

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JANUARY 2021

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE NATARAJ RANGASWAMY

I.T.A. NO.168 OF 2012

BETWEEN:

JINESH (HUF)
REPRESENTED BY ITS
KARTHA SRI. JINESH
NO.15, 80 FEET ROAD
WILSON GARDEN HOUSE BUILDING
CO-OPERATIVE SOCIETY LAYOUT
KOTHANUR MAIN ROAD
JP NAGAR, BANGALORE - 560 078.

... APPELLANT

(BY SRI. V. CHANDRASEKHAR, ADV., A/W
SRI. BHAIKAV KUTTAIAH, ADV.,)

AND:

THE INCOME TAX OFFICER
WARD 4(3)
UNITY BUILDING, MISSION ROAD
BANGALORE - 560 027.

... RESPONDENT

(BY SRI. E.I. SANMATHI, ADV.)

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THIS I.T.A. IS FILED UNDER SEC. 260-A OF INCOME TAX
ACT 1961, ARISING OUT OF ORDER DATED 25.01.2012 PASSED
IN ITA NO.983/BANG/2009 FOR THE ASSESSMENT YEAR 2005-06
PRAYING TO

(i) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW
STATED THEREIN.

(ii) ALLOW THE APPEAL AND SET ASIDE THE ORDER DATED 25.01.2012 PASSED BY THE ITAT BEARING ITA NO.983/BANG/2009 IN THE INTEREST OF JUSTICE AND EQUITY.

THIS I.T.A. COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the assessee. The subject matter of the appeal pertains to the Assessment year 2005-06. The appeal was admitted by a bench of this Court vide order dated 04.09.2012 on the following substantial questions of law:

(i) *Whether the tribunal was justified in law in not answering the specific ground raised by the appellant that there is no existence of HUF and consequently the assessment made does not survive on the facts and circumstances of the case?*

(ii) *Whether the tribunal was justified in law in confirming the action of the lower authorities when the appellant was not in receipt or accrual of any real income*

considered by the appellant as agricultural income on the facts and circumstances of the case?

(iii) Whether the tribunal was justified in law in confirming the treatment of agricultural income offered by the appellant for the Assessment Year 2005-06 as unexplained cash credit liable for taxation and bringing into tax as income from other sources and consequently passed a perverse order on the facts and circumstances of the case?

(iv) Without prejudice whether the tribunal is justified in law in holding that the provisions of Section 68 is applicable when the appellant has not maintained books of accounts on the facts and circumstances of the case?

(v) Whether the tribunal was justified in law in not condoning the delay of 145 days in filing the appeal on the facts and circumstances of the case?

2. Facts leading to filing of this appeal briefly stated are that the assessee filed the return of income for the Assessment Year 2005-06 declaring taxable

income of Rs.75,350/- earned by way of liaison commission on sale of agricultural produce. The assessee also disclosed in its return that it had earned agricultural income of Rs.28,35,500/-. The return filed by the assessee was subjected to scrutiny assessment under Section 143(3) of the Act and the Assessing Officer by an order dated 31.12.2017 inter alia held that the assessee had not carried out any agricultural land alleged to have leased out by him and that the aforesaid land was barren and bereft of any crops. Accordingly, the Assessing Officer made an addition of Rs.28,35,500/-. The assessee thereupon preferred an appeal before the Commissioner of Income Tax (Appeals) who by an order dated -05.03.2009 dismissed the appeal preferred by the assessee. The assessee thereupon approached the Income Tax Appellate Tribunal (hereinafter referred to as 'the tribunal' for short). The tribunal by an order dated 25.01.2012 dismissed the appeal preferred by the assessee. In the

aforesaid factual background, the assessee has approached this court.

3. Learned counsel for the assessee submitted that the assessee disputes the existence of HUF and the same was disputed by submitting a communication dated 27.12.2019 by the wife of the assessee. Therefore, the return filed by the assessee is in the status of HUF is non est in law and the Assessing Officer had no jurisdiction to assess the assessee in the status of HUF. It is also urged that the appellant was to take on lease certain agricultural lands and develop the same to carry out agricultural activities. The assessee approached the bank to avail the loan for the said purpose. It is also pointed out that from the statement of the landlords relied upon by the Assessing Officer, it is evident that the assessee had not made any unexplained investment by way of lease advance, booking under construction, development of farm and animal sheds etc. It is also contended that the

Assessing Officer is not correct in making an addition of Rs.28,35,500/- as income from other sources where the statement of affairs have been proved to be false by his very findings. The tribunal ought to have held that the Assessing Officer was wrong in treating the agricultural income shown by the assessee in his return of income from unexplained sources when there is no real receipt of income by the assessee. It is also submitted that the tribunal has not adjudicated the grounds raised by the assessee and has merely referred to the order of Commissioner of Income Tax (Appeals) and has paraphrased the findings recorded by the Commissioner of Income Tax (Appeals). It is also submitted that the tribunal erred in not condoning the delay. In support of aforesaid submissions, reliance has been placed on decisions in **'SUSHIL KUMAR MEHTA VS. GOBIND RAM BOHRA (DEAD) THROUGH HIS LRS (1990) 1 SCC 193, 'PULLANGODE RUBBER PRODUCE CO. LTD VS. STATE OF KERALA', (1973) 91 ITR 18 (SC),**

'CIT VS. MR.P.FIRM, MUAR', (1965) 56 ITR 67 9SC), 'BHANDARI METALS VS. STATE OF KARNATAKA', ILR 2004 KAR 2025, 'NIRMALA L. MEHTA VS. A.BALASUBRIMANIAM CIT', (2004) 269 ITR 1, 'S.R.KOSHTI VS. CIT', (2005) 276 ITR 165, 'CIT VS.SHOORJI VALLABHDAS AND CO.', (1962) 46 ITR 144 (SC), 'CIT VS. CHAMANLAL MANGALDAS (1960) 39 ITR 8 (S), 'GODHRA ELECTRICITY CO. LTD. VS. CIT', (1997) 91 TAXMANN 351 (SC).

4. On the other hand, learned counsel for the revenue submitted that the Assessing Officer as well as the Commissioner of Income Tax (Appeals) and the tribunal have concurrently upheld the addition made by the Assessing Authority for a sum of Rs.28,35,500/-. It is also urged that the issue is held in favour of the revenue and the findings are based on appreciation of evidence on record. Our attention has also been invited to the findings recorded by the Assessing Authority as

well as in para 6.4 to 6.5 of the Commissioner of Income Tax (Appeals) and in para 10 by the tribunal and has held that the assessee does not own agricultural land and the sale of agricultural produce has rightly been disbelieved. It is further submitted that the aforesaid findings are finding of fact and therefore, no substantial question of law arises for consideration in this appeal. In support of aforesaid submissions, reliance has been placed on decision of the Supreme Court in '**VIJAY KUMAR TALWAR VS. COMMISSIONER OF INCOME TAX**', 330 ITR 1.

5. We have considered the submissions made by learned counsel for the parties and have perused the record. The Assessing Officer by placing reliance on the statements of the landlords has found that they are the owners of the land and they had entered into a development agreement with the assessee. However, they have denied that they have received any advances from the assessee in this regard and no construction

activity / agricultural activity has been carried out by the assessee on the lands and the possession of the land has also not been handed over to the assessee. Therefore, the Assessing Officer has added the agricultural income of Rs.28,35,500/- to the total income returned as 'income from other sources' which are unexplained. The Commissioner of Income Tax (Appeals) in para 6.4 has held that though the assessee had entered into a lease agreement with land owners but the date of agreement was not mentioned and the stamp paper was purchased on 22.03.2003, which indicates that lease agreement was executed on that day or the subsequent day. It is further submitted that from perusal of the agreement it is clear that the land is earmark for growing / developing of land for different crops and no trees of any kind were found on the land prior to execution of the lease agreement. It has further been found that the buildings or animal sheds were not constructed on the lands which was leased out to the

assessee as the possession of the land in question was never handed over to the assessee. Similarly, the tribunal in para 10 of the order has recorded the finding that the assessee was neither in possession of the agricultural land nor he performed any agricultural activity. Therefore, the question of earning any agricultural income does not arise.

6. The aforesaid findings are pure findings of facts which have been recorded on meticulous appreciation of evidence on record. The aforesaid findings have not been shown to be perverse. It is well settled that this court in exercise of powers under Section 260A of the Act cannot interfere with the finding of fact until and unless the same is demonstrated to be perverse. **[See: SYEDA RAHIMUNNISA VS. MALAN BI BY L.RS. AND ORS. (2016)10 SCC 315 and PRINCIPAL COMMISSIONER OF INCOME TAX, BANGALORE & ORS. VS. SOFTBRANDS INDIA P. LTD., (2018) 406 ITR 513]**

In view of preceding analysis, the substantial questions of law are answered accordingly. In the result, we do not find any merit in this appeal, the same fails and is hereby dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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