also summoned the assessee and recorded the statement under section 131 of the Act. The AO finally treated the contract receipt of ₹ 63,37,910 as business income of the assessee by observing as under:

*"11. The RTC/ Pahani of the land properties owned by the assessee either in her name or together with her husband were examined to find if there is any agricultural crops/ activities in the said and as claimed by her. From the analysis of the land records it was found that for the FY 2014-15 there are no crops in the said land properties. 't was also found that the assessee is also into real estate business and she does developmental activities on the land. Thus the claim of the assessee that the land properties owned by her are used for agricultural activities is fanciful.*

*12. Based on all these findings a show cause notice was issued to the assessee giving an opportunity as to provide any documentary evidences towards her claim of agricultural income. The reply filed by the assessee was carefully considered and the submissions of the assessee were already countered in the earlier paragraphs. However the expenses related to the business income as claimed by the assessee is considered for computation of total income."*

28. Aggrieved assessee preferred an appeal to the Id. CIT-A who dismissed the appeal of the assessee by observing as under:

*"6.1 I have gone through the Assessment Order, Statement of Facts, Grounds of Appeal and rival submission(s) filed by the appellant in response to the notices issued u/s 250 of the Act and other material facts of the case as on record. (The AO made diligent enquiry before making the addition, as seen from the Assessment Order. The appellant had claimed agricultural income for the year; on the basis that she had supplied grass to Banerghatta Biological Park on which TDS u/s 194C of the Act was done by the purchaser, treating her as Tender Contractor. Specific information and documents were called for and obtained u/s 133(6) of the Act from Executive Director of the Banerghatta Biological Park wherein it was stated that during the period April, 2014 to March, 2015 the appellant had supplied cattle feed being a mixture of protein and digestible nutrients (and no grass) to the 2 - park. Thus, clearly, no grass was supplied during the period under consideration. Copies of some cash bills provided by the Park authorities for the said items showed dates of April, 2014. A statement on oath of the appellant was also recorded by the AO u/s 131 of the Act wherein she clearly expressed her lack of knowledge regarding which grass variety she was growing, how many acres of land she cultivated, what was the area of her landholding and so on. She could not controvert the information provided by the Banerghatta Park authorities regarding a mix of food grains for cattle feed and no grass supplied by her to them. Later on, she attempted to disown the statement given by her on the ground that being an agriculturist from rural background she may have mumbled something on oath, clearly a poor attempt at retracting the statement. The AO also examined the RTC/Pahani of the land properties owned by the appellant in her name or jointly with her husband and found that as per land records for the FY 2014-15 under consideration there were no crops in the said land properties. The AO passed a reasonable Order giving the appellant the benefit of expenses claimed by her and assessing Rs.63,37,910/- as contract receipts added to total income. During appellate proceedings, the appellant brought nothing on record to controvert the findings of the AO. In submission/s filed she merely repeated the contents of the statement of facts and grounds of appeal. Regarding her contention that she was not given opportunity to counter the so-called third party information u/s 131, the same is not found to be correct as she was informed of the details and her statement was recorded u/s 131 wherein she failed to counter the information provided by the park authorities. The appellant could not prove her claim of exempt agricultural income.*

*6.2 In view of the factual matrix as discussed above, I see no reason to interfere with the Order of the AO. No merit is therefore found in the grounds of appeal raised by the appellant and the same are dismissed."*

29. Being aggrieved by the order of Id. CIT-A, the assessee is in appeal before us.

30. The learned AR before us filed a paper book running from pages 1 to 23 and submitted that the assessee has been declaring income under the head agricultural income on the supply of agricultural produce to M/s Bannerghatta Biological Park which was also accepted by the revenue in the assessment year 2013-14 by virtue of the order of the Id. CIT-A. Accordingly the learned AR submitted that the addition made by the lower authorities treating the agriculture income is liable to be deleted.

31. On the other hand, the learned DR vehemently supported the order of the authorities below.

32. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the issue before us relates whether the income received by the assessee from M/s Bannerghatta Biological Park represents the income from the operation of the agricultural activity or business activity of the assessee. It is a fact on record that the assessee has been supplying products agricultural products to M/s Bannerghatta Biological Park since the last many years which was accepted by the revenue in the earlier years. This fact can be verified from the finding of the learned CIT-A for the assessment year 2013-14 which is extracted as under:

*"7. The assessment order was completed u/s 144 of the Act, to the best of the AO's judgments. The appellant has been declaring agriculture income consistently from lands owned by him. The details of the lands, its*

*extent, the crops yielded and the income have been furnished during the course of hearing. The AO as added 30% of the total agricultural income as expenditures incurred are presumptions, without bring any material evidence on record. During the assessment proceedings, the appellant furnished the last three years agricultural income declared which is as under and was accepted by the assessing authority.*

*AY: 2012-13 Rs. 24,56,267/-*

*AY: 2011-12 Rs. 12,65,000/-*

*AY: 2010-11 Rs. 20,17,876/-*

*It is seen from the agreement entered with the TENDER CONTRACTOR , the lists of food items yielded, the quantity, the rate etc., in the schedule of the agreement. The Assessing Officer has made an adhoc addition by disallowing 30% of the agricultural income declared is found to be not justified. Therefore a letter dated:- 05.11.2018 calling for the basis for making the disallowance of 30% of agricultural income was sent to file his report on or before 26.11.2018 many a times this office personally approached the assessing officer to expedite the report. Till date the assessing officer didn't furnish any report to this office. In view of the same i proceed in examining the agricultural receipt and the related expenditure incurred. The same was called for the appellant furnished agreement of the contract, the receipt given by the contractor, the bank statement wherein those receipts are reflected. It is seen from the asst. Years that the appellant had been constantly declaring the agricultural income as cited above. In view of the same I am of the opinion that the adhoc disallowance of 30% of agricultural income made by the AO is without any basis and therefore not justified. The addition made is hereby deleted."*

32.1 From the above, it appears that the revenue has taken a contradictory stand in the different assessment years. In other words, the income declared by the assessee on the supply of agricultural produce to M/s Bannerghatta Biological Park was accepted by the revenue from the source of agricultural activity whereas in the year under consideration, the revenue has treated the same as income under the head business and profession. The department has not brought any new evidence to demonstrate that the income in the present year is of a different character. Merely because the Park Director stated that no grass was supplied or the deduction of TDS under section 194C of the Act does not imply that the entire income becomes business income. The

supply of feed, whether cultivated or processed, may still fall within the ambit of agricultural income depending on its origin and nature.

32.2 Further, in the remand proceedings for other years, the AO has accepted similar income as agricultural. Therefore, in the absence of contrary material, and applying the consistency rule, we hold that the income from the M/s Bannerghatta Biological Park should be assessed as agricultural income. Accordingly, we set aside the Id. CIT(A)'s order and direct the AO to delete the addition made by him. Hence, this ground of appeal of the assessee is allowed.

33. In the result, the appeal of the assessee is hereby allowed.

34. In the combined result, ITA No. 89/Bang/2025 is partly allowed whereas ITA No. 75/Bang/2025 is hereby allowed.

Order pronounced in court on 5<sup>th</sup> day of August, 2025

Sd/-

**(KESHAV DUBEY)**  
Judicial Member

Sd/-

**(WASEEM AHMED)**  
Accountant Member

Bangalore  
Dated, 5<sup>th</sup> August, 2025

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore