

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No. 1036/Ind/2016

निर्धारण वर्ष /Assessment Year: 2009-10

Shri Vinodkumar Singh Kushwah

Indore

PAN – AEBPK – 7108Q

:: अपीलार्थी /Appellant

Vs

Income Tax Officer 3(5)

Indore

:: प्रत्यर्थी /Respondent

निर्धारिती की ओर से/Assessee by	Shri Ram Gilda
राजस्व की ओर से/Revenue by	Shri Mohd. Javed - DR
सुनवाई की तारीख Date of hearing	15.3.2017
उद्घोषणा की तारीख Date of pronouncement	20.3.2017

आदेश /O R D E R

PER SHRI C.M. GARG, JM

This appeal has been filed by the assessee against the order of the learned CIT(A)-I, Indore, dated 1.8.2016 in First Appeal No. IT-52/2014-15/23 for the assessment year 2009-10.

2. The grounds of appeal raised by the assessee–appellant read as follows :-

- “1. That the issuance of notice under section 148 is illegal, Wrong, without authority of law and jurisdiction*
- 2. That the assessment order passed u/s 144/ 147 is illegal, Wrong, without authority of law and jurisdiction*
- 3. That the addition made of Rs.13,22,100/- is illegal, wrong unjustified.*
- 4. That the learned Assessing Officer is also illegal, wrong and unjustified in trading the agricultural income of Rs.2,65,000/- as income the sourced.”*

3. First of all, the learned counsel for the assessee does not want to press ground nos. 1 and 2. Therefore, the same are dismissed as not pressed.

4. We have heard arguments of both the sides and carefully perused the relevant material placed on record of the Tribunal. The learned counsel for the assessee submitted that the Assessing Officer has passed the assessment order without affording proper and reasonable opportunity of being heard to the assessee and the additions of Rs. 13,22,100/- and Rs. 2,65,000/- have been made on illegal, wrong and unjustified basis. The learned counsel for the assessee further submitted that the case was taken up in scrutiny

for verification of AIR information regarding the cash deposit of Rs.13,22,100/- into Axix Bank account of the assessee. The learned counsel for the assessee further pointed out that the assessee has not deposited cash of Rs. 13,22,100/- on a single day and the same has been deposited in the form of small amounts of cash on different dates and the assessee also withdrew cash on different dates, which is apparent from the photocopy of the Axis Bank account of the assessee. The learned counsel for the assessee further pointed out that the opening balance as on 1.4.2008 was Rs. 41,416/- and maximum balance during the year was Rs.2,54,215/- on 11.9.2008 which is also apparent from the copy of Axis Bank account. The learned counsel for the assessee vehemently submitted that the assessee has shown agricultural income of Rs. 2,65,000/- as the assessee is a horticulturist and the assessee has taken on lease 44 bighas of agricultural land from different farmers as per the copies of the agreements and on this land the assessee used to produce only quality seeds. The learned counsel for the assessee specifically drew our attention towards the assessee's paper book page 32 and submitted that out of total impugned cash deposits, there was sale proceed of potato seeds of

Rs.2,50,000/- to KBA Traders and the payment was received by the assessee on 11.9.2009 which is also discernible from the copy of bank account and statement. The learned counsel for the assessee submitted that the Assessing Officer wrongly dismissed the claim of the assessee pertaining to exempt agricultural income and treated the same as income from other sources amounting to Rs.2,65,000/-

5. The learned counsel for the assessee submitted that without prejudice to the above submissions, the alternative argument of the assessee is that maximum balance in the accounts was only Rs.2,54,215/-. Therefore, peak addition may be taken for taxation purposes and the addition of Rs.13,22,100/- cannot be held justified and sustainable. The learned counsel for the assessee further submitted that the amount of peak addition i.e. Rs.2,54,215/- is lesser than the amount of agricultural income shown by the assessee at Rs.2,65,000/- which was treated by the Assessing Officer as income from other sources, dismissing the exemption claimed by the assessee which also covers this peak amount. Therefore, no addition can be made in regard to the cash deposits made to the assessee's bank account.

6. Replying to the above, the learned Departmental Representative strongly supported the action of the Assessing Officer as well as the first appellate authority and submitted that the assessee, being a salaried person, deposited huge amounts in his bank account and there was no plausible and acceptable explanation in this regard. Therefore, the Assessing Officer was right in making the addition of Rs. 13,22,100/-. The learned DR further submitted that since the assessee could not establish the fact that he has earned income of Rs. 2,65,000/- out of agricultural activities undertaken in the agricultural land of 44 bighas taken on lease, therefore, the Assessing Officer was also right in treating the same as income from other sources and, therefore, the learned CIT(A) was quite justified in upholding the assessment order.

7. Placing rejoinder to the above submissions, the learned counsel for the assessee submitted that if at all the assessee's claim towards exempt agricultural income is dismissed and the income of Rs. 2,65,000/- is treated as income from other sources, then it also covered the maximum peak balance of Rs. 2,54,215/- on 11.9.2008 which was the result of deposit of Rs. 2,50,000/- received from KBA

Traders on 11.9.2009 towards sale of potato seeds by the assessee. The learned counsel for the assessee submitted that in any case, the addition of Rs. 13,20,100/- cannot be held as sustainable on all counts and, therefore, the same may kindly be deleted.

8. On careful consideration of the rival submissions, at the very outset we observe that the Assessing Officer made the addition of Rs.2,65,000/- by treating the agricultural income as income from other sources dismissing the claim of exemption of the assessee by observing that the assessee did not file all details and evidence regarding the source of agricultural income. From the first appellate order it is also discernible that the first appellate authority upheld the action of the Assessing Officer by observing that the assessee has agricultural income from leasing of 44 bighas of agricultural land, which is found to be unsupported by any evidence. Therefore, it cannot be accepted that the amount of Rs.2,65,000/- shown as agricultural income was earned from the agricultural activities as agricultural income of the assessee. The learned CIT(A) further observed that the assessee has his own land and has also taken

agricultural land on lease for one year which was pertaining to the assessment year 2008-09 and not assessment year 2009-10. With these observations, the learned CIT(A) upheld the action of the Assessing Officer which treated the agricultural income as income from other sources. Before us, the learned counsel for the assessee drew our attention towards copies of the affidavits of the owners of the agricultural land regarding extension of lease deed which is placed at pages 21 to 24 of the paper book. Except these affidavits, which were not submitted during the assessment proceedings, there is no evidence to establish that the assessee took 44 bighas of agricultural land and undertook agricultural activities thereon to earn exempt agricultural income of Rs.2,65,000/-. We are in agreement with the contention of the learned DR that if there was written lease deed for the assessment year 2008-09 then there must be extension of lease by way of written document only and in the absence of the same, oral extension of lease on the basis of self-serving after-thought affidavits, cannot be accepted and thus we have no hesitation to hold that the Assessing Officer was right in

concluding that the assessee's claim for exempt agricultural income is not acceptable and the Assessing Officer was right in treating the amount as income from other sources.

9. The next issue posed for adjudication is the addition of Rs.13,22,100/- which was made by the Assessing Officer on account of cash deposits by the assessee during the financial year 2008-09 i.e. between 1.4.2008 to 31.3.2009. From the copy of bank account placed at paper book pages 25 to 31, we are satisfied with the contention of the learned counsel for the assessee that the impugned amount was not deposited on single day and the same was deposited in small amounts during the entire financial period and the maximum peak amount during the year was Rs. 2,54,215/- on 11.9.2008, which was enhanced after deposit of Rs. 2,50,000/- received by the assessee from KBA Traders. We also observe that the assessee not only deposited various small amounts on various dates but also withdrew small amounts therefrom. Thus, the addition made by the Assessing Officer and upheld by the learned CIT(A) by taking the total amount of deposits and ignoring the

withdrawals and peak amount, cannot be held as sustainable. In our considered view, the peak amount of maximum balance on 11.9.2008, which was Rs. 2,54,215/-, can be taken for the addition on account of cash deposits. The total of cash deposits cannot be taken for making the addition. At this juncture, we may also point out that since in earlier part of this order we have upheld the conclusion of the learned CIT(A) which confirmed the addition of Rs.2,65,000/- made by the Assessing Officer by treating the agricultural income as income from other sources, which also covered the amount of Rs. 2,54,215/-, therefore, no further addition on account of cash deposits can be held as sustainable.

10. Finally, in our humble understanding, when the amount of peak credit is less than the amount of income from other sources then no further addition is required to be made in this regard and, therefore, the addition made by the Assessing Officer and upheld by the learned CIT(A) of Rs. 13,22,100/- is wrong, unjustified and unsustainable and, hence, we dismiss the same and the Assessing Officer is directed to delete the addition in toto.

11. Accordingly, ground no. 3 of the assessee's appeal is allowed and ground no. 4 of the assessee's appeal is dismissed.

12. In the result, the appeal of the assessee is partly allowed.

Order pronounced in open Court on 20th March, 2017.

Sd/-

sd/-

लेखा सदस्य
(O.P.Meena)
Accountant Member

न्यायिक सदस्य
(C.M. Garg)
Judicial Member

March 20th 2017.

Dn/