

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad SMC Bench, Hyderabad
(Through Video Conferencing)
Before Smt. P. Madhavi Devi, Judicial Member

ITA No 25/Hyd/2020		
Assessment Year: 2015-16		
Shri Nadeem Mohd. Abdul Secunderabad PAN:ATAPA0329F (Appellant)	Vs.	Income Tax Officer Ward 10(5) Hyderabad (Respondent)
Assessee by:	Sri K.A. Sai Prasad	
Revenue by:	Sri D.J.P. Anand, DR	
Date of hearing:	21/01/2021	
Date of pronouncement:	28/01/2021	

ORDER

This is assessee's appeal for the A.Y 2015-16 against the order of the CIT (A)-6, Hyderabad, dated 11.10.2019. The grounds of appeal raised by the assessee are as under:

"1. The order of the learned Commissioner of Income Tax (Appeals) dismissing the appeal, in the facts and circumstances of the case, is not correct both on facts and in law.

2. In the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) is not justified in confirming the order of the Assessing Officer, who treated the sum of Rs.29,09,280 as non-agricultural income.

3. The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the income earned on leasing out agricultural land is agricultural income.

4. The view/observation of the learned Commissioner of Income Tax (Appeals) in para 7.14 of the appellate order that the appellant is not primarily an agriculturist etc., is not relevant for determination whether the appellant's activity is agricultural or not.

5. The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the lessee-company did agricultural activities to grow aromatic, medicinal plants

etc., and the lessee's end use of the produced product did not alter the nature of agricultural activity Para 7.16 .

6 The appellant craves leave to add, amend, delete or substitute any round or rounds during the course of hearing”.

2. Brief facts of the case are that the assessee individual filed his return of income for the A.Y 2015-16 on 1.1.2016 admitting total income of Rs.3,33,840/- after claiming Chapter VIA deduction of Rs.1,10,000/-. The assessee also admitted agricultural income of Rs.29,09,280/- and other income of Rs.2,01,921/- under 'Exempt Income' category. The assessee's return of income was selected for scrutiny under CASS to examine the assessee's claim of agricultural income. Accordingly, notices u/s 143(2) and 143(1) were issued to the assessee requiring the assessee to furnish certain information. The assessee furnished some information in support of his claim of agricultural income. After perusal of the same, the AO observed that the assessee is having agricultural land of 20 acres and 10 guntas in Survey No.426 and 427 respectively at Kadavergu Village of Warangal District. Apart from this, the assessee has taken on lease 10 acres and 21 guntas of dry land situated at Chellampally Village of Tallakondapally Mandal, Ranga Reddy Distt from one Shri Mod.Abdul Azeem (lessor), vide lease deed dated 1.5.2013 and agricultural land of 10 acres and 24 guntas situated at Devethpalle Village, Nampally Mandal, Ranga Reddy Distt from one Avula Sreenu (lessor) vide lease deed dated 22nd July, 2013. Thus, a total agricultural land of 41.15 acres situated at different places have been leased out by the assessee to a company by name Adisa Agro Pvt. Ltd, Mumbai, vide lease deed dated 30th Sept.2013. He observed from the copies of Khasra Pahani produced by the assessee, that they did not specify any crop

details. The AO also observed that the assessee also did not produce any evidence regarding the growing of any crops during the period relevant to the A.Y 2015-16 such as details of the parties from whom fertilizer, seeds etc., were procured and also the details of the parties to whom agricultural produce were sold and other details relating to the expenditure which is likely to be incurred for the agriculture operations by the assessee.

3. The AO also observed that the assessee is not having any agricultural land to claim that he has got an amount of Rs.29,09,280/- from agricultural activities and as the land he was holding was either on lease or leased to Adisa Agro Pvt. Ltd. He also observed from the lease deed entered into with Adisa Agro Pvt Ltd Mumbai that the lease rent @ Rs.40,000/- per acre is to be paid to the assessee but there was no TDS made by Adisa Agro P Ltd. Therefore, he rejected the assessee's claim of agricultural income and treated the income as "income from other sources" and brought it to tax. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the order of the AO and the assessee is in second appeal before the Tribunal.

4. The learned Counsel for the assessee submitted that the assessee is the owner of the agricultural land to the extent of 20 acres and 10 guntas in Warangal District and he has taken certain other land at Ranga Reddy District and Nalgonda District also on lease from the landowners respectively as recorded by the AO in his assessment order. He submitted that the assessee had been carrying on agricultural activity in these lands and the recording of the AO that the Khasra Pahani did not mention any crop details is incorrect. He has drawn my attention to the entries

in Khasra Pahani (reproduced by the AO in the assessment order) wherein the name of the crop is mentioned as Mango. He further submitted that the lease deed entered into with Adisa Agro (P) Ltd also mentions the agricultural operations having been carried on by the assessee and also the infrastructure created by him for carrying on such activity and there is no dispute with regard to the same. He submitted that the CIT (A) has disallowed the claim of agricultural income by holding that the assessee has utilized the agricultural land for growing commercial crops such as 'Aromatic and Medicinal plants' and therefore, it cannot be treated as agricultural operations. He submitted that this finding of the CIT (A) is contrary to his finding subsequently that the assessee himself has not carried on any agricultural activity. He further submitted that the case laws relied upon by the CIT (A) are all distinguishable on facts and have no relevance to the case on hand. He, therefore, prayed that the claim of agricultural income by the assessee be allowed.

5. The learned DR, on the other hand, supported the orders of the authorities below and submitted that the assessee himself has not carried on any agricultural operations but has leased out the land to a company and therefore, the same cannot be treated as agricultural income. Thus, he prayed for confirmation of the assessment order.

6. Having regard to the rival contentions and the material on record, I find that the undisputed facts of the case are that the assessee is the owner of agricultural land of 20 acres and 10 guntas. The Khasra Pahani also shows that these lands are agricultural lands and that the crop grown thereon is Mango.

Therefore, these lands being agricultural land is not in dispute. In addition to these lands, the assessee has taken on lease agricultural lands in Ranga Reddy and Nalgonda Districts from two other persons. These lands also being agricultural lands is not in dispute.

7. The next issue to be considered is whether the agricultural operations have been carried on by the assessee in these lands. According to the assessee, the assessee has created infrastructure to facilitate irrigation in the agricultural operations. According to the lease deed between the assessee and the company Adisa Agro Pvt. Ltd also, the assessee had already planted aromatic and medicinal plants in these lands and the lessee agreed to pay the lessor higher percentage in view of the crops already grown by the lessor. Therefore, the assessee has also carried on certain agricultural operations in the lands which have been leased out by the assessee.

8. As regards the agricultural operations carried on by Adisa Agro (P) Ltd during the relevant period is concerned, there is no information available on record nor is there any dispute raised by the authorities below, except for a finding by the CIT (A) in Para 7.23, that there is no evidence on record to state that the company had actually utilized the land wholly and exclusively for the purpose of cultivating on its own rather than sub-leasing it to outside parties. Therefore, no presumption can be drawn about the agricultural operations being or not being carried out by the company.

9. However, the fact remains that assessee has earned lease rent income by leasing out the agricultural land. Whether such income is eligible to be taken as agricultural income is the question before the Tribunal. The term agricultural income has been defined u/s 2(1A) of the I.T Act and for the purpose of ready reference, the same is reproduced hereunder:

“(1A)⁴]" agricultural income" means-

(a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes;

(b) any income derived from such land by-

(i) agriculture; or

(ii) the performance by a cultivator or receiver of rent- in- kind of any process ordinarily employed by a cultivator or receiver of rent- in- kind to render the produce raised or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent- in- kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub- clause;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent- in- kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub- clause (b) is carried on: ¹ Provided that-

(i) the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent- in- kind, by reason of his connection with the land, requires as a dwelling house, or as a store- house, or other out- building, and

(ii) the land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated-

(A) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or

(B) in any area within such distance, not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item (A), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification 2 in the Official Gazette.]³ Explanation.- For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of sub- clause (iii) of clause (14) of this section;]

1. Substituted by the Taxation Laws (Amendment) Act, 1970, w. r. e. f. 1-4-1962.
2. Inserted by the Finance Act, 1989 w. r. e. f. 1-4-1970.”

10. On a literal reading of Clause (a) of sub-section 1A to Section 2 we find that it refers to any rent or revenue (*emphasis supplied by me*) derived from land which is situated in India and is used for agricultural purposes. This section does not specify that the land which is used for agricultural purposes should be owned by the assessee. Therefore, the land owned by the assessee as well as the land taken on lease by the assessee are to be treated as agricultural land provided other conditions are satisfied. Further, not only the revenue, but even the rent for the land which is used for agricultural purposes is to be treated as ‘agricultural income’. The A.Y relevant for this case is A.Y 2015-16, whereas the lease deed entered by the assessee with Adisa Agro (P) Ltd is September, 2013 i.e. A.Y 2014-15. From the lease deed, it is seen that the assessee had carried on agricultural operations during the previous year i.e. 2013-14 relevant to the A.Y 2014-15 and thereafter, the assessee has leased out this land to Adisa Agro (P) Ltd on 30.09.2013 i.e. during the previous year 2014-15 relevant to the A.Y 2015-16. Therefore, the assessee had carried on agricultural operations during the previous year 2013-14 and subsequently such agricultural land has been given on lease to a company which is also engaged in carrying on agricultural operations. The finding of the CIT (A) is that the crops grown are commercial in nature. The definition of ‘Agricultural Income’ does not limit its application to any particular crops/produce. The only requirement is that the basic agricultural operations are to be carried out. The nature of the crop being commercial in nature will not therefore, disentitle the assessee from claiming the income as ‘agricultural income’. Thus, the finding of the CIT (A) that the assessee’s intention of taking

the agricultural lands on lease is to exploit them commercially is not sustainable to disentitle the assessee from making the claim of agricultural income. Having gone through the decisions relied by the learned CIT (A), I am of the opinion that they are all are distinguishable from the facts of the case before the Tribunal and therefore, are not applicable. In view of the same, I set aside the order of the AO and direct him to treat the lease rent received by the assessee from 'Adisa Agro (P) Ltd' for use of the agricultural land as agricultural income.

11. In the result, assessee's appeal is allowed.

Order pronounced in the Open Court on 28th January, 2021.

Sd/-

**(P. MADHAVI DEVI)
JUDICIAL MEMBER**

Hyderabad, dated 28th January, 2021.

Vinodan/sps

Copy to:

- 1 Shri Nadeem Mohd Abdul C/o Katrapati & Associates, 1-1-298/2/B/3, 1st Floor, Ashoknagar, Hyderabad 500020
- 2 ITO Ward 10(5) 5th Floor, IT Towers, AC Guards, Hyderabad
- 3 CIT (A)-6 Hyderabad
- 4 Pr. CIT – 6 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order