

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES “SMC-1” : DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.6277/Del./2019
Assessment Year 2016-2017

Transparent Agro Private Limited, Farm Number-1, Village Sultanpur, Mehrauli, New Delhi – 110 030. PAN AABCT9134E	vs.	The Income Tax Officer, Ward – 25(3), C.R. Building, I.P. Estate, New Delhi – 110 002.
(Appellant)		(Respondent)

For Assessee :	-None-
For Revenue :	Shri Om Parkash, Sr. DR

Date of Hearing :	18.11.2021
Date of Pronouncement :	26.11.2021

ORDER

This appeal filed by the Assessee is directed against the Order dated 20.06.2019 of the Ld. CIT(A)-9, New Delhi, relating to the A.Y. 2016-2017.

2. None appeared on behalf of the assessee at the time of hearing nor any petition seeking adjournment of the case has been filed. A perusal of the record shows that this appeal has been fixed for hearing on a number of times by

issuing notice through RPAD and on all occasions the Postal Authorities have returned the notice with the remarks “Left”. The assessee has also not taken any steps to intimate the changed address, if any. Therefore, I deem it proper to decide the issue on the basis of the material available on record and after hearing the Ld. D.R.

3. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the Ld. CIT(A) in upholding the order passed under section 143(3) of the I.T. Act and sustaining the addition of Rs.21,60,000/- made by the A.O. rejecting the claim of the same as agricultural income.

4. Facts of the case, in brief, are that the assessee is a company and filed its return of income on 07.10.2016 declaring total income of Rs.3,98,300/-. The case was processed under section 143(1) of the Act. Subsequently, the case was selected under CASS in limited scrutiny category to examine the following issues :

Reason Description	Issue
Mismatch between income/ receipt credited to Profit & Loss account considered under other heads of income and income from heads of income other than business/ profession (Schedule BP, Schedule EI & Part-B-TI of return).	
Large agricultural income (Schedule EI or Part-B TI of ITR)	Whether the claim of agricultural income is correct.

4.1. The A.O. accordingly issued notice under section 143(2) of the Act. Subsequently notice under section 142(1) of the Act along with questionnaire was issued to the assessee company for necessary compliance.

4.2. During the course of assessment proceedings, the A.O. noticed that the assessee company during the year under consideration was engaged in the farming and agriculture of all kind of seeds, flowers, plants, nursery, floriculture & sericulture. The assessee company has shown total revenue of Rs.1,96,47,872/- from its agricultural operations including rent of Rs.21,60,000/-

from agricultural land. On being questioned by the A.O. it was submitted that the assessee company was in receipt of sale proceeds of vegetables, fruits, flowers, leaves, strawberry, etc. for a total sum of Rs.1,74,87,872/- and rent of Rs.21,60,000/- received from M/s. Asian Hotels (North) Ltd under a contract for use of space for nursery plants. During the course of assessment proceedings the A.O. noticed that the assessee company had entered into a Memorandum of Understanding (MOU) dated 01.07.2003 with Sh. Shiv Kumar Jatia for carrying out agricultural operations on 5.25 acres agricultural land at Farm No.1, Sultanpur Farms, Village Gadaipur, Tehsil haуз Khas, Delhi. On the said agricultural land, necessary infrastructure & various equipments for cultivation has also been provided to the assessee company along with the land. The said MoU has been extended by the assessee company upto 31.03.2022 for a charge of Rs.30.00 lacs per annum. Further, it was also noticed that the assessee company has entered into a contract vide letter dated 11.03.2015 for use of space for nursery plants and storing of plants owned by

M/s. Asian Hotels (North) Ltd at Farm No.1, Sultanpur Farms, Village Gadaipur, Tehsil haуз Khas, Delhi for a charge of Rs.1.80 lacs per month i.e. Rs.21.60 lacs annually. It was noticed that the assessee company has shown rent from agricultural land of Rs.21.60 lacs in its Profit & Loss Account for the AY 2016-17 and has also claimed exemption on this rent by considering it as agricultural income. The A.O. noticed that the assessee company has earned rental income of Rs.21.60 lacs by sub-letting the space for storing of nursery plants owned by M/s. Asian Hotels (North) Ltd at the agricultural land which was let out to the assessee company on rent by Sh. Shiv Kumar Jatia vide MoU dated 01.07.2003. Further, the income from activity of sub-letting of the said property for the purposes of storing of plants cannot be claimed as income from agricultural operations. Thus, the rent receipts of Rs.21.60 Lacs; received from M/s. Asian Hotels (North) Ltd were not exempted as per the Act and these receipts should have been taxed under the head Income from other sources u/s 56 of the Act for the AY 2016-17.

4.3. In order to verify the actual activities being carried out as claimed by the assessee company for the agricultural purposes, the A.O. deputed his Inspector to conduct field enquiries and submit his report, to which the Inspector gave the following report which has been reproduced by the A.O. in the body of the assessment order at para 4.3 which reads as under :

“With regard to renting part of the land to M/s. Asian Hotels (North) Ltd., it was informed that there is no specific area given to them. M/s. Asian Hotels (North) Ltd. does not utilize the land for farming, but uses only for keeping and maintaining flower pots. The flower pots are kept according to the requirements of sunlight/shade for the flower plants. On the said premise, around 2000 pots were present and maintenance of the same was handled by Mr. Raja Ram, staff of M/s. Asian Hotels (North) Ltd. However, the quality and

standard of these flower plants and pot was very local and not up to the standard of Hayatt Hotels (M/s. Asian Hotels (North) Ltd. Further, nowhere in the entire farm house there was any board in the name of M/s. Asian Hotels (North) Ltd. or in the name of Hayatt Hotels.

For keeping the plants under the shade plants are kept in the backside of the farm house.”

4.4. The A.O. also issued notice under section 133(6) to M/s. Asian Hotels (North) Ltd., to submit complete details of purchase/sale transactions, the property/space/land i.e. address, land area, location, structure description, etc. taken on rent from the assessee company along with documentary evidence of rent agreement etc. and details of the activities & operations being carried out by the assessee company at the property/space/land.

4.5. After receiving reply from M/s. Asian Hotels (North) Ltd., in response to notice under section 133(6) of

the Act and further submission thereafter, the A.O. issued a final show cause to the assessee to explain as to why the rent receipt of Rs.21,60,000/- should not be taxed under the Head “Income from other sources” under section 56 of the I.T. Act, 1961. Rejecting the various explanation given by the assessee, the A.O. held that the amount of rent receipt of Rs.21,60,000/- from M/s. Asian Hotels (North) Ltd., are not agricultural income and not exempt under section 10(1) of the I.T. Act and are to be taxed under the Head “Income from other sources” under section 56 of the I.T. Act, 1961. He, accordingly, rejected the claim of exemption and made addition of Rs.21,60,000/- to the returned income of Rs.3,98,300/- and thus, determined the total income of the assessee company at Rs.25,58,300/-.

4.6. In appeal, the Ld. CIT(A) upheld the action of the A.O.

5. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

6. I have heard the Ld. D.R. and perused the record. I find the A.O. in the instant case after considering various submissions made by the assessee from time to time, report of the Inspector and the reply of M/s. Asian Hotels (North) Ltd., to the notice under section 133(6), treated the rent receipt of Rs.21,60,000/- received by the assessee from M/s. Asian Hotels (North) Ltd. as income from other sources as against agricultural income claimed by the assessee and made the addition of the same to the total income of the assessee. I find the Ld. CIT(A) upheld the action of the A.O. by observing as under :

✓ 5.2 I have considered the facts of the ground and contention of the AR of the appellant. The AO has made disallowance of Rs.21,60,000/- earned as rent from letting out the land situated at No.1 Sultanpur Farms, Vilalge Gadaipur, tehsil Hauz Khas, Delhi. The contention of the AR is that the appellant company has let out the land which was taken on lease from Sh. SHiv Kumar jetia for the purpose of cultivating flower plants for M/s Asian Hotels (North Ltd.)

5.3 The AO had issued notice u/s 133(6) of the Act to M/s Asian Hotels (North Ltd.) dated 03.12.2018 to submit the complete details of sale/purchase transactions the space utilized, for such activities and to provide documentary evidence as to rent agreement, etc. M/s Asian Hotels North Ltd. vide their submission dated 07.12.2018 has stated that "the company has to maintain proper landscaping and decoration as per international standards in the hotel premises. A no. of flower pots are placed at various locations in the hotel premises which are to be regularly replace with new and fresh plants. The flower pots removed from the hotel premises are stored int eh nursery of M/s Transparent Agro where new flower plants and

saplings are being grown and then put in the flower pots for replacement. This is the continuous process throughout the year in all seasons for providing space for nursery operations and storage of flower plants the company has entered into an agreement with m/s Transparent Agro and in terms of set agreement a monthly rent of Rs.1,80,000/- is being paid after deduction of TDS."

5.4 The AO had deputed inspector of the department to conduct field enquiry in the cases of agricultural activities at farm no.1 sultanpur farms, Village Gadipur, tehsil haur Khas, Delhi. The inspector vide his report dated 03.12.2018 had submitted as under:-

" With regard to leasing part of the land to Ms/ Asian Hotels (North Ltd.) it was informed that there is no specific area given to them . M/s Asian Hotels North Ltd. does not utilize the land for farming but uses only for keeping and maintaining flower pots. The flower pots are kept according to the requirements of sunlight/shade for the flower plants. ON the said premises, around 2000 pots were present and maintenance of the same was handed by Mr. Rajaram, Staff of M/s Asian Hotels North Ltd. However, the quality and standard of these flower plants and pots was very local and not upto the standard of the Hayatt Hotels (Asian Hotels (North Ltd.)). Further, nowhere in the entire farm house, there was any board in the names of Ms. Asian Hotels North Ltd. or in the name of the Hayatt hotels. The inspector had clicked photograph of the plants which is part of the assessment order on page 5 and 6. From the photos of these plants it can be very well seen that these plants are very ordinary plants which are generally kept in the houses. "

5.5 The appellant company has taken rent for letting out the land from M/s Asian Hotels (north Ltd.) and has received a fixed sum on monthly basis. As per section 2(1A)⁶ "agricultural income"⁷ means⁸—

- ⁹[(a) any rent¹⁰ or revenue¹⁰ derived¹⁰ from land¹⁰ which is situated in India and is used for agricultural purposes¹⁰;
- (b) any income derived from such land¹⁰ by—
 - (i) agriculture¹⁰; 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

Commissioner of Income Tax

(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 :

⁹[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 ¹¹[***]; or

¹²[(B) in any area within the distance, measured aially,—

(i) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten thousand but not exceeding one lakh; or

(ii) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than one lakh but not exceeding ten lakh; or

(iii) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten lakh.

5.6 The clause A talks about any rent or revenue derived from land which is situated in India and used for agriculture purposes whereas in the present case the appellant company has

given on rent the land which the company itself has taken on lease and no where the basic agriculture activities are carried out on the land. This is the case where appellant is drawing income from rent and the same is being treated as agriculture income.

To derive agricultural income both the conditions are to be fulfilled i.e having land, tilling of land and subsequent agriculture activities on the same whereas in the instant case it is only a case where flower pots are stored in the land and that too there is no specific earmarked area for the company which is purportedly has taken the land on rent.

After considering the facts of the case, reply received u/s 133(6) and report of the income tax inspector, after conducting field enquiry there is no doubt that on the land no agricultural activities are being carried out and it is only a simple case of rent being received by letting out a unspecified area to a company of a farmhouse. In the absence of basic agricultural activities not being carried out by the appellant, the action of the AO is hereby confirmed and he has rightly treated the sum of Rs.2160000/- as income from other sources. Thus appellant fails in this ground of appeal. //

7.1. I find the Ld. CIT(A) while rejecting the claim of agricultural income has given a detailed reasoning which in my opinion is a reasoned one and does not call for any interference. I, therefore, uphold the same and the grounds raised by the assessee are dismissed.

8. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 26.11.2021.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Delhi, Dated 26th November, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-1' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.