

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2973/Mum./2022
(Assessment Year : 2011-12)

ITA no.2974/Mum./2022
(Assessment Year : 2012-13)

ITA no.2975/Mum./2022
(Assessment Year : 2013-14)

ITA no.2976/Mum./2022
(Assessment Year : 2014-15)

Shri Shankar Namdeo Kashid
C-101, Gayatri Darshan, Thakur Complex
Kandivali (East), Mumbai 400 101
PAN – AALPK9117B

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-13(2)(2), Mumbai

..... Respondent

Assessee by : Shri Harish P. Shah
Revenue by : Shri Harmesh Lal

Date of Hearing – 08/06/2023

Date of Order – 19/06/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present batch of four appeals has been filed by the assessee challenging the separate impugned orders of even date 12/10/2022, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*learned CIT(A)*], for the assessment years 2011-12 to 2014-15.

2. Since the appeals pertain to the same assessee involving a similar issue, therefore, as a matter of convenience, these appeals were heard together and are being disposed off by way of this consolidated order. With the consent of the parties, the appeal being ITA no. 2973/Mum./2022, for the assessment year 2011-12, is taken up as a lead case.

3. The only grievance of the assessee in all these appeals is against the taxation of the alleged agricultural income received by the assessee as income from other sources. The assessee has raised similar grounds in all these appeals. For reference, the grounds raised in the appeal for the assessment year 2011-12 are reproduced as under: -

"GROUND OF APPEAL: AGRICULTURAL INCOME ASSESSED AS INCOME FROM OTHER SOURCES-

(1) On the facts & circumstances and in law the learned CIT(A), NFAC, Delhi [referred as "CIT(A)"] erred confirming assessment of gross agriculture receipt of Rs.184,47,847/- as other income disregarding the voluminous details, documents & explanation to substantiate the claim merely holding that "...assessee has not satisfactorily explained the exemption claimed on account of Agricultural income. Like, land usage, transaction details of agricultural produce, purchase of seeds, fertilizers, labour/ machinery used in agricultural activity. Only ownership of agricultural land itself cannot justify the gross agricultural income of Rs. 1,84,47,847 on the basis of documents produced by the assessee."

(2) On the facts & circumstances, the learned CIT(A) erred confirming the gross agriculture receipt of Rs.1,84,47,847/-as income from other sources on the basis of surmises, conjecture or suspicion as there is no contrary finding on the submissions made by the Appellant."

4. The brief facts of the case, as emanating from the record, are: The assessee is an individual and has shown income from salary, income from sources, and agricultural income. For the assessment year 2011-12, the assessee filed his return of income on 26/07/2011 declaring a total income of Rs.9,76,310 and agricultural income of Rs.1,84,47,847. The return was

processed under section 143(1) of the Act. Subsequently, the proceedings under section 147 of the Act were initiated on the basis of the information received from the office of the Directorate of Income Tax (System), New Delhi that the assessee has shown agricultural income and the same has been claimed as exempt. It was also mentioned that the assessee showing agricultural income of more than Rs.1 crore from the assessment years 2007-08 to 2015-16 is engaged in routing their unaccounted/illegal money in the garb of agricultural income, thereby not only claiming exemption on such income but also engaged in the money laundering activities. Accordingly, the notice under section 148 of the Act was issued to the assessee on 29/03/2016 after recording the reasons for reopening. During the proceedings under section 147 of the Act, statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. In the assessment order dated 30/12/2016 passed under section 143(3) r/w section 147 of the Act, the **Assessing Officer ("AO")** also noted that in the case of M/s Stationery Point (India) Ltd., in which the assessee is a director, the CBI, EOU Wing, Mumbai has seized laptop/electronic data from his residence. During the reassessment proceedings, the assessee was asked to furnish the details of agricultural income of Rs.1,84,47,847 claimed as exempt and was asked to produce the bills for purchase & sales, expenses, and any debit and credit made to the profit and loss account for the agricultural produce. Further, the assessee was asked to produce transportation receipts, octroi receipts, weight bridge receipts for transportation, and weighing of agricultural produce. The assessee was also asked to submit any other information supporting his claim that he has earned an exempt income of Rs.1,84,47,847. The assessee was

also asked to show cause as to why the income of Rs.1,84,47,847 be not treated as income from unexplained sources and added to his total income. Vide notices under section 142(1) of the Act dated 14/10/2016 and 15/11/2016, the assessee was once again asked to submit the above said details. However, as noted in the assessment order, the assessee did not submit any details, moreover took an adjournment for about a month on 29/11/2016. As noted by the AO, on 30/12/2016, i.e. at the fag end of the year, the assessee produce certain copies (not original) of bills which are not supported by any original documents such as loading/unloading charges, octroi receipts, transportation receipt, weigh bridge receipts, stock register, etc. Further, the assessee also did not produce any evidence in support of carrying out any agricultural activities such as sowing, tilling, plowing, harvesting etc. Therefore, in the absence of originals/supporting documents, the AO rejected the claim of exemption of agriculture income and treated the same as income of the assessee from undisclosed sources. Accordingly, the AO added Rs.1,84,47,847 to the total income of the assessee under the head income from other sources.

5. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee by not agreeing with the documentary evidence submitted by the assessee in support of its claim. The relevant findings of the learned CIT(A), in this regard, are as under: -

"4.5 I have very carefully considered the matter. I have examined the order of the A.O and the submissions of the appellant. I have also seen the documents submitted by the assessee. The assessee has mainly submitted the ownership document of agricultural land and self-made cash sales vouchers of onions, grapes etc

4.6 All the vouchers submitted by the assessee are self-made (not of the purchasing party) alike and written in same manner, there is no address of the purchaser. no name of the purchaser, neither any shop number/ basic address or name of the district to which the purchaser belongs to mentioned on the vouchers. No details of sale procedure like transport vehicle and vehicle number is mentioned.

4.7 As per documents submitted during appeal proceedings it is

seen that the assessee has purchased agricultural land in 2009 which is claimed to be used for agricultural purposes. The crop related land revenue papers given by LEKHPAL of that area, showing the crops grown on the land is not produced during appeal proceedings to verify the claim of the assessee.

4.8 It is also seen that out of four cases of the assessee in the appeal before me there is substantial growth in agriculture income of the assessee in the next year i.e. 2012-13 and decrease in 2013-14 and 2014-15 from the same agricultural land despite any change in the area of land or agricultural operations. It is strange to notice how there can be such difference in agricultural income from the same area of agricultural land when other factors are constant.

Sr. no.	A.Y.	Agricultural Income Assessed
1.	2011-12	1,84,47,847
2.	2012-13	2,06,70,510
3.	2013-14	44,69,470
4.	2014-15	78,43,422

4.9 No bank account has been submitted through which the payments for agricultural operations were made. Thus expenses of agricultural operation are not supported by any bank statement.

4.10 The case of the assessee is also under investigation by the central agencies CBI and economic offences wing Bombay.

4.11 No transportation document with respect to sale of agricultural income was submitted either before assessing officer or during the appeal proceedings. Assessee has been unable to establish through evidences that the income Rs. 1,84,47,847 has been derived from the agricultural produce grown on the land.

4.12 Merely by owning agricultural land and producing some crops on it, will not entitle the assessee to claim a heavy amount of agricultural income as exempt unless it is establish that the crop was harvested on the same land and properly sold in the market and all the documentary evidence for the same are submitted during the assessment or appeal proceedings which is not the case here

4.13 The assessee is required to give satisfactory explanation that the assessee is eligible for allowance of the exemption claimed under section 10(1) read with

section 2(1A) of the Act. Section 2(1A)(b) which provides that the agricultural income includes, inter alia, any income derived from land in India by agricultural operations including processing of agricultural produce, raised or received as rent in kind or any process ordinarily employed by cultivator or receiver of rent in kind so as to render it fit for the market, or sale of such produce. Agricultural income of this nature will broadly be computed as if it were chargeable to tax under the head "Profit and gains of business or profession".

4.14 The assessee has not satisfactorily explained the exemption claimed on account of Agricultural income. Like, land usage, transaction details of agricultural produce, purchase of seeds, fertilizers, labour/machinery used in agricultural activity. Only ownership of agricultural land itself cannot justify the gross agricultural income of Rs 1.84,47,847 on the basis of documents produced by the assessee. As a result, the appeal is DISMISSED.

Being aggrieved, the assessee is in appeal before us.

6. Having considered the submissions of both sides and perused the material available on record. It is the plea of the assessee that he is a farmer and owns land along with other relatives. The agricultural income claimed as exempt is in respect of agricultural products such as grapes, onion, tur dal, garlic, bajra, and mango. In this regard, the statement showing details of land and items cultivated, forming part of the paper book on page No. 16 was referred to at the time of the hearing. The learned AR also referred to the statement showing income and expenditure in support of its plea that for cultivating the aforesaid agricultural produce it had incurred expenditure on the purchase of seeds, fertilisers, diesel, power and fuel, repair and maintenance, salary and wages, water charges, sampling charges, purchase of plants, the land levelling charges, etc. It is evident from the record that it was the plea of the assessee that most of these details could not be furnished during the assessment proceedings since the CBI, in relation to the matter of M/s Stationery Point India Ltd, has seized entire record maintained at the

office premises, where the records pertaining to the assessee were also maintained. However, the same was furnished before the learned CIT(A). From the perusal of the impugned order, we find that the learned CIT(A) though treated these details as additional evidence, however, did not call for any remand report from the jurisdictional AO regarding the evidence so furnished by the assessee. Further, we find that the learned CIT(A) rejected the evidence without calling for any further information from the assessee. Thus, none of the authorities have properly examined the evidence so furnished by the assessee in respect of the claim of exemption of agricultural income. In view of the above and the interest of justice, we deem it appropriate to remand this issue to the file of jurisdictional AO for *de novo* adjudication after examination of all the details filed by the assessee. In this regard, we also direct the AO to conduct thorough verification/examination of all the aspects pertaining to the claim of income as agricultural income. Needless to mention that the AO shall have the liberty to call for/summon any party from whom the assessee has claimed to have purchased various products in respect of its agricultural activity. The AO can also conduct a field visit to verify the claim of cultivation of agricultural products by the assessee. Needless to mention that no order shall be passed without affording reasonable opportunity of being heard to the assessee. The assessee is also directed to furnish all the information/details as may be sought by the AO. With the above directions, we remand this issue to the file of the jurisdictional AO and set aside the impugned order. As a result, grounds raised by the assessee in the appeal for the assessment year 2011-12 are allowed for statistical purposes.

7. During the hearing, both parties agreed that in the other appeals also the impugned addition is arising out of a similar factual matrix. Therefore, the issue arising in these appeals is also remanded to the file of the jurisdictional AO for *de novo* adjudication in view of the aforesaid directions. As a result, grounds raised by the assessee in the appeal for the assessment years 2012-13 to 2014-15 are also allowed for statistical purposes.

8. In the result, all the appeals by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 19/06/2023

Sd/-
AMARJIT SINGH
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 19/06/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai