

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.1689/Ahd/2018
Assessment Year: 2013-14**

Talshibhai B Narola, 21-A, Earth Bungalows, Akshar Chowk, Old Padra Road, Baroda – 390 012. [PAN – AAOPN 4886 F]	Vs.	The Income Tax Officer, Ward – 1(2)(3), Baroda.
(Appellant)		(Respondent)
Assessee by	Shri Mehul K. Patel, AR	
Revenue by	Shri Rohit Asudani, Sr. DR	
Date of Hearing	18.07.2023	
Date of Pronouncement	25.08.2023	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the Assessee against order dated 08.05.2018 passed by the CIT(A)-2, Vadodara for the Assessment Year 2013-14.

2. The Assessee has raised the following grounds of appeal :-

- “1. *The Learned CIT(Appeals) erred in holding that the appellant had not discharged the primary onus is cast upon him in respect of sale proceeds of Agricultural products received from Shri Aakash Vagela, Kamlesh Gandhi Infrastructure And Collabera Technologies P. Ltd. from Shri Hez Parisar aggregating to Rs.2,60,305/- and Rs.18,625/- respectively.*
2. *The Learned CIT (Appeals) a erred in holding that the reply of the AR in relation to agricultural activities carried out by him was not convincing and further erred in holding that a sum of Rs.8,90,040/- was income arising out of non-agricultural activities.*
3. *The Learned CIT (Appeals) erred in disregarding the contention raised by the appellant during the appellate proceedings and erred in confirming the estimation of Rs.8,90,040/- as business income.*

4. *The Learned CIT (Appeals) erred in holding that the agricultural expenses cannot be less than 15 – 20% of the gross receipts and further erred in confirming that agricultural income was Rs.73,73,780/- against the agricultural income disclosed by the appellant at Rs.85,42,750/-."*

3. The assessee filed return of income for the Assessment Year (A.Y.) 2013-14 showing total income at Rs.1,97,520/- alongwith agricultural income at Rs.75,42,750/-. The case of the assessee was selected under scrutiny. Various notices under Sections 143(2) and 142(1) were issued from time to time and served upon the assessee. During the assessment proceedings, the assessee claimed that the agricultural income of Rs.85,42,750/- which was declared in return of income inadvertently as Rs.75,42,750/- due to oversight. After considering the submissions of the assessee, the Assessing Officer made addition of Rs.2,60,305/- in respect of income from other sources alongwith addition of Rs.18,625/- under the same head and also made addition of Rs.8,90,040/- in respect of business income. The Assessing Officer also taken into account agricultural income of Rs.85,42,750/- out of this agricultural income of Rs.11,68,970/- and treated the same as business income/income from other sources and assessed the agricultural income at Rs.73,73,780/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the assessee has not carried out any business activities and was not supposed to maintain books of accounts as the assessee is mainly engaged in agricultural activities of growing of Flower Plants, Vegetable Plants and various types of Lawns during the year under consideration. For the record purpose, the assessee maintained books of accounts and relevant documents and the details were submitted during the course of assessment proceedings. The Ld. AR submitted that during the year under consideration, the only taxable income being income from salary and interest income from Bank FDR and Saving Bank Account totalling to Rs.1,97,520/- (after deduction of Rs.10,000/- claimed under Section 80TTA). Agricultural income earned to the extent of Rs.75,42,750/- was claimed as exempt income while filing the return of income. Due to the oversight, the agricultural income was shown at Rs.75,42,750/- while filing return of income instead of

Rs.85,42,750/- which was brought to the notice of the Assessing Officer during the course of assessment proceedings. The Ld. AR further submitted gross agricultural income being Rs.90,50,270/- out of which expenses of Rs.5,07,520/- were claimed and hence agricultural income being Rs.85,42,750/-.

5.1 As regards to ground no.1 in respect of addition on account of treating agricultural income as income from other sources amounting to Rs.2,60,305/-, the Ld. AR submitted that the Assessing Officer has considered the transactions of sale of plants, laws etc. with Shri Aakash Vagela, M/s. Kamlesh Gandhi Infrastructure and M/s Collabera Technologies P. Ltd. as income from other sources only for the reason that the said parties did not submit the reply for information called for under Section 133(6) of the Act. The Ld. AR submitted that to substantiate the claim of agricultural income, the assessee produced copies of all sales bills shown as agricultural income and submitted copies of ledger of said parties in books of accounts and copy of bank statement from which transactions are routed through banking channels and transactions are supported by invoices. The Ld. AR submitted that genuineness of the transactions was proved and at no stretch of imagination the transactions carried out are to be treated as income from other sources. The Ld. AR relied upon the decision of Tribunal in case of Cheil India Pvt. Ltd. vs. ITO (ITA No.6183/Del/2014) and Vitrag Metal Pvt. Ltd. vs. ITO, 46 ITR 201.

5.2 As regards to addition on account of treating part of agricultural income as income from other sources amounting to Rs.18,625/-, the Ld. AR submitted that the Assessing Officer erred in treating part of the transaction with Shri Hez Parisar as income from other sources. The transactions with the said party are of Rs.85,705/- from sale of plants as per books of accounts of the assessee and when information under Section 133(6) of the Act was called for, the party's ledger shows transactions of Rs.67,080/- and, therefore, difference of Rs.18,625/- was due to booking of assessee's bills lately and hence the said difference cannot be considered as income from other sources.

5.3 As regards to ground nos.2 & 3 relating to addition on account of treating agricultural income as business income amounting to Rs.8,90,040/-, the Ld. AR submitted that the Assessing Officer has considered Rs.26,97,090/- as other sales and made addition @ 33% thereon i.e. Rs.8,90,040/- as business income, but the assessee is engaged in nursery activities and does not carry any other business

activities during the year under consideration. Hence income from agricultural activities cannot be treated as business income. The Ld. AR submitted that the assessee produced copies of sales bills shown as agricultural income and the Assessing Officer only taken into account the transaction with M/s. Green Leaf as agricultural income and considered other income as other sales and added percentage of this sales as business income. The presumption of the Assessing Officer is not justifiable and hence addition made of Rs.8,90,040/- is not justifiable.

5.4 As regards to ground no.4 relating to agricultural expenses, the Id. AR submitted that the agricultural expenses would be less than 5 – 20% of gross receipt and, therefore, the Assessing Officer was not justified to assess the agricultural income to the extent of Rs.73,73,780/- and not the agricultural income which was disclosed by the assessee at Rs.85,42,750/-.

6. The Ld. DR in respect of ground no.1 submitted that the Assessing Officer as well as the CIT(A) has rightly made addition to the extent of Rs.2,60,305/- and Rs.18,625 respectively as the parties to whom the agricultural produce was sold has not come up despite giving notice under Section 133(6) of the Act. Ld. DR relied upon the assessment order and the order of the CIT(A). As regards to ground nos.2 & 3, the Ld. DR submitted that the CIT(A) was right in confirming the addition to the extent of Rs.8,90,040/- as the assessee has not given the details in respect of whether said income was arising from agricultural activities or from the non-agricultural activities and the estimation of 33% of Rs.26,97,040/- was justified. As regards ground no.4, the Ld. DR relied upon the Assessment Order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. As regards to ground no.1, the assessee in respect of addition of Rs.2,60,305/- has given all the copies of ledger of the said party as well as sales bills and the said transaction was duly reflected in books of account as well as Balance Sheet and, therefore, after taking cognisance of the evidences including the supporting documents and invoice, the transaction appears to be genuine and, therefore, We have heard both the parties and perused all the relevant material available on record. this addition does not sustain. As regards to addition of Rs.18,625/-, it is clear case that the assessee is carrying out the agricultural activities and sale of plant to the particular party and this ledger shows the transaction to the

extent of Rs.67,080/- and the difference of Rs.18,625/- was due to booking of assessee's bills lately which is reflected from the documents produced before the Assessing Officer as well as before the CIT(A). Thus, ground no.1 is allowed.

7.1 As regards to ground nos.2 & 3, it is clearly the activity of agricultural in nature in respect of engaging in nursery activities of growing various types of lawns, flower plants and vegetable plants and they cannot be considered as commercial activity for treating the same as business income. The assessee has produced relevant copies of the sales bills as well as the transaction details from Bank Account as well as books of account including Ledger and Invoices. Hence, ground nos.2 & 3 are allowed.

7.2 As regards to ground no.4 in respect of agricultural expenses, the assessee has shown the sales bills of all the parties including M/s. Green Leaf and at no point of time the Assessing Officer has disputed that the said agricultural income was in fact of commercial activities related to business income. Thus, ground no.4 is allowed.

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

Order pronounced in the open Court on this 25th August, 2023.

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 25th day of August, 2023

PBN/*

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad