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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Sep-29-2006

Judge : P Parashar, K Bansal

Appellant : Ramesh Batta

Respondent : Dy Cit

Judgement :

1. This appeal has been filed by the assessee against the order of the learned Commissioner (Appeals) dated 28-3-2002 for assessment year 1998-99. Shri O.P. Sapra, advocate appeared for the assessee whereas Dr. Balwan, DR represented the revenue.

2. First ground of appeal challenges the sustenance of addition of Rs. 4,37,636 made by the assessing officer in the hands of the assessee under the head "Business income". Facts concerning this issue are as follows. The assessee took on lease an orchard for collection of fruits. The orchard was situated at the residential complex of Indira Gandhi National Forest Academy, the organization of Government of India. The terms of lease were corroborated in the agreement dated 22-5-1995, which was executed on behalf of the President of India by the Director of the Academy in favour of Shri Ramesh Batta, the assessee. The contract was for three years i.e., 1996-97 and 1997-98 and was concluded on 31-12-1997. In terms of this lease the 2nd party i.e., the assessee was given right to collect fruits from May 1995 to December 1997 from the Indira Gandhi Forest Academy Residential Complex. As per the terms of the lease the second party

was to deposit 10 per cent of the total tendered amount every year. The assessee was also allowed to make his own arrangements for irrigation i.e., for watering of the trees. First party was also empowered to use the orchard land or any part thereof in which fruit trees were standing for any purpose during the lease period by giving a written notice to the second party i.e., the assessee.

3. The assessee filed his return of income declaring total income at Rs. 4,37,636 and agricultural income at Rs. 4,39,410. The return was initially processed under Section 143(l)(a) of the Act. Later on notices under Section 143(2)/142(l) were issued and the assessee was required to justify his claim in respect of agricultural income of Rs. 4,39,410 which included income from garden sale proceeds. In assessment years 1996-97 and 1997-98 the assessing officer rejected the claim of the assessee. So far as the assessment year under consideration is concerned, the assessing officer after referring to the agreement entered into by the assessee with Indira Gandhi Forest Academy required the assessee to show as to why the sale proceeds fruits from the garden of IGNFA should not be assessed under the head "Business income" as done in the preceding years. In response to this notice the assessee submitted a detailed reply. The assessee also moved application before the Additional Commissioner under Section 144A who concluded as under:- I, therefore, conclude that the income derived from sale of orchard fruits is business income and not an agriculture income, assessing officer assessed garden proceeds from IGNFA as business income. As already mentioned in the preceding para that facts and circumstances are exactly similar to facts of the previous year relevant to assessment year 1997-98, this year also garden proceeds are taken as business income." 4. On the basis of the order of the Additional CIT, the assessing officer held income of Rs. 3,95,759 as business income. He also disallowed the claim of the assessee of Rs. 15,675 shown as agricultural expenses on account of expenses on orchard.

5. The assessee challenged the finding of the assessing officer before the learned Commissioner (Appeals). Before him the following submissions were made:- (i) The appellant had taken on lease the fruits orchard standing in the IGNFA residential complex for the period May 1995 to December 1997 vide agreement dated 24-5-1995; the orchard consisted of lichi, guava, bale, chakotra, kathal and

jamun fruits; the IGNFA had given the land and orchard on lease to the appellant; the basic operations had already been carried out on the land at the time of plantation of trees; since appellant was in possession of the orchard land, he had a free access to the orchard and the operations of tilling the land, weeding, digging the soil and removal of undesirable growth were carried out by him. On the basis of above arguments, it was stressed by the learned A.R. that it was wrong on the part of the assessing officer to say that above stated functions were not agricultural operations at all.

(ii) Attention was also drawn to the paras 7,8,10 and 12 of the agreement in support of the contentions that appellant was authorized to use the orchard land for purposes of watering and other operations.

(iii) The reliance was placed on the judgment of Hon'ble Supreme Court in CIT v. Raja Benoy Kumar Sahas Roy (iv) Attention was also drawn to the provision of Section 2(1A). It was stated that there were three limits given in the definition of "Agricultural income".. It was to be rent or revenue, which was to be derived from land which was situated in India. And thirdly, which is used for agricultural purposes.

(v) The judicial decisions and rulings relied upon by the assessing officer in his order for assessment year 1996-97 which forms the basis of such finding in the assessment order under appeal were stated not in favour of the department but they strengthened the claim of the appellant of agricultural income. The case laws cited by the assessing officer in the order are: The assessee also placed reliance on the following decisions in support of his submissions: 6. After considering the conditions set out in the lease agreement which have been referred to in para 2.2 of the order of the learned Commissioner (Appeals), he rejected the plea of the assessee and upheld the order of the assessing officer by observing as under: 2.11 To sum up the above discussion the agreement and auction notice had given to the appellant only the right to pluck the fruits from trees growing in the orchard and there was no lease of orchard land in favour of the appellant. Apart from minor operations such as watering the trees, cleaning the bushes etc., the appellant was specifically prohibited from carrying out the activity of digging and cultivation etc. In

the circumstances, assessing officer's finding that the income arising from sale of fruits was not derived from the land was correct and is upheld. The judgment of Hon'ble High Court in the case of CIT v. K.S. Imam Saheb (1969) 71 ITR 742 (Mad.) had direct bearing and relevance to the facts of the case under appeal.

There being no nexus between the income, land and agricultural operation in the instant case, the income from sale fruits could not be categorized as agricultural income. The ITAT judgment reported in 18 TTJ (Mad. 54) relied upon by the Id. A.R. is not of much help as the facts in that case were clearly distinguishable. In that case the sale proceeds of coconut came from leasehold land whereas in the instant case there was no lease of land. As per the ratio laid down by Hon'ble Supreme Court in the case of CIT, West Bengal Calcutta v. Raja Benoy Kr. Sahas Roy 32 ITR 466 (SC) also the claim of the appellant was not maintainable due to obvious reasons, that no subsequent operations were carried out by the appellant in conjunction and continuation of basic operations. In fact in the absence of lease of land and specific prohibition to use the land it was not possible for the appellant to carry out any such operations.

Therefore the claim of the appellant that income from sale of fruits constituted agricultural income was correctly disallowed by the assessing officer and the finding of the assessing officer that this income was assessable as business income is hereby confirmed.

Accordingly, this ground of appeal is rejected.

7. The learned Counsel for the assessee Shri Sapra has submitted detailed arguments for assailing the findings of the learned Commissioner (Appeals). He has submitted that the departmental authorities have not been able to appreciate the activities carried out by the assessee for taking income from sale of fruits. According to him, the assessee was required to undertake various activities and operations for taking the yield. It was pointed out by him that for this purpose the orchard land was also handed over and was given in possession of the assessee who was required to carry out the activities of the digging the soil, watering the trees, pruning, cutting, cleaning the bushes and also plucking the fruits. According to him, these activities were in the nature of agricultural activities and since the

operations were agricultural operations, the income earned by the assessee on performing such operations is to be treated as agricultural income and not as business income. In support of his contention the learned Counsel also placed reliance on various authorities including the following: (i) Maharajadhiraj Dr. Sir Kameshwar Singh of Darbhanga v. CIT (1987) 167 ITR 549 (Pat.) Maharajadhiraj Sir Kameshwar Singh v. State of Bihar 8. The learned DR on the other hand, supported the orders of the lower authorities and submitted that the assessee did not carry out any agricultural operations and therefore, the income earned by the assessee on sale of fruits of the orchard cannot be treated as agricultural income.

9. We have carefully considered the facts and circumstances relating to this matter and rival submissions. The definition of agricultural income is given in Section 2(1A) of the Act which is as under (a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes; (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: (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 the 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, urbanization of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette.

Explanation I - 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; Explanation -For the removal of doubts, it is hereby declared that income derived from any building or land referred to in Sub-clause (c) arising from the use of such building or land for any purpose (including letting for residential purpose or for the purpose of any business or profession) other than agriculture falling under Sub-clause (a) or Sub-clause (b) shall not be agricultural income;" From the above definition it is clear that the following three categories of income are covered within the definition of agricultural income: (a) Rent or revenue derived from land which is used for agricultural purposes.

(b) Income derived from agricultural land by agricultural operations either by sale of the agricultural produce as such or sale of such produce after carrying out such process ordinary employed to render the produce raised or received by him fit to be taken to market.

(c) Income from building situate within the vicinity of the agricultural land which is occupied by the cultivator to enable him to carry on agricultural operations either for his own residence or as a store house provided the land is assessed to land revenue or local rate or the land is situated in Urban Areas.

10. The learned Counsel for the assessee has argued before us that the assessee was carrying out the operations for taking the yield of the fruit crops. According to him watering of the roots of the trees, treatment of the trees and pruning etc. are necessary operations for taking the proper yield of ripe fruits. In this regard he also made reference to the agreement referred to above as per which also the

assessee was required to make arrangement for watering of the trees.

11. On going through the relevant clauses of the agreement and also on considering the nature of operations carried out by the assessee for harvesting lichi, mangoes, guava, kathal, jamun crops, we are unable to accept the reasoning advanced by the learned Counsel for the assessee to support the contention that the assessee was carrying on agricultural operations. The nature of agricultural operations and agricultural purpose has been considered in detail by the Hon'ble Supreme Court in the case of CIT v. Raja Binoy Kumar Sahas Roy wherein it has been held as under: 'Agriculture' in its primary sense denotes the cultivation of the field and is restricted to cultivation of the land in the strict sense of the term, meaning thereby tilling of the land, sowing of the seeds, planting and similar operations on the land. These are basic operations and require the expenditure of human skill and labour upon the land itself.

Those operations which the agriculturist has to resort to and which are absolutely necessary for the purpose of effectively raising produce from the land, operations which are to be performed after the produce sprouts from the land, e.g., weeding, digging the soil around the growth, removal of undesirable undergrowth, and all operations which foster the growth and preservation of the same not only from insects and pests but also from deprecation from outside, tending, pruning, cutting, harvesting and rendering the produce fit for the market, would all be agricultural operations when taken in conjunction with the basic operations. The human labour and skill spent in the performance of these subsequent operations cannot be said to, have been spent on the land itself.

The mere performance of these subsequent operations on the products of the land, where such products have not been raised on the land by the performance of the basic operations, would not be enough to characterise them as agricultural operations; in order to invest them with the character of agricultural operations these subsequent operations must necessarily be in conjunction with and in continuation of the basic operations which are the effective cause of the products being raised from the land. The subsequent operations divorced from the basic operations cannot constitute by themselves agricultural operations.

Only if this integrated activity which constitutes agriculture is undertaken and performed in regard to any land can that land be said to have been used for "agricultural purposes" and the income derived therefrom said to be "agricultural income" derived from the land by agriculture, under Section 2(l) of the Indian Income Tax Act, 1922." In the case of Raza Buland Sugar Co. Ltd. v. CIT (1980) 123 ITR 241 (All) the Hon'ble Allahabad High Court also considered this issue in that case. The assessee adopted lease on payment of rent from Nawab of Rampur and after the extension of the U.P. Zamindari Abolition and Land Reforms Act, 1951, to the territory of the erstwhile State of Rampur, the assessee had become the Sirdar of the land. In that case the Hon'ble High Court considered the meaning of agricultural income and held that three conditions should be satisfied: (1) rent or revenue should be derived from land; (2) the land should be situated in India; and (3) the land should be used for agricultural purposes.

12. In the instant case, the orchard which was let out to the assessee was situated in the residential complex of IGNFA. The assessee has not proved that it was agricultural land. It has also not been shown that the rent or revenue was paid or payable in respect of this land.

Neither before the assessing officer nor before the learned Commissioner (Appeals) the assessee could show and prove the character of the land from the revenue records. It has also not been shown that in past the land was treated as agricultural land and fruits taken from the orchard were covered within the meaning of agricultural income. So far as the period for which the orchard was given to the assessee the matter has been restored to the file of the learned Commissioner (Appeals) for deciding the issue afresh because the learned Commissioner (Appeals) disposed of the appeals ex parte. However, the fact remains that the department has never treated the income derived from fruits as income on account of agricultural operations or as agricultural income.

13. In the instant case the learned Commissioner (Appeals) has therefore, rightly held the income derived by the assessee as business income. We, therefore, do not find any reason to interfere in the order of the learned Commissioner (Appeals). It is upheld by us. This ground of appeal taken by the assessee is

rejected.

14. The next ground is about sustenance of disallowance of Rs. 12,910 under the head "Depreciation on car". The learned Commissioner (Appeals) upheld the order of the assessing officer by observing as under: 3. In ground No. 2 of the appeal the appellant has objected to the disallowance of depreciation at Rs. 12,910 on account of personal use of car. The appellant had shown hiring of his personal car to the sister concern M/s. Rakesh Brick Unit for 12 months on monthly rent of Rs. 1,250 and had claimed depreciation at Rs. 25,821. The assessing officer observed that the sister concern had appellant's wife and brother as partners and there was no ostensible reason for the letting out of car on rent to the sister concern except to claim depreciation particularly when the sister concern was having its own separate car. The assessing officer held that the entire arrangement of hiring out of car to sister concern was done with a view to claim set off of loss (due to excess of depreciation over hiring charges) against positive income under other heads. Assessing officer also stated that maximum personal use of the car by the appellant was not ruled out and therefore he disallowed 50 per cent of the depreciation on car. In the written submissions the Id. A.R. contended that the appellant was entitled to full depreciation on car as the rental income from car was duly shown. It was further stated that no expenses towards petrol, repair and servicing were debited in the personal accounts of the appellant and therefore it was not correct to assume the personal use of car.

The relevant facts and submissions have been carefully considered.

Admittedly the car is stated to have been hired out to a concern in which the wife and brother of the appellant were partners. Looking to the facts in its entirety there seems no justification for giving the car on a nominal rent of Rs. 15,000 per annum and incurring loss on account of depreciation while the sister concern already possessed a separate car. Therefore, there is force in the finding of the assessing officer that entire arrangement of giving the car on hire was only an arranged one to get a set off of loss against positive income. I also agree with the observation of the assessing officer that in the given circumstances possibility of maximum use of car by the appellant was not ruled out. Therefore, disallowance made at the rate of

50 per cent of depreciation on car is hereby confirmed. This may not be out of place to mention here that disallowance on similar lines was confirmed by Commissioner (Appeals), Dehradun in assessment year 1996-97 also. Accordingly, this ground of appeal is rejected.

15. Before us the learned Counsel for the assessee failed to substantiate the claim of the assessee. Neither any agreement was filed to show that the car was let out to M/s. Rakesh Brick Unit nor the accounts of that concern have been furnished. The assessing officer has disallowed 50 per cent of the depreciation in the above car. The possibility of personal use of the car cannot be ruled out particularly when in the firm the assessee's wife and brother were partners. The learned Commissioner (Appeals) has also observed that no ostensible reason has been shown for letting out the car, In view of the above facts and circumstances relating to this matter we do not find any scope to interfere in the order of the Commissioner (Appeals). The ground taken by the assessee is therefore, rejected.

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