

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

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.432/PUN/2024
निर्धारण वर्ष / Assessment Year: 2011-12

Mr. Dnyaneshwar Baburao Kathe, Janori Dhawa, 10 th Mail Road, Dindori, Nashik- 422206. PAN : BBPPK3199D	Vs.	ITO, Ward-1(3), Pune.
Appellant		Respondent

Assessee by : Shri Krishna V. Gujarathi
Revenue by : Shri Ramnath P. Murkunde
Date of hearing : 13.08.2024
Date of pronouncement : 04.11.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 05.01.2024 passed by LD. CIT(A)/NFAC for the assessment year 2011-12.

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

- "1) *On the facts and in the circumstance of the case and in law the honorable CIT(A) has erred and is not justified in confirming the addition of Rs.31,58,740/- by treating the cash deposits made by the assessee in the saving bank account of Dena Bank as unexplained income without appreciating the fact that the said cash deposited in the bank was out of agriculture sale proceeds. The appellant prays that the addition may please be deleted.*

2) *On the facts and in the circumstances of the case and in law the honorable CIT(A) has erred and is not justified in confirming the addition of Rs.39,32,662/- as Long Term Capital Gain on sale of land without appreciating the fact that*

- *the land under consideration is agriculture land which is not a Capital Asset and is exempt from tax.*
- *the land under consideration is agriculture land and is not a capital asset and therefore the provision of section 50C of the Income Tax Act is not applicable in appellant's case.*

The appellant prays that the gain on sale of agricultural land may please be allowed as exempt from tax.

Without prejudice to second ground of appeal that the land under consideration is an agriculture land and the income from the said land is exempt, the appellant wishes to raise third Ground of Appeal as follows

- 3) *On the facts and in the circumstances of the case and in law the honorable CIT(A) has erred and is not justified in disallowing the deduction claimed u/s 54F of the Income Tax Act. The appellant prays that the deduction u/s 54F may please be allowed.*
- 4) *The appellant hereby reserves the right to add, amend, alter, delete or raise any additional ground of appeal.”*

3. The facts of the case, in brief, are that the assessee is an individual and claims to be an agriculturist. According to the assessee, there was no taxable income, therefore, income tax return was not furnished by him. On the basis of information available with the Department that during the financial year under consideration, the assessee had deposited cash of Rs.31,58,740/- in his savings bank account maintained with Dena Bank and also sold immovable property for Rs.40,25,000/-, the case was reopened u/s

147 of the IT Act and notice u/s 148 and 142(1) were issued to the assessee. The assessee did not comply with the above notices and accordingly the assessment order was passed *ex-parte* determining the taxable income at Rs.71,83,740/-. This amount consists of two additions first one represents unexplained cash of Rs.31,58,740/- deposited in savings bank account and the second one Rs.40,25,000/- represents income from long term capital gains on the sale of agricultural land.

4. Against the above *ex-parte* assessment order, the assessee preferred appeal before ld. CIT(A)/NFAC. After considering the reply of the assessee, ld. CIT(A)/NFAC dismissed the appeal and sustained the additions made by the Assessing Officer. It is this order against which the assessee is in appeal before this Tribunal.

5. Ld. AR submitted before us that the order passed by Ld. CIT(A)/NFAC is not correct. It was submitted by ld. Counsel of the assessee that the assessee is an agriculturist and do not have any other income, therefore, return of income was not furnished by him. It was submitted that during the period under consideration, on various dates the assessee has deposited cash amounting in all to Rs.31,58,740/- in his savings bank account maintained with Dena Bank. Ld. Counsel of the assessee submitted that the

assessee is in possession of substantial agricultural land along with his brother and involved in production of export quality roses in poly house. For this purpose, the assessee has also availed bank loan. It was submitted that the assessee is less literate and residing in remote area of Maharashtra & do not have any knowledge regarding maintenance of records such as sale bills, purchase bills, vouchers for labour payment, transportation/diesel expense etc. Ld. Counsel of the assessee submitted that the assessee is also involved in production of tomato and wheat and also doing production of rose on normal land (other than the poly house). The whole amount of Rs.31,58,740/- deposited in Dena Bank on various dates pertains to receipt from sale of agricultural produce i.e. export quality rose, tomato and also production of rose on normal land. Ld. Counsel of the assessee relied on the statistical data report prepared by Associate Professor of Agricultural Economics College of Pune wherein it was opined that production of export quality of rose in poly house yield is more than Rs.22,50,000/- per acre, per year in Maharashtra. In the same report it was also opined that production of rose on normal land (i.e. other than poly house) yields sale of Rs.4,50,000/- per acre, per year. Ld. Counsel of the assessee further submitted that in support of agricultural land

holdings and production of export quality rose, tomato and wheat, 7/12 extracts were produced before the ld. CIT(A)/NFAC but they were not found reliable, reason being not signed by Talati of the particular area. In this regard, ld. Counsel of the assessee furnished before us 7/12 extracts duly signed by the Talati of related area as an additional evidence. Later 7/12 extract copy downloaded from the Government site was also produced before the Bench. The ld. Counsel of the assessee submitted that in all these 7/12 extract production of export quality rose, tomato and wheat have been specifically mentioned/entered. It was accordingly contended before the Bench that doubt raised by ld. CIT(A)/NFAC regarding ownership/holding of agricultural land no more survives, and therefore, the agricultural income should have been accepted by the Assessing Officer as well as by the ld. CIT(A)/NFAC.

6. The ld. Counsel of the assessee further submitted that the statistical data report relied on by the assessee was not accepted by the Assessing Officer in the remand report submitted before ld. CIT(A)/NFAC. It was submitted that the Assessing Officer has denied the statistical data by saying that various factors affect the yield per acre and there could be significant variance in the actual

yield derived. In this regard, it was submitted that even if 75% of the yield estimated by the Associate Professor of Agricultural Economics College of Pune is accepted even then there will be agricultural sale of more than Rs.32,50,000/- for the period under consideration. In support of this contention, a chart was prepared and submitted before Id. CIT(A)/NFAC wherein a total of Rs.65,15,000/- was estimated as sale of agricultural produce based on the calculation prepared by Professor of Agriculture College, Pune. In addition to above, it was also submitted that during the period from 07.09.2010 to 14.02.2011 an amount of Rs.6,50,000/- was deposited in the same bank account and prior to deposit of above amount, Rs.7,85,000/- was withdrawn. Accordingly, it was contended that withdrawn amount was again deposited into the Bank. In support of this contention copy of bank account statement was produced before Id. CIT(A)/NFAC, but Id. CIT(A)/NFAC has not accepted the same. Ld. Counsel of the assessee further relied on various case laws wherein under similar circumstances, the estimation of agricultural income in the absence of bills and vouchers for sale of agricultural produce and receipt for expenses were estimated judiciously and the additions were deleted. In this regard, Id. AR relied on the following decisions :-

- (i) Smt. Annakkalanjiam Mathivanan ITA No.2451/Chny/2018 order dated 22.01.2019 (Chennai ITAT).
- (ii) ITO vs. Madhusudan Dhakad Harda, ITA No.09/Ind/2022 order dated 28.06.2022 (Indore ITAT).

7. Accordingly, ld. AR requested before the Bench to delete the addition of Rs.31,58,740/- being deposited out of agricultural income.

8. With regard to addition of Rs.40,25,000/- on account of sale proceeds of Agricultural land assessed as long term capital gain, ld. AR submitted before us that the agricultural land sold was not capital asset being situated more than 8 kilometres away from nearest municipality. It was submitted that a certificate in this regard is obtained and produced before the Bench as an additional evidence wherein it has been stated by Public Works Department, Maharashtra State that the distance of impugned agricultural land sold by the assessee was more than 8 kilometres from Nashik Municipal Corporation (i.e. nearest municipality). Therefore, the same is not a capital asset as per section 2(14) of the IT Act, accordingly Capital Gain cannot be calculated. Alternatively, it was also submitted before the Bench that sale proceeds/long term capital gain in any case was invested in residential building

wherein an amount of Rs.32,05,250/- was invested by the assessee. Accordingly, it was claimed that deduction u/s 54F is also allowable to the assessee. It was also submitted that in the original assessment proceedings, the Assessing Officer has taken the actual sale consideration i.e. Rs.40,25,000/- as the sale value and taxed the same without providing benefit of cost of acquisition etc. But in the remand report, the Assessing Officer has reported the Fair Market Value of the sold property i.e. at Rs.56,65,000/- which is clear cut change of opinion by the Assessing Officer. It was submitted that once the assessing officer has opted full value of consideration as the sale value instead of FMV, he cannot change it in the remand report. It was submitted that Ld. CIT(A)/NFAC has also accepted FMV Rs.56,65,000/- as the sale value of the property which is not correct & from this enhanced value cost of acquisition etc was allowed. It was submitted that the sale value once adopted by the Assessing Officer cannot be changed in remand report either by the AO or by LD CIT(A)NFAC. It was therefore alternatively requested to take the value as determined by the AO in the assessment order i.e. at Rs.40,25,000/- & further requested to allow cost of acquisition etc from this value only. In support of alternative ground regarding cost of construction of

residential house a certificate along with proposed plan was produced before Id. CIT(A)/NFAC along with bill of building contractor. It was submitted that Ld. CIT(A)/NFAC therefore erred in not allowing the alternative claim regarding benefit of deduction u/s 54F of the IT Act by saying that the bill for construction does not appear to be genuine and no completion certificate of Government Authority was produced. In this regard, Id. AR submitted that a certificate from Architect Shri Sanjay Ugale along with sanctioned layout of house at village Janori and a completion certificate issued by Architect Shri Sanjah Ugale is obtained and produced before the Bench as additional evidence. It was accordingly requested before the Bench either to accept that the agricultural land sold is not a capital asset or alternatively to allow deduction u/s 54F of the IT Act by taking sale value of land at Rs.40,25,000/-.

9. Ld. DR relied upon the orders passed by subordinate authorities and requested to confirm the same. Ld. DR relied on the following case laws in support of their contentions :-

- (i) Abhijit Subhas Gaikwad vs. DCIT, 60 taxmann.com 259 (Pune – Trib.).
- (ii) Gopal C. Sharma vs. CIT, 209 ITR 946 (Bombay).

- (iii) Smt. Sarifabibi Mohmed Ibrahim vs. CIT, 204 ITR 631 (SC).
- (iv) CIT vs. V.A. Trivedi, 172 ITR 95 (Bombay).
- (v) CIT vs. Siddharth J. Desai, 139 ITR 628 (Gujarat).

10. We have heard Ld. Counsel from both the sides and perused the material available on record including additional evidences furnished by the assessee and case laws relied on by both the parties. We find that the assessee has challenged addition of Rs.31,58,540/- and determination of long term capital gain of Rs.39,35,662/-. We find that in support of agricultural income the assessee has relied on statistical data report prepared by Professor of Economics Agricultural College, Pune but the said report cannot be sacrosanct for the purposes of proof of agricultural income and the assessee needs to substantiate the same before the AO with proper and supporting evidences. At the same time we find that the assessment order was passed *ex-parte* i.e. in the absence of assessee and first appeal order was passed after considering the remand report sent by the Assessing Officer. Under these circumstances we find that the assessee could not support his case properly before the Assessing Officer and accordingly considering the totality of the facts of the case and in the interest of justice, we

deem it appropriate to set-aside the order passed by Ld. CIT(A) and remand the matter back to the file of the Assessing Officer with direction to pass assessment order afresh after providing reasonable opportunity of hearing to the assessee. The Assessing Officer shall decide the issue as per fact and law. The assessee is also hereby directed to respond to the notices issued by the AO, otherwise the AO shall be at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised in this appeal are accordingly allowed for statistical purposes.

11. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 04th day of November, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 04th November, 2024.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.