IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI

BEFORE SHRI R. K. PANDA ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No. 4647/DEL/2012 (A.Y 2009-10)
(THROUGH VIDEO CONFERENCING)

JCIT Range-2, Aayakar Bhawan, Bhansali Ground, Meerut **(APPELLANT)**	Vs	Prasandi Builders Pvt. Ltd. 110, Krishna Plaza, Garh Road, Meerut AAACP8262G **(RESPONDENT)**

Appellant by	**Sh. K. Sampath, Adv & Sh. V. Raj Kumar, Adv**
Respondent by	**Smt. Sushma Singh, CIT DR**

Date of Hearing	**14.07.2021**
Date of Pronouncement	**20 .09.2021**

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 11/06/2012 passed by CIT(A)-Meerut for assessment year 2009-10.

2. The grounds of appeal are as under:-

Revised Grounds

1. "Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in directing the AO to give benefit of Cost Index and tax the surplus as long term capital gain on sale of shop G-6 ignoring the fact that the AO had made the addition" only on a/c of difference between the Market price and alleged actual sale price shown by the assessee against

which the related expense had already been claimed by the assessee and allowed by the A.O.

2. Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 2.50,00,000/- made by the AO. u/s 68 of the IT Act, 1961 following the ration down by the Hon'ble Supreme Court in the case of Lovely Exports (P) Ltd. (2008) 216-CTR-195, ignoring the fact that the identity of the alleged share holders remained unproved and the book value of the shares was Rs.120/- only as against Rs.5,000/- per share ?

3. Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition by the A.O. on account of. sale of business property below the market price out of the unsold stock relating to year ending on 31/03/2009 ignoring the fact that the transactions were shown at price much below the circle rates ?

4. Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs.2,83,28,690/- being the land development expenses allegedly paid by the assessee for the work contract stated to have been received from Era Land Mark (India) Ltd. for Rs. 2,97,53,359/- ignoring the facts that no TDS was made on contract payment, and the entire expenses were unverifiable.

5. Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in law in treating the income from agriculture against the income assessed under the head "other sources" ignoring the fact that the assessee failed to establish any activity relating to agriculture."

3. The assessee company is engaged in the business of construction, builders and property developers. The return of income was filed by the assessee company on 28.09.2009 declaring income of Rs. 15,18,269/- and claiming refund of Rs. 4,32,383/-. The case was selected for scrutiny and notices under Section 143(2) dated 23.09.2010 and u/s 142(1) dated 14.07.2011. The Assessing Officer at the time of assessment proceedings asked

various details related to sale of stock at Krishna Plaza Project and details of its completion along with other details related to the business of the assessee. The Authorized Representative of the assessee furnished the details including that of Krishna Plaza Project and Dwarka Project. The Assessing Officer observed regarding sale of shop No. G-6. which is fixed asset that the sale was made to Smt. Upasna Yadav at Rs. 9,15,000/- where as the fixed asset were shown at Rs. 3,60,000/-. Stamp duty value of the property transferred was shown at Rs. 15,12,000/- on the date of transfer as mentioned in sale deed. The Assessing Officer held that assessee could not prove the commercial expediency or distress sale that to the family member and has sold the shop at the price lower than the stamp value as per provisions of Section 50C of the Act. Therefore, u/s 50C the Assessing Officer made addition of Rs. 5,97,000/-.

4. The Assessing Officer further made addition of Rs. 2,50,00,000/- towards share capital/share premium relating to Apurva Leasing Finance & Investment Company and Shalini Holdings Ltd. thereby stating that the said transaction is nothing but an arrangement and an attempt to convert unaccounted money to the assessee company under the garb of share capital and share premium as both the Companies are not available on the given address and assessee failed to establish the identity, creditworthiness and genuineness of the transitions. The addition was made u/s 68 of the Act.

5. The Assessing Officer further made addition of Rs. 72,30,000/- being undisclosed sale relating to sale of properties which are below market price. The Assessing Officer also made addition of Rs. 2,83,28,690/- relating to disallowance on account of non-deduction of tax on payments of expenditure more specifically that of development expenditure. Further, the Assessing Officer made addition of Rs.4,15,250/- related to agricultural income and Rs. 1,48,75,000/- relating to advance from customers for which there was no specific material produced by the assessee. The Assessing Officer also made addition of Rs. 16,82,610/- relating to difference of sale amount in absence of

details where the assessee has taken the sale value for unsold stock. The Assessing Officer finally made addition of Rs.7,29,144/-on account of contravention to Provisions of Section 40A (v)(iii).

6. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

7. As regards to Ground No. 1, the Ld. DR submitted that the Assessing Officer has applied Circle Rate. The Assessing Officer has given a categorical finding that the assessee could not prove the commercial expediency or distress sale made to a family member. The assessee also could not prove that the property was not worth fetching market value. Smt. Upasna Devi to whom the shop was sold is the widow of Major Naveen Yadav, who is the elder son of Colonel M. S. Yadav, the elder brother of the Managing Director, Vijay Pal Yadav. Thus, the Assessing Officer has rightly made addition of Rs.5,97,000/-. The Ld. DR further submitted that the CIT(A) has erred in directing the AO to give benefit of Cost Inflation Index and tax the surplus as long term capital gain on sale of shop G-6 ignoring the fact that the AO had made the addition" only on a/c of difference between the Market price and alleged actual sale price shown by the assessee against which the related expense had already been claimed by the assessee and allowed by the A.O.

8. The Ld. AR submitted that Ground No. 1 is raised against the CIT(A)'s direction to the AO to re-compute the long term capital gain after providing benefit for cost inflation indexation to the Assessee. The full facts leading to the addition are narrated by the AO on page 7 of the assessment order. The CIT(A) has granted the nominal relief in terms of his observations in para 6.4 on page 5 of the order. The irony of the matter is that the AO failed to remember while proposing the addition that he himself had appreciated the rudimentary fact in the opening portion of the assessment order that *"the Assessee Company engaged in the business of construction, builders and property developments".*

The CIT(A) passed the order on 11.06.2012. The Income-tax Act provided for taxation of the difference between the circle rate and the actual sale consideration of property by a trader through the insertion of Section 43CA w.e.f. 01.04.2004. Much before this, the respondent Assessee had pointed out to the AO that the Mumbai Tribunal in Inderlok Hotels Private Ltd. vs. ITO 318 ITR 234 (AT) had explicitly held that Section 50C of the Act had no application to the sale of stock in trade. The CIT(A) ought to have abided by the ratio of the decision of the Mumbai Tribunal as cited and relied upon before him by the assessee. Accordingly, therefore, it is pleaded that the directions of the CIT(A) be amended to provide relief to the Assessee on this point as per the applicable law.

9. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee submitted before the Revenue authorities that the assessee sold the shop at market price to a close relative with a guarantee that it would fetch good rent, however, it was lying vacant and the Assessing Officer applied Section 50C of the Act. The assessee transferred the said shop in the assets and not claimed it as stock year after year. The genuineness of the transaction was never doubted by the Assessing Officer, and the buyer Smt. Upasna Devi is the daughter-in-law of elder brother of the Assessee. The Assessing Officer has applied Section 50C of the Act, but the CIT(A) has not given any finding as to why the Cost Inflation Index Benefit has to be given to the assessee. Therefore, it needs verification of the entire issue. Thus, we are remanding back this issue to the file of the Assessing Officer for proper adjudication and decide the same afresh as per law. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Ground No. 1 of the Revenue's appeal is partly allowed for statistical purpose.

10. As regards Ground No. 2, the Ld. DR submitted that the Investigation Wing has given a clear report that these parties are non-existent and are

accommodation entry providing Companies. The Ld. AR further submitted that the assessee at no point of time has given the basis as to how the book value of shares was increased from Rs. 124 to Rs. 5000 per share. The Assessing Officer has rightly made addition of Rs. 2,50,00,000/-. The Ld. DR further submitted that the CIT(A) has erred in deleting the addition of Rs. 2,50,00,000/- made by the AO. u/s 68 of the IT Act, 1961 following the ratio down by the Hon'ble Supreme Court in the case of Lovely Exports (P) Ltd. (2008) 216-CTR-195, ignoring the fact that the identity of the alleged share holders remained unproved and the book value of the shares was Rs.120/- only as against Rs.5,000/- per share.

11. The Ld. AR submitted that Ground No. 2 is with reference to the deletion of addition of Rs. 2.50 crores made on account of share capital by the AO in assessment. The Ld. AR submitted that the Assessee Company, which was incorporated in 1995, had purchased land from Awas Vikas Parishad, U.P. at Meerut in 1999 which, from time to time, was being carried over as stock in trade in its accounts. Due to the depression in the real estate business, the Assessee was unable to liquidate the properties constructed on those lands, swiftly or conveniently. However, the value of lands, as such, had considerably appreciated by the time of the advent of the subject assessment year.

11.1. The Ld. AR submitted that in order to be able to meet the financial obligations of the business, the Assessee company issued shares to two companies viz., Shalini Holdings Ltd. and Apoorva Leasing Finance and Investment Company Ltd. which belonged to the relatives of the Directors of the Assessee Company. The former had free reserves of Rs. 112.12 crores and the latter of Rs. 14.86 crores. The above named investment companies had also made similar investments in another group company of the Assessee known as Emm Vee Infrastructures India Private Ltd. In the assessment of the Emm Vee Infrastructures, similar objections had been taken by the concerned AO to the induction of share capital therein. The objections as taken in assessment were

all overruled in appeal by the CIT(A) in that case. When that issue came up before the Tribunal, B Bench by way of a departmental appeal bearing No. 4178/D/2012, the Tribunal vide order dated 19.06.2017, finding no merit in the departmental appeal, dismissed the same.

11.2. The Ld. AR submitted that in the subject case, the addition has been made on the basis of gratuitous and anomalous allegations based entirely on suspicion and conjectures and on the precedent of Emm Vee Infrastructures. To discredit the valuation of shares as presented by the Assessee, the AO worked out the value of shares as per book instead of taking the value, as per the market value of the assets held by the Assessee Company. Notwithstanding the fact that cogent and copious evidence was filed during assessment to prove the identity, credit-worthiness and genuineness of the transactions, the AO ignored the same on suspicious and fallacious grounds. He failed to repudiate the evidence as filed on behalf of the Assessee. Had only the AO taken the value of assets held by the Assessee on the valuation date at their contemporaneous value, the justification for the share premium would have been self- evident to him. The factum of the investing companies not having handsome income was not of much relevance in face of the fact that both the investing companies had massive reserves and thus had at their command adequate financial resources to support any investments proposed to be made by them.

11.3. The Ld. AR submitted that the various decisions relied upon by the Ld. DR are distinguishable and are not applicable to the facts of the case specially when the Tribunal had already accepted the genuineness of the transactions. The Ld. AR submitted that the citation in NRA Iron and Steels Private Ltd. (2019) 412 ITR 161 (SC) as relied upon by the Department would be of no help to it in the facts and circumstances of the case. The reason being that in the said decision, the High Court decisions in favour of the assessee on share capital have all been unreservedly endorsed. Of special importance is the fact

that the order of the Apex Court clearly spells its decision that it is in the context of the facts of the case before. That is stated explicitly in para 12 of its apex court order. The Apex Court thus tested the correctness of the decision of the High Court and the Tribunal on the basis of the accepted authorities and the normal protocol for share capital verification as provided in the judgments of the Delhi High Court in CIT Vs. Lovely Exports Private Ltd. (2008) 299 ITR 268, CIT Vs. Oasis Hospitalities Private Ltd. (2011) 333 ITR 119(Del), CIT Vs. Kamadhenu Steel & Alloys Ltd. (2014) 361 ITR 220(Del) and CIT Vs. N.R. Portfolio Ltd. (2014) 222 Taxman 157(Mag.)(Del). In order to cull the requirement envisaged u/s 68 of the Act for the acceptance of the credit, the Apex Court went by the time honoured authorities in Kale Khan Mohammed Hanif Vs. CIT (1963) 50 ITR 1 (SC) and, Roshan Di Hatti Vs. CIT (1977)107 ITR 938 (SC). The apex Court also approvingly cited from the observations of the Guwahati High Court in Nemi Chand Kothari Vs. CIT (2003) 264 ITR 254(Gau). In order to be able to unravel the sinister designs of evasive and manipulative assessees, the Apex Court went by the ratio and standards enunciated in the cases of Sumati Dayal Vs. CIT (1995) 214 ITR 801 (SC) and CIT Vs. Mohankala (2007) 291 ITR 278(SC). It would thus be amply clear, on a careful reading of the judgment as a whole, that the Apex Court did not spell out any fresh test or any new mode or manner of verification of share capital u/s 68 of the Act. It is most noteworthy that in a way, the Apex Court in the said judgment stood by the mandate in the case of Lovely Exports (P) Ltd. (supra) and others which included Divine Leasing & Finance Company Ltd. In this way, the order of the CIT(A) in para 7.5 is in total and complete sync with the Apex Court observations in the cited case. Further, the decision of Emm Vee Infrastructures India Private Ltd. as referred to the order of the lower authorities has subsequently been confirmed by the Tribunal for relief in that case as pointed out hereinbefore. In the circumstances, the addition as deleted by the CIT(A) being correct both on facts and on law.

12. We have heard both the parties and perused all the relevant material available on record. We find that the CIT(A) while deleting the addition has held as under:-

"***7.5 Decision and reasons therefor:***

I have gone through the assessment order of the AO and considered the written submissions and arguments of the AR. I have also gone through the remand report as well the rejoinder made by the AR. I have also gone through the case laws referred to by the AR. The AO has made reference for enquiry to the Investigation Wing, Delhi. He also obtained a similar enquiry report made by ACIT, Circle, 1, Meerut in the case of Emm Vee Infrastructures India Pvt. Ltd. The AO formed his opinion on the basis of the report of the Investigation Wing, Delhi and of ACIT Circle 1, Meerut without going himself for the verification from the share applicants about the confirmation and the documents submitted by the assessee company. The AO had with him the addresses of the share applicants, their bank statements and even their Income tax return acknowledgments. He had with him the addresses of the Directors but never verified any detail from his counterpart in Delhi where the share applicants were assessed. The Investigation Wing and ACIT Circle 1, Meerut through ACIT (TDS), Delhi had provided the names and the addresses of the Directors but the AO failed to enquire from them regarding the investments. Neither the AO nor the Investigation Wing, Delhi found any cash deposited in the bank for the encashment of the share application cheques.

I find that there is no doubt about the identity of the share applicants and the genuineness of the transaction regarding the share application which are proved by the confirmations and the bank accounts which the assessee company has submitted during the assessment proceedings. The confirmations of both the share applicants were submitted and the transactions have been done through the Axis Bank, Karol Bagh, Delhi. The assessee even furnished before the A.O. the set of Balance sheets , the copies

of Income Tax return acknowledgments, the copies of share applications and the copies of Board Resolution for the share application. Further from the set of Balance sheets it is seen that the company Shalini Holdings Ltd has capital and free reserves at Rs. 112,12,50,000/- and investments at Rs. 116,95,01,200/- in 253 companies whereas the second applicant has capital and free reserves at Rs. 14,86,25,000/- and investments of Rs. 13,20,35,000/- in 21 companies. The capital and free reserves and the investments of the share applicants prove their creditworthiness. The A.O failed to see the large amounts of investments and capital structures of the share applicants and without applying his mind added the amounts received as share application u/s 68 of IT Act.

In view of the above facts and various judgments cited by AR and keeping in mind of judgment of Apex court in the case of Lovely Exports Pvt. Ltd (2008) 216 CTR 195 the addition of Rs.2,50,00,000/- is deleted."

12.1 It is pertinent to note that the assessee for want of working capital had issued 10,000 equity shares of Rs. 100 each at a premium of Rs. 4,900/- to two different companies. The breakup of issue stands of 2,000 equity shares of Rs. 100 each at a premium of Rs. 4,900/- to Appoorva Leasing Finance and Investment Pvt. Ltd. amounting to Rs. 50,00,000 and 8000 equity shares of Rs. 100 each at a premium of Rs. 4,900/- to Shalini Holdings Ltd. The total of issue capital amounted to Rs. 250,00,000 including the share premium of Rs.245,00,000/-. The assessee Company has furnished details of shares issued to the two Companies. We find merit in the contention of Ld. AR/ Assessee Company that the premium is worth by looking the orders in hand, the assets in possession and the workings of the tear results. The details of the issued capital and the confirmations were provided by the assessee to the Assessing Officer. The copy of Bank Statement of the Share applicants along with ITR acknowledgments, the set of balance sheets were also forwarded to the Assessing officer. The change in the address of Investor Companies were

also informed to the Assessing Officer. Thus, the assessee company had discharged the burden by proving the genuineness of the transactions by submitting the bank statements, the creditworthiness of the investors by submitting the set of balance sheets of the investor companies and also proved identity while submitting the details of their income tax acknowledges, the certificate of incorporations and the copy of addresses from the site of Ministry of Company Affairs. Merely stating that how the book value of shares was increased without any cogent evidence brought on record by the Assessing Officer the Assessing Officer cannot suspect the genuineness creditworthiness of the transactions. The decision of the Tribunal in case of Emm Vee Infrastructures (supra) relied by the Ld. AR is apt in the present case Thus, there is no need to interfere with the finding of the CIT(A). Hence, Ground No. 2 is dismissed.

13. As regards Ground No. 3, the Ld. DR made similar submissions to that of Ground No. 1. The Ld. DR further submitted that the CIT(A) has erred in deleting the addition by the A.O. on account of sale of business property below the market price out of the unsold stock relating to year ending on 31/03/2009 ignoring the fact that the transactions were shown at price much below the circle rates.

14. The Ld. AR submitted that Ground No. 3 is in respect of the sale of shops held by the Assessee as stock in hand. The AO has narrated the facts on pages 16 and 17 of his order. The CIT(A) has recorded his findings on pages 27 to 33 of the order. In deleting the addition, as proposed by the AO, the CIT(A) has relied upon the decision of the Mumbai Tribunal in Inderlok Hotels Private Ltd. Vs. CIT (2009) 318 ITR 234. As of present, the law on this point is very clear, in as much as, the power so to do has been granted by the Act to the AO in terms of Section 44CA only w.e.f. 01.04.2014. He submitted that in the subject year, there was no such power with the AO to tax the difference between the circle

rate and the sale value. The difference between circle rate and the sale value in the case of sale or stock in trade, circle rate as brought to tax by the AO has been rightly deleted by the CIT (A) which merits to be confirmed.

15. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Ld. DR made similar submissions to that of Ground No. 1 and the same is identical. It is further noted by us while deciding Ground No. 1 that the Assessing Officer has applied Section 50C of the Act, but the CIT(A) has not given any finding as to why the Cost Inflation Index Benefit has to be given to the assessee. Therefore, it needs verification of the entire issue. Thus, we are remanding back this issue to the file of the Assessing Officer for proper adjudication and decide the same afresh as per law. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Ground No. 3 of the Revenue's appeal is partly allowed for statistical purpose

16. As regards to Ground No. 4, the Ld. DR relied upon the assessment order. The Ld. DR further submitted that the CIT(A) has erred in deleting the addition of Rs.2,83,28,690/- being the land development expenses allegedly paid by the assessee for the works contract stated to have been received from Era Land Mark (India) Ltd. for Rs. 2,97,53,359/- ignoring the facts that no TDS was made on contract payment, and the entire expenses were unverifiable.

17. The Ld. AR submitted that Ground No. 4 is in respect of addition of Rs. 2,83,23,690/- made on account of land development expenses. The assessee company had a business contract with the Era Land Market India Ltd. for the development of their lands. Full facts with regard to this issue is stated by the AO in the assessment order on pages 17 to 19. The addition has been made by the AO in terms of the alleged non-compliance with the TDS provisions and also on the consequent disability for claiming deduction for relatable expenses as provided u/s 40(a) (ia) of the Act. The CIT(A) has narrated the facts and

stated his conclusion on pages 33 to 38 of the order. The simple fact of the case is that all these payments related to labour charges paid to labourers on a daily basis were all noted on the acquaintance sheets for each day. Later, the acquaintance sheets were bunched together and the aggregate payments were debited to the accounts as one single sum of the day. For the fact that the individual payments were not in excess of the prescribed limits for TDS and that the payments to the several labourers were individually much below the TDS limits, the relief has rightly been allowed by the CIT(A). The department has not pointed out any factual error or deficiency in the order of the CIT(A). In the circumstances, the deletion as ordered by the CIT(A) be confirmed.

18. We have heard both the parties and perused all the relevant material available on record. The CIT(A) in para 9.4 held as under:

"9.4 Decision and reasons therefore:

I have gone through the facts of the case, submissions of the AR, the remand report of the AO and the rejoinder of the AR. I have also considered the letter of the company regarding the vouchers being with the parent company for their audit for obtaining the finance facilities and vice versa letter of Era Land Marks Ltd. about the returning of the vouchers. I have also considered the case law as given by the AR. The AO could not verify the entire bunch of vouchers but retained some and in the third Para of Page 19 expressed. "A list of few labours have been submitted along with some signatures without any details, date or supporting record." However, every where he has stated that no details have been submitted regarding the payments or deduction of TDS. The AO further has stated in the last lines of the same para that " It is further stated that at later stage if assessee established the deduction of TDS and deposit to the Central Government as per provision of I.T. Act then income of Rs. 1,65, Cr. as stated above shall be treated as Income of the assessee."

The AO cannot presume the income at one stage of Rs. 14,24,669/- being 4.79% as shown by the assessee and at another stage an income of

Rs. 1,65 Crore. The AO has failed to establish the correct amount of income which he wanted to be taxed as the real surplus of the assessee from the work contract. He has disallowed he entire expenditure taking the same as payments made above the statutory limit of Section 194C of the Income-tax Act, 1961. The AO has failed to establish from the list of vouchers/details as submitted by the assessee for his verification to show that there was any payment made in excess of Rs. 20,000/-, the statutory limit for TDS. The AO was confused by the book entry adjustment of the purchase of commercial space made by the assessee company from the Era Land Mark Limited. The application of Section 40(a)(ia) has to do nothing on the adjustments for he commercial space. If any payment is made exceeding Rs. 20,000/-, the same could be disallowed. The AO took the advantage of the form 3CD without going to the basic requirements of verifying the books. No details, as stated by the AO, was produced, but he could verify from the books of accounts the amount to be disallowed. The AO has expressed that if at a later stage any payment of TDS is made, the income shall be treated as Rs. 1.65 Crore. The AO has himself noted regarding the submission of few labour sheets, but has not commented if any violation of the provisions of Section 194C of IT Act, 1961 was done by assessee on those payments. I have gone through the set of payment vouchers submitted by the assessee with his written submissions of various head of accounts and find that these is no payment which violates the provisions of Section 194C of IT Act, 1961, hence the disallowance of Rs.2,83,28,000/- is deleted from the income of the assessee."

Thus, it is pertinent to note that all the payments related to labour charges were paid to labourers on a daily basis were noted on the acquaintance sheets for each day as per the documents produced by the Assessee before the Revenue authorities. The acquaintance sheets were bunched together and the aggregate payments were debited to the accounts as one single sum of the day, because the individual payments were not in excess of the prescribed limits for

TDS and that the payments to the several labourers were individually much below the TDS limits. Therefore, the CIT(A) was rightly deleted the said addition as department could not point out any factual error or deficiency in the order of the CIT(A). Thus, there is no need to interfere with the findings of the CIT(A). Ground No. 4 is dismissed.

19. As regards to Ground No. 5, the Ld. DR relied upon the assessment order. The Ld. DR further submitted that the CIT(A) has erred in treating the income from agriculture against the income assessed under the head "other sources" ignoring the fact that the assessee failed to establish any activity relating to agriculture.

20. The Ld. AR submitted that Ground No. 5 is with regard to agricultural income as derived by the assessee during the year. The AO's observations in this regard are contained on page 19 of the assessment order. The CIT (A) has dealt with this issue on pages 38 to 40 of his order. The Ld. AR submits that the AO wrongly ignored the evidences furnished by the assessee for the purchase of seeds, the payment of electricity and diesel expenses for operating the tube well and tractor, the Khasra and khatauni issued by the Patwari for the crops and also the sale vouchers of the agricultural produce. No error or shortcoming has been pinpointed by the Department in the order of the CIT (A). Hence the order of the CIT (A) on this point be confirmed.

21. We have heard both the parties and perused the material available on record. It is pertinent to note that the assessee has given the details upon which the Assessing Officer has given a remand report before the CIT(A). The CIT(A) held as under:

"10.4 Decision and reasons therefore:

I have carefully considered the facts of the case and the submissions of the AR. I have also considered the remand report of AO and its rejoinder made by the AR. On the basis of the copies of letters and other

relevant documents produced by the AR, and from the letters and documents submitted, including copies of Khasra Khatauni, the bills of diesel, the copy of bills of seeds, use of tractor and electricity bills, I reach the conclusion that income related to the activity of land could only be held as agricultural income. Looking at all relevant facts, I hold the income of Rs. 4,15,250/- to be agricultural income and not income from 'Other Sources' It is directed accordingly."

The assessee has given/produced letters and documents including copies of Khasara and Khatauni, bills of diesel, copy of bills of seeds, use of tractor and electricity bills. The assessee has proved before the Authorities that activity on land was purely agricultural in nature. Therefore, the CIT(A) has rightly held the said income to be agricultural income. There is no need to interfere with the findings of the CIT(A). Hence, Ground No. 5 is dismissed.

22. In result, the appeal of the Revenue is partly allowed for statistical purpose.

Order pronounced in the Open Court on this 20th Day of September, 2021.

Sd/-	**Sd/-**
(R. K. PANDA)	**(SUCHITRA KAMBLE)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 20/09/2021
*R. Naheed **
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI