

IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'D': NEW DELHI)

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER  
And  
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No.3243/DEL/ 2012  
(Assessment Year :2008-09)

Japinder Singh  
133, Saharanpur Road  
Dehradun  
PAN: AQPPS3944J  
(APPELLANT)

Vs.

ITO  
Ward-1(1)  
Dchradun  
(RESPONDENT)

ASSESSEE BY : Shri Ved Jain, CA. &  
Shri V. Mohan, Adv.  
REVENUE BY : Ms. Renuka Jain, DR.

ORDER

PER T. S. KAPOOR, AM:

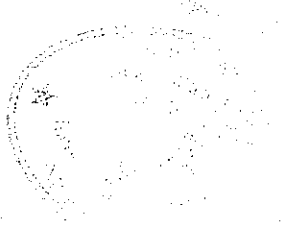
This is an appeal filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-I, New Delhi dated 15.02.2012 for the assessment year

2008-09. The grounds taken by the assessee are as under:

"1 On the basis of facts and circumstances of the case, the order passed by the Ld. CIT (A) is bad both in the eye of law and on facts.

2(i) On the facts and circumstances of the case, the Ld. CIT (A) has erred both on facts and in law in confirming the addition of Rs.1,40,00,000/- made by the Assessing Officer.

(ii) That the above said addition has been confirmed ignoring the explanation and the evidence brought on record by the assessee.



*[Handwritten signature]*

(3)(i) On the facts and circumstances of the case, the Ld. CIT (A) has erred both on facts and in law in ignoring the contention of the appellant that the commission income having neither accrued nor arisen during the year there was no jurisdiction for the Assessing Officer to tax the same as income.

(ii) On the facts and circumstances of the case, the Ld. CIT (A) has erred both on facts and in law in ignoring that PACL India Ltd. has filed criminal proceedings against Mr. Khetasar who was assigned the job and has denied having paid any commission to him and as such there was no justification in taxing the same as commission income.

4(i) On the facts and circumstances of the case, the Ld. CIT (A) has erred both on facts and in law in confirming the addition of Rs.6,37,777/- as income from other sources shown by the assessee as agricultural income.

(ii) That the above addition has been confirmed without fully appreciating the explanations and evidences furnished by the assessee to prove that the income is from agricultural operation.

5. The appellant craves leave to add, amend or alter any of the grounds of appeal."

2. The assessee has taken 5 grounds of appeal but the effective grounds of appeal are only two. The first grievance of the assessee is that Ld. CIT (A) has upheld the addition of Rs.1,40,00,000/- which was received from one Mr. Khetasar on the belief that the said amount represented as his share of commission income. The assessee is further aggrieved with the confirmation of addition of Rs.6,37,777/- as income from other sources instead of agricultural income as declared in his return of income.

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3. The brief facts of the case are that the assessee is a property consultant, working as broker agent on behalf of M/s PACL India Ltd. along with another broker Shri Rajender Singh Khetasar. Both persons had separately agreed to purchase 20000 bighas of land and 130000 bighas of land respectively on behalf of M/s PACL India Ltd. vide different agreements dated 12.03.2006 and 27.10.2006. There was another agreement dated 14.03.2006 between assessee and Shri Rajender Singh Khetasar by which both had agreed to share the commission received from M/s PACL India Ltd. on 50-50% basis irrespective of the fact as to who procures the land.

4. During the year, the assessee received an amount of Rs.1,40,00,000/- from Shri Rajender Singh Khetasar, which he did not offer for tax. The Assessing Officer during assessment proceedings on the basis of agreement between assessee and Shri Rajender Singh Khetasar made the addition of Rs.1,40,00,000/- as his part of share in the commission income. The Assessing Officer observed that assessee had utilized the amount for purchase of immovable properties and for advancing loans to other persons, therefore, he held that amount necessarily represented commission income. The Assessing Officer further observed that the assessment of Rajender Singh Khetasar was completed u/s 143(3) at a total income of

Rs.7,68,55,660/- and same position has also been intimated for assessment year 2008-09 vide letter dated 24.11.2010. Therefore, he held both Rajender Singi. Khatesar & assessee were earning commission income. The contention of the assessee that the acquisition of land was not completed and, therefore, commission had not become due was not accepted. Regarding receipt of Rs.1,40,00,000/- it was submitted by the assessee that the same was received as friendly loan. Similarly it was contended that agreements could not be completed as the land procured was disputed and M/s PACL India Ltd. had filed criminal proceedings for recovery of amounts given as advance to Shri Rajender Singh Khetasar.

5. The Assessing Officer further made an addition of Rs.8,37,777/-, which the assessee had declared as agricultural income. The Assessing Officer observed that assessee had declared agricultural income from sale of Sugarcane, Rice etc. The assessee was confronted with the documentary evidence in support of his claim and in reply, the assessee submitted through an affidavit that agricultural income comprised sale on account of proceeds of Dhan Rs.6,29,771/- from sugarcane, Rs.2,66,000/- and from sale of seasonal vegetables Rs.75,000/-. It was further submitted that agricultural income was earned out of crops grown on his land and on land taken on



lease. The Assessing Officer rejected the claim of assessee on the basis that land of the assessee was situated in district Dehradun, whereas, receipts of agricultural produce were from district Haridwar and moreover assessee had not submitted any evidence of incurring agricultural expenses. The contention of assessee that he had entered into an agreement for sharing agricultural produce on 50% basis was also not accepted. The Assessing Officer had also deputed an ITI to make enquiries and report of ITI had mentioned that assessee owned 17 bighas of land and no agricultural activities were being carried out on this land for the last many years. In view of the above, the claim of the assessee regarding agricultural income was rejected and income was assessed as income from other sources.

6. Dissatisfied with the order, the assessee carried the matter to CIT (A) who upheld the first addition of Rs.1,40,00,000/-. However, he reduced the income from other sources by Rs.2 lacs by accepting the claim of assessee regarding agricultural income, up to Rs. 2 lacs.

7. Aggrieved, the assessee is in appeal before us. At the outset, the Ld. AR submitted that the appeal of the assessee is covered by the ITAT order in his own case in the assessment year 2007-08 and our attention was invited to copy of Tribunal order placed at paper book page 87 onwards. He further

submitted that in the earlier year the assessee had received an amount of Rs.62,50,000/- from the same person. Shri Rajender Singh Khetasar though the same agreement and the Tribunal had remitted the file back to the office of Assessing Officer for readjudication.

8. Continuing his submissions, he stated that facts and circumstances of the case are similar as in the earlier year. Therefore, it was prayed that this appeal can also be remitted back to the office of Assessing Officer for readjudication.

9. The Ld. Departmental Representative had no objection to the proposal of Ld. AR.

10. We have heard the rival parties and have gone through the material placed on record. We find that in earlier year an amount of Rs.62,50,000/- was paid by Shri Rajender Singh Khetasar to the assessee and the matter was sent back to Assessing Officer for readjudication. The relevant findings of Tribunal order are placed at paper book page 94 onwards, which are reproduced as under:

“We have heard the rival parties and have gone through the material placed on record. We find that the land was

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procured by Shri Rajender Singh Khetasar as confirmed by the company on whose behalf land was purchased and Shri Rajender Singh Khetasar had also declared commission income to the tune of Rs.7,18,55,600/- in his return of income. We also find from the order of CIT (A) that assessee had made a complaint on 9.04.2009 to the joint Commissioner of Police, Economic Offences Wing, New Delhi claiming that the company had paid an amount of Rs.213 crores to Shri Rajender Singh Khetasar who had procured approximately 1.5 lacs bighas of land and had collected Rs.15 crores as commission. We also find from the order of CIT (A) that land purchase had become disputed because of its proximity to Pakistan and, therefore, company had filed several suits against Shri Rajender Singh Khetasar as well as the assessee claiming recovery of money paid for purchase of land and commission. We also find that Shri Rajender Singh Khetasar had since died and assessee had not returned the money to Shri Rajender Singh Khetasar despite a period of 5 years had elapsed between date of payment and appellate proceedings as noted by Ld. CIT (A).


14. Though the Ld. CIT (A) had confirmed and upheld the additions, made by Assessing Officer, on account of payment of Rs.62,50,000/- by Shri Rajender Singh Khetasar to assessee but vital facts has been ignored both by Assessing Officer and Ld. CIT (A) and these are that as per agreement the commissions was to be shared as 50:50 but despite the fact that Shri Rajender Singh Khetasar had declared commissions income of Rs.7,18,55,600/- the Assessing Officer took only Rs.62,50,000/- as share of assessee on the basis that such sum was received by assessee. In fact if the Assessing Officer on the basis of agreement between assessee and Shri Rajender Singh Khetasar is treating the cheque received by assessee as his income, he should have considered 50% of total commission earned by Shri Rajender Singh Khetasar which was in crores. The Assessing Officer also did not confirm from the Income Tax records of Shri Rajender Singh Khetasar as to whether he had claimed expenditure which he had paid to the assessee as his alleged share of commission. Moreover Ld. CIT (A) has given directions to Assessing Officer regarding certain

additions and has not directly adjudicated on them which is beyond his powers.

15. Therefore, keeping in view the totality of facts and circumstances we are of the considered opinion that whole case should be relooked again by Assessing Officer and it is directed that Assessing Officer should make proper and detailed enquiries before arriving at any conclusion regarding additions if any. Therefore, the case is remitted back to office of Assessing Officer."

11. We find that facts and circumstances of the present appeal are same as in the previous year. However, in this year Ld. CIT (A) has not given any directions rather he had decided on the issues unlike in the earlier year however, substantial facts remains same. Therefore, following the above order we are of the opinion that the present appeal be also readjudicated by Assessing Officer. The Assessing Officer on the basis of relevant record and information from the Income Tax record of the Shri Rajender Singh Khetasar as well as from any other source can arrive at the appropriate decision.

None of our observations will preclude the Assessing Officer from making additions if on the basis of facts and circumstances of the case, the Assessing Officer establishes that the amount received represented income of the assessee.





12. Regarding second ground of appeal with respect to agricultural income, the same is also remitted back to be readjudicated by Assessing Officer again on the basis of actual agricultural records. Needless to say that necessary opportunity will be given to the assessee of being heard..

In view of the above, the appeal filed by assessee is allowed for statistical purposes.

Order pronounced in open court on 24/07/ 2013.

(Rajpal Yadav)  
Judicial Member

(T. S. Kapoor)  
Accountant Member

Dated the 27<sup>th</sup> day of July, 2013  
S.Sinha

Copy forwarded to  
1. APPELLANT By Hand  
2. RESPONDENT  
3. CIT  
4. CIT (A)  
5. CIT(ITAT), New Delhi.

AR,ITA  
NEW DELHI.

सहायक पंजीकार,  
Assistant Registrar,  
आयकर अपील न्यायालय,  
Income Tax (Appeal) Tribunal

दिल्ली  
New Delhi

