

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

JUDGMENT

(1) D.B. INCOME TAX APPEAL NO. 288/2010

SMT. SUSHILA MEENA
VS.
THE COMMISSIONER OF INCOME TAX-III, JAIPUR &
ANOTHER.

AND

(2) D.B. INCOME TAX APPEAL NO. 260/2010

SMT. SUSHILA MEENA
VS.
THE COMMISSIONER OF INCOME TAX-III, JAIPUR &
ANOTHER.

DATE OF JUDGMENT : 18.04.2012

HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN-I
HON'BLE MR. JUSTICE MAHESH BHAGWATI

Mr. Naresh Gupta, for the appellant.
Ms. Mahi Yadav on behalf of Mr. Sameer Jain,
for the respondents.

Heard learned counsel for the parties.

2. Both the appeals of appellant are directed against common order dated 16.06.2010 passed by Income Tax Appellate Tribunal, Jaipur Bench 'SMC', Jaipur (hereinafter referred to as 'the Tribunal') relating to Assessment Years 2003-04 and 2004-05, therefore, the same are being disposed by this common judgment.

3. D.B. Income Tax Appeal No. 260/2010 relates to Assessment Year 2003-04 and D.B. Income Tax Appeal No. 288/2010 relates to Assessment Year 2004-05. The appeal relating to Assessment Year 2004-05 has been disposed off by Commissioner of Income Tax(Appeals) on the basis of appellate order passed in Assessment Year 2003-04, therefore, the facts of D.B. Income Tax Appeal No. 260/2010, relating to Assessment Year 2003-04, are being given.

4. Assessee filed return declaring income of Rs. 93,622/- plus agriculture income of Rs. 2,83,976/-. The assessee submitted revised return of income declaring income of Rs. 93,622/- plus agriculture income of Rs. 4,07,822/-. The assessing officer has mentioned the details of agriculture income and expenses shown by the assessee in Para No. 6 of the assessment order. The assessing officer came to a conclusion that depreciation claimed of Rs. 75,977/ seems to be not justified, as the assessee is doing dairy farming business since 1994-95, but till financial year 2000-01, she did not claim any depreciation and she has only two cows and buffaloes, therefore, looking to the past history of the

case and facts of the case, disallowed the depreciation of Rs. 75,977/-.

5. The assessee shown Rs. 65,000/- as other misc. income on account of sale of animals, dogs, addu leafs, padi, wood etc., but the same was not accepted by the assessing officer on the ground that sale of above items are not covered as agricultural products, therefore, other misc. income of Rs. 65,000/- included in the agricultural income by assessee was treated as income of the assessee from undisclosed sources and taxed as income from other sources.

6. Same is the position in the Assessment Year 2004-05. Depreciation of Rs. 67,873/- claimed by the assessee was disallowed by the assessing officer. Other misc. income of Rs. 62,250/-, included in agriculture income, for sale of animals, dogs, addu leafs, padi, wood etc. was treated as income of the assessee from undisclosed sources and taxed as income from other sources.

7. Being aggrieved with the assessment order, the assessee preferred an appeal. The Commissioner of Income Tax(Appeals)-III, Jaipur[hereinafter referred to as 'CIT(A)'] disallowed the claim of the assessee in

respect of depreciation, as the appellant did not produce the original bills relating to purchase of air coolers etc. and it was held that assessing officer was justified in disallowing the depreciation claimed on the purchase of building and air coolers. The order passed by the assessing officer was confirmed. The same finding was recorded by CIT(A) in respect of Assessment Year 2004-05.

8. So far as treating of Rs. 65,000/- of appellant's undisclosed income as income from other sources, is concerned, the CIT(A) held that the assessing officer was not correct in treating the same as income from other sources. However, CIT(A) examined the matter in respect of 'production expenses' and after detailed discussion in respect of appellant's agricultural income, came to a conclusion that balance amount of Rs. 1,07,417/- is to be treated as assessee's income from other sources.

9. On further appeal by the assessee before the Tribunal, the Tribunal vide its order dated 16.06.2010 held that so far as issue of depreciation is concerned, the same is restored back on the file of the assessing officer. So far as question regarding

'production expenses' incurred on agriculture receipts is concerned, the Tribunal observed that CIT(A) has enhanced the agricultural income, therefore, it cannot be said that there is an enhancement of taxable income. The finding of CIT(A) in respect of estimate of agricultural income was held to be fair and reasonable. Para No. 12, 23 and 25 of the order passed by the Tribunal are reproduced as under:

"12. Hence the issue of depreciation is restored back on the file of the A.O., to consider Expl. 5 to section 32 and gives opportunity to assessee to produce original vouchers of cooler and exhaust fan and to consider the valuation report in respect of building if vouchers are not produced. For verifying the quantum of expenditure & period of construction the A.O. will be at liberty to refer the matter to valuation cell as per law.

23. I have considered the submissions of the Ld.A/R and that Ld.D/R. The agriculture income was estimated by Ld.CIT(A) at 3,00,405/- as against Rs. 2,55,171/- estimated by A.O. Hence the agricultural income has been enhanced by the Ld.CIT(A) and hence it cannot be said that there is an enhancement of taxable income. Taxable income as a result of increase in agricultural income as computed by A.O. has been reduced by Ld.CIT(A) and hence there is no case of enhancement.

25. From above sequence of bills and showing of fruit sales in the

last fortnight of March, it is clear that entries in books of account do not inspire confidence. I have also gone through the photocopy of sale bills of food grains and expenses and I feel that entries in books of account do not inspire confidence. Hence one was left to estimate the expenses to find out estimated agricultural income. The method adopted by Ld.CIT(A) can not be had as incorrect as the Ld.CIT(A) has fairly estimated the expenses. I feel that finding in respect of estimate of agricultural income is fair & reasonable and the action of Ld.CIT(A) is required to be confirmed."

10. We have considered the submissions of learned counsel for the parties in the light of reasons assigned by CIT(A) as well as the Tribunal and we find that the questions involved in the present appeals are relating to questions of facts and no substantial question of law is involved in these appeals. Income tax appeal can be admitted only on substantial question of law and in our view, no substantial question of law is involved in these appeals. Hence, both the appeals are dismissed with no order as to costs.

11. A copy of this judgment be placed on record in connected file.

(MAHESH BHAGWATI), J. (NARENDRA KUMAR JAIN-I), J.

D.B. INCOME TAX APPEAL NO. 288/2010
&
D.B. INCOME TAX APPEAL NO. 260/2010

“All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.”

MANOJ NARWANI
JUNIOR PERSONAL ASSISTANT.