

ito Vs. Rajpal Singh

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Court : Mumbai

Decided On : Mar-03-2004

Reported in : (2004)91TTJ(Mumbai)993

Appeal No. : ITA No. 260/Mum/1997 3 March 2004 A.Y. 1993-94

Appellant : ito

Respondent : Rajpal Singh

Advocate for Pet/Ap. : Sanjay Rai, *for the Revenue* K. Shivram & P.K. Parida, *for the Assessee*.

Judgement :

ORDER

JAIDEV, A.M.:

These cross-appeals are directed against Commissioner (Appeals)'s order dated 1-10-1996.

ITA No. 260/Mum/1997 : (Revenue's appeal) :

2. The following ground of appeal has been raised

'On the facts and in law, the learned Commissioner (Appeals)-XXX, Mumbai, has erred in deleting the addition of Rs. 21,54,303 on account of unexplained investment in purchases in spite of the fact that the assessing officer has collected

sufficient evidence which proves that though, the assessee has shown sales of certain goods, yet he has failed to prove that the corresponding purchases were out of his regular books of accounts.

In doing so, the Commissioner (Appeals) has ignored the fact that once the sales are proved, it was for the assessee to prove that the corresponding purchases were also from his known sources or that these were accounted for in the books of account of the assessee.

The appellant prays that the order of the Commissioner (Appeals) on the above grounds be set aside and that of the Income Tax Officer restored.'

3. The grievance of the revenue is against Commissioner (Appeals)'s action in deleting the addition of Rs. 21,54,303 made under section 69C on account of unexplained investment made in the purchases. The assessing officer was of the opinion that the purchases made from M/s Shanti Corpn. amounting to Rs. 20,70,582, M/s Rohitchandra & Co., to the extent of Rs. 80,070 and from M/s Automech, Engg. (P) Ltd., of Rs. 3,651 should be treated as unexplained purchases because the identities of the parties from whom the purchases were made had not been established. The assessing officer observed that against these purchases the assessee had not made any payments as noted from the respective party's ledger account. The assessing officer also detected that the parties to whom the sales have been shown did not confirm the said transactions and the contention that these entries reflected adjustment entries had also not been established as the assessee was unable to provide confirmations. The assessing officer was of the opinion that since the assessee has not been able to prove as to whether he was maintaining any godown wherein the items could be stored, the genuineness of the purchases became doubtful. Accordingly, an amount of Rs. 21,54,303 was treated as unexplained investment of the assessee. Being aggrieved, assessee carried the matter in appeal before the Commissioner (Appeals).

4. It was contended before the Commissioner (Appeals) that 'In view of the paucity of fund the appellant was working more or less as a commission agent and arranging for the purchases and sales as an intermediary. In most of the cases the

purchases so reflected were directly sent to the godown of the parties who were purchasing the items'. It was further contended that non-confirmation of the third party could not lead to the conclusion that the assessee had not made, the purchases or the purchases were out of unaccounted funds. The learned Commissioner (Appeals) deleted the addition by observing as under

'I have considered the contention of the appellant as well as the views of the assessing officer. The assessing officer restored the additions mainly on the ground that the parties from whom the appellant had reflected the purchases were not traceable and, therefore, the genuineness of the transaction, was doubtful. The assessing officer further observed that these purchases which are reflected as adjustment sales to various parties were also not confirmed by the said parties and, therefore, doubted the transactions as a whole, The assessing officer admitted the fact that from the records of the appellant no evidence is available as to whether any payment has been made by the appellant to the parties from whom the said purchases were reflected. On p. 6 at para 5 of his order the assessing officer commented that 'from the sequence of events it is very clear that the assessee has never made any purchases from M/s Shanti Corporation and also did not make any payment towards such purchases and also that adjustment entries made on ledger folio No. 47 are not genuine'. While summing up the issue, the assessing officer on p. 20, para (a) observed that 'However, on going through the corresponding purchase registers and sales registers, it is noticed that the assessee has effected sales corresponding to the above purchases thus, sales effected by the assessee are proved, but these sales can be effected only if the assessee has really the stock of goods with him. Since the assessee has tried to introduce bogus purchase bill in the above names corresponding to the sales effected, it is proved beyond doubt that the assessee has invested the said value of stock from his undisclosed sources. Hence, I add back such unaccounted investments in purchases.' The assessing officer, therefore, was of the opinion that the sales did not take place but since the appellant was not in a position to provide the whereabouts of the parties from whom the purchases were reflected he felt that the transactions did not take place and accordingly disallowed the entire payment made towards purchases on this account. The assessing officer, it would thus transpire, had considered that the sales were effected by the appellant. If

that be a case, there has to be a corresponding purchase. The appellant's books or the bank account do not reflect any payment made to M/s Shanti Corpn. and Other. The assessing officer has added back the amount only on the surmise that the parties from whom purchases were made are not available. While this might lead to some doubt about the genuineness of the purchase price so reflected, the entire purchases cannot be added back by treating the same as bogus as because corresponding sales have been taken into account while tabulating the profit of the appellant. The assessing officer has added the amount by stating that the investments in purchases are from undisclosed sources. This has not been ascertained on the basis of any entries in the books nor has the assessing officer been able to provide any clue that payments were made. Unless the source of the said amount is pinpointed and that the assessing officer is able to prove that money was paid to the parties from whom purchases were made, addition on this score that the purchases reflected payment from undisclosed sources cannot be sustained. The other question which would sway in favour of the appellant is with regard to the estimation of the total sales. The assessing officer had estimated sales at Rs. 1,25,00,000 as against Rs. 1,01,21,800 reflected by the appellant. Even for argument sake one takes into consideration the contention of the assessing officer, the benefit of this addition has to be given to the appellant as it has to be considered that sale proceeds to this extent were available in the hands of the appellant. The Andhra Pradesh High Court in the case of Laladapati Subba Ramaiah v. CIT : [1956]30ITR593(AP) opined that credit has to be given in such cases. Similarly, the Supreme Court in the case of Anantaraman Veerasinghaiah & Co. v. CIT : [1980]123ITR457(SC) deliberated that 'income although commonly described as intangible is as much a part of his real income as that disclosed by his account books. It has the same concrete existence. It could be available to the assessee as the book profit could be'. The Punjab and Haryana High Court in the case of CIT v. Premchand Jain (1992) 60 Taxman 37 (P&H;) also upheld assessee's contention while explaining cost of construction of house by giving credit to the past intangible additions. In the instant case the question is not with regard to the earlier additions but additions made during the year itself. Considering the facts and circumstances, I am of the opinion that the assessing officer has not been able to substantiate his findings that the purchases involved

unexplained investments. Accordingly, the addition of Rs. 21,54,303 on this score stands deleted. The appellant thus gets a relief of Rs. 21,54,303.

5. The learned Departmental Representative contended that the assessee does not maintain any stock register. In this regard the learned Departmental Representative read over relevant portions of the assessing officer's order. It was pointed out by the learned Departmental Representative that the payments have been claimed to have been made by the assessee by cheques. The learned Departmental Representative further pointed out that though accounts of the assessee were audited but they were found unreliable by the Commissioner (Appeals). In this regard the learned Departmental Representative read over the relevant portions of Commissioner (Appeals)'s order at pp. 9 and 10. The learned Departmental Representative also objected to the Commissioner (Appeals)'s observation given on p. 11 of 'his order that the assessing officer had made the impugned addition on 'the basis of surmises. The learned Departmental Representative contended that addition was not made on surmises but in fact was based upon the enquiries made by the assessing officer. The learned Departmental Representative further stated that the learned Commissioner (Appeals) did not call for any remand report from the assessing officer and confirmed sales estimated by the assessing officer. The learned Departmental Representative contended that GP as shown by the assessee was confirmed by the Commissioner (Appeals). The learned Departmental Representative further contended that the onus is on the assessee to prove the purchases. The learned Departmental Representative further contended that alleged cash movement made by the assessee is not required to be established by, the assessing officer. The learned Departmental Representative vehemently contended that the Commissioner (Appeals)'s order is based upon irrelevant facts and the correct facts have not been appreciated by the learned Commissioner (Appeals). Reliance was placed by the learned Departmental Representative on the following decisions :

(i) CIT v. La Medica (2001) 250 ITR 575

(ii) Tribunal Chandigarh Bench A, in the case of Vicky Foods (P) Ltd. v. Asstt. CIT (2003) SOT 513 (Chd)

6. On the other hand, the learned counsel of the assessee contended that the assessing officer had applied provisions of section 145 after pointing out the defects in the books of account. By referring to pp. 21 and 22 of the assessing officer's order the learned counsel pointed out that the assessing officer had made addition under section 69C of the Income Tax Act. Referring to p. 4 of the assessing officer's order, the learned counsel pointed out that assessing officer had mentioned the defects in the books of account of the assessee particularly the fact that, the assessee did not maintain any stock register. The learned counsel further contended that the assessee had neither made payments for purchases nor received payments for sales as the assessee acted only as an intermediary. It was stated that the goods were directly sent by the parties from whom the assessee has shown to have made purchases to the parties to whom the assessee has shown to have made sales. The learned counsel argued that since there is no payment, there is no question of making any addition in respect of payments made from undisclosed sources. The relevant portions from pp. 11 and 12 of Commissioner (Appeals)'s order were read over by the learned counsel. The learned counsel vehemently contended that making of addition under section 69C is without any justification. It was stated that only journal entries were passed and no payment was made either by cash or by cheque. The learned counsel further contended that the assessee did not have any godown and without making the purchases, sales could not have been effected. The learned counsel of the assessee made an alternative contention that if at all addition is made under section 69C, deduction for the purchases should also be allowed as the proviso to section 69C barring such deduction was inserted with effect from 1-4-1999, and hence it is not relevant for the assessment year under consideration which is assessment year 1993-94. The learned counsel further contended that there cannot be separate addition for unaccounted purchases when the turnover and GP are also estimated. The learned counsel objected to the learned Department Representatives argument that the GP shown by the assessee has been accepted by the assessing officer. Referring to para 19 of the assessing officer's order, the

learned counsel pointed out that GP was estimated by the assessing officer at 5 per cent as against 3.4 Per cent shown by the assessee. Referring to the relevant portions of assessing officer's and Commissioner (Appeals)'s orders, the learned counsel pointed out that only adjustment entries were passed by the assessee in respect of purchases and sales transactions and the assessee more or less acted as a commission agent for which no addition could be made for unexplained expenditure in purchases. The learned counsel contended that the decisions relied upon by the learned Departmental Representative are not applicable due to the peculiar facts of the instant case. It was stated that in those cases books of account were not rejected by the department and in the case of La Medica (supra), there was a specific finding regarding introduction of on-money which is not the fact in the instant case. The learned counsel relied upon the decisions quoted by the learned Commissioner (Appeals) in his order. In addition the, learned counsel relied upon the following decisions

(i) Indwell Constructions v. CIT : [1998]232ITR776(AP)

(ii) Dy. CIT v. Adinath Industries : [2001]252ITR476(Guj)

(iii) Maddi Sudavsanam Oil Mills v. CIT : [1959]37ITR369(AP)

(iv) ITO v. Chetan Ram Ram Gopal (2000) 68 TTJ (Jad) 229

(v) Decision dated 8-2-2002, of Tribunal, Mumbai Bench 'I', in the case of H.R. Builders v. Asstt. CIT in ITA Nos. 3311 & 3312/Mum/1996 for assessment years 1991-92 & 1992-93.

(vi) Decision dated 12-4-2003, of Tribunal, Mumbai Bench 'D' in the case of Asstt. CIT v. H.R. Builders in ITA Nos. 4571 & 4572/Mum/1996 for assessment years 1991-92 & 1992-93.

(vii) Balaji Textiles Industries` (P) Ltd. v. ITO (1994) 49 TTD 177 (Bom)

7. In his rejoinder, the learned Departmental Representative contended that it is not correct ; to say that the assessee was a commission agent. Referring to p. 3 of the paper book, the learned counsel pointed out from the trading and P&L; a/c that

the assessee had opening balances as well as closing balances of the stock and hence he, was acting in the capacity of a trader. The learned Departmental Representative further submitted that if the assessee had no godown where did he keep the stock? The learned Departmental Representative emphasized that the order of the Commissioner (Appeals) is based upon incorrect appreciation of facts. From the P&L; a/c the learned Departmental Representative pointed out that godown rent is debited under the head 'office expenses' and hence this shows that the assessee was only a trader. The learned Departmental Representative further contended that there is no evidence that the party from whom assessee purchased the goods had sent the goods directly to the party to whom assessee sold the goods. It was stated by the learned Departmental Representative that the accounts of the assessee are not reliable. The learned Departmental Representative accepted that without purchases, sales cannot be effected but he stated that whether the purchases are effected from the specified parties is not proved. The learned Departmental Representative contended that genuineness of the entire transaction was in doubt. With regard, to the application of proviso to section 69C, the learned Departmental Representative contended that proviso to section 69C though inserted with effect from 1-4-1999, should be treated as retrospective in operation'. In this regard, the learned Departmental Representative referred to the Tribunal's decision in the case of Star Chemicals (ITA No. 1276), wherein the judgement in the case of Allied Motors (P) Ltd. : [1997]224ITR677(SC) was followed. The learned counsel of the assessee interrupted to say that the decision in the case of Star Chemicals (supra) was with regard to section 43B and hence it, is distinguishable in facts. The learned Departmental Representative then contended that the decisions relied upon by the learned counsel of the assessee are distinguishable in facts. It was stated that : [1998]232ITR776(AP) (supra) pertains to section 40 which starts with the wording notwithstanding anything to the contrary in sections 30 to 38 . . .' It was stated that section 69C does not fall between sections 30 to 38 and hence the facts are distinguishable. Referring to the decision in : [2001]252ITR476(Guj) (supra)., the learned Departmental Representative contended that in that case only the purchases made by the assessee were found to be bogus. The learned Departmental Representative contended that in the instant case the sales are also

doubted and hence the judgement of Gujarat High Court is not applicable on the facts of the case. Referring to the Tribunal's decision reported in (1994) 49 ITD 177 (Bom) (supra), the learned departmental Representative contended that it was held in that case that after estimation of GP, the other additions stand covered. The learned Departmental Representative submitted that this decision is distinguishable as the GP was not estimated, by the assessing officer in the instant case. At this stage, the learned counsel of the assessee interrupted to say that GP was estimated at the rate of 5 per cent as is mentioned by the assessing officer in his order. Hence, the learned counsel pointed out that it is not correct to say that only turnover was estimated by the assessing officer and GP was not estimated.

8. We have given a careful consideration to the rival submissions in the light of the material placed before us. The relevant extracts from the Tribunal's decision dated 12-3-2003, in the case of H.R. Builders (supra) are reproduced as under :

'However, the alternative contention of the assessee that the amounts added under section 69C should be allowed as deduction in computing the business profits has been rightly accepted by the Commissioner (Appeals). It cannot be disputed that for an assessee who is engaged in constructing buildings, cement is the raw material and if there has been a purchase of cement, albeit not recorded in the books of account, the same will have to be allowed as a deduction if the addition of the amount is made under section 69C. The order of the Patna Bench of the Tribunal in Nishat Housing Development (P) Ltd. v. Asstt. CIT which has been referred by the Commissioner (Appeals) supports the assessee's claim. The proviso to section 69C which prohibits such a deduction has been inserted prospectively with effect from 1-4-1999, and therefore, does not apply for the years under appeal. While, therefore, upholding the addition under section 69C and thereby reversing the order of the Commissioner (Appeals) on that point, we uphold the other part of the order of the Commissioner (Appeals) by which he allowed the deduction of the amount added in computing the business income.'

We are in agreement with the decision of Tribunal, Mumbai Bench 'D' (supra), that proviso to section 69C has been inserted prospectively with effect from 1-4-1999.

The assessment, year under appeal being 1993-94, we hold that proviso to section 69C does not apply for the year under appeal. Therefore, we hold that the amount added under section 69C on account of unexplained expenditure in purchases will have to be allowed as a deduction. Therefore, the alternative contention made by the learned counsel of the assessee is accepted and the relief allowed by the learned Commissioner (Appeals) is further strengthened on the basis of this alternative contention. We are in agreement with the finding of the learned Commissioner (Appeals) that the assessing officer having estimated sales at Rs. 1,25,00,000 as against Rs. 1,01,21,800 shown by the assessee, the benefit of this addition has to be, given to the assessee as it has to be considered that sale proceeds to the above extent were available in the hands of the assessee. The learned counsel of the assessee has argued that decisions relied upon by the learned Departmental Representative are distinguishable in facts and the learned Departmental Representative has argued that most decisions relied upon by the learned counsel of the assessee are distinguishable in facts. We are of the opinion that the matter has to be decided on the peculiar facts of the instant case rather than following the precedents which are not on all fours with the facts of the instant case. However, the decision of the Tribunal in the case of H.R. Builders (supra) with regard to the prospective operation of proviso to section 69C is applicable to the facts of the instant case. The learned counsel of the assessee has shown that it was not only the turnover which was estimated by the assessing officer but the GP was also estimated. We find that this contention of the learned counsel of the assessee is correct. Thus, we find that there is some force in the contention of the learned counsel that once the GP and the turnover are estimated, the other additions stand covered. The decision of the Tribunal in the case of Balaji Textiles Industries (P) Ltd. (supra) does help the case of the assessee. We further find that the learned Commissioner (Appeals) has given a finding that assessee was more or less working as a commission agent and arranging for the purchases and sales as an intermediary. Thus, the impugned transactions appear to be entered into by the assessee as an intermediary only. We, therefore, hold that there is no infirmity in the order of the Commissioner (Appeals). The appeal of the revenue is rejected being without any merit. ITA No. 6513/Mum/1996 : (Assessee's appeal) :

9. The first ground of appeal is raised by the assessee as under

'On the facts and in the circumstances of the case, the learned Commissioner (Appeals) erred in confirming the rejection of the books of account of your appellant made by the assessing officer invoking the provisions of section 145(2) on the allegation that books of account of your appellant are not reliable and thereby further erred :

(a) In confirming the turnover of your appellant at Rs. 1,25,00,000 as estimated by the assessing officer as against turnover of Rs. 1,01,29,800;

(b) In confirming the rate of GP at 4.75 per cent as against rate of GP of 3.04 per cent as declared by your appellant in his trading result; and

(c) In restricting the deduction for expenses to Rs. 2,00,000 as against expenses of Rs. 2,85,122 incurred by your appellant wholly and exclusively for the purposes of his business.'

10. The learned counsel of the assessee contended that the learned Commissioner (Appeals) has erred in confirming the rejection of the books of account of the assessee by invoking the provisions. of section 145(2). On the other hand, the learned Departmental Representative contended that the assessing officer had rejected the books of account after pointing out the defects therein. Hence, according to the learned Departmental Representative, the books were rightly rejected by the assessing officer and the learned Commissioner (Appeals) rightly upheld the assessing officer's order in this regard.

11. Having considered the rival submissions, we are of the opinion that there is no merit in this ground of appeal of the assessee. We are inclined to agree with the finding of the learned Departmental Representative and we hold that the learned Commissioner (Appeals) rightly confirmed rejection of books of account of the assessee by the assessing officer by invoking the provisions of section 146(2).

The appeal of the assessee fails on this ground,

12. Ground of appeal No. 2 is raised as under :

'On the facts and in the circumstances of the case, the learned Commissioner (Appeals) erred in confirming the addition of Rs. 2,96,603 made by the assessing officer to the income of your appellant on account of alleged cash credits invoking the provisions of section 68. of the Income Tax Act, 1961.'

13. The assessing officer found that the assessee had introduced cash loans from 17 parties aggregating to Rs. 2,96,603 and the amount from each party was less than Rs. 20,000. The assessing officer further noted that 'It is surprising to note that though the assessee has made entries in the cash book in respect of alleged cash loans received by him yet he has not made any corresponding entry in the ledger account'. The assessee stated that these were squared up loans and hence no ledger entry was made. The assessing officer rejected the assessee's contention by observing that 'the assessee's books are audited and the auditor is obliged to give a separate statement indicating the various loans taken by the assessee including the squared up loans'. The assessing officer further noted that confirmations in respect of cash credits had not been filed by the assessee from the loan creditors and hence the assessee had failed to prove the identities and creditworthiness of the creditors. The assessing officer had also conducted certain enquiries and found that in some of the cases addresses of the loan creditors was fake and in some cases they were incomplete. The assessing officer further noted that none of the loan creditors were produced before him inspite of the various opportunities provided. The assessing officer accordingly held that the amount of Rs. 2,96,603 represented undisclosed income of the assessee and he added the same under section 68 of the Income Tax Act.

14. Before the Commissioner (Appeals) assessee had filed affidavits in confirmation of having received the loan amounts. In all, assessee had filed 8 such confirmations. The learned Commissioner (Appeals) noted that none of the persons was assessed to tax and they had indicated their address as Village Kharkari, District Bhiwani. The learned Commissioner (Appeals) noted that these affidavits are dated 29-11-1995, whereas the last date of the hearing before the assessing officer was 9-11-1995, and the assessment was completed on 30-11-1995. The Commissioner (Appeals) further observed that 'This, therefore, goes to prove that the affidavits were submitted after the assessment was completed since

an affidavit signed on 29-11-1995, could not have reached Mumbai before the date of assessment. In fact, in the case of two of the affirmments, the date indicated is 7-12-1995'. In these circumstances, the learned Commissioner (Appeals) upheld the assessing officer's order by observing that the assessee had miserably failed to discharge his onus of proving the identity and creditworthiness of the loan creditors. ,

15. The learned counsel of the assessee frankly admitted that no evidence except the affidavits/confirmations is available to prove the identity and creditworthiness of the loan creditors. On the other hand, the learned Departmental Representative by relying upon the decision of Calcutta High Court in the case of Prakash Textile Agency v. CIT : [1980]121ITR890(Cal) and of the Supreme Court in the case of Kale Khan Mohammad Hanif v. CIT : [1963]50ITR1(SC) , contended that the addition has been rightly made by the assessing officer under section 68 as the assessee failed to prove the identity and creditworthiness of the creditors.

16. Having considered the rival submissions in the light of the material placed before us, we are of the opinion that assessee had failed to prove the identity and creditworthiness of the creditors. Therefore-we hold that the addition was rightly sustained by the Commissioner (Appeals). We, therefore, find no merit in this ground of appeal of the assessee. This ground of appeal is, therefore, rejected.

17. Ground of appeal No. 3 is raised as under :

'On the facts and in the circumstances of the case, the lower authorities erred in treating the agricultural income of Rs. 25,510 as income from undisclosed sources and thereby erred in making the addition to the income of your appellant. '

18. The assessee has shown agricultural income of Rs. 25,510 which was treated by the assessing officer as assessee's income from undisclosed source in the absence of corroborative evidence. The assessing officer pointed out in his order that the assessee had only stated that the agricultural land is situated in Haryana State and the crops produced are grain and wheat, and sale proceeds are received in cash. The assessing officer observed that there was no corroborative evidence to support of the assessee's statement. A statement of the assessee was

also recorded under section 131 wherein assessee denied having any immovable property either in Bombay or anywhere else except a flat booked at Yogi Hills, Mulund. In these circumstances, the assessing officer concluded that the agricultural income shown by the assessee was in fact assessee's income from undisclosed sources introduced in the form of agricultural income. He, therefore, made the impugned addition.

19. in the first appeal, assessee contended before the Commissioner (Appeals) that when he denied having immovable property he understood the meaning of the property as house property and, therefore, inadvertently denied about holding an immovable property except a flat in Mulund. The assessee further pointed out before the Commissioner (Appeals) that assessee had shown agricultural income in the previous year relevant to assessment year 1992-93 and the same was accepted by the department. The assessee had also claimed before the Commissioner (Appeals) that he was from the family of farmers and derived agricultural income regularly from agricultural land at Village Kharkari, District Bhiwani (Haryana). The assessee also enclosed a copy of 'Jambandi' issued by the Patwari of the village. However, as assessee's arguments did not find favour with the learned Commissioner (Appeals) and he upheld the addition made by the assessing officer by observing that 'The appellant had also not disclosed the agricultural holdings in the balance sheet neither provided any details by way of sale of agricultural produce or incurring expenditure for generating such agricultural income.'

20. The learned counsel of the assessee contended that in the assessment year 1992-93, assessee had shown agricultural income at Rs.. 15,600 and the same was accepted by the department in the order passed under section 143(3). Our attention was adverted to the assessment order for the assessment year 1992-93 available at p. 48 of the paper book. The learned counsel by referring to statement of agricultural income for each year available at p. 90 of the paper book, pointed out that in the subsequent years the assessee had shown the agricultural income as under which was accepted by the department though under section 143(I)

Asst. yr. 1994-95

25,000

Asst. yr. 1995-96

2,10,000

Asst. yr. 1996-97

2,00,000

The learned counsel further contended that the agricultural land was not reflected in the balance sheet as the balance sheet pertained to the proprietary concern of the assessee, viz., M/s Silver Star. It was stated that the balance sheet was of the: proprietary concern and, therefore, agricultural land being not the asset of the proprietary concern was not reflected in the balance sheet. The learned counsel further referred to the Jamabandi documents available at pp. 57 to 60 of the paper book, which were produced before the Commissioner (Appeals). On the other hand, the learned Departmental Representative relied upon the order of the assessing officer as well as of the Commissioner (Appeals). In reply, the learned counsel adverted our attention to p. 86 of the paper book which contains the submissions made before the Commissioner (Appeals) in connection with the, agricultural income. It was pointed out that these submissions show that copies of Jamabandi issued by Patwari were filed before the Commissioner (Appeals). It was, stated that the assessee owns the agricultural land along with his father.

21. Having considered the rival submissions in the light of the, material placed before us, we are of, the opinion that agricultural income shown by the assessee has to be accepted in view of the facts of the case Agricultural income was accepted by the Department in the assessment year 1992-93 in the order passed under section 143(3) and also in the subsequent assessment year, the agricultural income was -duly shown by the assessee which was accepted by the Department under section 143(I). The assessee has given a reasonable explanation as to why the agricultural land could not be shown in the balance sheet of his proprietary concern. The balance sheet was not of the assessee individual, but it, was the balance sheet of-the proprietary concern of the assessee and hence only the

assets belonging to the proprietary concern could, be reflected balance sheet We further find that the assessee had produced copies of Jamabandis issued by Patwari of the village which proved that the, assessee owned agricultural land along with his father Shri Shihpal and derived a agricultural income from such land. We, therefore, hold that agricultural income shown by the assessee was genuine and should have been accepted by the revenue authorities. The order of the learned Commissioner (Appeals) on this issue is, therefore, set aside and the assessing officer is directed to delete the addition. The appeal of the assessee succeeds on this issue.

22. Ground of appeal No. 4 pertains to levy of interest under section 234B. Both the parties agreed that this ground is of consequential nature and is not required to be specifically dealt with. The assessing officer is directed to recalculate the interest chargeable under section 234B after giving effect to this order.

23. Ground of appeal No. 5 relates to initiation of penalty proceedings under section 271(l)(c).

24. This ground was not argued and seems to be infructuous as merely initiation of penalty proceedings is not appealable. The assessee has right to appeal against the penalty if and when it is levied. This ground of appeal is, therefore, dismissed.

25. In the result, the appeal of the revenue stands dismissed and appeal of the assessee stands partly allowed.