

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER
AND SHRI RAM LAL NEGI, JUDICIAL MEMBER**

ITA NO. 5075/MUM/2013 : (A.Y : 2002-03)

Aubsingh Dharamsingh Chouhan Vs. ACIT-17(3), Mumbai
C/o. Tarsingh P. Chouhan, (Respondent)
Shop no. 1, Building No. 66,
13th Lane, Kamathipura,
Mumbai 400 008 (Appellant)
PAN : ABCPP4005P

Assessee by : Shri N.M. Porwal

Revenue by : Shri R.P. Meena

Date of Hearing : 20/09/2016

Date of Pronouncement : 11/01/2017

ORDER

PER G.S. PANNU, AM :

The captioned appeal by the assessee is directed against the order of CIT(A)-19, Mumbai dated 03.04.2013, pertaining to the Assessment Year 2002-03, which in turn has arisen from the order passed by the Assessing Officer, Mumbai dated 29.03.2006 under section 143(3) r.w.s 153C of the Income Tax Act, 1961 (in short 'the Act').

2. Although in the Memo of appeal, assessee has raised multiple Grounds of appeal but essentially the grievance is against the action of

income-tax authorities in treating Rs.10,50,000/- as income from undisclosed sources as against the claim of assessee that same represents agricultural income. Briefly put, the relevant facts are that consequent to a search action undertaken by the Department of Customs on 6.12.2001 at Shop no. 1, 66, Kamathipura 13th Lane, Mumbai, the Assessing Officer issued a notice u/s 132A of the Act dated 27.10.2003 whereby cash to the extent of Rs.10,50,000/- was requisitioned by the Income-tax department. Notably, in the course of search by the Customs Department, cash of Rs.14,00,000/- was found and seized out of which assessee had claimed ownership to the extent of Rs.10,50,000/-. Consequent to the requisition by Income-tax Department u/s 132A of the Act, the impugned assessment proceedings were initiated by issuance of notice u/s 153C of the Act and in the ensuing assessment finalised u/s 143(3) r.w.s. 153C of the Act dated 29.3.2006, the said amount of cash of Rs.10,50,000/- has been assessed as income from undisclosed sources. The said stand of the Assessing Officer has since been affirmed by CIT(A), against which assessee is in appeal before us.

3. Before us, one of the pertinent points raised by assessee is that the explanation of assessee that cash found was earned by him from agricultural activity has been rejected without any cogent reasons. The learned representative for the assessee explained that assessee has been consistently explaining that the same represented his savings from agricultural activity being carried out since long. Our attention has been drawn to the statement of assessee recorded by DDIT (Inv.), Mumbai on 28th & 29th October, 2003, copy of which has been placed in

the Paper Book at pages 36 to 42. It has been pointed out that in the said statement assessee had explained that his only source of income was from agriculture and that such plea has not been found to be false, and therefore treating the savings from agricultural income as NIL is not justified. It was, therefore, contended that the lower authorities had no material to reject the explanation furnished by the assessee.

4. On the other hand, the Id. DR has relied upon the stand of the lower authorities and in this regard, it was also pointed that assessee had made contradictory statements before the Customs authorities and the Income-tax Department with regard to the level of earnings from agricultural activity and, therefore, the Assessing Officer was quite justified in treating the cash found of Rs.10,50,000/- as unexplained and as an income earned by assessee from undisclosed sources.

5. We have carefully considered the rival submissions. Factually speaking, there is no dispute to the fact that the impugned assessment proceedings have been initiated in the hands of assessee primarily on account of search action conducted by Department of Customs. In page 2 of the assessment order, Assessing Officer notes that during the search operations carried out by Customs at the stated premises, the occupant thereof, i.e., one Shri Aub Singh Pratap Singh had made a confession that the cash amount of Rs.14,50,000/- found was sale proceeds of contraband gold sold by the captioned assessee who used to keep the sale proceeds in the said premises. It is also noted by the Assessing Officer in the assessment order that in his statement recorded on 15.4.2002 (i.e. nearly 4 months after the search action by

the Customs), assessee denied the same but claimed ownership of Rs.10,50,000/- out of total cash of Rs.14,00,000/- found and seized. Be that as it may, at the time of hearing we had specifically put to the parties as to whether any proceedings are pending in the Customs Department. The learned representative for the assessee made a statement at bar that no proceedings were pending before the Customs Department and said fact has also not been controverted by the Id. DR appearing for the Revenue.

6. Before us, the only dispute relates to the veracity of explanation furnished by assessee that cash of Rs.10,50,000/- represented assessee's accumulated savings from agricultural activities. The first plea of Assessing Officer for not accepting the explanation of assessee was that the level of earning contended before the Customs authorities was much lower than the amount explained before the Income-tax authorities. Secondly, the Assessing Officer took note of a communication obtained from District Collector, Jalore, Rajasthan dated 8.4.2004 in order to estimate the agricultural income earned by assessee over the years. Considering both the aspects, the Assessing Officer rejected the plea of assessee that the sum of Rs.10,50,000/- found was assessee's savings from agricultural activity.

7. In our considered opinion, the entire material and evidence on record does not distract from the fact that the only known source of income of assessee is from agriculture. In fact, the said fact has been consistently asserted by the assessee right from the time he was examined by the Customs Department as well as by DDIT (Inv.) on 28th

& 29th October, 2003. In an answer to question no. 2 put by DDIT (Inv.), assessee pointed out that his only source of income was agriculture and that 5/6 years ago, he did carry out sale and purchase of old electronic goods. Similarly, in an answer to question no. 21 regarding the cash found by the Customs Department on 6.12.2001, assessee pointed out that the sum of Rs.10,50,000/- was brought by him from his village to Mumbai for the purpose of purchasing a house. Similarly, in an answer to question no. 34 whereby the DDIT (Inv.) questioned that even if the source was to be accepted as agriculture, same was estimatable at Rs.5 lacs only and required the assessee to explain the balance of Rs.5.5 lacs, the assessee deposed that the entire income was from agriculture. A perusal of his statement reveals that none of the assertions made by the assessee have been put to question by the DDIT (Inv.). Subsequently, during the assessment proceedings we noticed that the Assessing Officer has referred to a communication dated 8.4.2004 of District Collector, Jalore, Rajasthan regarding the agricultural income of assessee. On the said basis, the Assessing Officer held that whatever agricultural income was earned by assessee, same would have been spent and the said cash of Rs.10,50,000/- could not be taken as income from agriculture. On the contrary, with respect to said communication from the District Collector, Jalore, Rajasthan, the learned representative referred to an Affidavit of assessee dated 8.2.2012 furnished to CIT(A), which explains the wrong inference drawn by Assessing Officer. A copy of said Affidavit has been placed in the Paper Book at pages 59 to 64. In para 7 of the said Affidavit, assessee has tabulated the year-wise difference between the agricultural income shown by assessee and that considered by the Assessing Officer for Assessment Years 1998-99 to

2004-05. It is pointed out that the difference is only with respect to agricultural expenses incurred by assessee. The learned representative explained that in the tabulation in para 7 of the Affidavit, assessee has also enumerated the gross estimated agricultural income reported by District Collector, Jalore, Rajasthan in his report dated 8.4.2004. It is pointed that even going by the report of the District Collector, Jalore, Rajasthan, existence of agricultural income of Rs. 9 to 10 lacs cannot be disputed. He has also referred to para 9 of the Affidavit wherein, based on the report of the District Collector, Jalore, Rajasthan, assessee's agricultural income for 10 Assessment Years of 1994-95 to 2004-05 has been enumerated, which clearly justifies the cash found of Rs.10,50,000/-. We find that the averments made by the assessee in his Affidavit dated 8.2.2012 were very much before the CIT(A) who had called for a Remand report from the Assessing Officer. We do not find any controversion of the averments made by the assessee and, in any case, though the assessee has been thoroughly investigated and examined by the Customs Department as well as by the Income-tax Department, no source of income other than agriculture has been unearthed. In fact, the reference to certain trading in old electronic goods stated by the assessee *suo moto* in his statement to Income-tax authorities has also not been accepted as such and, in any case, neither the Assessing Officer nor the assessee has alluded to any income therefrom. Be that as it may, we are only trying to emphasise that in the absence of any material to show that assessee has any source of income other than agricultural activity, the explanation of assessee ought to have been accepted that the cash found of Rs.10,50,000/- was savings from his past agricultural activity. Under these circumstances,

in our considered opinion, the lower authorities erred in treating the sum of Rs.10,50,000/- as income from undisclosed source. As a consequence, we set-aside the order of CIT(A) and direct the Assessing Officer to delete the impugned addition.

8. Since we have accepted the plea of assessee on merits, some of the Grounds raised by assessee regarding the validity of proceedings initiated u/s 153 of the Act are not been adjudicated as the same is rendered academic.

9. In the result, appeal of the assessee is allowed, as above.

Order pronounced in the open court on 11th January, 2017.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 11th January, 2017

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai