

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC': NEW DELHI**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2560/DEL/2023  
(Assessment Year: 2015-16)**

Ishwar Chander Pahuja,  
C/o Sumer Garg & Co., CAs  
E-501A, IITL Northex Tower,  
Plot No.A – 9, Netaji Subhash Place,  
Pitampura,  
New Delhi – 110 034.

vs.

ACIT, Circle 19 (1),  
New Delhi.

**(PAN : AAFPP4275M)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri S.C. Garg, CA  
REVENUE BY : Shri Om Parkash, Sr. DR

Date of Hearing : 24.06.2024  
Date of Order : 06.09.2024

**ORDER**

The assessee has filed appeal against the order of the Learned Commissioner of Income Tax (Appeals), Delhi [“Ld. CIT(A)”, for short]/National Faceless Appeal Centre (NFAC) dated 21.08.2023 for the Assessment Year 2015-16.

2. The assessee has raised following grounds of appeal :-

“1. The Ld. AO erred in law and on facts in disallowing the claim of the assessee of having earned agricultural income at Rs.23,36,957/- and the Ld. CIT(A), NFAC erred in law and on facts in confirming the action of the Ld. AO treating the same as bogus without making any verification in the facts and circumstances of the case.

2. The Ld. AO erred in law and on facts in making the addition of Rs.23,36,957/- to the income of the assessee and the Ld. CIT(A), NFAC erred in law and on facts in confirming the action of the Ld. AO in the facts and circumstances of the case.

3. The Ld. AO erred in law and on facts in taking and the Ld. CIT(A), NFAC erred in law and on facts in confirming the action of Ld. AO of taking adverse inference against the assessee without bringing on record any evidence adverse to the assessee and without considering relevant evidence furnished by the assessee in the facts and circumstances of the case.

4. The Ld. AO erred in law and on facts in doubting the authenticity of the evidences furnished by the assessee for selling of agricultural produce simply because the sale was not made through the Kisan Mandi and no Mandi tax was paid and no Mandi /sales tax registration number etc. of seller/ purchaser was available. The Ld. CIT(A), NFAC erred in law and on facts in confirming the action of Ld. AO in the facts and circumstances of the case.

5. Without prejudice to the above, The Ld. AO was not justified in law and on facts in disallowing whole of the agricultural income and the Ld. CIT(A), NF AC erred in law and on facts in confirming such action of Ld. AO while the assessee was required by the AO only to give explanation and justification for not claiming any expenses in carrying out agricultural activities. The explanation of the appellant was rejected without cogent reasons.

6. The Ld. AO erred in law and on facts in observing that the assessee was liable to maintain the books of account u/s 44AA of the Income Tax Act 1961 for agricultural activities carried on by him.

7. The Ld. AO erred in law and on facts in not following principles of natural justice while making the addition since no show cause notice was served on the appellant. The Ld. CIT (A), NF AC also failed to comply with principles of natural justice since no opportunity of hearing through video conferencing was afforded by him as prayed for by the Appellant.

8. The Ld. AO erred in law and on facts in charging interest u/s 234A, 234B and 234C of the Act based on assessed income in the facts and circumstances of the case.”

3. Brief facts of the case are that assessee filed his return of income on 29.03.2016 declaring an income of Rs.8,61,560/-. The case was selected for scrutiny through CASS under Limited Scrutiny. Accordingly, notices issued under section 143(2) and 142(1) of the Income-tax Act, 1961 (for short 'the Act') and served on the assessee. The e-proceedings were conducted as per the option of the assessee and informations were filed as and when called for. The Assessing Officer observed that assessee is deriving salary income from Pahuja Seeds Pvt. Ltd. as a Director, income from house property and income from other sources. During assessment proceedings, Assessing Officer observed that assessee has shown agricultural income of Rs.23,36,957/- under section 2(1A) of the Act and claimed the same as exempt u/s 10(1) of the Act, thus the assessee has claimed tax rebate on agricultural income of Rs.6,01,097/-. The Assessing Officer further observed that assessee has not claimed any expenses for any agricultural income. Because of this, Assessing Officer was of the opinion that claim of agricultural income appeared doubtful. Accordingly, assessee was asked to furnish complete details with supportive evidence for the income from agriculture and to furnish explanation with supporting evidences to justify the reasonability and genuineness of the claim of exemption of agricultural income. In reply, the assessee has furnished the copy of holding of agricultural land at difference places and furnished copy of bills of sale of agricultural produce to the persons mostly his related parties. The assessee

reiterated his claim that he has made the expenses on the agricultural activities by selling seedlings and seeds to mobile vendors and farmers. However, AO observed that assessee did not furnish any reasonable explanation and computation of agricultural income along with books of accounts maintained for the agricultural activities.

4. In view of the unsatisfactory explanation and the deficiencies pointed out in the above paragraph, the agricultural income declared by the assessee is disallowed and added to the income of the assessee.

5. Aggrieved with the above order, assessee preferred an appeal before the NFAC and raised grounds objecting to addition of Agricultural income, non-consideration of evidence, non-appreciation of evidence and non-consideration of justification of expenses by the Assessing Officer and non-requirement of maintenance of books of account by the assessee. After considering the detailed submissions and various grounds raised by the assessee, ld. CIT (A) sustained the addition made by the Assessing Officer.

6. Aggrieved, assessee is in appeal before us.

7. At the time of hearing, ld. AR for the assessee submitted as under :-

“1. History of the case: The assessee graduated in Agriculture Science from Agricultural University, Ludhiana (Punjab) in the year 1976. After returning to Delhi, he ventured into Vegetable seeds business. His entire family was already in the seeds business. Thereafter, he purchased agricultural land in village Faridpur, Panipat (Haryana) & Akbarpur Majra in outer Delhi and started production of vegetable seeds. Later, he acquired agricultural lands in village

Karjagi in Karnataka State. The documents pertaining to ownership of agricultural lands are placed at Pages 54-61 of the paper book.

2. Expertise of the assessee : The assessee has experience of more than 40 years to his credit & has expertise in production of hybrid seeds I foundation seeds and open pollinated (non-hybrid) seeds due to academic qualification & field experience. For the last more than three decades, the assessee has been producing vegetable seeds on his agricultural lands.

3. Consistent method of accounting for agricultural income: The assessee takes into account the bulk sale proceeds during the year as agricultural income. Mother seed is provided to the assessee by the related concerns for whom he produces the seeds. Other expenditure on production is met by sales of seeds of lower quality and seedlings (poudh) to the mobile vendors / kitchen gardeners. The vegetables which are not convertible into seeds are sold in the open market. This system of accounting the agricultural income has been adopted by the assessee consistently year after year and has been accepted in scrutiny assessments since many years. Submissions in this regard made before Assessing Officers from time to time are placed at Page 122, 125, 135, 138, 141, 143, 146, 149 & 157 of the paper book.

4. Agricultural income declared over the years : Agricultural Income declared by the assessee from AY 1988-89 to A Y 2015-16 are placed at Page 89 of the paper book. The agricultural income in the subsequent years are as under:

Assessment Year	Agricultural Income declared
2016-17	34,90,019
2017-18	38,76,467
2018-19	33,83,588
2019-20	34,05,617
2020-21	33,90,794
2021-22	33,87,821
2022-23	33,73,133
2023-24	33,43,300

5. AO's observations : In Para 4 of the order, the AO noticed that the assessee had not claimed any expenses for earning agricultural income & therefore, he entertained doubts about the claim of agricultural income. In Para 5, the AO has observed that the assessee

did not furnish any reasonable explanation along with books of account. The AO has noted the assessee's explanation that he met the expenses on the agricultural activities by selling seedlings & seeds to mobile vendors and farmers. In Para 6, the AO has claimed that the assessee was liable to maintain the books of account for agricultural activities carried on by him u/s 44AA of the Act. The AO further observed that in majority of cases the sale was effected to the related parties only. Further, the sale is not made through the Kisan Mandi & no Mandi tax was found to be paid no registration number of the seller & purchaser in Mandi or Sale Tax etc. is available. On these facts, the AO found that the authenticity of the evidences furnished by the assessee remained doubtful. The AO observed that the bills issued by the assessee were nothing but self-serving documents prepared to transfer the profits from the related companies & sales to them appeared to be colorable devices to reduce their profits & claim bogus exempt agricultural income.

#### 5.1 Assessee's explanations:

(i) As submitted above, the expenses incurred for agricultural activities were met out of sales of seedlings & seeds to mobile vendors & farmers. It is submitted that it is a usual practice adopted at almost all the farms. This fact had been accepted in all the assessment years (mentioned at Page 89) except the instant year. The assessment orders are placed at Page 121, 124, 129, 131, 134, 136, 142, 145, 148.

(ii) Your kind attention is invited to scrutiny proceedings for A Y 2014-15 when the case had been selected under scrutiny for verification of claim of Agricultural Income at Rs. 21,03,601/- (Page 154, 156). Assessment order is placed at Page 50, 152. Copy of assessment order dated 10.01.2024 for Assessment Year 2022-23 accepting the Agricultural income declared at Rs.33,73,1331- has been submitted with your honor.

(iii) Your honor, the AO was misconceived in observing that the assessee was liable to maintain books of account for agricultural activities u/s 44AA of the Act since the section is applicable to business transactions only. It is also not mandatory that agricultural produce has to be sold through the Kisan Mandi by paying Mandi Tax. No Mandi Tax or Sales Tax etc. is applicable on agricultural produce sold outside Mandi & therefore, no registration with Sales

Tax or Mandi was required for related concerns purchasing seeds from the assessee.

(iv) As a matter of fact, the AO was largely influenced by the fact that the assessee had sold his produce to related concerns. Vegetable seeds are not shelf products. No other company would purchase seeds from the assessee in view of the fact that the assessee has related concerns dealing in the same products. Any other company would entertain doubt about the quality of seeds since the quality cannot be verified by visual inspection. Since the related concerns are assured about the quality, it does not pose any problem either for the related companies or for the assessee. For this reason, the assessee sells all his production to the related entities. In the process, both the assessee as well as the companies gain extra benefit in the form of quality assurance as well as protection of secrets involved in hybrid seeds.

(v) The Ld. AO was also not justified in considering the bills issued by the assessee (Page 27, 31, 32, 33, 36-41) as self-serving documents. The assessee placed before the AO copies of bills similarly issued by other farmers in respect of purchases made by related concerns from them (Page 90-100). You will kindly appreciate that the farmers do not have printed bills. The allegation of transfer of profits of related concerns is also factually not correct since the related concerns have earned profits on sale of seeds purchased from the assessee as per details submitted with your honor on 24.06.2024 (69 Pages).

6. Observation of NFAC in First Appeal: The assessee submitted before NFAC that throughout the assessment proceedings the Ld. AO had raised only one query i.e. how the expenses incurred for agricultural activities were accounted for. There was no show cause to the assessee that the vouchers/bills in respect of agricultural income were not authentic. No verification, whatsoever was carried out by Ld. AO. It was also submitted that the Ld. AO has not brought on record any evidence adverse to the assessee. The Ld. CIT (Appeals) NFAC did not properly appreciate the facts and circumstances & method of accounting for agricultural income consistently followed by the assessee over the years, by simply observing that the AO was not precluded from scrutinizing the claims specific to the present year.

7. Violation of principles of natural justice by the Ld. AO & Ld. CIT (Appeals) NFAC: The assessee has raised this issue in ground of

appeal No.7 before your honor. As per law settled by Hon'ble Apex Court & the High Courts / ITAT, the adjudicating authority is mandated to issue a proper show cause notice to the assessee proposing addition along with the reasons. However, no show cause notice proposing any addition was issued by the Ld. AO.

- CBDT Instruction No. 20/2015 dated 29.12.2015.

"Para 4: The Board further desires that in all cases under scrutiny, where the Assessing Officer proposes to made additions or disallowances, the assessee would be given a fair opportunity to explain his position on the proposed additions 1 disallowances in accordance with principles of natural justice. In this regard, the AO shall issue an appropriate show-cause notice duly indicating the reasons for the proposed additions / disallowances along with necessary evidences 1 reasons forming the basis of the same."

7.1 The assessee had prayed the NFAC vide submissions dated 20.04.2022 (Page 103) as under:

"It is further prayed that opportunity of hearing through video conferencing may kindly be afforded so that the appellant can forward oral arguments before your honor."

The request was made in those proceedings since the portal did not enable the "Seek Video Conference Request" Button.

The Ld. CIT (Appeals) NFAC did not grant any opportunity for personal hearing through VC."

8. On the other hand, ld. DR for the Revenue relied upon on the orders of the lower authorities.

9. Considered the rival submissions and material placed on record. I observed that the Assessing Officer noticed from the informations submitted by the assessee that the assessee has not claimed any expenses for earning agricultural income. With the above observation, the details were called for



from the assessee and after observing the submissions of the assessee, the Assessing Officer rejected the submissions of the assessee with the observation that assessee did not furnish any reasonable explanation and computation of agricultural income along with books of account maintained for the agricultural activities. I observed that assessee is graduated in agricultural science from Agricultural University, Ludhiana and he is into vegetable seeds business. It is a fact on record that assessee is holding agricultural land in different places and the details of the sales were also submitted before the Assessing Officer. It is also fact on record that assessee is declaring agricultural income, it is brought to our notice that income declared by the assessee from AY 2016-17 to 2023-24 within the range of Rs.33 lakhs to Rs.38 lakh per annum. The assessee has declared the income for the impugned assessment year of Rs.23,36,957/- without claiming any expenditure. The Assessing Officer rejected the above income and expressed doubtful of agricultural income mainly because assessee has not claimed any expenditure in the return of income. Considering the regularity and consistency of declared income over the years and subsequent assessment years, the income declared by the assessee seems to be in order and also assessee is a professionally graduated in agricultural science. Further, I observed that the Assessing Officer observed that assessee has not maintained any books of account as per section 44AA of the Act. In my view, assessee's income falls under section 10(1) of the Act and as per section 44A of the Act, as

per the provisions of the Act, who are supposed to maintain books of account, does not include agriculturist. Therefore, assessee's case does not fall u/s 44AA of the Act. I also observed that the assessee has submitted copy of bills of sale of agricultural produce to various persons, even though to the related parties. In our considered view, considering the agricultural income declared by the assessee over the years, the claim of the assessee is genuine and assessee has submitted that the agricultural expenses were met out of sale of seedlings to farmers is acceptable. If at all required, assessee would have grossed up the sales by including the seedlings sales and claimed the agricultural expenditure. Therefore, I do not see any reason to suspect the income declared by the assessee. Accordingly, the grounds raised by the assessee are allowed.

10. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open court on this 6<sup>TH</sup> day of September, 2024.**

SD/-

**(S.RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

Dated: 06.09.2024

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI