Court No. - 32

Case :- INCOME TAX APPEAL No. - 106 of 2011

Appellant :- Commissioner Of Income Tax
Respondent :- Landmark Innovation Pvt.Ltd
Counsel for Appellant :- Shambhu Chopra/Ssc

Hon'ble Sunil Ambwani,J.
Hon'ble Surya Prakash Kesarwani,J.

1. An Affidavit of service has been filed. We have heard Sri Shambhu Chopra for the Commissioner of Income Tax.

2. This Income Tax Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) is directed against the order dated 08.10.2010, passed by the Income Tax Appellate Tribunal, Agra Bench, Agra in Income Tax Appeal No. 26/Agr/2009, relating to the Assessment Year 2005-06.

3. The revenue has raised the following substantial questions of law, for consideration:-

"1. Whether the ITAT was legally correct in confirming the decision of the first appellate authority deleting the addition of Rs.41,08,724/- (i.e. 39,55,924 + 1,52,799/-) made u/s 68 of I.T. Act, 1961 and directing the AO to assess the income of Rs.41,08,724/- as agricultural income ignoring the fact that no primary record of agricultural activities was available with the assessee to substantiate the agricultural income ?

2. Considering the ratio of decisions given by Hon'ble Apex Court in the case of CIT Vs. R. Venkata Swamy Naidu (1956) 29 ITR 529 (SC) whether the Hon'ble ITAT was justified in holding the alleged agricultural income genuine, although the assessee could not produce proper material no prove that it had earned any agricultural income during the year under consideration ? "

4. The Income Tax Appellate Tribunal (ITAT) considered the submissions, and held that once the department has accepted the agricultural income returned by the assessee during the previous assessment years namely A.Y. 2003-04 and 2004-05, for which the assessments were made under Section 143 (3) read with Section 147 of the Act, no interference could be made in the order of CIT (A) for deleting the additions for the AY 2005-06. The ITAT thereafter recorded following findings of fact:-

"We have carefully considered the rival submission along with the

orders of the Tax Authorities below. This is an admitted fact that the assessee was owning the land. The assessee has also cultivated the land i.e. the assessee has carried out all the basic operations including tilting, watering and planting on the land. The assessee has produced the khasra and khatauni in respect of agricultural land stating therein that agricultural crops were produced by the assessee during the year. The Department has accepted the agricultural income returned by the assessee during the A.Ys. 2003-04 & 2004-05 in the assessment made under section 143(3) read with section 147 of the Act from the same very land. The assessment orders are dated 23.12.2008. This fact is not denied by the ld. D.R. Once the agricultural income is duly accepted by the A.O. In all these A.Ys. After verification, in our opinion, there remains no merit in the appeal of the Revenue. The ld. D.R. Although vehemently supported the order of the Assessing Officer but could not adduce any evidence which may prove that the facts involved in this A.Y. are different from the A.Y. 2003-04 and 2004-05. Apparent is real. Onus is on the person who alleges apparent is not real. The income shown by the assessee is the revenue derived from the land which is situated in India and used for agricultural purposes. No iota of evidence to the contrary is brought on record. The assessee has incurred the expenditure in cash and has sold the agriculture produce in cash cannot be the basis to conclude that the assessee has not derived the agricultural income. The assessee is a private limited company and has maintained regular books of accounts as required under the Companies Act. The Profit & Loss Account and Balance Sheet has been prepared and approved in the General Body meeting of the Company. The entries in the books are not proved to be bogus. The Income-tax Act does not prohibit the assessee to incur the expenditure in cash. Even there is no provision under the Income Tax Act debarring the assessee from selling agricultural crops in cash. No addition can be sustained merely on the basis of the suspicion however is strong it may be. We, therefore, are of the opinion that no interference is called for in the order of the CIT(A). The CIT(A) has rightly deleted the addition made by the A.O. Under section 68 and directed the A.O. To accept the agricultural income shown by the assessee. This is not a fit case which warrants our interference. The order of the CIT(A) is very exhaustive, explicit and dealt with all the objections taken by the A.O. We, therefore, confirm the finding as reproduced herein above of the CIT(A). Thus, ITA No. 26/Agr/2009 filed by the Revenue stands dismissed."

5. Sri Shambhu Chopra has relied on the order of AO, who did not believe that any agricultural operations were carried on the land in the previous year on the ground that there was no record maintained by the assessee about the purchase of fertilizers and chemicals, and expenditures incurred on tube-well boring, construction of store house, levelling of field etc. The explanation submitted by the assessee was not accepted. The AO added Rs.41,08,724/- declared by the assessee as agricultural income - exempt from income tax, as income of the assessee from other

sources under Section 68 of the Act.

6. The CIT (A) considered the question of addition of Rs.41,08,724/- by AO under Section 68 of the Act and have recorded findings that if in the previous years the agricultural income from the same land on which agricultural crops were produced by the appellant was accepted, he could not have recorded findings that in the present assessment year in question, the income could not be treated as agricultural income for want of proof of records of fertilizer and chemicals and expenditures incurred on tube-well boring, construction of store house, levelling of field etc. The ITAT has confirmed the findings recorded by CIT (A). Even if each assessment year is treated to be a separate unit, the findings in respect of previous years based on the record of title and possession of agricultural land, and the evidence led for proving that agricultural operations were carried out and crops were produced could not be disbelieved in the subsequent year, for want of primary evidence. The assessee was not required to submit proof of agricultural operations every year, in the absence of any material, which may suggest that the agricultural operations were stopped or was not carried out in the relevant period. There was no evidence to establish that the assessee has sold the agricultural land or that the assessee had stooped the agricultural operations. Further, the CIT (A) and ITAT have recorded findings that the assessee as a Private Company was maintaining regular books of accounts as required under the Companies Act, which were also audited and accepted in the AGM of the Company. The entries in the books were not proved to be bogus. There is nothing under the Income-tax Act debarring the assessee from selling agricultural produce in cash, and thus additions based only on suspicion could not be sustained.

7. The findings recorded by the CIT (A) and ITAT are question of facts, which do not require interference, nor any substantial questions of law arises, for consideration in the appeal by the Court.

8. The Income Tax Appeal is **dismissed.**

Order Date :- 8.8.2013
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