IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU "A" BENCH, BENGALURU

Before Shri Chandra Poojari, Accountant Member
and
Shri Keshav Dubey, Judicial Member

ITA No. 228/Bang/2024 (Assessment Year: 2017-18)		
A.S. Srinath (HUF) No. 1, Mallikarjuna Nilaya 1st Cross, Hosamane Jail Road Shivamogga 577201 PAN – AAMHA9965J	vs.	The Income Tax Officer Ward 1 & TPS No.75, 100 Feet Road Gopal Gowda Exten. Shivamoga 577201
(Appellant)		(Respondent)

Assessee by:	Shri Rajeev C. Nulvi, Advocate
Revenue by:	Shri Guru Kumar S., Addl. CIT-DR

Date of hearing:	28.05.2024
Date of pronouncement:	10.07.2024

O R D E R

Per: Keshav Dubey, J.M.

This appeal at the instance of the assessee is directed against the order of the National Faceless Appeal Centre, Delhi / CIT(A) dated 09.01.2024 vide DIN & Order No. ITBA/NFAC/250/2023-24/1059510032(1) passed under Section 250 of the Income Tax Act, 1961 (the Act) for Assessment Year (AY) 2017-18.

2. The assessee has raised the following grounds of appeal: -

"*1. The order of the authorities below is against the facts of the case and passed on assuming the facts which are unrealistic.*

2. On the facts and circumstances of the case, and in the provisions of the law, the Assessing Officer erred in estimating the agricultural expenditure at a certain percentage of agricultural income is against the fact, as the increase in the gross receipts may be for various reasons, which are not dependent on agricultural expenditure.

3. *On the facts and circumstances of the case, and in the provisions of the law, the authorities below erred in appreciating the fact, that the agricultural expenditure claimed by the Appellant for his land holding of 8 Acres 27 Guntas is almost the same and similar Rs.4,90,000/- to Rs.5,27,000/-, as against the sharp increase or decrease in the income for different financial years.*

4. *On the facts and circumstances of the case, and in the provisions of the law, the Assessing Officer erred in estimating the agricultural expenditure at a certain percentage of revenue is not a determinative factor as the expenditure will not vary in commensurate with the revenue.*

5. *On the facts and circumstances of the case, and in the provisions of the law, the Assessing Officer erred in estimating the agricultural expenditure at a higher amount than the amount claimed by the Appellant and then treating/deeming such expenditure as income from other sources as against the fact that in records of the department, there is no information that the Appellant is having income other than the agricultural income for deeming the income from other sources.*

6. *For these and other reasons which may be adduced at the time of the hearing, this Honourable Bench is requested to delete the addition made by the A.O. As the A.O estimates the expenditure, assuming that the expenditure varies in commensurate with income but it was not so.*

7. *The Appellant Trust craves leaves to add, to alter, to amend or to delete any other grounds at the time of the hearing."*

3. The brief facts of the case are that the assessee being a Hindu Undivided Family (HUF) has been deriving income only from the source of agriculture since the formation of the HUF. The assessee has been filing return of income regularly by declaring agricultural income in the past. For AY 2017-18 the assessee HUF filed its return of income on 22.03.2019 under Section 139(4) of the Act by declaring interest income or Rs.53,660/- and agricultural income of Rs.53,22,638/-. Thereafter the case had been selected for limited scrutiny under CASS to verify the 'agricultural income'. During the course of assessment proceedings the assessee has furnished a break-up of agricultural income derived in respect of different agricultural produce such as areca nut, cocoa, pepper, banana as well as tender coconut. The Assessing Officer (AO)

observed that the pepper sale forms the major chunk of the agricultural produce sold by the assessee, which is about 62.46% of the gross agricultural produce. Further the AO was of the opinion that as the expenditure shown by the assessee at 8.49% of the gross agricultural produce is very meagre and in the absence of any bills with regard to the expenditure incurred in connection with the agricultural activity, the AO adopted 30% of the gross agricultural income as the expenditure in connection with the agricultural activity which works out to Rs. 17,44,946/- and accordingly treated assessee net agricultural income at Rs.40,71,542/- (58,16,488 – 17,44,946) and the excess of expenditure of Rs.12,51,096/- (17,44,946 – 4,93,850) was brought to tax as income from other sources and accordingly concluded the assessment under Section 143(3) of the Act vide order dated 26.11.2019. Aggrieved, assessee preferred an appeal before the CIT(A).

4. The CIT(A) confirmed the view taken by the AO and dismissed the appeal with the following observations: -

> *"I have carefully considered the facts of the case, grounds of appeal and written submissions uploaded by the appellant. In the present case the appellant has filed the return of income for AY. 2017-18, declaring total income at Rs.51.460/- and claimed an agricultural income of Rs.53.22,638/- as exempt income (after reducing the expense of Rs 4,93,850/- from Gross Agricultural Income at Rs.50,16.488/-). Thereafter, the case was selected and the Assessment was completed u/s 143(3) of the Act vide Assessment Order dated 21.08.2018. During the course of Assessment Proceedings, the appellant was asked to explain as to why the cultivation expenses are so low at Rs.4,93,850/- corresponding to the high Agricultural income at Rs.58.16,488/-. Since, the appellant could not explain the low expenses as above, the Assessing Officer after analyzing the yield of agricultural produce of the appellant vis-a-vis corresponding expenditure through different scientific and agricultural data available for the crop pattern observed that in order to harvest the agricultural produce, nearly 48.78% of the corresponding cultivation expertise is required. Further, the Assessing Officer has also analyzed the expenditure of the appellant from subsequent years and found that the appellant has claimed the expenses for the AY 2018-19 at 66 77% and for A.Y. 2019-20 at 29.99%, and arrived at a conclusion that at*

least 30% of cultivation expense is a reasonable expenditure on the Gross Agricultural income. Therefore, the Assessing Officer computed the agricultural expenses of Rs. 17,44,946/- at 30% of Gross Agricultural income and reduced the Exempt Agricultural Income of the appellant to Rs 40,71,542/-, thereupon, added Rs 12,51,096/- (i.e. Total Expense Rs 17,44,946/- – Rs. 493850/-) as taxable income from other sources. The present appeal has been constituted against the said order.

*6. During the appellate proceedings the appellant has argued (*as above) that Assessing Officer has wrongly decided Rs. 12,51,096/- as the income from other sources. The above argument of the appellant holds no merit as there is no doubt that appellant has shown the amount credited to his account, albeit claiming it as agricultural income. The Assessing Officer has made an elaborate analysis and deduced that the amount of Rs.12,51,096/- (i.e. excess of expenditure, Rs 1744946 – Rs.4,93,850/-) is actually the income of assessee which is over and above the Actual agricultural income of Rs.40,71,542/-, therefore, the irrelevant ground of appellant instead of discussing the issue on merit) is not tenable. The appellant has also produced the land record and crop information letter which is neither a relevant evidence (as the same was also produced during the assessment proceedings) nor explains the issue of low expenses at all. Therefore, the appellant has not been able to explain the issue to prove his contention as to why there was so low expense for the Agriculture produce. Further, appellant's own computation of the agricultural income in the subsequent years are not in line with the argument of the appellant and actually substantiates, the findings of the Assessing Officer in this year. In fact, the Assessing Officer has taken very Pragmatic view by analyzing and taking different factors, relevant data, available scientific and agricultural resources to arrive at the total income of the appellant. Therefore, I find no inconsistency in the order of the Assessing Officer, and thus, the Assessment Order is confirmed.*"

Aggrieved by the order of the ld. CIT(A), the assessee filed the present appeal before the Tribunal.

5. The assessee filed a paper book comprising 10 pages enclosing therein the written submissions, copy of RTC for land holding, copy of the crop confirmation letter issued by the Deputy Tahsildar, Shimoga Taluk, Shivamoga district, Karnataka as well a copy of the date wise sale of agriculture product, buyer name, amount received and mode of amount received in a tabulated

form. The solitary issue raised by the assessee is whether the CIT(A) is justified in confirming the order of the AO specially when no adverse materials were brought on record and the additions were based on pure estimate, imagination and surmises.

6. Before us, the learned A.R. of the assessee submitted that the assessee is holding 8 acres 27 guntas of agricultural land at Purle Village in Shimoga Taluk of Karnataka State where the assessee is cultivating coffee, pepper, areca nut, coconut, banana and coco. During the course assessment proceedings the assessee has submitted all the sale bills in support of the gross agricultural income and there is no dispute with regard to this. The AO merely on assumption of the facts came to the conclusion that the expenditure claimed by the assessee towards agricultural income is less and estimated 30% based on pure guess and surmises. Further the A.R. of the assessee vehemently submitted that the AO has not brought into record a single evidence to show that the income is earned through other sources of income and the AO should follow rule of consistency as in the earlier years the same were never disputed by the AO.

7. The learned D.R., on the other hand, supported the orders of the authorities below and submitted that on verification of return of income from assessment years 2016-17 to 2018-20 it was seen that expenditure varies from 8.49% to 66.77% which is quite abnormal and, therefore, the authorities below are justified in adopting the expenditure in connection with the agricultural activity @ 30% of the gross agricultural income.

8. We have heard the rival contentions and perused the material on record.

9. After analysing the facts of this case, considering the submissions made by the ld. AR & DR and the materials placed on record we cannot brush aside the fact that the assessee HUF is holding 8 acres 27 guntas of agricultural land at Purle Village in Shimoga Taluk of Karnataka State where the assessee is

cultivating coffee, pepper, areca nut, coconut, banana and coco. The fact that only main source of Income are from Agriculture activities also not disputed by the authorities below.

10. The chapter II of the Income Tax Act, 1961 deals with "Basis of Charge". As per Section 4(1) of the I. Tax Act, 1961 "Where any Central Act enacts that income tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and [subject to the provisions (including provisions for the levy of additional income-tax) of, this Act] in respect of the total income of the previous year of every person:

Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly."

Thus a reading of the above clearly show that the charge of tax is on total income. Agriculture income is exempt u/s 10(1) of the I. Tax Act, 1961 which falls in Chapter III of the Act. Heading of the Chapter III is "Incomes which do not form part of total income". Thus the item of Income specified in Section 10(1) of the Act or Chapter III of the Act would not be a part of total Income. There cannot be a charge of Tax u.s.4(1) of the Act on anything other than total income. We could not understand how by increasing the agriculture expenditure & reducing the Agriculture Income which are exempted U/s 10(1) of the Act would give rise to Total Income chargeable to tax U/s 4(1) of the Act under head "Income from Other Sources". We are of the opinion that the question of increasing or decreasing of any agriculture expenditure may become irrelevant if income of the assessee HUF is considered solely agriculture in nature & therefore merely by increasing the Agriculture expenditure & reducing the exempted Agriculture income will not resulted in Income from other sources automatically unless the AO brought some material on record to show that the assessee HUF earns any other income also. It is also well settled that the AO cannot "step into the shoes of an assessee", or question or even sermons to his beleaguered assessees on the conduct of the

business. This is more particularly so, when there is nothing in the enacted laws, that requires an assessee to conform to a particular set of business practices.

In our considered view, merely on the basis of some estimation & assumption of the AO, increasing of Agriculture expenditure & consequently reducing the Agriculture income will not automatically culminate in Income from Other Sources without any material being brought on record to show that agriculture expenses are not genuine or they are understated. AO has merely acted on the basis of surmises and conjuncture in adopting the estimate of 30% of gross agriculture income as Expenditure in connection of agriculture activities without carrying out further verification. In this case we note that both the authorities have failed to discharge their duties properly as none of the parties have brought any substantial material on record to prove that assessee has incurred expenses over & above what has been stated by the assessee HUF.

11. Under these circumstance, we are not in a position to sustain the order of the ld. CIT(A) as the same appeared to be on assumptions & estimations, guess & surmises to sustain the addition made by the AO and therefore, we are inclined to set aside the order of the first appellate authority and direct the AO to delete the addition of Rs.12,51,096/-. Accordingly, the appeal of the assessee is allowed.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 10th July, 2024.

Sd/-	Sd/-
(Chandra Poojari)	**(Keshav Dubey)**
Accountant Member	**Judicial Member**

Bengaluru, Dated: 10th July, 2024
n.p.

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bengaluru*
5. *Guard File*

By Order

//True Copy//

Assistant Registrar
ITAT, Bengaluru