

IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH, PUNE

(Through virtual court)

**BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM**

ITA No. 701/PUN/2017

Assessment Year: 2012-13

Shri Jayant Maniklal Lunawat
1206/B/22 Lunawat Court,
Shivajinagar
PUNE – 411 005.

PAN AAYPL3026H

Appellant

Vs.

Joint Commissioner of Income-tax
Range 5, Pune.

Respondent

Appellant by : Shri Suyog Bhave
Respondent by : Shri M.G. Jasnani

Date of Hearing : 25-01-2022
Date of Pronouncement : 08-02-2022

ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from order of the
ld. Commissioner of Income Tax (Appeals) – 2, Pune dated 18-11-2016
for the Assessment Year 2012-13 raising following grounds of appeal.

- (1) The Hon. CIT(A) erred in,
 - a. disallowing agriculture income of Rs.3,01,781/-
 - b. In unilaterally deciding the issue of disallowance of agriculture income by relying on some NHB reports, without giving an opportunity to the appellant to put his say on the matter, similarly as has been done by Ld. AO.
 - c. Not considering the fact that cost of banana cultivation for A Y 2011-12 is 57.22% and AY 2012-13 is 38.79% averaging to 42.46% as against the alleged average ratio of 47.20% considered by CIT (A).
- 2) The Hon. CIT (A) erred in disallowing expenses of Rs.94,500/- under Sec. 14A r.w. Rule 8D of Income Tax Rules, 1962.
- 3) The Hon. CIT(A) erred in disallowing the depreciation of Rs.2,76,166/-

on adhoc basis for the reason that no business is carried out during the

4) The Hon. CIT(A) erred in

- a. disallowing legal and professional expenses of Rs.15,08,770/- in spite of the fact that assessee following consistently and uniformly the method of allocating and accounting the business expenses from year to year and same is accepted by CIT (A) - 3, Pune while deciding the issue for A Y 2009-10.
- b. Understanding that legal expenses are incurred for defending the court cases, pending at various stages, with the land owners and for taxation issue. These legal and professional expenses are incurred wholly and exclusively for the purpose of business of the appellant only.
- c. Understanding that the assessee is very much in business, but the construction activity was slowed down due to legal dispute with the land owners. Disallowance of expenses on the ground that business activity was slowed down due to extraneous reasons is totally unjustified.
- d. Not following the judgment of The Hon. CIT(A) - 3, Pune in assessment Year 2009-10, wherein he allowed the similar expenses incurred on account of legal and professional expenses.

5) The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.

2. The relevant facts are that the assessee is an individual and is engaged in the business of real estate including trading in TDR and shares. The assessee filed his return of income on 30-9-2012 showing total income at Rs. 9,16,49,628/- which was subsequently revised on 15-3-2013 declaring total income at Rs. 10,16,49,630/-. The assessment was completed on 24-3-2015 determining total income at Rs. 11,02,77,792/-.

3. That regarding first ground of appeal, it is with regard to the disallowance of excess claim of agricultural income and at para 4.2 to 4.5 the A.O has given his reasons and more specifically he has relied on a data published by National Horticultural Board (NHB). As per the data provided by NHB the expenses incurred for crop of banana in the year 2nd and 3rd after plantation should be approximately 47.2% of gross receipts. However, the assessee has shown the

expenses at 27.2% of gross receipts only. From the above it is clear that the assessee has suppressed the expenses to inflate the exempt agricultural income. Therefore, the suppressed expenses to the tune of 20% of gross receipts which comes to Rs. 3,01,781/- was disallowed and added to the total income of the assessee.

4. At the time of hearing, the learned Authorised Representative of the assessee submitted that the A.O though has relied on the data published by NHB, however, the same was not furnished to the assessee for his response thereby violating the principles of natural justice. The A.O on his own has relied on the data published by NHB and made the addition. The assessee on this ground relies on the decision of the Hon'ble Orissa High Court in the case of Falcon Marine Exports Ltd. Vs. Union of India (2011) 16 Taxmann.com 356 (Orissa) submitting that if the assessing authority is relying on NHB report then it has to be confronted to the assessee. The learned A.R further prayed that the matter may be remitted back to the file of the A.O to re-adjudicate the matter as per law considering the decision of Hon'ble Orissa High Court (supra) while applying the principles of natural justice. The learned DR fairly conceded to these submissions of the assessee. In the aforesaid referred judgment, the facts were that the assessee had filed Writ Petition before the Hon'ble Orissa High Court on the ground that during the assessment proceedings, the A.O has made additions u/s 40A(3) of the Act on account of cash purchases relying upon various documents/reports which were never confronted to the assessee nor copies were furnished to the assessee. It was the contention of the Revenue that the reports relied upon by the A.O were available on the internet and were accessible to general public including the assessee and there has been no violation of natural justice. Hon'ble Orissa High Court held that the

assessee was entitled to prior notice of any report or material which the A.O intended to rely upon and by merely claiming that the said reports were available on internet cannot satisfy the mandate of rules of natural justice. Therefore, in the instant case, natural justice has been clearly violated and the A.O's order was clearly indicative of possible bias and therefore, the impugned order passed by the A.O was set aside and the Revenue was directed to serve copies of reports which were sought to be relied upon by the A.O against the assessee to the assessee. This issue was decided in favour of the assessee. Reverting to the facts of the present case, the A.O had relied on NHB reports which were never given to the assessee for his response or submissions. The mandate of principles of natural justice is thus violated in this case. In view thereof, in the interest justice, we set aside the order of the Id. CIT(A) on this ground and remand the issue back to the file of the A.O to re-adjudicate as per law while complying with the principles of natural justice and as per the above referred judicial pronouncement (*supra*) placed on record. Thus, ground No. 1 is allowed for statistical purpose.

5. Ground No. 2 is not pressed as submitted by the learned AR. After recording his submissions, this ground is dismissed as not pressed.

6. In ground No. 3, the assessee is aggrieved with the disallowance of 20% on luxury cars. The A.O observed that the assessee was not having any business income during the year. However, he claimed huge depreciation on the luxury cars such as BMW, ETC. No log book was also maintained. The A.O therefore, disallowed 20% of depreciation claimed on such vehicles u/s 38(2) of the Act. The learned CIT(A) vide para 9.1 observed that there was no business carried out by the assessee during the year, neither has maintained any log book to co-relate the use of vehicles for business purposes. Therefore,

the learned CIT(A) confirmed the addition made by the A.O and even before us, the assessee was unable to bring out on record any evidence or material to support his case on this issue. We are therefore, of the considered view and after going through the entire details that no business activity was carried out by the assessee and when he could not establish the business connection for the use of the luxury vehicles in relation to his business in such a scenario the stand of the revenue is correct. This ground is therefore, dismissed.

5. In ground No. 4, the assessee has challenged the disallowance of legal expenses of Rs. 15,08,770/-. The A.O has discussed the same in the assessment order as under:

“Perusal of profit and loss account, it was observed that assessee has claimed legal expenses to the tune of Rs. 15,08,770/- and claimed it as expenditure. On verification of details it was found that majority of such expenses are related to payment to advocates for court matters related to land disputes in various cases. This has nothing to do with the construction and real estate business of assessee. In fact, it was incurred for settlement of dispute of such property, which is not part of stock in trade. It was also observed that assessee has not offered any income on sale of housing units. Therefore, at any circumstances, it cannot be held as revenue expenditure. It is definitely a capital expenditure and even it was incurred for project under construction, still the same is required to be capitalized, as assessee is following project completion method and no income has been offered during the year. Therefore, Rs. 15,08,770/- is added back in the income of assessee.”

6. That, before the learned CIT(A) the assessee has made detailed written submissions which were considered and thereafter at para 10.2, the learned CIT(A) has held that the A.O has clearly mentioned that there was no business co-relation between the legal expenses claimed and the business of the assessee. That on perusal of some of the sample bills, it is seen that majority of the payments have been made to M/s. Vidhi Partners for handling various writ petitions. During the appellate proceedings, the assessee has failed to bring any evidence which could prove that the same were related

wholly and exclusively for the purpose of the business of the assessee. Particularly keeping in view of the fact that no business operations were carried on by the assessee during the year as no business income has been shown, therefore, the learned CIT(A) upheld the disallowance of legal expenses as made by the A.O. The fact remains undisputed before us that the assessee has not done any business activities during the year and that there is no business income shown also by the assessee. Therefore, the legal expenses claimed cannot be wholly and exclusively for the purposes of business of the assessee. In such a scenario, the decision of the subordinate authorities is held to be correct. Ground No.4, therefore, dismissed.

8. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on this 8th February 2022.

Sd/-
(R.S.SYAL)
VICE PRESIDENT

sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated : 08th February 2022 .
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The Pr. CCIT Pune
4. Addl. CIT Range 2,
5. The D.R. ITAT 'B' Bench
6. Guard File

BY ORDER,

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Sr. Private Secretary
ITAT, Pune.

		Date	
1	Draft dictated on	31-01-2022	Sr.PS/PS
2	Draft placed before author	03.02.2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS
6	Kept for pronouncement on		Sr.PS
7	Date of uploading of order	08-02-2022	Sr.PS
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9	Date on which the file goes to the Head Clerk		
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11	Date of dispatch of order		