

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI [**CAMP: COIMBATORE**]

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी.जॉर्ज, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.307, 308, 309, 310, 311, 312 & 313/Mds/2016

निर्धारण वर्ष / Assessment Years : 2006-07 to 2012-13

The Deputy Commissioner of
Income Tax,
Central Circle – 2,
Coimbatore – 641 018.

v. M/s Shanthi Feeds (P) Ltd.,
6/15, Main Road,
Pappampatti Post, Ondipudur,
Coimbatore – 641 016.

(अपीलार्थी/Appellant)

PAN : AAJCS 8030 J

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Shiva Srinivas, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing : 18.01.2017

घोषणा की तारीख/Date of Pronouncement : 13.02.2017

आदेश /O R D E R

PER BENCH:

These appeals filed by the Revenue are directed against a consolidated order dated 03.09.2015 of the Commissioner of Income Tax (Appeals) – 18, Chennai, for the impugned assessment years.

2. Grounds taken by the Revenue are similar for all the years, except for one other ground taken for assessment year 2010-11, which will be dealt with separately. The common grounds raised by the Department are concerned with an estimated addition made by the Assessing Officer for sale of manure in the nature of poultry droppings which was deleted by the Commissioner of Income Tax (Appeals), and on the direction of Ld. CIT(Appeals) to exclude dropping of birds reared by contract farmers from stock available for sale.

3. Facts apropos are that assessee, engaged in the business of poultry and feed was subjected to search on 05.08.2011. Simultaneously, proceedings under Section 133A of the Income-tax Act, 1961 (in short 'the Act') were also initiated in the premises of the group companies. In response to notice under Section 153A of the Act, assessee filed return for the impugned assessment years declaring the following income:-

Sl. No.	Assessment Year	Date of filing of return u/s 139(1)	Income originally returned u/s 139(1) (₹)	Date of filing of return in response to 153A Notice	Returned Income u/s. 153A (₹)	Additional Income Offered (₹)
1.	2006-07	19.10.06	4,06,39,540 (Firm)	21.08.2013	4,18,70,540	12,31,000
2.	2007-08	23.10.07 23.10.07	8,39,051 (firm) 4,90,96,061 (Co)	21.08.2013	6,52,40,210	1,34,87,839
3.	2008-09	29.07.08	1,00,15,920	21.08.2013	2,61,70,510	96,52,840
4.	2009-10	08.09.09	15,79,84,730	21.08.2013	16,49,96,890	70,12,159
5.	2010-11	20.08.10	41,65,54,860	21.08.2013	42,93,52,800	1,27,97,940

6.	2011-12	29.09.11	69,12,47,360	21.08.2013	70,10,76,190	98,28,831
7.	2012-13	11.09.12	40,20,09,300	21.08.2013	40,84,86,750	64,77,448

4. In a statement recorded from Managing Director of the assessee under Section 132(4) of the Act, it seems he confirmed sale of manure in the nature of poultry droppings which were not accounted. He also stated that invoices were not raised by the assessee for sale of poultry droppings. The A.O., during the course of assessment proceedings, sought opinion from Professor & Head of Poultry Sciences, Veterinary College & Research Institute, Namakkal. The said Professor opined that the average poultry dropping per bird per annum would be 25 Kgs. Assessing Officer put the assessee to notice as to why the earnings from sale of poultry droppings for the impugned assessment years should not be estimated as under after reducing poultry droppings of birds reared by contract farmers:

F.Y.	Avg. Poultry Dropping in Tonnes (Total Dropping less contract farmers Dropping)	Estimated Sales (₹)
2005-06	4399.85	26,39,910
2006-07	5032.90	32,21,056
2007-08	5395.025	36,68,617
2008-09	7474.725	53,07,055
2009-10	8868.175	65,62,449
2010-11	9858.125	74,92,175
2011-12	10320.05	78,43,238
TOTAL	51348.85	3,67,34,500

5. Explanation of the assessee was that against average annual feed of 36.5 Kgs per bird, the average poultry dropping per bird was only by 14 Kgs and not 25 Kgs as estimated by the Assessing Officer. Assessee reworked the possible earnings from sale of poultry droppings as under:-

F.Y.	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
No. of parent birds at the close of the year in Nos.	209594	238276	257801	351069	418567	466585	437482
Average annual feed consumption per bird in Kgs	36.5	36.5	36.5	36.5	36.5	36.5	12.2
Average poultry droppings per bird in Kgs.	14	14	14	14	14	14	4.67
Average poultry droppings per annum in Tonnes	2800	3080	3500	4340	5320	6020	2055
Average poultry droppings used for own consumption per Annum in Tonns	1680	1848	2100	2604	3192	3612	1233
Average poultry droppings at contract farms in Tonns	840	924	1050	1302	1596	1806	617
Average poultry droppings sales per annum in Tonn	280	308	350	434	532	602	205
Average selling price of poultry droppings per annum per Tonn	600	640	680	710	740	760	760
Average manure total sales value per annum in Rupees	168000	197120	238000	308140	393680	457520	155800

From the above data, the assessee worked out the additional income from sale of poultry droppings as under:-

F.Y.	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Average Poultry droppings used for own consumption per annum in Tons	1680	2848	2100	2604	3192	3612	1233
Average selling price of poultry droppings per annum per Ton	600	640	680	710	740	760	760
Average manure consumption per annum in Rupees (A)	1008000	1182720	1428000	1848840	2362080	2745120	937080
Average poultry droppings sales per annum in Tonn	280	308	350	434	532	602	205
Average manure total sales value per annum in Rupees (B)	168000	197120	238000	308140	393680	457520	155800
Additional income on account of manure sales (A) + (B)	1176000	1379840	1666000	2156980	2755760	3202640	1092880

In support of the above, assessee produced a letter from one Prof. D. Narahari, Senior Vice President of Indian Poultry Science Association.

The Ld. A.O.

6. After considering the evidence and details filed by the assessee, Ld. A.O. concluded that the expert opinion provided by the assessee had fixed average feed consumption of a bird at 55 to 60 KGs for a 60-week period. On an annual basis, as per the A.O., such

feed consumption came to 49.8 KGs per annum per bird. Since assessee had itself estimated poultry dropping of 14 KGs on a feed of 36.5 KGs, as per the A.O., on feed of 49.8 KGs, the poultry dropping per bird would work out to 19.10 Kgs. As per the A.O., assessee itself had estimated the price of this manure between ₹500 to ₹1000 and therefore, and the average price came to ₹750 per ton for assessment year 2006-07. According to him, there could have been an increase of ₹25/- per annum on such sale price. Average price of the poultry feed was fixed by him in accordance with following table:-

Assessment Year	Average price per ton
2006-07	₹ 750
2007-08	₹ 775
2008-09	₹ 800
2009-10	₹ 825
2010-11	₹ 850
2011-12	₹ 875
2012-13	₹ 900

Thereafter taking 19.1 Kgs as the poultry dropping per bird and the rate as mentioned in the table above, he re-worked the income of the assessee from sale of poultry droppings for each of the year. Additions were accordingly made for each year.

5. Aggrieved, the assessee moved in appeal before the CIT(Appeals) for all the years. The CIT(Appeals), after going through the expert opinion furnished by the assessee, found that the expert had estimated bird dropping per year at 10 KGs. As per the CIT(Appeals), the Assessing Officer has adopted 19.10 KGs without bringing any material evidence in support thereof. The CIT(Appeals) noted that in the poultry business, poultry droppings would be collected periodically, stored in an open place and exposed to sun and rain. Thus, according to him, ascertaining such droppings per bird scientifically was possible. Ld. CIT(Appeals) held that in the circumstances of the case, assessee's estimate of 14 KGs per bird was fair.

6. Coming to the question of rate adopted per ton, as per the Ld. CIT(Appeals), the market rate of poultry manure was only ₹1200 per tipper, viz. for a quantity of two tonnes. Thus, according to him, average price for manure was only ₹600/-. He held that the rate of ₹750 per ton fixed by the Assessing Officer for 2006-07 was incorrect. He directed the A.O. to adopt ₹750/- per tonne for assessment year 2012-13 and work out on the rates on reverse basis upto assessment year 2006-07. Ld. CIT(Appeals) also directed the A.O. to exclude the

birds grown under contract farming from the stock of birds while working out the bird droppings.

7. Now before us, the Ld. Departmental Representative submitted that the average rate of poultry dropping at 19.10 Kgs per bird was correctly worked out by the Assessing Officer considering the facts and circumstances of the case. According to him, Assessing Officer was having an expert opinion obtained by the Department which justified the quantity of poultry dropping fixed by the Assessing Officer. Further, as per the Ld. D.R., the CIT(Appeals) fell in error in giving directions to the Assessing Officer to exclude the birds grown through contract farms while working out the stock of poultry droppings available for sale. As per Ld. D.R., such exclusion would result in a lower number of birds than the average stock admitted by the assessee.

8. Per contra, the Ld. A.R. supported the order of the CIT(Appeals).

9. We have perused the orders and heard the rival contentions. While estimating the yield of poultry dropping, the Assessing Officer admittedly had relied on an expert opinion given by Prof. D. Narahari,

Senior Vice President of Indian Poultry Science Association. The extract of such opinion as it appears in assessment order is reproduced as under:-

1. "What could be the average life time of a parent bird?
The commercial life (Not its full biological life) of a broiler parent bird is about **60 weeks**.
2. What could be the average consumption of feed (in kgs) during the life time of a parent bird?
During the above commercial life, a parent bird will consume around 55-60 Kgs of feed.
3. What could be the average poultry droppings of a parent bird during its life time? What could be the average poultry droppings of a parent bird with reference to its consumption (% of average consumption)? (i.e. poultry droppings (in kgs) of a parent bird in its life time / Average consumption of parent bird in its life time)
The average poultry droppings per parent bird will be about 15 Kgs which accounts to about 25% of the feed consumed. However, as it undergoes composting at the bottom of the cage, some of it gets decomposed, eaten by maggots, flies, insects etc., and some washed away by rain water. Therefore, the practical recoverability of manure may not exceed 10 Kgs per parent bird.
4. What could be the moisture content (in %) per kg of poultry droppings?
The moisture content varies between 80-85% for fresh droppings. However, as the droppings falls under the ground it will gradually lose the moisture level."

Assessing Officer had accepted the expert opinion insofar as it related to feed consumption of bird at 55-60 KGs for 60-weeks. However,

when it came to poultry dropping, he refused to consider the opinion of the said expert. The said expert had clearly mentioned that recoverable manure would not exceed 10 KGs per bird. In our opinion, when reliance is placed on the opinion of an expert, it cannot be considered in part and rejected in part. It should have been considered in whole. Since the addition made by the A.O. is based on the expert opinion of Prof. D. Narahari, Senior Vice President of Indian Poultry Science Association, we are of the opinion that the CIT(Appeals) was justified in directing the A.O. to accept the expert opinion in toto. Assessee itself had estimated the droppings per year per bird at 14 KGs, which was higher than the estimation of 10 KGs per bird made by the expert. We are, therefore, of the opinion that the order of the CIT(Appeals) cannot be faulted on this count.

10. Coming to the question of estimation of reduction of bird dropping, for birds grown by contracting farms, the relevant observation of the CIT(Appeals) is reproduced hereunder:-

“7.4 It is submitted before me that the appellant grows parent birds in his own farm and also with contracting farms. As per the existing practice in the trade, poultry contracting farmers gets the growing charges per bird periodically in addition to that poultry manure. All bird droppings belong to the contracting poultry farmers. On perusal of the

assessment order I find that A.O. has calculated bird droppings based on the closing stock of birds. It is apparently seen that assessing officer has not calculated the number of birds grown at contracting farms. It has to be excluded for the purpose of arriving at bird droppings income. The assessing officer is directed to work out the bird droppings (manure) after excluding birds grown at contracting farms. Accordingly, the grounds raised in this regard are allowed for all the asst. years i.e. 2006-07 to 2012-13.”

Insofar as bird droppings were concerned, Assessing Officer himself had excluded bird droppings of poultry raised by contracting farms. Such reduction in bird droppings, as noted by the Ld. CIT(Appeals), was to be based on the number of birds grown at contracting farms and not based on the number of birds held in closing stock as done by the Assessing Officer. Just because assessee had valued stock of birds considering a particular strength, we cannot say that poultry droppings of birds under contact farming were not to be excluded. We are of the opinion that the CIT(Appeals) was fair in giving such directions. We do not find any reason to interfere with the order of the CIT(Appeals) in this regard also.

11. This leaves us to one more ground raised by the Revenue for assessment year 2010-11 which assails deletion of addition of

₹2,37,99,820/- made by the A.O. for unexplained investment, under Section 69B of the Act.

12. During the course of search, it was found that the assessee had acquired 63.18 acres of land from one M/s Valarmathi Farms Pvt. Ltd. The valuation shown in the registered deed was ₹5,30,40,000/-. A statement was recorded from Shri S.K. Shanmugam, Director of M/s Valarmathi Farms Pvt. Ltd. Shri S.K. Shanmugam stated in reply to a question that he had received consideration of ₹8,67,00,000/- for sale of land to the assessee. He also stated that the difference between registered value of ₹5,30,40,000/- and actual consideration of ₹8,67,00,000/- was received by him as on-money in cash from Shri R. Lakshmanan, Managing Director of the assessee. During the course of search, there was a notebook seized from office premises of the assessee. In page 46 of the said notebook, the following information was recorded:-

"Road:	2.55
Kumar:	1.00
	2.00
	<u>3.00</u>
	8.55
Document	<u>3</u>
	8.58
Broker	<u>20</u>

8.78
3.00
5.78"

It seems Managing Director of the assessee Shri Lakshmanan had accepted payment of such on-money. Assessing Officer required the assessee to explain the source of on-money payment of ₹3.366 Crores. In reply, it was stated by the assessee that a sum of ₹1,71,30,000/- were unexplained cash credits, ₹30,00,000/- was from unaccounted sale of manure and broken eggs and the balance was withdrawn from accumulated drawings of his family members. In the return filed by the assessee for assessment year 2010-11, assessee had admitted only ₹98,60,180/- as on-money payment for purchase of above property. The balance was claimed to have been made out of sale of poultry dropping. Assessing Officer was of the opinion that the assessee could not produce any evidence to show the source for the balance of ₹2,37,99,820/-. He made an addition of said amount.

13. In its appeal before the CIT(Appeals), argument of the assessee was that realization from sale of bird droppings, which was not accounted, should be considered for telescoping with the on-

money payment of ₹2,37,99,820/-. The CIT(Appeals) accepted this contention and deleted the addition.

14. Now before us, the Ld. Departmental Representative submitted that it was essential to correctly work out the unaccounted income from sale of bird droppings for assessment years 2006-07 to 2010-11. As per the Ld. D.R., the Ld. CIT(Appeals) had not made verification of such amount with the investment made by the assessee before allowing telescoping.

15. Per contra, Ld. A.R. supported the order of the CIT(Appeals).

16. We have perused the orders and heard the rival contentions. Assessee had estimated and admitted unaccounted income from sale of bird droppings and broken eggs during the course of assessment proceedings before the Assessing Officer. We have already upheld the order of the CIT(Appeals) with regard to deletion of additions made by the Ld. A.O. on additional income estimated from sale of bird droppings. In our opinion, the finding of the Ld. CIT(Appeals) that additional income from bird droppings for various assessment years covered by the search assessment was adequate to meet the on-money payment of ₹ 2,37,99,820/- was justified. Telescoping was

rightly allowed by the Ld. CIT(Appeals). We do not find any reason to interfere with the order of the CIT(Appeals) on this aspect also.

17. In the result, appeals of the Revenue for all the assessment years 2006-07 to 2012-13 are dismissed.

Order pronounced on 13th February, 2017 at Chennai.

sd/-

(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

sd/-

(अब्राहम पी.जॉर्ज)
(Abraham P. George)
लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 13th February, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-18, Chennai
4. Principal CIT-2, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.