

Dy. Cit Vs. Ramdeo Kumar

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Court : Rajasthan

Decided On : Jan-09-2004

Reported in : [2004]140TAXMAN102(Raj)

Appeal No. : IT Appeal Nos. 371 & 372 (JDP) of 1999 in C.O. Nos. 145 & 146 (JDP) of 1999 A.Y. 1994-95 & am

Appellant : Dy. Cit

Respondent : Ramdeo Kumar

Advocate for Pet/Ap. : D.R. Zala, *for the Revenue* N.M. Ranka and R. Yadav, *for the Assessee*

Judgement :

ORDER

N.K. Saini, A.M.

The appeals filed by the department. and the C.Os. filed by the assessee are directed against the orders of the Commissioner (Appeals) dated 30-3-1999 and dated 24-3-1999 for the assessment years 1994-95 and 1995-96 respectively.

2. First, we shall take up appeal ITA No. 372 of 99 for the assessment year 1995-96 filed by the revenue.

2.1 In this appeal, the first ground raised by the department relates to the deletion of addition of Rs. 1,51,000 made by the assessing officer on account of gift from NRI.

The facts relating to this issue, in brief are that the minor son of the assessee received a gift of Rs. 1,51,000 by cheque dated 14-6-1994 from one Shri Gurvinderpal Singh son of Shri Joginderpal Singh, Thailand. The assessee filed copies of the gift dated 14-6-1994, copies of the passport of the donor along with the return of income, and claimed that he had friendly relations with the donor and that amount was gifted by him from NRE bank Account with Citibank, New Delhi. The donor was not produced for cross examination. However, his address of Thailand was intimated and the assessee also requested that if any further enquiries were to be made, the donor may be contacted at the given address. The assessee also furnished a fax message dated 21-10-1996 received from Shri Gurvinderpal Singh confirming the gift to Shri Aditya Kumar, minor son of the assessee. The gift had been treated by the assessing officer as bogus and non-genuine on the ground that there was no occasion for the stranger like Mr. Gurvinderpal Singh to make gift of substantial amount. According to the assessing officer, gifts are made to close relatives or friends and the value of the gift depends upon the financial capacity, social status and convention in the society. The assessing officer stated that the donor had no blood relation and it was not verifiable as to whether he has made any such gifts to his own kith and kin in the past. His financial capacity is also not proved and it cannot be believed that he should part with so much amount as a gift without any purpose. The assessing officer opined that the gifts are normally made on reciprocal basis and the assessee did not make any gift to the children of the donor in the past. The assessing officer treated the gift as undisclosed income of the assessee by relying upon the decision of the Honble High Court of Punjab and Haryana in the case of Lall Chand Kalra v. CIT (1981) 6 Taxman 171 and the decision of the Honble Supreme Court in the case of Jhuggilal Kamalapat v. CIT : [1969]73ITR702(SC) . The assessing officer also relied upon the decision of the ITAT Jaipur Bench in the case of Shyam Sunder Gupta v. ITO (IT Appeal No. 512 (JP) of 19941 assessment year 1989-90.

2.2 The assessee carried the matter in appeal before the Commissioner (Appeals) and submitted that the donor an NRI is staying in Thailand and the assessee visited Thailand in the year 1983 and during his visit they became family friends. It was stated that Shri Gurvinderpal Singh also visits India and his children studies in India and during his visits, the assessee used to meet Shri Gurvinderpal Singh at Delhi and other places, and both have developed good friendship and family acquaintances over the period. It was submitted that Shri Gurvinderpal Singh has made the gift from his NRE account in favour of Shri Aditya Kumar, minor son of the assessee and in support of the said gift, the assessee furnished photocopies of the gift letter dated 5-6-1994, photocopy of the gift cheque, photocopy of the passport, copy of the gift deed, affidavit of the donor and the letter of the Citibank along with the visiting card of the donor. It was stated that the gift was collected through bank account of the donee Shri Aditya Kumar, in Chandni Chowk, Delhi, account No. 11811 and thereafter, the assessee obtained a draft in favour of M/s. Hazari Mal Sujan Chand and thus the amount was accounted for.

2.3 In view of the aforesaid submissions, it was stated that the identity, capacity and genuineness of the gift was proved before the assessing officer and as such the onus cast upon the assessee was discharged. It was stated that none of the evidences produced, were found to be false. It was claimed that the assessing officer had no power under the Act requiring the NRI to appear in person and even under the provisions of section 131 of the Act, no personal attendance can be compelled if the person stays beyond 500 KMs or 1000 KMs. It was stated that the donee is existing assessee and there was no evidence that the amount was given by the assessee. It was stated that the amount of Rs. 1,51,000 was neither unreasonable nor excessive considering the status of the donor and it had been established that the donor was a close family friend of the assessee for the last 15 years. It was argued that blood relation was not condition precedent for a valid gift. The assessee also furnished correspondence with the donor and the photocopy of the new year greetings and other material. The assessee also stated that the decisions relied upon by the assessing officer are distinguishable and stated that in the decision of the Honble Supreme Court in the case of Jhuggilal Kamlapat (supra), it had been held that the assessing officer should not proceed with suspicion and doubt to ignore the documentary evidence. As regards the decision

of the Honble High Court of Punjab and Haryana in the case of Lall Chand Kalra (supra), it was stated that in such it stood established that the donor S & B on being examined told that they gifted the amount to the assessee out of income from certain lands owned by them but the Tribunal found that they had no land or income on relevant time. Similarly in respect of the decision of the ITAT Jaipur Bench, relied upon by the assessing officer, it was stated that it helps the assessee and not the department. After distinguishing the judgments relied upon by the assessing officer, the assessee relied on certain case laws viz. the case of CIT v. Daulatram Rawatmull : [1973]87ITR349(SC) , decision of the ITAT Amritsar Bench in the case of Ashwani Kumar Garg v. Assessing Officer (1998) 197 Taxman 271 (Mag).

2.4 The Commissioner (Appeals) after considering the submissions of the assessee observed that the minor son of the assessee received a gift of Rs. 1,51,000 through cheque from the donors NRE account and realized its value through banking channel in order to utilize the amount of gift as per details produced. Thus, there was no dispute about the amount of gift as well as regarding the identity of the donor and there was nothing on record in any form to suggest that the transfer/gift had not been voluntarily or it had been made under any compulsion. He further observed that the transfer of gift cannot be said with consideration in money or money worth because no material in this respect has been brought on record. Accordingly, it was held that the transaction fulfilled the requirement of gift as per the parameters mentioned in section 2(xii) of the G.T. Act. The Commissioner (Appeals) opined that the aspect on which the assessing officer had heavily relied, related to the occasion of gift, reciprocal basis and close relations might have been the consideration to some extent but cannot be the sole criteria and so much essential ingredients for judging the genuineness of a gift made through a gift deed executed as a recognized document for this purpose. According to him, the assessing officer had not disputed the existence of gift deed and the authority and the genuineness of the most relevant and pertinent documents. The Commissioner (Appeals) further stated that the assessing officer had not disputed the identity of the donor and no reason has been against the financial capacity of the donor who was claimed to be wealthy NRI and the

quantum of the gift cannot be said to be beyond his financial capacity. He, therefore, observed that the amount of gift had been received through cheque as per prescribed banking channel and as such the genuineness of the transaction was not in doubt. The Commissioner (Appeals) was of the view that there was no tangible material or evidence whatsoever, brought on record to question the factum of transaction of the gift as against which the assessee has produced before the assessing officer all necessary details and relevant documents in support of the gift made. He further observed that the assessing officer did not require any further details from the assessee and nothing had been said against the reliability of those details which implies that the details were factual and correct, and acceptable to the assessing officer and if so, the transaction made through those, cannot be treated as bogus because otherwise, the assessing officer was duty bound to prove as to why and how the apparent was not real.

2.5 The Commissioner (Appeals) categorically stated that no nexus between the donor and the assessee has been established to suggest that the gift had been arranged to show deposits in the books of account of the assessee. He further stated that the donor was Managing Director, Stylo Group worth as many as 7 shops/branches and establishment at different places as mentioned in the details furnished before the assessing officer. He further pointed out that financial capacity of the donor had not been specifically questioned by the assessing officer and his deposits in the NRE account had also not been doubted.

2.6 The Commissioner (Appeals) referred to the judgment of the Delhi High Court in the case of CIT v. Mrs. Sunita Vachani : [1990]184ITR121(Delhi) and the decision of the ITAT Calcutta Bench in the case of Smt. Bhagwati Devi v. ITO and on that basis, the Commissioner (Appeals) stated that the cases referred to by the assessee were helpful to strengthen the arguments in respect of the gifts. He also pointed out that the case laws relied upon by the assessing officer for treating the gift as bogus, have been distinguished successfully by the assessee. The Commissioner (Appeals) held that the amount of gift received from an NRI out of the amount standing in his credit in NRE account in Bank, was exempt from the gift tax. He accordingly deleted the addition made by the assessing officer. Aggrieved, the department is in appeal.

2.7 Before us, Learned Departmental Representative reiterated the observations of the assessing officer and submitted that it was an arranged gift and was a colourable device to defraud the department. Therefore, the assessing officer was justified in treating the alleged gift as income of the assessee from undisclosed sources.

2.8 In his rival submissions, the Learned Counsel for the assessee reiterated the submissions which he made before the Commissioner (Appeals) and vehemently argued that the identity, creditworthiness of the donor along with the genuineness of the transaction was proved beyond any doubt and the assessee was not linked with the gift since the gift had been given to the minor son of the assessee by a NRI out of love and affection. Therefore, the Commissioner (Appeals) was fully justified in treating the gift as genuine and he had rightly deleted the addition made by the assessing officer.

2.9 We have considered the rival submissions and given our thoughtful consideration to the material available on record. In the instant case, it is not disputed that the donor Shri Gurvinderpal Singh is a NRI and man of means because the assessing officer had not questioned the creditworthiness of the donor. It is also not disputed that the amount was received by the minor son of the assessee from NRE account of the donor. It is true that no deposits can be made in the NRE account except the realization from the foreign country. In other words, only foreign exchange can be deposited in the NRE account. It is not the case of the assessing officer that the assessee went to Thailand and gave his money to the NRI for depositing in his NRE account maintained in India or NRI received the money back from the assessee after giving the cheque to his minor son. In fact the assessing officer was not justified in observing that the gift was an arranged gifts. The assessing officer treated the gifts as bogus on the basis that the assessee had not given any gifts to the children of the donor in the past. In our opinion, this observation of the assessing officer is against the provisions of law because the amount can be treated as gift if it is given without any consideration and under the natural love and affection. Similarly, the observation of the assessing officer that there was no blood relation and occasion to receive the gift, is also not acceptable because for making the gift, it is not necessary that there should be some blood

relation or the gift should be made only to the relatives and not to the friends.

2.10 We may mention here that the ITAT Chandigarh Bench in the case of R.K. Syal v. Asstt. CIT held that the assessee having produced the affidavits of NRI donors affirming the gifts, addition amounts representing the gifts could not be made only on the ground that there was no occasion or relationship for making the gift. Similarly, ITAT Rajkot Bench in the case of Asstt. CIT v. Radhey Shyam Bansal (2000) 68 TTJ (Raj) 136 held that the gift received by the assessee from a foreign party out of love and affection could not be treated as income of the assessee when the genuineness of the credit could not be doubted, identity of the donor was established and his capacity to make the gift is not questionable. In the case of Mrs. Sunita Vachani (supra), their Lordships of Delhi High Court held that even though it may be surprising as to how large sums of money are received by a family in India by way of gifts from strangers from abroad but unless there is something more tangible than suspicion, it will be difficult to regard the moneys received in India from abroad as representing the income of the assessee in India.

2.11 In the present case also, it is not disputed that the gift was made by a person from abroad and there was nothing on record except suspicion that the money from NRE account represented the income of the assessee. We, therefore, after considering the totality of the facts narrated as above, are of the firm view that the Commissioner (Appeals) was fully justified in deleting the addition since the assessee filed all the documents i.e., gift deed from the donor, copy of the gift deed, fax message from the donor, photocopy of the passport, affidavit of the donor, visiting card of the donor, a letter from the Citibank confirming that Shri Gurvinderpal Singh holds nonresident external savings account and had given cheque to the minor son of the assessee out of NRE account. The aforesaid documents had not been proved by the assessing officer as false or untrue. Therefore, we do not see any merit in this ground of appeal filed by the department.

3. The next issue in this appeal relates to the deletion of addition of Rs. 1,20,000 made by the assessing officer on account of four gifts received from the near relatives.

3.1 Briefly stated, the facts of the case are that the assessing officer during the assessment proceedings, found that the assessee received a gift of Rs. 30,000 from Smt. Godawari Devi (elder sister of the assessee) and his son Shri Vikram Kumar received gifts of Rs. 30,000 each from Shri Ravi Kumar son of Smt. Godawari Devi (elder sister of the assessee) and Shri Yogesh Kumar Bihani, son of Smt. Bimla Devi Bihani, sister. of the assessee, and another son of the assessee Shri Aditya Kumar received a gift of Rs. 30,000 from Shri Pardeep Kumar Bagri, son of assessee's eldest sister late Smt. Vidya Devi Bagri, resident of Calcutta.

3.2 The assessing officer disallowed the gift from Smt. Godawari Devi, elder sister of the assessee by observing that she was charging interest from M/s. Hazarimal Suganchand Chitlangia, to whom a sum of Rs. 1,25,503 was given on loan. He also pointed out that she received lease money from the assessee and as such she was in need of funds for herself. Therefore, the assessing officer opined that there was no occasion to make any gift to the assessee by Smt. Godawari Devi.

3.3 In respect of gift from Shri Ravi Kumar, son of Smt. Godawari Devi, the assessing officer mentioned that no gift was made by him in the past and as such the gift to Shri Vikram Kumar, son of the assessee was arranged by the assessee from his undisclosed income.

The assessing officer also pointed out that Shri Yogesh Kumar, who made the gift of Rs. 30,000 to Shri Vikram Kumar, was in debit of Rs. 2 lacs as on 31-3-1995 to M/s. Hazarimal Suganchand Chitlangia and so it cannot be believed that he would make a gift of Rs. 30,000 to the son of the assessee.

Similarly in respect of gift given by the Shri Pardeep Kumar to Shri Aditya Kumar, son of the assessee, the assessing officer doubted the financial capacity of Shri Pardeep Kumar. However, he mentioned that the gift was by bank draft and confirmation had been filed by the donor who was assessed to tax.

3.4 In view of the aforesaid observations, the assessing officer treated Rs. 1,20,000 as undisclosed income of the assessee and made the addition accordingly.

3.5 When the assessee carried the matter in appeal before the Commissioner (Appeals) the assessee submitted that Smt. Godawari Devi, real sister of the assessee is an existing assessee since long. It was pointed out that the gift declaration, copy of the account showing the credit balance and copy of the bank pass book along with the income-tax return filed for the assessment year 1994-95 were furnished. It was claimed that all the aforesaid facts suggested that the gift was genuine.

It was, further stated that in respect of gift of Shri Ravi Kumar all the similar details were filed before the assessing officer which were not disputed. Shri Ravi Kumar is also an existing assessee and there was no dispute about the credit balance and the cheque was also collected by the donee through his bank account.

In respect of Shri Yogesh Kumar, it was stated that he maintained books of account and all other relevant details including the gift declaration duly attested by the Notary Public were filed.

Similar arguments were advanced in respect of the gift from Shri Pardeep Kumar.

3.6 The assessee, therefore, submitted before the Commissioner (Appeals) that all the donors were existing assesseees and had declared gift in their assessment records and their financial capacity was proved from the capital account. It was further stated that all the donors were close relatives and, therefore, the gifts were made out of love and affection and the assessing officer had not established that the amounts of gifts were provided by the assessee to the donors. It was argued that the law nowhere required that there should be any occasion to make the gifts which are voluntarily instant and out of love and affection. It was submitted that there was no basis for any observation against the assessee as no material or evidence had been identified.

3.7 The Commissioner (Appeals) after considering the submissions of the assessee and going through the details furnished vis-a-vis the observations of the Assessing Officer, stated that the Assessing officer had not made out a case of bogus gift on the basis of any material evidence. According to him, the addition has been made without any justification particularly when the identity of the donor

had not been doubted and the sources of the gifts were very old credits in the respective accounts and the donors were existing assessee of income-tax. He further pointed out that the genuineness of the transactions cannot be questioned particularly when the transactions are through bank and no evidence against such transactions has been collected in support of the adverse finding. He also stated that there was no basis to observe that Snit. Godawari Devi was in need of funds. Similarly the reasons assigned for disallowance of gift made by Shri Ravi Kumar were not justified because it was not necessary that there must be reciprocal gifts only. As regard the gift by Shri Yogesh Kumar, the Commissioner (Appeals) observed that it was not the case of the assessing officer where the donor was having no capital because the balance sheet produced had shown the balance more than Rs. 5 lakhs and he was existing assessee of the income-tax. The Commissioner (Appeals) further observed that although Shri Yogesh Kumar had taken a loan of Rs. 2 lakhs for investment indifferent concerns as per balance sheet but the same should not be the ground for rejection of the genuineness of the gift. As regards the gift of Shri Pardeep Kumar, the Commissioner (Appeals) stated that his personal production for verification of gift was not possible because he was staying beyond 1000 KM but all other requirements like identity, source and that the transaction was made through bank, were complied with. The Commissioner (Appeals) agreed with the submissions of the assessee that when a person was income-tax assessee and all the relevant details were made available to the assessing officer, the assessee can be said to have discharged his burden.

3.8 In that view of the matter, the Commissioner (Appeals) observed that the assessing officer had not fully appreciated the facts on record and adverse inference had been drawn on the basis of presumption particularly regarding the occasion of gift, donors receiving rent and lease money etc., whereas the very route of the transaction of the gift has not been challenged. The Commissioner (Appeals), therefore, deleted the additions made by the assessing officer.

3.9 We have considered the rival submissions and given our thoughtful consideration to the facts available on record. In the instant case, it is noticed that all the donors were assessed to income-tax. Their identity was not in doubt. All of them were having financial capacity to give gifts. The transactions were through

banking channel which shows that the assessing officer made the additions merely on the basis of presumption and assumption which is not tenable in the eyes of law. The only requirement of the law was that the assessee was required to prove the identity creditworthiness and genuineness of the transactions which had duly been proved by the assessee. In that view of the matter the Commissioner (Appeals) was justified, in deleting the addition made by the assessing officer.

4. Now we will take up appeal ITA No. 371 of 99 for the assessment year 1994-95. The Ground No. 1 of this appeal reads as under :

1. In the facts and circumstances of the case and in law, the learned Commissioner (Appeals) has erred in deleting the addition of Rs. 1,50,000 made by the assessing officer an account of bogus gift from NRI.

4.1 The facts related to this ground of appeal are identical to the facts involved in ITA No. 372 of 99 (supra). The only difference is that in the instant case, the gift received by Shri Vikram Kumar, minor son of the assessee from Shri Gurvinderpal Singh, was of Rs. 1,50,000 while in the other case i.e., ITA No. 372 of 99 (supra), the gift had been received by Shri Aditya Kumar, another minor son of the assessee and the gift amount was Rs. 1,51,000. However, all other facts are identical and even the rival submissions were also similar. In that view of the matter, our findings given in ITA No. 372 of 99 (supra) on this issue will apply *mutatis mutandis*. Accordingly, we hold that the Commissioner (Appeals) was fully justified in deleting the addition of Rs. 1,50,000 made by the assessing officer on account of gift from NRI.

4.2 The ground No. 2 of this appeal raised by the department relates to the deletion of addition of Rs. 40,000 treating the two gifts of Rs. 20,000 as genuine.

4.3 The facts in brief related to this ground of appeal are that Smt. Godawari Devi and Shri Ravi Kumar had certain amounts lying deposited with M/s. Hazarimal Suganchand and withdrew Rs. 20,000 each on 10-2-1994 and 12-2-1994 by cheque from their respective account for making the gift. The assessing officer disallowed the gift because those persons were charging interest from the assessee and also receiving lease money on agricultural land and there was no

occasion to make the gift to the minor son of the assessee namely Shri Aditya Kumar. The assessing officer held that those gifts were arranged by the assessee by utilizing his undisclosed income, accordingly addition of Rs. 40,000 was made in the hands of the assessee.

4.4 We may point out that similar gifts had been made by Smt. Godawari Devi, sister of the assessee and Shri Ravi Kumar, son of Smt. Godawari Devi to Shri Vikaram Kumar, another minor son of the assessee. However, the amount was Rs. 30,000 each and that issue we have already dealt with while dealing with the appeal filed by the department in ITA No. 372 of 99 (supra). Admittedly the facts are identical and even the rival submissions were also similar.

4.5 In that view of the matter, we are of the opinion that the Commissioner (Appeals) was fully justified in deleting the additions since the assessing officer had made the same on the basis of assumption and presumption which is not tenable in the eyes of law. Accordingly, this ground of appeal of the department also fails.

5. Now, we will take up C.O. No. 145/JDP/99 and C.O. No. 146/JDP/99 filed by the department arising out of ITA No. 371 of 99 for the assessment year 1994-95 and ITA No. 372 of 99 for the assessment year 1995-96 respectively.

5.1 In C.O. No. 146 of 99, the assessee merely supported the order of the Commissioner (Appeals) and no relief had been sought. Therefore, the same becomes infructuous since we have already dismissed the appeal filed by the department in ITA No. 372 of 99 for the assessment year 1995-96 and upheld the order passed by the Commissioner (Appeals).

6. Similar in C.O. No. 145 of 99 arising out of ITA No. 371 of 99 for the assessment year 1994-95, vide Ground Nos. 1 & 2, the assessee supported the order passed by the Commissioner (Appeals) which we have already upheld. Thus, these two grounds of CO have also become infructuous.

7. Another ground i.e., Ground No. 1 in the C.O. No. 145 of 99 reads as under :

'That the learned lower authorities erred in adopting the cost of agricultural land as on 1-4-1981 at Rs. 33,000 against claimed at Rs. 37,000 per bigha.'

7.1 The brief facts related to this ground of appeal are that the assessee sold 25 bighas agriculture land in Chak 17-3-1994 and estimated the cost of acquisition of these land as on 1-4-1981 at Rs. 37,000 per bigha. The assessing officer conducted certain enquiries through Inspector and after considering the reply of the assessee and enquiry report of the Inspector adopted the value of land at Rs. 27,000 as on 1-4-1981. The assessing officer discussed this issue at Pages 5 & 6 in Para 7 of the assessment order dated 2-12-1996. He observed that the sale transaction relied by the assessee was not comparable and relatable and the Inspector had estimated the cost of land at Rs. 27,000 per bigha which was adopted for working capital gains. The assessing officer further observed that the assessee sold certain agricultural land in the same location during the year ending 31-3-1996 and in respect of that, cost of land was taken at Rs. 33,000 per bigha as on 1-4-1981.

7.2 Before the Commissioner (Appeals) the assessee submitted that the assessing officer had heavily relied on the report of the Inspector for the estimate but he had ignored the relevant fact that the Inspector had admitted that the land sold by Shri Sarwan Singh (instance relied upon by the assessee) was situated at different places i.e. Village 1-A whereas the assessee's land was situated at 12. The assessee submitted that both the lands were situated in the same Chak No. 1 and the nature of the two lands and the other aspects including the revenue were absolutely identical. It was submitted that the Inspector had assumed and presumed that the land of Shri Swaran Singh was having commercial utility but in fact there was no distinction in crops and availability of water etc. in respect of both lands. It was also submitted that the material collected, if any, by the assessing officer for estimating Rs. 27,000 per bigha was not confronted to the assessee and it was a mere estimate.

7.3 The Commissioner (Appeals) after considering the submissions of the assessee, observed that the assessee estimated Rs. 37,000 per bigha on the basis of sale instance relied by him but the said transaction was not comparable to

the assessee's case as held by the assessing officer after discussion. According to the Commissioner (Appeals), the Inspector also estimated the cost of land without any proper basis and appropriate material. He opined that the local enquiries conducted by the assessing officer could not be considered sufficient to estimate the value of land by local observation as on 1-4-1981. He, therefore, held that both the estimates were not based on any facts which could be said reliable and convincing. However, he pointed out the observation of the assessing officer that the assessee himself adopted the rate of Rs. 33,000 per bigha in a transaction entered into other assessment year 1996-97, he considered that rate as relevant and reasonable, and directed the assessing officer to adopt the cost of land at Rs. 33,000 per bigha as on 1-4-1981 as against Rs. 27,000 per bigha taken by him on the basis of the report of the Inspector which was not confronted to the assessee.

7.4 Before us, Learned Counsel for the assessee, reiterated the submissions which he made before the Commissioner (Appeals). However, he could not successfully point out any apparent mistake in the observations of the Commissioner (Appeals).

7.5 In his rival submissions Learned Departmental Representative supported the order of the assessing officer.

7.6 After considering the rival submissions and the relevant material on record, we are of the opinion that the Commissioner (Appeals) was fully justified in directing the assessing officer to adopt the cost of land at Rs. 33,000 per bigha which was declared by the assessee himself and had already been accepted by the department for the assessment year 1996-97. Therefore, the assessee also was not right in adopting more value in the earlier assessment year i.e., 1994-95 which is under consideration. It is also noticed that the assessing officer had not confronted the Inspector's report to the assessee, therefore, he was not justified to take the value of land at Rs. 27,000 per bigha on the basis of Inspector's report.

7.7 Considering the totality of the facts as narrated hereinabove in this order, we do not find any infirmity in the impugned order of the Commissioner (Appeals) on this issue and, therefore, we do not see any merit in this ground of cross objection filed by the assessee.

8. In the result, both the appeals by the department and the cross objections by the assessee are dismissed.

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