

आयकर अपीलीय अधिकरण, 'बी' (एस एम सी) न्यायपीठ,चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' (SMC) BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ITA No.: **838/CHNY/2022**
निर्धारण वर्ष/Assessment Year: 2016-17

**Shri Perumal
Sundaramahalingam,**
7-3-8B 7-3-8B/5,
Lasar Nagar, Nilakottai Taluk,
Pattiveeran Patti – 624 211.

The Income Tax Officer,
Vs. Ward3,
Dindigul.

PAN: DGBPS 4217R
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri R. Thulasi Ram, Advocate
: Shri S. Chandrasekaran, JCIT

सुनवाई की तारीख/Date of Hearing : 08.03.2023
घोषणा की तारीख/Date of Pronouncement : 08.03.2023

आदेश /ORDER

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Appeal No.CIT(A), Madurai-1/10576/2018-19 dated 29.07.2022. The assessment was framed by the Income Tax Officer, Ward 3, Dindigul for the assessment year 2016-17 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 19.12.2018.

2. This appeal by assessee is time barred by 13 days and assessee and assessee has filed condonation petition along with affidavit stating the reason. The order of CIT(A) is dated 29.07.2022 which was received by assessee on the very same date on 29.07.2022. The appeal was to be filed on or before 27.09.2022 but actually appeal was filed before Tribunal only on 10.10.2022 and thereby there is a delay of 13 days. The assessee stated that the assessee first approached one auditor in Dindigul for filing of appeal before Tribunal but auditor did not file the appeal and hence, the assessee approached an advocate in Madurai who facilitated in filing appeal and in this process, there is a delay of 13 days. When this was pointed out to Id. Senior DR, he could not controvert. Going by the reasons, I'm of the view that cause is reasonable and the delay is condoned and appeal is admitted.

3. The only issue in this appeal is as regards to the order of CIT(A) confirming the action of AO in making addition of Rs.20,38,500/- being declared by assessee as agricultural income and treated by AO as non-agricultural income. The AO also made differential amount of Rs.3,73,440/- being actual gross receipts of Rs.59,10,940/- as against gross agricultural receipts declared at Rs.55,38,500/-. For this issue assessee has raised various grounds which need not to be reproduced.

4. Brief facts are that the assessee filed his return of income for the relevant assessment year 2016-17 and admitting gross agricultural receipts at Rs.55,38,500/- and claimed expenditure on agricultural operation at Rs.35,00,000/- and net agricultural income was declared at Rs.20,38,500/-. The assessee produced sale bills from where it was ascertained by AO that gross agricultural receipts was to the tune of Rs.59,10,940/- as against gross agricultural income admitted in the return of income at Rs.55,38,500/-. As per the details of sale bills, the assessee sold green pepper (berries) for the period 2015-16 relevant to this assessment year 2016-17. The AO has reproduced the entire details of sale bills. The AO during the course of assessment proceedings enquired the assessee that how much land he is holding. In reply, assessee stated that he had taken agricultural land on lease for cultivation and harvest of agricultural produce and for that he had entered into tenancy agreement with owners of agricultural plantation such as pepper plantation and has carried out certain agricultural activities such as planting, irrigation, manuring and control of pesticides, etc., to harvest the produce with hired labourers. The assessee produced copies of two agreements entered with agriculturists Shri A.Malaiyan of Pattipadi Village, Aercaut Tauk, Salem District and Shri A.Selvaraj of Nagaloor Village, Aercaut Taluk, Salem District. The AO after analyzing all the facts

noted that the assessee is not agriculturist and the so called net agricultural income declared at Rs.20,38,500/- apart from differential amount of Rs.3,72,440/- is non-agricultural income and assessed the same as 'income from other sources' by observing in para 2.0 as under:-

“2.0 It is known fact that the assessee has, in the instant case, entered into a lease agreement with the lessor –owners of agricultural land just to collect green pepper from pepper creepers grown on trees and plants standing in their agricultural land and that too, for a period of one year during the period 2015-16. He has claimed only the lease amount of Rs.35,00,000/- given to both the lessors as expenditure on agriculture. He did not claim any expenditure other than the lease amount given to the lessors in his return of income filed for the assessment year 2016-17. This shows that he was in no way connected with the agricultural operations and therefore, net agricultural income of rs.20,38,500/- admitted by the assessee is treated as non-agricultural income. Further, the differential amount of Rs.3,72,440/- (Actual Gross Receipts as per Bills is Rs.59,10,940/- minus Gross Agricultural Receipts admitted in the R/I is Rs.55,38,500/-) specified in para 1.7 of this assessment order, is also treated as non-agricultural income earned by the assessee. Thus, a sum of Rs.24,10,940/- is treated as non-agricultural income earned by the assessee.

Aggrieved, assessee preferred appeal before CIT(A).

5. The CIT(A) confirmed the action of the AO by observing as under:-

In the submissions filed, the Appellant has stated that operations like spurning. irrigation, manuring, weed removal, harvesting etc was done through hired labours. However, in the account of Agricultural Income the Appellant has not debited even a single expense like wage/salary paid to hired labour, purchase of manure, purchase of pesticides/insecticides, purchase of Agricultural equipments etc. which are the basic expenses incurred by a person who genuinely undertakes

Agricultural operations. However, in the present case the Appellant has debited only one expense i.e. payment of Tenancy/lease of Rs.35,00,000/-. These facts prove that the basic operations and subsequent operations (as discussed in para 7.3 (c) above) were not undertaken by Appellant.

f) Further, it is pertinent to note that Appellant took this land on lease for FY. 2015-16 only. It is not a case of Appellant that he is regularly taking this land on lease and conducting Agricultural operations on the same. Appellant did not explain whether he had shown Agricultural Income from pepper plantations in earlier and subsequent AY's also.

g) In view of above facts, I agree with the finding of AO that Appellant entered into lease agreement with lessors just to collect the green peppers from their pepper plantations for FY. 2015-16 and sell the same in market. The financials show no agricultural expenses incurred by the Appellant. It means that agricultural operations (both basic and subsequent operations) were conducted by the owners of Agricultural land and they incurred all the agricultural expenses and in return they were paid tenancy/lease of Rs.35,00,000/- by Appellant. In view of above facts, the action of AO in treating the amount of Rs.24,10,940/- as non agricultural income is sustainable and is hereby upheld. Grounds of Appeal No. 1 and 2 are dismissed.

Aggrieved, assessee is in appeal before the Tribunal.

6. I have heard rival contentions and gone through facts and circumstances of the case. Admittedly, the assessee has not debited any agricultural expenses like wages / salary paid to hired labourers, purchase of manure, purchase of pesticides, insecticides or purchase of agricultural equipments etc., i.e., basic requirements for carrying out agricultural operation. The assessee has only claimed lease rent for leasing of land or the farms of green pepper (berries). I also

agree with the findings of the lower authorities that assessee is basically not in agricultural operations although he has taken land on lease and paid expenses of Rs.35,00,000/-. The AO and CIT(A) both are of the view that Rs.24,10,940/- is not agricultural income and I agree with both the authorities but in case, the income is held as non-agricultural, the assessee has to be given weightage of expenses which he has incurred and accordingly, I have to make a firm estimate of income. Hence, I estimate the income at Rs.12,00,000/- and deleted the balance of Rs.12,00,000/-. In term of the above, I direct the AO accordingly and appeal of the assessee is partly-allowed.

7. In the result, the appeal filed by the assessee is partly-allowed.

Order pronounced in the open court on 8th March, 2023 at Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 8th March, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त /CIT

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF.