

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ।
IN THE INCOME TAX APPELLATE TRIBUNAL,
"SMC" BENCH, AHMEDABAD

(Conducted Through Virtual Court)

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.605/Ahd/2019
Assessment Year :2014-15

Jigar Ashok Hebra B-2/33, Amrapali Apartment Sukhipura Bus Stand Paldi, Ahmedabad. PAN : ACUPH 2982 G	Vs	ITO, Ward-5(2)(1) Ahmedabad.
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(Applicant)	(Responent)
Assessee by :	Shri Pritesh L. Shah, CA
Revenue by :	Shri Alpesh Parmar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 04/04/2022

घोषणा की तारीख /Date of Pronouncement: 27/04/2022

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER

This appeal is filed by the assessee against the order dated 26.3.2019 passed by the Ld. Commissioner of Income Tax [Appeals]-5, Ahmedabad relating to the assessment year 2014-15, by which the Id.CIT(A) has confirmed the order of the ITO, Ward-5(2)(1) making addition of agricultural income of Rs.37,11,028/- as unexplained income.

2. Brief facts of the case is that the assessee is an individual and derives income from salary and income from other sources and agricultural income. The assessee has filed his returned income on 18.2.2015 admitting total income of Rs.1,98,900/-. The case was selected for scrutiny assessment and notices under section 143(2) and 142(1) were

issued from time to time. As there were no reply from the assessee a show cause notice dated 12.8.2016 was served on the assessee on 19.8.2016, which reads as under:

“Date : 12.08.2016

To,
Jigar Ashok Hebra
B-2/33, Amrapali Apartments
Sukhipura Bus Stand
Paldi
Ahmedabad.

Sir,

*Sub: Show cause for proposed addition in your case
Under scrutiny for A.Y.2014-15. Reg:*

*Ref (1) Notice u/s.143(2) of dated 21.09.2015 non complied
(2) Notice u/s.142(1) of dated 04.04.2016 non-complied
(3) Letter dated 28.07.2016 date of hearing 15.08.2016 non-complied*

Please refer to the above.

2. In this regard, it is noticed that while several letters issued to you and also so many telephonic reminder given to you. But neither you have appeared personally nor furnished any documents/details related your case under scrutiny. It is seen from your return that an income of agricultural of Rs.37,11,028/- has offered. For justification and verification the correctness and genuineness the above mentioned the above mentioned notices/letter has been issued. Even your staff member Shri Chirag D. Panchal (M) 8866726446, to whom has also handed over copies of notices. However, you are found totally none co-operated in the proceeding.

3. You are show cause why the entire amount of Rs.37,11,028/- should not be added back to your total income. You are also show cause why penalty u/s.271(l)(b) will not be initiate against you for non-attendance and non compliance the above referred notices. Your reply should reach to this office on or before 26.08.2016 at 11.30A.M....."

(Addition A Rs.37,11,028/-)

This show cause was sent and served upon the assessee on 19-08-2016 through speed post."

3. As there was no reply from the assessee, the AO made addition of Rs.37,11,028/- as unexplained income of the assessee and determined

total income of Rs.39,09,928/-and also initiated penalty proceedings under section 271(1)(c) of the Act.

4. Aggrieved against the assessee the assessee filed appeal before the Id.CIT(A), wherein the assessee filed written submissions along with application for additional evidence under Rule 46A of the Income Tax Rules, 1962 providing land ownership deals with supporting documents and also agriculture produce as well as certain bills. The Id.CIT(A) called for remand report from the AO. The concluding portion of the remand report of the AO is as follows:

“6. Thus, from the above, it is seen that the assessee has not furnished any proof of agriculture \ done by him or on behalf of him some other farmer has done it. There is no mention of any crop in the Form No 7 or 12 furnished by the assessee. Apart from the above. The assessee has claimed that total expenses were only Rs 4,68,7407- for the sales consideration received at Rs 39,80,128/-. The percentage of expenses claimed to be incurred is 11.76% only and the expenses claimed were towards the labour for sales only which has been deducted by the broker from the gross sales consideration. No details have been received from the traders to whom sales of agriculture produce is stated to be sold. The assessee has also not furnished any proof of purchase of seeds, fertilizers, payments made towards agriculture labours etc. The bills produced for sales only stated that payments of Rs 4,68,7407- were deducted on account of off loading and labour for sold goods. It is not possible to have agriculture produce without incurring such expenses. Hence, the assessee's submission is misleading. There is no proof of purchase of seeds, fertilizers, electricity, water facilities etc. Without incurring these expenses no agriculture activities can be done. Moreover, the documents in the form of Forms No 7 there is no details of farming done by the assessee or any other farmer on the stated land. Merely holding the agriculture land is not enough proof of agriculture activities done by the assessee. Hence, it is very clear that the claim of agriculture income is not genuine. Therefore, the income shown as agriculture income is required to be treated as income from undisclosed sources.”

5. The assessee also filed his rejoinder to the remand report by taking following contentions:

“08. The Assessing Officer asked the persons who have purchased the agricultural products from the assesses about the 7 x12 abstracts, income and expenditure account in respect of agricultural activities under taken, bills for purchases of electricity, water, seeds, fertilizers, pesticides, labour etc. and who has done the farming activities and what was paid to them. .

0.9 It is a surprising that how the Assessing Officer can ask such question to the persons who are the purchasers of agricultural final

products. The persons who have purchased assessee's agricultural products are the general merchants and commission agents and they are not farmers from whom the Assessing Officer can expect the details mentioned above. If the 4 parties are farmers then there may be question of giving such details but the Assessing Officer has asked for the details mentioned vide para no. 5 of remand report.

In view of the above, the agricultural income is requested to be considered as genuine.”

6. After considering the above submissions of the AO and the assessee, the Id.CIT(A) passed the following order:

“4.7. It is noted that the AO issued a show cause notice to the assessee vide letter dtd.12.8.2016 to prove the genuineness of agricultural income shown of Rs.37,11,028/-. However, no details were filed hence the addition was made. In the appellate proceedings the appellant filed additional evidence which was forwarded to the AO. The AO in the remand report submitted that the appellant merely filed form No.7/12 only i.e. for the proof of ownership of land. However, no proof or evidence in support of cultivation of land during the year was filed. The appellant submitted list of buyers and to verify the genuineness the AO in the remand proceedings issued notice to the buyer of the agriculture product. However no reply was received from any buyer. The remand report was forwarded to the appellant to submit comments on the finding of the AO in the remand report. The appellant filed rejoinder and also submitted unsigned confirmation letter from the buyer which cannot be admitted at this stage of appellate proceeding as already twice opportunities have been given in the assessment proceeding and remand proceeding. It is also noted that the so called confirmation from the buyer is not signed by any one thus having no evidentiary value.

4.8. The AO also reported in the remand report that the appellant claimed the expenses for earning the agricultural income of Rs.4,68,140/- for payment of labour, seeds and another expenses. However, no evidence and bills for incurring these expenditures were filed and thus the genuineness of this expenditure is not proven. In view of the forgoing discussion, it is quite evident that the genuineness of the expenditure incurred for earning the agricultural income and receipt from sale of the agricultural products is not established and proved by the appellant. Therefore the addition made by the AO on account of unexplained agricultural income confirmed.

The ground of appeal is dismissed.”

7. Aggrieved against the same, the assessee is before us in second appeal.

8. The sole ground raised by the assessee is that the ld.CIT(A) has erred in confirming addition of Rs.37,11,028/- considering the same was unexplained income, such addition is required to be deleted.

9. The ld.counsel for the assessee pleaded that the assessee is an individual and semi-literate persons, and he did not understand the implications of the notice issued by the AO, which resulted in *ex parte* assessment. However, during the appellate proceedings, the assessee has produced all the details of land ownership with supporting documents, and also agriculture produce and also sales bills by party-wise. Therefore, the AO is not correct in making addition on account of agriculture income of Rs.37,11,028/-, as income from other source, which is not permissible under the law. The ld.AR also further submitted that the ld.CIT(A) has not appreciated the facts properly and notice issued to the agriculture traders has nothing to do with quantification of agriculture crops and thereby the ld.CIT(A) confirmed the addition made by the AO which is required to be deleted. Further, the ld.AR brought to our attention that the assessment year 2015-16, the assessee admitted 10% disallowance in agriculture income, the same was accepted and disallowed by the AO vide order dated 22.12.2017 passed under section 143(3) of the Act.

10. Per contra, the ld.DR appearing for the Revenue supported the orders of the lower authorities and further held that no proof for payment of labour, seeds and other expenses giving rise to the agriculture income, were produced by the assessee before the appellate authorities also. Therefore, the entire disallowance is to be upheld and thereby dismiss the appeal of the assessee.

11. We have given our thoughtful consideration and perused the material available on record including paper book filed by the assessee. It is an admitted fact that the assessee filed belated return of income for the Asstt.Year 2013-14 declaring of Rs.1,98,900/- wherein agriculture income of Rs.37,11,028/- was also claimed. During the course of regular

assessment proceedings, in spite of various notices, the assessee has not furnished any details thereby the AO treated the expenses as unexplained income and added to the income of the assessee. During the appellate proceedings before the Id.CIT(A), the assessee filed land ownership details with supporting documents and agriculture produce sales bills made to four parties as additional documents before the Id.CIT(A) by invoking Rule 46A of the IT Rules. The Id.CIT(A) has called for remand report from the AO, wherein the AO reported that the additional expenses were only of Rs.4,68,140/- and sale consideration received was Rs.39,80,268/-. Percentage of expenses claimed to be incurred was 11.76% only and the expenses claimed were towards labour for sale only, which has been deducted by the broker from the gross sale consideration. No details have been received from the traders to whom sale of agriculture produce is stated to be sold. The assessee also not furnished any proof of purchase of seeds, fertilizer payments etc. Bills produced for sales only stated that payment of Rs.4,68,140./- were deducted on account of off-loading and labour charges for goods sold. It is not possible to have agriculture produce without incurring such expenses. So the claim of the assessee is misleading in the absence of any details of procurement of seeds, fertilisers, water facilities, labour charges, and therefore, no agriculture activities can be said to be done. Further, in the form no.7/12, there is no details of farming being done by the assessee and the nature of the crops, and the quantification of the land, has not been mentioned. Hence, the claim of entire agriculture income is required to be treated as income from undisclosed income.

12. In the rejoinder to the remand report, the assessee raised a pertinent question viz. the details of expenditure and quantification of goods cannot be questioned that too from the purchasers/traders of the goods. The purchasers are general merchant and commission agents, and they are not farmers from whom, the AO can expect details as mentioned above. Further, the Id.CIT(A) in his order held that it was quite evident that genuineness of the expenditure incurred for earning agriculture

income and receipt from sale of agriculture produce is not established, and proved by the assessee. Therefore, the addition made by the AO on account of unexplained agriculture income is confirmed. We find that both authorities are not correct in holding that entire income as admitted by the assessee for having not proved, details of expenditure incurred to be treated as an unexplained income of the assessee. As pleaded by the ld.AO for assessee's own case for the Asstt.Year 2015-16 on assessee's admission, the same agriculture income at 10% was agreed to be disallowed by the assessee against returned agricultural income of Rs.21,68,400/-. The same was accepted by the AO, and passed assessment under section 143(3) of the Act on 22.12.2017. Taking into consideration various opportunities given to the assessee, and the fact that the assessee had not explained the expenses incurred in earning the agriculture income of Rs.37,11,028/-, it is appropriate to make a disallowance at 25% of the expenses incurred for earning this agriculture income seems to be reasonable and meet the ends of justice. Thus, we direct the AO to make a disallowance to the extent of 25% of the expenditure on account of earning of agriculture income and pass an order accordingly. Accordingly, the appeal of the assessee is allowed partly in the above terms.

13. In the result, appeal of the assessee is partly allowed.

Order pronounced in the Court on 27th April, 2022 at Ahmedabad.

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad, dated 27/04/2022

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