

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**Before Sh. Satbeer Singh Godara, Judicial Member
&
Sh. Manish Agarwal, Accountant Member**

ITA No. 1879/Del/2021 : Asstt. Year: 2015-16

ITA No. 1880/Del/2021 : Asstt. Year: 2016-17

Vipul Mittal (HUF), G-36, Behind Fire Station, Lawrence Road, Keshavpuram, New Delhi-110035	Vs	PCIT, Delhi-15, Delhi-110035
(APPELLANT)		(RESPONDENT)
PAN No. AAFHV2383E		

ITA No. 1881/Del/2021 : Asstt. Year: 2016-17

Naresh Mittal (HUF), G-36, Behind Fire Station, Lawrence Road, Keshavpuram, New Delhi-110035	Vs	PCIT, Delhi-15, Delhi-110035
(APPELLANT)		(RESPONDENT)
PAN No. AAEHN5752L		

**Assessee by : Sh. Salil Kapoor, Adv. &
Ms. Ananya Kapoor, Adv.
Revenue by : Sh. Surender Pal, CIT-DR**

Date of Hearing: 24.02.2025	Date of Pronouncement: 28.02.2025
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ORDER

Per Satbeer Singh Godara, Judicial Member:

These assessee's three appeals ITA Nos. 1879, 1880 & 1881/Del/2021 for Assessment Year 2015-16 and 2016-17, arise against the PCIT, Delhi-15's DIN & order No. ITBA/REV/F/REV5/2020-21/1031977501(1), 1031978912(1) &

1031978555(1), in proceedings u/s 263 of the Income Tax Act, 1961 (in short "the Act"), appeal-wise; respectively.

2. Heard both the parties at length. Case files perused.

3. Both the parties are very much *ad idem* during the course of hearing that the assessee's instant three appeals raises an identical issue of it's entitlement of claim section 10(1) agricultural income exemption; involving varying sums, as the case may be. We therefore treat it's appeal ITA No. 1879/Del/2021 for A.Y. 2015-16 as the "lead" case.

4. Next comes the assessee's sole substantive issue between the parties regarding correctness of the learned PCIT-15 impugned revision directions issued u/s 263 of the Act holding the Assessing Officer's corresponding regular assessment framed on 29.12.2017, as an erroneous one causing prejudice to the interest of the Revenue. We make it clear first of all that this assessee all along has been assessed as an HUF. It had filed it's return on 28.08.2015 declaring taxable income of Rs.3,22,330/- which was initially processed u/s 143(1) of the Act. The Assessing Officer thereafter completed his scrutiny assessment on 29.12.2017 disallowing the assessee's

expenditure incurred on freight charges amounting to Rs.4,38,060/- which appears to have attained finality.

5. We next note that the learned PCIT thereafter proposed to exercise section 263 revision jurisdiction on the ground that the assessee's agricultural income exemption claim of Rs.97,22,240/- had been accepted without carrying out adequate enquiries in light of section 263(1) explanation-2 inserted by the Finance Act, 2016 w.e.f. 01.06.2015. The assessee filed it's reply thereto on 15.12.2017. Learned counsel submits that the assessee duly filed it's reply before the PCIT in revision proceedings stands rejected as under:

"2. The assessment records of the case were called for and examined. It was observed that the assessment order so passed was erroneous in so far as it was prejudicial to the interests of the revenue due to the following reason(s):

a) Deduction of Rs. 97,22,240/- was claimed as the Income under Agricultural Income and A.O. had accepted and allowed Rs. 92,84,180/- under agricultural Income shown by the assessee without making any appropriate enquiries and even while ignoring the fact that the freight charges bills provided by the assessee of M/s. Milap Transport Road lines, were in reply to notice u/s 133(6) of the I.T. Act, 1961. The assessee informed that "the GR/Bilties as annexed with the present notice are neither printed by us nor issued by us at any point of time and they are forged and fabricated GR/Bilties. It is pertinent to mention that no goods were transported for M/S Vipul Mittal HUF at any point of time by our office especially on the dates as mentioned on the said bilties/invoices. The said bilties/invoices are forged and fabricated as my trade name i.e. (Milap) is not written

properly". This is evident from this that assessee had no agricultural income and had shown such huge agricultural income on the basis of dubious activities at far distant locations. The careful consideration of statement of the Karta recorded on 12-12-2018 had amply shown that the agriculture income shown by the HUF assessee was not genuine. It is also found that the assessee had shown huge agricultural income in the preceding years and the same should be verified by the A.O.

3. In view of the above observations, a show cause notice was issued to the assessee on 10-03-2021 to show cause why an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment should not be made u/s 263 of the Act as the order passed by the AO was erroneous in as much as it is prejudicial to the interests of the revenue.

4. In response to the notice dated 10-03-2021, the assessee filed application on dated 19-03-2021 which has been placed on record, wherein the assessee requested for inspection of the assessment record and certified true copy of the same, to file the proper reply in response to the notice dated 10-03-2021.

5. With change of incumbency of the charge, the jurisdictional Pr. Commissioner of Income Tax- 15, Delhi issued fresh notice on 23/03/2021 for compliance of the issues by 26/03/2021 to which the assessee filed written submission. The decision as below have been taken after verifying the records of the assessee and the compliance received in this office from the assessee on 26/03/2021.

6. The response of the assessee with regard to the above notice may be summarized as under:-

"The Assessee filed the detailed reply on 15/12/2017 in response to the above show cause notice dated 08/12/2017 and stated that the Assessee has not dealt with Milap Transport Roadlines. The transportation of agricultural produce was done by the agent, i.e. (M/s Guru Kirpa & Co).

Further stated that the Assessee has requested the persons from whom the Assessee has taken the land on lease to comply the Notices issued u/s 133(6). Similarly the Assessee requested M/s Guru Kirpa & Co. to appear

before the AO in response to summon issued u/s 131 of the Act.

All the person, from whom land was taken had complied the notice u/s 133(6) vide their respective replies.

M/s Guru Kirpa & Co. also appeared before the AO and his statement was recorded on oath on 22/12/2017. M/s Guru Kripa & Co. confirmed the transaction made with the Assessee as well as the fact that transportation of agricultural produce was done by him and the charges of same were deducted from payment of sale proceeds.

The Assessee also appeared before the AO on 26/12/2017 and his statement was recorded on oath on 26/12/2017 in compliance of Summons issued u/s 131 dated 29/11/2017.

Apart from the above the Assessee had filed the following documents vide letter dated 04/10/2017, 20/11/2017 and 28/12/2017 as asked by the AO vide its notice dated 18/04/2017 and 21/08/2017. Copy of same is enclosed herewith.

- 1. Copy of J From issued by the Anaj Mandi Nabha and Sale bills issued by the M/s Guru Kirpa & Co.*
- 2. Detail of expenditure incurred for cultivation along with supporting documents.*
- 3. Detail of agriculture Land along with lease deed.*
- 4. Farad (Jamabanadi) kept by Patwari for land ownership and its use to prove the agriculture land used by the Assessee.*

Apart from the above, the AO has also verified the details/information filed by the Assessee through independent inquiry by issuing notices u/s 133(6) to the following persons: -

Date	Name	Nature of transaction	Status	Certified copy of reply
06/10/2017	M/s Vikram Traders	Commission Agent	Complied	Enclosed
06/10/2017	M/s Kapoor Chand Telu Ram	Commission Agent	Complied	Enclosed
06/10/2017	M/s Sarpanch Commission Agent	Commission Agent	Complied	Enclosed
06/10/2017	M/s Dhaliwal & Co.	Commission Agent	Complied	Enclosed
06/10/2017	M/s Guru Kripa & Co.	Commission Agent	Complied	Enclosed

Since, the AO has not found any discrepancy in the documents/details of agriculture income/expenditure, therefore he has accepted the agriculture income and expenditure, except the transportation charges.

In view of above it is amply clear that, AO completed the assessment after detailed inquiries ad due verification of all aspects of agricultural income of the Assessee.

7. The facts and circumstances of the case have been carefully examined. The assessment order and facts emerging therefrom were also given careful consideration in this regard. On such examination of the records of the case and on perusal of the submission made by the assessee, it emerges that the income that has apparently escaped assessment is the amount equivalent to the deduction claimed under Chapter VIA under Income from agriculture amounting to Rs. 97,22,240/- along with such deductions taken by the assessee in its accounts of preceding years, allowed by the A.O. in respective A.Y.

8. In this regard, it would also be of particular relevance to look into Explanation 2 to section 263 of the Act inserted in section 263(1) w.e.f. 01.06.2015, which provides that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal commissioner or commissioner, (a) made;(b) the order is passed allowing any relief without inquiring into the claim. Facts emerging in this case make it abundantly clear that the Assessing Officer has passed assessment order without making inquiries in respect of quantum of deduction Chapter VIA of the Act.

9. Therefore, the assessment order u/s 143(3) of the Act, dated 28-12-2018 in this case is, thus being annulled being erroneous in so far as it is prejudicial to the interests of the revenue.

10. In view of the facts stated above and from the perusal of the documents/submissions made by the assessee during the assessment proceedings before Pr. Commissioner of Income Tax-15, New Delhi, I, the Pr. Commissioner of Income Tax, Delhi-15, New Delhi, therefore, remand the matter back to the Assessing Officer to examine the case afresh especially with regard to the quantum of deduction claimed under Chapter VIA under the Income from agriculture income amounting to

Rs. 97,22,240/- along with the such deduction taken on this account during preceding years. The same allowed by the A.O. in respective A.Y. need to be re-examined.

11. The assessing officer is directed to grant adequate opportunity to the assessee to represent their case and observe natural justice during proceedings to make the case maintainable as per law."

5.1 This leaves the assessee aggrieved.

6. Learned counsel vehemently argues that the PCIT has erred both in law as well as on facts in holding the above stated regular assessment dated 29.12.2017 as an erroneous one causing prejudice to the interest of the Revenue. He refers to the assessee's detailed paper book running into 212 pages not only comprising all the relevant scrutiny notice(s) dated 19.09.2016 u/s 143(2) of the Act raising specific question on details of agricultural income but also the replies submitted thereto as well as all the ledger accounts and other details. He further seeks to buttress the point that the Assessing Officer had issued section 133(6) notice(s) to the assessee's various commission agents as well in order to examine its agricultural income exemption claim.

7. It is at this stage that we put a specific question to the assessee as to how much land falls under its ownership. We are informed very fairly that this HUF/appellant does not itself own

even on "inch" of land in it's name since it is only cultivating lands of various farmers on lease hold basis. Various lease agreements to this effect have been filed in the paper book at pages 160 to 184 in the paper book. We note that all these are self-serving un-registered lease documents which had never been verified by the learned Assessing Officer during scrutiny. Nor do we find any Revenue record in assessee's name as his lease holder of the said lands. We are accordingly of the considered opinion that given the fact that even the assessee's title or lease hold rights on the corresponding agricultural land have neither been examined nor verified till date despite the fact that the limited scrutiny raised the sole issue of "larger agricultural income", we are of the considered view that even if there were some other inadequate enquiries with the commission agents concerned would not negate applicability of section 263(1) explanation-2 of the Act (supra).

8. It is at this stage that the learned counsel invites our attention to para 10 in the impugned revision directions that the same suffer from non-application of mind as the agricultural income exemption claim has been treated as the one falling under chapter-VIA of the Act. We find no merit in the assessee's instant argument(s) as once the learned PCIT had already

concluded upto para 9 of his revision directions that the assessment had been framed by the Assessing Officer without carrying out an adequate enquiries as the above sole issue, merely because there are certain inconsistencies in the last para 10 thereof would not vitiate the entire revision proceedings.

9. Learned counsel lastly refers to PCIT Vs. Delhi Airport Metro Express Pvt. Ltd. (2017) 398 ITR 8 (Del.) para 10 that PCIT ought to have carried out the necessary enquiry himself before terming the assessment herein as an erroneous one causing prejudice to the interest of the Revenue. We hold that the assessee's instant last argument also does not carry any substance once the learned PCIT has clearly made out a case of "no enquiry" by the assessing authority which attracts both the limbs of it's assessment as an erroneous one as well as causing prejudice to the interest of the Revenue in light of Malabar Industries Ltd. vs. CIT (2000) 243 ITR 83(SC). We accordingly conclude in light of our preceding detailed discussion that the learned PCIT has rightly exercised his impugned revision jurisdiction in the given facts of the case. Ordered accordingly. The assessee's "lead" appeal ITA No. 1879/Del/2021 fails therefore.

10. Same order to follow in the assessee later twin appeal ITA Nos. 1880 & 1881/Del/2021.

11. These assessee's three appeals ITA Nos. 1879, 1880 & 1881/Del/2021 are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order Pronounced in the Open Court on 28/02/2025.

Sd/-
(Manish Agarwal)
Accountant Member

Sd/-
(Satbeer Singh Godara)
Judicial Member

Dated: 28/02/2025

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR