

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**'B' BENCH, CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1236/Mds/2016  
निर्धारण वर्ष / Assessment Year : 2010-11

Smt. Smita Vishweshwar, 356, TTK Road, Alwarpet, Chennai – 600 018 PAN:AADPV2354F (अपीलार्थी/Appellant)	v.	The Income Tax Officer, Non Company Ward 3(3), Chennai. (प्रत्यर्थी/Respondent)
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अपीलार्थी की ओर से/Appellant by	:	Shri M.V. Swaroop, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Shri Surpiyo Pal, JCIT

सुनवाई की तारीख/Date of Hearing	:	02.03.2017
घोषणा की तारीख/Date of Pronouncement	:	08.03.2017

**आदेश /ORDER**

**PER A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER:**

This appeal is filed by the assessee aggrieved by the order of the Ld. Commissioner of Income Tax (Appeals) in ITA No.137/2013-14/A.Y 2010-11/CIT(A)-4 dated 15.02.2016 passed u/s. 250(6) r.w.s. 143(3) of the Act.

2. The assessee has raised several grounds in her appeal, however, the crux of the issue is that the Ld. CIT(A) has erred in confirming the order of the Ld. AO who had rejected the claim of the assessee for having earned agricultural income of Rs.10,66,010/- by treating it as income from other sources.

3. The brief facts of the case are that the assessee is an individual earning income from business and profession filed her return on income on 03.02.2011 for the relevant assessment year admitting income of Rs.13,65,979/- which comprised of agricultural income Rs.10,49,510/-. The case was selected for scrutiny and finally assessment was completed u/s. 143(3) of the Act on 20.03.2013, wherein the Ld. AO made addition of Rs.10,92,215/- under the head income from other source rejecting the claim of the assessee to treat it as agricultural income.

4. During the course of assessment, it was observed by the Ld. AO that the assessee did not own any agricultural land. However, she along with another 11 persons had obtained 319.5 acres of agricultural land on lease from M/s. Barwood Plantations Pvt. Ltd.,

M/s. Gudalur Industrial and Agricultural Enterprises Pvt. Ltd., and M/s. Sri Hariprasad (HUF). It was also revealed that the assessee did not have any expertise with respect to the agricultural activities carried on in the lease land. On query, it was explained that one Mr. E. J. Coelho manages the agricultural activities on behalf of all the 12 persons. It was further revealed that the entire produce of green tea leaves were sold to M/s. Silver Cloud tea factory on daily basis and in lieu of the sale proceeds they disburse expenditure towards cultivation and maintenance of the land and the balance amount is remitted to all the leases proportionately with respect to the land obtained by them on lease. From the above facts it was evident that the assessee did not take part in any activities with respect to the cultivation of the land. Therefore the Ld. AO opined that the arrangement made by the assessee along with all 11 other individuals is nothing but diversion of the profit from the land holding companies to the assessee and her associates in order to avoid dividend tax. The Ld. AO also came to the conclusion that the amount received by the assessee along with her associates is nothing but dividend received from the companies and therefore brought the amount of Rs.10,66,010/- to tax under the had income from other source.

5. On appeal, the Ld. CIT(A) after examining the issue in detail confirmed the order of the Ld. AO by observing as under:

*“15. I have considered the Remand Report furnished by the AO and the counter arguments of the appellant against the findings of the present AO. After analyzing all the relevant facts and the evidences on record, I have arrived at a conclusion that the genuineness and the bonafide character of the alleged agriculture income is highly questionable. It is immaterial whether the agricultural land is owned by the assessee or not so long the agricultural operations are carried out by the assessee herself or through the labour or the man power under her direct supervision. In the present case, the assessee has failed to prove that either the agriculture operations were carried out by herself or through some other person under her direct supervision. In the present case, the entire agricultural operations are carried out by some third person who is not at all accountable to the appellant. The agriculture income never reaches the appellant which is entirely pocketed by Mr. E J Coelho who manages the agriculture operations. In fact it is Mr. E J Coelho in whose hands the income should be treated as agriculture income and not the appellant. The assessee has actually further leased out the land to Mr. E J Coelho who does carry out the actual agriculture activities by engaging labour and all. During the appellate proceedings, the assessee failed to furnish any details regarding the expenses incurred towards the agriculture operations, inputs, seeds/saplings, irrigation, electricity, labour cost etc. etc. It was stated by the appellant that all these expenses were incurred by Mr. E J Coelho out of the sale proceeds of agricultural produce which always remained with him. It is interesting to note that the sale proceeds of agriculture produce for the earlier years too have not reached the appellant so far. The agriculture income which the assessee has reflected in her return of income is the notional income only.*

*16. Hence, keeping in view the above facts and the circumstances of the case and also considering the findings of the AO in the assessment order and the Remand Report, I am of the considered opinion that the appellant is neither the owner of the agricultural land nor did she carry out any agriculture operations directly or directly under her supervision which could have enabled her to claim the amount of Rs.10,49,510/- as agriculture income. As a result, the action of the AO is confirmed.”*

6. Before us, the Ld. AR vehemently argued by stating as follows:-

- 1) The assessee had legally obtained lease of the agricultural land from the land holding companies.
- 2) The lease transaction entered between the assessee and the land holding companies does not violate any law.
- 3) The assessee had engaged managers to manage the land obtained on lease for conducting agricultural activities which cannot be also held as illegal.
- 4) The company which purchases the agricultural produce from the assessee had disbursed the expenditure incurred by the assessee towards agricultural activities and remitted the balance amount to the assessee which cannot be also held as illegal.

It was therefore argued by the Ld. AR that the orders of the Revenue authorities cannot be appreciated when the facts reveal that the assessee had legally cultivated the agricultural land obtained by her on lease. Hence it was pleaded that the Ld. AO may be directed to delete the addition made under the head income from other source by treating it as dividend income.

6. The Ld. DR stoutly argued in support of the orders of both the Revenue authorities by reiterating the discussions made therein.

7. We have heard the rival submissions and carefully perused the material available on record. The transaction of lease of agricultural land between the assessee and the land holding companies cannot be termed as illegal, however it appears to be sham because of the following reasons:-

- 1) The lease rent paid to the land holding companies/HUF by the assessee and the other individuals who had taken the land on lease is only Rs.500/- per acre, per annum, which is too low and not in parity with the agricultural income earned by the lease holders.
- 2) All the share holders of the land holding companies are the lease holders of the land owned by the companies which is in proportion to the shares held by them.
- 3) The decision of the company to lease the land is not in the interest of the company which is a distinct legal entity for profit but a modus operandi to pass on the income derived

from agricultural operation from the land owned by the companies to the share holders of the company directly.

- 4) The entire transaction is aimed to circumvent the provisions of the Act because dividend income is taxable in the hands of the assessee.
- 5) There is also no cogent evidence to prove that the assessee had cultivated the land and earned agricultural income individually because it appears that the agricultural operations were collectively performed by all the share holders by engaging staff. The documentary evidences created are in connivance with all the parties to make believe the transaction entered in papers to be genuine.
- 6) It is crystal clear that all the shareholders of the company had performed agricultural activities under the name of Barwood Estate instead of in the name of the companies which is only to avoid the distribution of profit by the companies as dividend.

Because of the above mentioned reasons, we are of the considered view that the Ld. AO and the Ld. CIT(A) are right in their decisions for holding the amount received by the assessee to be

treated as dividend income due from the company. Hence we hereby refrain from interfering with the orders of the Revenue Authorities.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced on 08<sup>th</sup> March, 2017 at Chennai.

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

Sd/-  
(ए. मोहन अलंकामणी)  
(A. Mohan Alankamony)  
लेखा सदस्य/Accountant Member

चेन्नई/Chennai,  
दिनांक/Dated, the 08<sup>th</sup> March, 2017.

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
3. आयकर आयुक्त (अपील)/CIT(A)
5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent
4. आयकर आयुक्त/CIT,
6. गार्ड फाईल/GF.