

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I", MUMBAI**

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 549/MUM/2023 (A.Y: 2020-21)

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| Vinayak Sudhakar Malkotagi Flat No. 104, Plot No. 36 Gorai Shree Sahyog CHS Near Gorai Depot Borivali (W), Mumbai - 400091 PAN: AQOPM5908M (Appellant) | v. | ITO – International Taxation Ward – 3(2)(1) 16 th Floor, Air India Building Nariman Point, Mumbai – 400 021 (Respondent) |
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|--------------------------------------|---|---------------------------------|
| Assessee Represented by | : | Shri Rushabh Mehta |
| Department Represented by | : | Shri Soumendu Kumar Dash |
| Date of Conclusion of Hearing | : | 27.06.2023 |
| Date of Pronouncement | : | 30.08.2023 |

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by assessee against order of the Learned Commissioner of Income Tax (DRP-2), Mumbai – 1 [hereinafter in short "Ld. DRP"] dated 08.12.2022 for the A.Y. 2020-21 passed U/s. 144C(5) of Income-tax Act, 1961 (in short "Act").

2. Brief facts of the case are, assessee filed his original return of income for A.Y. 2020-21 on 02.01.2021 declaring income of ₹.2,77,560/-. Thereafter, the return was selected for limited scrutiny for the reason of 'Agricultural Income'. Notices u/s 143(2) and 142(1) of the Act along with questionnaire were issued and served on the assessee through e-portal. In response, assessee filed the details through e-portal.

3. The Assessing Officer observed that assessee derived agricultural income in the form of rental income in accordance with the provisions of section 2(1A)(a) of the Act which is fully exempt from tax u/s. 10(1) of the Act. Further, he observed that assessee is the owner of the three acres of agricultural land situated at Sangli, Maharashtra which has been given on rent to A.S Agri and Aqua LLP for farming and cultivation of agricultural produce. During the current Assessment Year, a promissory note between the assessee and A.S Agri and Aqua LLP was executed wherein it was agreed that the assessee will provide its agricultural land to A.S Agri and Aqua LLP from 01.08.2019 on a monthly remuneration of ₹.8,00,000/-. Further, it was also agreed that the assessee will make a refundable deposit worth ₹.1.60 crores in the business of A.S Agri and Aqua LLP in which the assessee will hold a 50% stake. During assessment proceedings, assessee submitted that assessee should have declared in

his return of income of ₹.64,00,000 /- not ₹.41,70,000/- as declared by him due to negligence of the tax return preparer.

4. In response to query, assessee has submitted that assessee has entered into a joint venture for farming and cultivation of agricultural produce with A.S Agri and Aqua LLP whereby the profits will be shared equally. However, it was submitted that till date the said business has not been commenced and thus the details with respect to the same has not been incorporated in the return of Income.

5. The Assessing Officer observed from the submissions made by the assessee that assessee has made a refundable deposit worth ₹.1.60 crores in the business of A.S Agri and Aqua LLP and received rental income. However, he observed that the business of A.S Agri and Aqua LLP has not yet commenced operation which means no cultivation of turmeric has been carried out during the relevant financial year. In the absence of any agricultural activity and the business nature of the transaction, a show-cause notice was issued why the above receipt should not be treated as business income.

6. In response, assessee has not filed any reply till finalization of the Assessment Order. Based on the facts available on record, Assessing Officer completed the assessment by treating the rental income received by the assessee as income from business.

7. Aggrieved with the above order, assessee filed objections before Ld.DRP and filed detailed submissions, for the sake of clarity it is reproduced below: -

"Objection No. 1

1. *The Ld. Assessing Officer has failed to appreciate the fact that the monthly rental/remuneration of Rs 8,00,000 is derived from land which is situated in the district of Sangli, Maharashtra, India and is used for agricultural purposes is agricultural income within the meaning of section 2(1A)(a) of the Income Tax Act, 1961 which is exempt from tax under the provisions of section 10(1) of Income Tax Act, 1961*

Statement of Fact

1. *Vinayak Sudhakar Malkotagi, hereinafter referred to as "assessee" has executed a promissory note with AS Agri and Aqua LLP wherein it has been mutually agreed that the assessee will provide its land to AS Agri and Aqua LLP on rental basis at a monthly remuneration of Rs. 8,00,000 commencing from 01st August 2019 to carry out the following businesses on its land*

1. *Turmeric cultivation through vertical farming*
2. *Bioflock fisheries*
3. *Seafood aquaculture*

Objection No.2

1. *The Ld. Assessing Officer has erred by misinterpreting the promissory note executed between both the parties and the responses filed by the assessee thereby proposing to tax the agricultural income exempt from tax u/s 10(1) of Income Tax Act, 1961 as business income chargeable to tax.*

Statement of Fact

1. On page no.3 of the promissory note executed between both the parties it has been stated that the second party being the assessee has agreed to provide a refundable deposit of Rs. 1.60,00,000 for a period of 6 years to first party being AS Agri and Aqua LLP for enabling them to carry out the business of Turmeric cultivation through vertical farming and Bioflock Aqua Culture on the land provided by the assessee for which the assessee is deriving monthly remuneration of Rs. 8.00.000 which is agricultural income within the meaning of section 2(1A)(a) of Income Tax Act, 1961

2. On page no.3/point no.5 of the promissory note executed between both the parties it has been stated that the profits in the business of sea food aquaculture by using the existing pond shall be shared with the assessee in the ratio of 50:50.

3. It has nowhere been stated that the assessee has a 50% stake in the entire business of AS Agri and Aqua LLP as alleged by the Ld. Assessing Officer.

Objection No.3

1. The Ld. Assessing Officer has failed to provide the assessee with reasonable opportunity of being heard thereby violating the principles of natural justice.

Statement of Fact


1. The assessee had filed a letter on 23-01-2022 against notice issued under section 142(1) dated 16-01-2022. On 10-03-2022, the Ld. Assessing Officer issued a show cause notice asking the assessee to furnish on or before 14-03-2022 an explanation against the proposed receipt of Rs. 64,00,000 to be considered as business income.

2. The assessee in order to get the other relevant details such as 7/12 letter representing the said land as agricultural land and the signed confirmation from AS Agri and Aqua LLP that the payment of monthly rental is against the land provided to AS Agri and Aqua LLP for carrying out the business of turmeric cultivation through vertical farming, bioflock fisheries and seafood aquaculture and the fact as regards that the business of seafood aquaculture in which assessee holds a 50% stake, sought a week's time through an adjournment as it was practically not possible for the assessee to arrange the details and the signed confirmation within such a short period of time of 2-3 days as the assessee is currently residing in Dubai since last 10 years and communicates regarding arranging all the relevant documentary evidences through his paternal uncle in India who happens to be a senior citizen. As the assessee's paternal uncle was not keeping well on account of health complications, this was sole reason as to why the assessee requested for an adjournment for a week to gather the other relevant evidences.

3. The assessee did manage to gather the other relevant evidences by 16th March, 2022 which were supposed to be submitted along with the reply to be filed against the show cause notice. Assessee's request was

ignored by the Ld. Assessing Officer who closed the e- proceeding tab on 15th March, 2022 thereby depriving the assessee to file the relevant evidences as mentioned above."

8. Based on the additional evidences submitted by the assessee, remand report was called from the Assessing Officer. For the sake of clarity, the details of remand report is reproduced below: -


OFFICE OF THE
INCOME TAX OFFICER (IT) - 3(2)(1) MUMBAI
16th FLOOR, AIR INDIA BUILDING, NARIMAN POINT,
MUMBAI - 400 021
Mail: mumbai.00.03.2.1@income-tax.gov.in

No. IT(O)IT-3(2)(1)/Remand/2022-23 11/11/2022

To
The ITO(IT) to DRP2 WZ,
Mumbai

Madam,

Subj: Admission of additional evidence under Rule 40A in the case of Mr. Vinayak Sudhakar Malkotagi, AY 2020-21 [PAN: AQOPM5908M] - Reg.

Ref: No. CIT(DRP-2)/Obj-11/Remand Report/2022-23/308 dated 23.09.2022
No. CIT(DRP-2)/Obj-11/Remand Report/2022-23 dated 04.11.2022

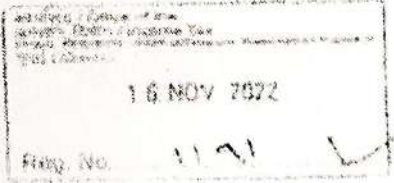
Please refer to the above.

2. Brief facts of the case:

In this case, the return of income for A.Y. 2020-21 was e-filed on 02/01/2021 declaring total income at Rs. 2,77,560/-. Further, the case was selected for scrutiny under CAsS. Accordingly, notices u/s 143(2) and 142(1) of the IT Act, 1961 (herein after the Act) have been issued and served upon the assessee through ITBA Portal. In response to the same the assessee submitted the replies through e-filing portal, which are placed on records.

The case was selected in the scrutiny for the reason 'Agricultural Income'. The assessee was asked to file the relevant details regarding the said cash deposit vide notices u/s 142(1) of the Act. The assessee submitted the details called for.

As per details filed by the assessee, the assessee has derived agricultural income in the form of rental income in accordance with the provisions of section 2(1A)(a) of the Act, which was fully exempt from tax under section 10(1) of the Act. The assessee was the owner of the three acres of agricultural land situated at Sangli, Maharashtra which has been given on rent to AS Agri and Aqua LLP for farming and cultivation of agricultural produce.



Further, the assessee was asked to produce the documentary evidences to substantiate its claim. In response to the same the assessee did not produce any details which prove that the assessee was engaged in the agricultural activities. Therefore, the rent received to the tune of Rs. 64,00,000/- is added to the total income of the assessee for the year under consideration under the head Income from business.

Aggrieved with the Order passed by the AO, the assessee has filed appeal before your good office.

3. Vide above referred letter your good office have directed me to offer my comments towards the admissibility of the additional evidences, which are as under:

- a. Suggest confirmation of payment of monthly remuneration for using the agricultural land.
- b. 7/12 letter representing the said land as agricultural land.

My comments on the additional grounds furnished by the assessee are as under:

- a. As per the confirmation letter it is observed that the assessee provided the land to A S Agri and AQUA LLP for the purpose of business of turmeric cultivation through vertical farming, bullock fisheries and seafood aquaculture and received the rent of Rs. 64,00,000/- . Further, it is pertinent to mention here that in the confirmation letter only details of joint venture for the business of turmeric cultivation through vertical farming and bullock fisheries has been mentioned but it has not been mentioned about the agricultural activities carried out during the year under consideration.

It is hereby also mentioned that in III Para of the confirmation it is clearly mentioned that business of seafood aquaculture has not been commenced only rent has been paid. Therefore, it is clear from the confirmation letter that no agricultural activities has been carried out during the year under consideration. Hence, the rent received by the assessee is not of the nature of agricultural income and the assessing officer correctly made the addition to the tune of Rs. 64,00,000/- under the head Business Income.

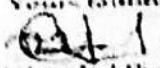
- b. The 7/12 letter representing the said land as agricultural land is acceptable.

4. In view of the above it is clear that no agricultural activities has been carried out during the year under consideration, hence, the income earned by way of rent cannot be treated as agricultural income. Further, there is nothing on record to suggest that the case of the assessee falls in any of

the exceptions mentioned in Rule 40A of the I.T. Rules, 1962. Therefore, these additional evidences may not be accepted.

5. In view of the above discussion and facts of the case, it is submitted that the case may be decided on merits of this case.

Submitted

Yours faithfully

(Member Ld. Appeal)
C.O.(I) - (M.D.) Mumbai

9. In response, assessee also filed its reply dated 17.11.2022, for the sake of clarity it is reproduced below: -

"1. Before answering para-wise to the remand report filed by the Respondent ITO-IT 3(2)(1), Mumbai (hereinafter referred to as 'Respondent'), Vinayak Sudhakar Malkotagi (hereinafter referred to as 'Appellant Assessee') craves leave to refer to the following facts which are relevant for the proper appreciation of the matter in issue:-

a. The Appellant Assessee has executed a promissory note with AS Agri and Aqua LLP wherein it has been mutually agreed that the Appellant Assessee will provide its land to AS Agri and Aqua LLP on rental basis at a monthly remuneration of Rs. 8,00,000 per month from August 2019, wherein AS Agri and Aqua LLP will carry out the following businesses on the land:

- Turmeric cultivation through vertical farming

-Bio-flock Fisheries - Seafood Aquaculture

b. On page no.3 of the promissory note executed between both the parties it has been stated that the second party being the Appellant Assessee has agreed to provide a refundable deposit of Rs. 1,60,00,000 for a period of 6 years to first party being AS Agri and Aqua LLP for enabling them to carry out the business of Turmeric cultivation through vertical farming, Bio-flock Fisheries and Seafood Aquaculture on the land provided by the Appellant Assessee for which the Appellant Assessee is deriving monthly remuneration of Rs. 8,00,000.

c. On page no.3/point no.5 of the promissory note executed between both the parties it has been stated that it is only in the business of seafood aquaculture by using the existing pond of the Appellant Assessee that the profits and losses shall be shared in the ratio of 50:50.

The details of promissory note submitted before Your Honour is as follows:

| Nature of submission | Date of submission | Particulars | Relevant page no to nature of submission |
|-----------------------------|-----------------------------|---|---|
| Form No.35A | 22 nd April 2022 | Promissory note submitted as Annexure B to form 35A | Page no 87-99 |
| Synopsis | 14th November 2022 | Promissory note submitted | Page no 4-16 |

d. It has nowhere been stated that the Appellant Assessee has a 50% stake in the entire business of AS Agri and Aqua LLP as alleged by the Respondent in para 4,7 and 9 on page no.2, 3 and 4 respectively of the draft assessment order dated 23/03/2022.

e. The Appellant Assessee had filed a signed confirmation letter from AS Agri and Aqua LLP regarding monthly. rental/remuneration for using the agricultural land to carry out the activities as captioned in (a) above and the fact that there is no joint venture in business of turmeric cultivation and bi-flock fisheries but the only venture is in seafood aquaculture wherein profits and losses will be shared in the ratio of 50:50. The said confirmation letter was filed before Your Honour as an additional evidence on 22nd April 2022 (Please refer page no.4 of the additional evidence paper book)

f. The Appellant Assessee had filed a letter dated 23/01/2022 in response to notice issued under section 142(1) of Income Tax Act, 1961 dated 16/01/2022, submitting the details asked for. The said details were not acceptable to the respondent and the respondent on 10/03/2022 issued a show-cause notice asking the Appellant Assessee to furnish on or before 14/03/2022, an explanation to the proposed receipt of Rs. 64,00,000 to be considered as a business income.

g. The Appellant Assessee in order to get the other relevant details such as 7/12 letter representing the said land as agricultural land and the signed confirmation from AS Agri and Aqua LLP that the payment of monthly rental is against the land provided to AS Agri and Aqua LLP for carrying out the business of turmeric cultivation through vertical farming, bioflock fisheries and seafood aquaculture and the fact as regards that the business of seafood aquaculture in which Appellant Assessee holds a 50% stake, sought a week's time through an adjournment filed on 13th March, 2022 on the e- filing portal, as it was practically not possible for the Appellant Assessee to arrange the details and the signed confirmation within such a short period of time of 2-3 days as the Appellant Assessee was, since a considerable period time, residing in United Arab Emirates and was

communicating regarding arranging all the relevant documentary evidences. through his paternal uncle in India who happens to be a senior citizen. As the Appellant Assessee's paternal uncle was not keeping well on account of health complications, this was sole reason as to why the Appellant Assessee requested for an adjournment for a week to gather the other relevant evidences.

h. The Appellant Assessee did manage to gather the other relevant evidences by 16th March, 2022 which were supposed to be submitted along with the reply to be filed against the show cause notice. Appellant Assessee's request was ignored by the Respondent who closed the e-proceeding tab on 15th March, 2022 thereby depriving the Appellant Assessee to file the relevant evidences as mentioned above.

i. The Appellant Assessee has on 14th November, 2022 filed before Your Honour as per Your Honour's requirement at the time of first hearing, 7/12 letter with the crop register which had earlier been submitted before Your Good Self as a paper book to additional evidence.

| Nature of submission | Date of submission | Particulars | Relevant page no to nature of submission |
|--------------------------------|--------------------------------|--|---|
| Additional Evidence paper book | 22 nd April 2022 | 7/12 letter with crop register from FY 2017-18 | Page no 6-8 |
| Synopsis | 14 th November 2022 | 7/12 letter with crop register from FY 2017-18 | Page no 43-45 |

j. The Appellant Assessee has also on 14th November, 2022 filed before Your Honour as per Your Honour's requirement at the time of first hearing, submitted the expense cum purchase vouchers to exhibit the fact that the expenses were incurred to make the land operational and used for agricultural purposes.

k. The crop register from FY 2017-18 forming part of 7/12 letter exhibits the fact that the crops like wheat (marathi word as Gahu), grapes (marathi word Draksh), pomegranates (marathi word as Dadimb), shalu (marathi word as shadu) were grown on the land given by the Appellant. Assessee to AS Agri and Aqua LLP from where rental income was being derived. This therefore, proves the fact that land given to AS Agri and Aqua LLP was used for agricultural purposes. And therefore, the rental income of Rs 8,00,000 per month in the issue under consideration is agricultural income within the

meaning of section 2(1A)(a) of Income Tax Act, 1961. By virtue of this, income within the meaning of section 2(1A)(a) of Income Tax Act, 1961 is excluded from the total income as per the provisions of section 10(1) of Income Tax Act, 1961.

l. The Respondent has, erroneously assessed the rent of Rs.64,00,000/- as business income. It is pertinent to mention here that the Appellant Assessee is not in the business of lending and taking properties on rent and therefore, the variation as proposed in the draft assessment order is null and void.

m. In the light of the above preliminary submissions, the response to rebuttal made in the remand report filed by the respondent for not accepting the Appellant Assessee's contention and disregarding the production of additional evidences are as under:

Rejoinder of the Appellant Assessee against para-wise reply to remand report filed by the Respondent:

A. Rebuttal of the Appellant Assessee's contention that income earned is not an agricultural income in para 3 and 4 of the remand report 7/12 letter along with crop register:

a. The detailed justification and supporting documentary evidences in the form of 7/12 letter along with crop register furnished by the Appellant Assessee exhibits the fact that the crops like wheat (marathi word as Gahu), grapes (marathi word Draksh), pomegranates (marathi word as Dadimb), shalu (marathi word as shadu) were grown on the land which was later on given by the Appellant Assessee to AS Agri and Aqua LLP from where rental income was being derived. This therefore, proves the fact that land given to AS Agri and Aqua LLP was always used for agricultural purposes. And therefore, the rental income in the issue under consideration is agricultural income within the meaning of section 2(1A) (a) of Income Tax Act, 1961. By virtue of this, income within the meaning of section 2(1A)(a) of Income Tax Act, 1961 is excluded from the total income as per the provisions of section 10(1) of Income Tax Act, 1961.

b. Vide para 3(b) of the remand report filed by the respondent, it has been accepted that the said 7/12 letter is acceptable which beyond doubt proves the fact that since the land was used for agricultural

purposes, the rental income in issue is exempt under section 10(1) read with section 2(1A)(a) of Income Tax Act, 1961.

c. The respondent's reply in this regard is therefore misleading and subject to confirmation bias.

Signed confirmation letter of payment of rental/remuneration for using the agricultural land:

a. As per the confirmation letter filed, It has been confirmed by AS Agri and Aqua LLP that the rental income in the issue under consideration is earned for the use of land given on rent by the Appellant Assessee for carrying out the business of turmeric cultivation through vertical farming, bio-flock fisheries and seafood aquaculture.

b. It has further been confirmed that there is no joint venture whatsoever in the business of turmeric cultivation through vertical farming and bio-flock fisheries. It is only in the business of seafood aquaculture, that there is a joint venture with the Appellant Assessee and the profits and losses are to be shared in the ratio of 50:50.

c. The relevant portion of the confirmation has been reproduced as follows:

"This is to confirm that as per the promissory note executed on 17 April 2019, you have agreed to provide your land to us on rental basis to carry out the business of turmeric cultivation through vertical farming, bio-flock fisheries and seafood aquaculture at a monthly remuneration/rent of Rs. 8,00,000/- starting from 01st August 2019. For FY 2019-20, total remuneration paid/credited to you is Rs. 64,00,000/-

Further, I hereby confirm that there is no joint venture with you whatsoever in the business of turmeric cultivation through vertical farming and bioflock fisheries. As far as the business of seafood aquaculture is concerned, we have entered into a joint venture in which profits/losses will be shared equally (in the ratio of 50:50)

Further, I hereby confirm that till date the business of seafood aquaculture has not been commenced but rental/monthly remuneration of Rs. 8,00,000/- is being paid to you for using the land as stated in the promissory note."

d. The respondent has provided his comments on the additional evidences furnished by the Appellant Assessee. The relevant portion of the respondent in para 3 is furnished as under:

"a. As per the confirmation letter it is observed that the assessee provided the land to AS Agri and Aqua LLP for the purpose of business of turmeric cultivation through vertical farming, bioflock fisheries and seafood aquaculture and received the rent of Rs. 64,00,000/-. Further, it is pertinent to mention here that in the confirmation letter only details of joint venture for the business of turmeric cultivation through vertical farming and biflock fisheries has been mentioned but it has not been mentioned about the agricultural activities carried out during the year under consideration.

It is hereby also mentioned that in III para of the confirmation it is clearly mentioned that business of seafood aquaculture has not been commenced only rent has been paid. Therefore, it is clear from the confirmation letter that no agricultural activities has been carried out during the year under consideration. Hence, the rent received by the assessee is not of the nature of agricultural income and the assessing officer correctly made the addition to the tune of Rs. 64,00,000/- under the head Business Income.

b. The 7/12 letter representing the said land as agricultural land is acceptable."

e. In spite of specifically mentioning the fact in the confirmation letter that there is no join venture in the business of turmeric cultivation through vertical farming and bio-flock fisheries, the respondent has attempted to tweak the language and misguide that there is a joint venture in the business of turmeric cultivation through vertical farming and bioflock fisheries and further went on to say that nothing has been mentioned about the agricultural activities carried out during the year under consideration.

I. The Respondent has already in its remand report accepted the 7/12 letter filed by the Appellant Assessee, wherein in the crop register, details of crops grown since FY 2017-18 to FY 2019-20

has been mentioned. Further, it has been mentioned in the crop register in the column named as Hungam in marathi, the English translation of which means season, that the crops as mentioned in the register were grown in FY 2019-20 throughout the season. It has been mentioned in the crop register in marathi language as sampurna varsh in FY 2019-20, the English translation of which

means throughout the year. Further, Section 2(1A)(a) uses the phrase "used for agricultural purposes" which if read in conjoint manner with the crop register, proves the fact that agricultural activities were being carried out through out the year under consideration.

g. The Appellant Assessee has confirmed the fact that the business of seafood aquaculture in which he holds 50% stake, has not been commenced i.e., no sale or purchase activities relating to seafood aquaculture has commenced, but only rent has been earned for land being occupied by AS Agri and Aqua LLP as per the promissory note. This is nothing but a fixed cost for AS Agri and Aqua LLP which has to incurred whether or not business activities are carried out. This fact has been brought on record by the Respondent in the remand report.

h. The respondent has further interpreted that since no agricultural activities relating to seafood aquaculture has been commenced, the rent received is not an agricultural income. The respondent seems to have ignored the crop register in the 7/12 letter submitted where it has already been exhibited above that throughout the FY 2019-20, other agricultural activities were carried out apart from seafood aquaculture. Thus, a conjoint reading of section 2(1A)(a) with crop register proves that the land in issue was used for agricultural purposes and therefore, the rental income derived is an agricultural income which is excluded from the total income as per the provisions of section 10(1) of Income Tax Act, 1961.

i. The respondent seems to have ignored the concept of fixed cost as to whether or not seafood aquaculture activities are carried out, land taken for conducting the said activities attracts rent in nature. It has already been proved above that the land in issue is an agricultural land and was used for agricultural purpose, and therefore, it is irrelevant as to whether activities related to seafood aquaculture has been commenced or not as long as the nature of the land has been proved.

j. The Respondent's reply in this regard is therefore misleading and subject to confirmation bias.

Disregarding production of additional evidence in terms of Rule 46A of Income Tax Rules, 1962

a. The Appellant Assessee had filed a letter dated 23/01/2022 in response to notice issued under section 142(1) of Income Tax Act,

1961 dated 16/01/2022, submitting the details asked for. The said details were not acceptable to the respondent and the respondent on 10/03/2022 issued a show-cause notice asking the Appellant Assessee to furnish on or before 14/03/2022, an explanation to the proposed receipt of Rs. 64,00,000 to be considered as a business income.

b. The Appellant Assessee in order to get the other relevant details such as 7/12 letter representing the said land as agricultural land and the signed confirmation from AS Agri and Aqua LLP that the payment of monthly rental is against the land provided to AS Agri and Aqua LLP for carrying out the business of turmeric cultivation through vertical farming, bioflock fisheries and seafood aquaculture and the fact as regards that the business of seafood aquaculture in which Appellant Assessee holds a 50% stake, sought a week's time through an adjournment filed on 13th March, 2022 on the e-filing portal, as it was practically not possible for the Appellant Assessee to arrange the details and the signed confirmation within such a short period of time of 2-3 days as the Appellant Assessee was, since a considerable period time, residing in United Arab Emirates and was communicating regarding arranging all the relevant documentary evidences through his paternal uncle in India who happens to be a senior citizen. As the Appellant Assessee's paternal uncle was not keeping well on account of health complications, this was sole reason as to why the Appellant Assessee requested for an adjournment for a week to gather the other relevant evidences.

c. The Appellant Assessee did manage to gather the other relevant evidences by 16th March, 2022 which were supposed to be submitted along with the reply to be filed against the show cause notice, Appellant Assessee's request was ignored by the Respondent who closed the e-proceeding tab on 15th March, 2022 thereby depriving the Appellant Assessee to file the relevant evidences as mentioned above.

d. The Appellant Assessee, therefore submits that the non-furnishing of the aforesaid documents before the respondent was not deliberate but for the reasons beyond the control of the Appellant Assessee. The Appellant Assessee submits that if the same are not admitted and taken on record, great injustice would be caused to the Appellant Assessee and moreover the purpose of principles of natural justice would be defeated.

PRAYER:

The Appellant Assessee, in light of the above, therefore prays that: -

- 1. Your Honour may be pleased to call for the records and proceedings pertaining to the case of the Appellant and be pleased to admit additional evidences as furnished.*
- 2. To set aside and/or reverse the impugned draft assessment order and remand report dated 23/03/2022 and 11/11/2022 respectively as the rebuttal raised by the Respondent lacks merit and be rejected by Your Honour.*
- 3. Your Honour is requested to allow the income in issue claimed as agricultural income within the meaning of section 2(1A)(a) of Income Tax Act, 1961."*

10. After considering the submissions along with remand report, Ld.DRP has dismissed the objections raised by the assessee with the following observations:

"We have gone through all the material brought on record. We have specifically perused the agreement, the 7/12 extract/ crop register, the vouchers/ bills of expenditure, the earlier return of income of the assessee and the confirmation from the LLP. We note that it is a fact that the assessee owned 3 acres of agricultural land. We note from the agreement that it did not give specification of the 1 acre of the said land to be used for the impugned joint business. In any case, the impugned joint business to be done on 1 acre of the said land has not started till date. We note that the assessee did not show to us that the 1 acre of the said land was given possession of to the LLP. Item 3 of the agreement mentioned that Rs. 96,00,000/- (Rs. 8,00,000/-per month) to be paid to the assessee by the LLP as 'benefit/ remuneration'. It can be safely and reasonably inferred from the agreement that the said 'benefit/ remuneration' would arise from or connected to the impugned joint business, for which the agreement was made. We note that the agreement was not made for solely for 'renting out of the 1 acre of the land. We can reasonably state that 1 acre of the said land would not. fetch Rs. 96,00,000/- (Rs. 8,00,000/-per month) as rent. We note that the high quantum of 'benefit/ remuneration' is directly connected to the impugned joint business of turmeric farming and fisheries, which did not start till

date. We note that the 7/12 extract and the crop register furnished before us does not mention existence of a pond in the said land. Besides, it does not mention that the 1 acre of the land was in possession of the LLP for which it had to pay such high amount of rent. Admittedly, in the computation of income, the said land is mentioned as rain fed'. The 7/12 extract/ crop register mentioned that the land is 'water irrigated. The 7/12 extract/ the crop register mentioned that during the year wheat, grapes and pomegranates were grown on the land. The vouchers/ bills of expenses relating to agricultural activities, mentioned the names of assessee. We note that the said land was purchased by assessee on 19.09.2018 and the deed mentioned it 'agricultural land". The assessee did not show any agricultural income in AY 2019-20. We can reasonably infer from the bills/ vouchers, 7/12 extract /the crop register and the purchase deed that the said land is agricultural land' and during the relevant previous year wheat, grapes and pomegranates were grown on the land by the assessee, because the bills/ vouchers bear names of the assessee and not the LLP. We can safely infer that the assessee himself had grown the crops mentioned in the 7/12 extract / crop register and was not in possession of the LLP, which paid the impugned amount, which is unrealistic to be termed as 'rent from the said agricultural land of 1 acre. As far as the confirmation from the LLP is concerned, we note that it is a only a friendly assertion unconnected with any discernible favorable facts. We find it not reliable because of the adverse facts and circumstances narrated supra. Therefore, we are of the considered opinion that the amount of Rs. 64,00,000/- is not 'rent' arising from the said land and hence it is not 'agricultural income'. The grounds of objection nos. 1 and 2 are dismissed.

11. Aggrieved with the above order, assessee is in appeal before us raising following grounds in its appeal: -

"1. On the facts and circumstances of the case and in law, the Ld.AO failed to provide the appellant with reasonable opportunity of being heard. The appellant is a NRI was staying abroad during the course of proceedings. Thus, the appellant could not make proper representation before the Ld. AO thereby denying the appellant an opportunity and natural justice.

2. On the facts and circumstances of the case and in law, the Ld. AO erred in proposing to tax the agricultural income which is exempt from tax u/s 10(1) of the Income Tax Act, 1961 as business

income chargeable to Tax by misrepresenting the promissory note executed between both the parties and the responses filed by the assessee thereby.

3. On the facts and circumstances of the case and in law, the Ld. AO erred in making an addition of Rs 64,00,000/- as business income by not appreciating the fact that the monthly rental/remuneration of Rs 8,00,000- is derived from agricultural land which is situated in the district of Sangli, Maharashtra, India and is used for agricultural purposes which constitutes agricultural income within the meaning of Section 2(1A)(a) of the Income Tax Act, 1961 which is exempt from tax under the provisions of Section 10(1) of the Income Tax Act, 1961.

4. The appellant craves leave to add, alter, amend, modify, ratify, delete or substitute any ground's as may be necessary."

12. At the time of hearing, Ld. AR of the assessee brought to our notice facts on record and observations of Assessing Officer and Ld. DRP in the respective orders. He brought to our notice Page No. 157 of the Paper Book which gives the various details submitted by the assessee before Ld.DRP and specifically he brought to our notice Page No. 316 of the Paper Book which is the letter issued by A.S Agri and Aqua LLP dated 14.03.2022 and the letter confirms the payments of monthly remuneration for using agricultural land to the assessee. The above confirmation letter was issued by LLP to the assessee dated 14.03.2022 in which they confirmed the payment of rental / monthly remuneration of ₹.8,00,000/- paid by them for using the land as stated in the promissory note. He submitted that it is fact on record that assessee has received ₹.64,00,000/- from the

above said LLP for use of agricultural land. Therefore, it is an agricultural income which is exempt from tax and Assessing Officer cannot charge the rental income of the assessee under the head business income.

13. On the other hand, Ld. DR relied on the findings of the Ld. DRP at Page No. 16 of the order.

14. Considered the rival submissions and material placed on record, we observe from the submissions made by Ld. AR of the assessee that assessee has entered into an agreement with A.S Agri and Aqua LLP for doing joint business of only sea food aquaculture and not Turmeric farming and fisheries, accordingly, provided one acre of land [held 3 acres of land] with water and power supply and other facilities to them. As per the agreement assessee will receive ₹.8,00,000/- per month [₹.64,00,000/- - total rent for this assessment year] as per the agreement, both the parties agreed to share the profits at 50% each only on aquaculture and also assessee had paid ₹.1.6 crores as refundable deposit to the LLP only for investment in aquaculture business. It is fact on record that assessee has received ₹.8,00,000/- per month from the LLP and even they have acknowledged that they have paid the above said rent to the assessee, however, we observe that no business was carried by the above

said LLP in the above said land and they have confirmed the same in their confirmation letter dated 14.03.2022.

15. From the above, it is clear that LLP has not carried any business activities and appears from the confirmation letters, they have not used the above said land. They have made the payment only on the basis of agreement. The assessee is now relying on the confirmation letters submitted by them and the 7/12 extract / crop register to claim that assessee has earned the rental income from the agricultural land. However, the fact on record shows that the LLP has not carried out any activity in the above said land and they have merely paid the rental income based on the agreement. Further, we observe even the 7/12 extract / crop register shows that crops like wheat, grapes and pomegranates were cultivated. It is not clear, who has cultivated. As per the confirmation submitted from LLP, they have not carried out any cultivation. It is fact on record that the assessee has received rent on agricultural land given to LLP and also they have acknowledged the same. Further, we observe that the assessee has interest only in the aquaculture business and nothing to do with the agriculture activities. There is no link to the advance given to LLP for aquaculture business and agriculture business. The assessee has received the rent based on agreement by giving the

land on lease to the LLP and non-utilization of the above said land does not preclude the assessee to treat the same as agricultural income. It is also important to note that the assessee is an NRI and has no control over the non-performance on non-utilization of land by the LLP. What is relevant is the agreement. The assessee has received the same as per the agreement and the receipt of the above rent was promptly declared by the assessee. The Assessing Officer cannot wear the shoes of the assessee to presume that no activities carried by the LLP and the same cannot be treated as the agricultural income. Only person, who can question the transactions is the Assessing Officer of the LLP.

16. Coming to the next issue, the Assessing Officer has treated the above rent receipt as "business income" by not accepting that the assessee could receive such rent particularly when LLP has not carried out any operation. This shows that Assessing Officer has rejected the submissions of the assessee based on impossibility of performance. As stated above, the receipt of rent based on agreement cannot be rejected particularly there exist agreement to this effect and also the assessee has actually received the rent. Particularly when the other party confirms that they made this payment only for the agriculture purpose. This contractual performance cannot be denied in the hands of the assessee. Even

otherwise, Assessing Officer has rejected the claim of the assessee on the basis of impossibility of performance, then he cannot treat the income as "business income". It should be Nil, just because assessee has declared the same he cannot proceed to change the head to tax the income. When the impossibility of performance exist, it cannot be charged to tax under any head of income. Therefore, we are not inclined to accept the findings of the lower authorities, hence we direct the Assessing Officer to treat the rental income as agricultural income.

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

Order pronounced in the open court on 30th August, 2023.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai / Dated 30/08/2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum