

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ए', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, AM
&
SHRI PAWAN SINGH, JM

आयकर अपील सं./ITA No.2079/Mum/2011

(निर्धारण वर्ष / Assessment Year :2006-07)

Dr. Avinash Chandra Tiwari, A-8, Sunder Nagar, CST Road, Kalina, Mumbai-400072	Vs.	ITO-11(2)(1), Mumbai-20
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAPT 7886 M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

आयकर अपील सं./ITA No.1936/Mum/2011

(निर्धारण वर्ष / Assessment Year :2006-07)

ITO-11(2)(1), Mumbai-20	Vs.	Dr. Avinash Chandra Tiwari, A-8, Sunder Nagar, CST Road, Kalina, Mumbai-400072
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAPT 7886 M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Mr. Mehul Shah
राजस्व की ओर से /Revenue by : Ms. Vinita J. Menon
सुनवाई की तारीख / Date of Hearing : 21/12/2015
घोषणा की तारीख/Date of Pronouncement 31/03/2016

आदेश / O R D E R

PER R.C.SHARMA (A.M):

These are the appeals filed by the assessee and revenue against the order of CIT(A)-Mumbai, for the assessment year 2006-07, in the matter of order passed u/s.143(3) of the I.T.Act.

ITA No.2079/Mum/2011(Assessee's Appeal)

2. Rival contentions have been heard and record perused. Facts from the assessment order regarding ground No.1 are that AO did not accept assessee's submission of source being from accumulated agricultural savings and the details filed stating that he was not able to give any proof of cash accumulated from savings and agricultural income. AO observed that Appellant claimed to have agricultural income during past several years but in support of the claim assessee did not produce any concurrent evidence to substantiate his claim of agricultural income. This income had not been offered by assessee for tax purposes being exempt income and therefore not verifiable. In none of the earlier years such income was shown and included in total income by assessee. AO held that as per the provisions of the Act, assessee ought to have showed his agricultural income for calculation of tax on total income. The return income filed by an assessee represents the income earned by person from all sources whether exempted or not and it is not an excuse for non-declaration of income. AO therefore, added Rs.10 lakhs deposited in Bank of India, Saki Naka Branch on 27/4/2005 as undisclosed cash credit u/s. 68 of the Act. In absence of any verifiability in terms of concurrent/supporting evidences appellant's argument was not accepted and the sum of Rs.12,75,306/- cash and bank balance was also treated as undisclosed cash credit u/s. 68.

3. By the impugned order the CIT(A) gave part relief after observing as under :-

2.2.5 Facts and material on record are considered. It is seen from the details filed by Appellant that agricultural income from financial year 2000-2001 to financial year 2003-04 was nearly Rs.10 lakhs out of which agricultural income of two years i.e. A.Y. 2001-2002 and A.Y. 2004-2005 have been accepted by the same Assessing Officer who has submitted the remand report. Therefore, there is no denial of agricultural activity and income there from in Appellant's case. In so far as FY. 2004-2005 i.e. A.Y. 2005-2006 is concerned, the AO in his report has raised doubts in respect of the claim of agricultural income of Rs.2.5 lakhs. Nevertheless,

no independent third party verification or facts seem to have been done nor established by the AO even in the remand proceedings, though the matter was with the AO for over four months. In the facts and circumstances of the case, treating as base the agricultural income of Rs.2,50,500/- on the same landholding accepted by the AO for AY. 04-05, it would be reasonable to estimate Appellant's agricultural income at Rs.2.5 lakhs as declared. In the event therefore, the total agricultural income available to Appellant for accumulation or saving cannot exceed the sum of Rs.12,46,950/- disclosed by him. Nevertheless, AO's reservation about the entire 'income being available as accumulation and savings has merit. It is estimated that out of the total agricultural income disclosed by him in five years, Appellant would have accumulation of savings of estimated Rs.10 lakhs.

2.2.6 In the circumstances, the deposit of Rs.10 lakhs on 27/4/05 in the bank account out of accumulation agricultural savings is considered as possible and explained. Appellant however, also explains the cash of Rs.12,75,306/- on 31/3/06 from the same source. After considering the deposit of Rs.10 lakhs as being out of agricultural accumulation of savings, there is no further saving available for the Appellant to explain the said sum of Rs.12.75 lakhs. In the facts and circumstances of the case, therefore while Appellant's explanation for Ground No.2 is accepted and addition deleted on said count, Appellant's explanation and adequacy of monies available with regard to the Ground No.4 is held to be neither evidenced nor substantiated. In the facts and circumstances of the case, ground number four fails."

4. With regard to ground No.2, we found that facts in the assessment order indicate that Appellant had explained the sum of Rs.30.5 lakhs as being sale proceeds of agricultural land which were deposited in the said bank account. AO observed that the demand draft details as indicated by assessee were different from those narrated in the bank account and therefore, disallowed the claim of the assessee. AO also held that the account opening sum of Rs.1,01,000/- explained to be out of accumulation of savings and agricultural income was also unsubstantiated and therefore, rejected the claim. During appellate proceedings, the matter of Rs.30.5 lakhs was remanded to the AO along with the issue regarding agricultural income. In the Remand Report the AO has submitted that the sum of Rs.30.5 lakhs from sale proceeds of agricultural land is explained as it had been confirmed by the party who purchased the land and gave the demand drafts to the assessee. AO, however, did not accept explanation for the balance sum of Rs.1,01,000/-. By the impugned order CIT(A) held that in view of

the facts and finding given by the AO in the Remand Report, the source of the said money of Rs.30.05 lacs is explained. In view of the same, the addition to the extent of Rs.30.5 lakhs was deleted. In so far as Rs.1,01,000/- is concerned, the issue of availability of savings from agricultural income was found to be missing. In view of the same, CIT(A) did not accept a sum of Rs.1,01,000/- out of agricultural accumulated savings. The availability of said monies not having been evidenced by assessee, addition was sustained by CIT(A) to the extent of Rs.1,01,000/-.

5. We have considered rival contentions and carefully gone through the orders of authorities below and found from the record that out of deposit in the bank account, the CIT(A) has already accepted assessee's contention with regard to Rs.10 lacs deposited in Bank of India. However, in respect of addition made on account of difference in cash and bank balance reported in balance sheet and professional balance sheet amounting to Rs.12.75 lacs is concerned, the CIT(A) has given detailed findings at para 2.2.1 according to which assessee could not substantiate the source of Rs.12,75,306/-. Nothing was brought on record to persuade us to deviate from the findings of the CIT(A) with regard to non-availability of source of Rs.12.75 lakhs. Similarly, with regard to addition of Rs.1,01,000/-, the CIT(A) has given detailed finding at para 2.4.1 and 2.4.2 according to which issue of availability of savings from agricultural income was discussed and CIT(A) concluded that assessee could not substantiate the source of Rs.1,01,000/-. Accordingly, the same was confirmed. Nothing was brought on record to persuade us to deviate from the findings recorded by both the lower authorities. Accordingly, we do not find any reason to interfere in the order of lower authorities for upholding addition of Rs.1,01,000/-.

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

ITA No.1936/Mum/2011(Revenue's appeal)

7. Ld. AR submitted that the tax effect in the appeal of the revenue is below Rs.10 lakhs, and, therefore, the same is not maintainable as per the CBDT instruction No.21/2015 dated 10.12.2015.

8. The Id Departmental Representative agreed to the contention of Id counsel for the assessee.

9. We have considered rival contentions and perused the record. The CBDT in its Circular No.21/2015 dated 10th December, 2015 have revised the monetary limit to Rs.10 lakhs from Rs.4 lakhs to file the appeal before the Tribunal by the Revenue. On scrutiny of appeal filed by the revenue, it is found that the total tax demand is below the prescribed limit of Rs.10 lakhs. The CBDT also clarifies that this instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/Tribunal. The Income Tax Act was amended and Section 268A has been introduced on the Statute book with retrospective effect. Section 268A carves out an exception for filing of appeals and References under section 260A of the Act. The legislature has prescribed that the CBDT is empowered to issue circulars and instructions from time to time, with regard to filing of appeals depending on the tax effect involved. The relevant circular issued by CBDT reads as under:

“Reference is invited to Board's instruction No 5/2014 dated 10-07-2014 wherein monetary limits and other conditions for filing departmental appeals (in income-tax matters) before Appellate Tribunal and High Courts and SLP before the Supreme Court were specified.

2. In supersession of the above instruction, it has been decided by the Board that departmental appeals may be filed on merits before Appellate Tribunal and High Courts and SLP before the Supreme Court keeping in view the monetary limits and conditions specified below.

3. Henceforth appeals/SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:-

Sl.No.	Appeals in Income-tax matters	Monetary Limits (in Rs.)
1.	Before Appellate Tribunal	10,00,000
2.	Before High Court	20,00,000
3.	Before Supreme Court	25,00,000

*It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided **on merits** of the case.*

4. For this purpose, "tax effect" means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as "disputed issues"). However the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal, can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In other words, henceforth, appeals can be filed only with reference to the tax effect in the relevant assessment year. However, in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, appeal shall be filed in respect of all such assessment years even if the 'tax effect' is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which 'tax effect' exceeds the monetary limit prescribed. In case where a composite order/judgment involves more than one assessee, each assessee shall be dealt with separately.

6. In a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect being less than the monetary limit specified above, the Commissioner of Income-tax shall specifically record that "even though the decision is not acceptable, appeal is not being filed only on the consideration that the tax effect is less

than the monetary limit specified in this instruction". Further, in such cases, there will be no presumption that the Income-tax Department has acquiesced in the decision on the disputed issues. The Income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other assessment year, or in the case of any other assessee for the same or any other assessment year, if the tax effect exceeds the specified monetary limits.

7. In the past, a number of instances have come to the notice of the Board, whereby an assessee has claimed relief from the Tribunal or the Court only on the ground that the Department has implicitly accepted the decision of the Tribunal or Court in the case of the assessee for any other assessment year or in the case of any other assessee for the same or any other assessment year, by not filing an appeal on the same disputed issues. The Departmental representatives/counsels must make every effort to bring to the notice of the Tribunal or the Court that the appeal in such cases was not filed or not admitted only for the reason of the tax effect being less than the specified monetary limit and, therefore, no inference should be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should impress upon the Tribunal or the Court that such cases do not have any precedent value. As the evidence of not filing appeal due to this instruction may have to be produced in courts, the judicial folders in the office of CIT must be maintained in a systemic manner for easy retrieval.

8. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above 'or there is no tax effect:

- (a) Where the Constitutional validity of the provisions of an Act or Rule are under challenge, or*
- (b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or*
- (c) Where Revenue Audit objection in the case has been accepted by the Department, or*
- (d) Where the addition relates to undisclosed foreign assets/ bank accounts.*

9. The monetary limits specified in para 3 above shall not apply to writ matters and direct tax matters other than Income tax. Filing of appeals in other Direct tax matters shall continue to be governed by relevant provisions of statute & rules. Further, filing of appeal in cases of Income Tax, where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12 A of the IT Act, 1961, shall not be governed by the limits specified in para 3 above and decision to file appeal in such cases may be taken on merits of a particular case.

10. This instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/ Tribunals. Pending appeals below the specified tax limits in para 3 above may

be withdrawn/ not pressed. Appeals before the Supreme Court will be governed by the instructions on this subject, operative at the time when such appeal was filed.

11. This issues under Section 268A (1) of the Income-tax Act 1961.”

10. Considering the above CBDT Circular, we found that this appeal of the revenue is not maintainable as the tax effect in this appeal is below Rs.10 lakhs. Accordingly, we dismiss the appeal of the revenue.

11. In the result, appeal of assessee as well as appeal of the revenue are dismissed

Order pronounced in the open court on this 31/03/2016.

**Sd/-
(PAWAN SINGH)**

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 31/03/2016

प्र.कु.मि/pkm, नि.स/ PS

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**Sd/-
(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai