

ITAT allows farmer to lead evidence that agriculture produce was source of cash deposits in bank A/c

Summary – The Delhi ITAT in a recent case of Nanava, (the Assessee) held that where a farmer claimed before AO that source of cash deposit was his agricultural income but did not submit relevant evidence on a belief that he was not required to substantiate same, he was to be given chance by Appellate Forum to lead required evidences

Facts

- As per AIR information, it was noticed that the assessee had made cash deposits aggregating Rs. 33.60 lakhs in its bank. The assessee initially was represented by a Counsel JP who stated that the amount had been deposited after selling agricultural land. The assessee subsequently was represented by another Counsel SP who stated that the assessee had deposited the same from the receipt of sale proceeds of his property where the amount had been received as an advance. He also stated that ultimately the deal did not materialize and the entire amount was returned. The assessee was stated to be farmer; however, no evidence was filed either *qua* the said activity nor any other document evidencing the fact of ownership of agricultural land etc. As a result, the assessment was concluded under section 147/144 wherein the said amount was added.
- In appeal before the Commissioner (Appeals), the assessee sought permission to file fresh evidences. The Commissioner (Appeals) was of the view that sufficient opportunity was provided by the Assessing Officer.
- He therefore, rejected the prayer.
- On appeal:

Held

- Nothing has been brought on record by the Commissioner (Appeals) to show what was the evidence sought to be filed by the assessee. Admittedly, as per record, the assessee described himself before the Assessing Officer as a farmer. The assessee though sporadically was represented by counsels appointed by him admittedly they failed to file any evidence in support of the stated claim of advance received for sale of property. It is further seen that frequent change of the counsels at the assessment stage may have handicapped the assessee.
- On going through the record it is found that no good reason has been cared to be brought on record by the Commissioner (Appeals) to justify why in the peculiar facts and circumstances, fresh evidences could not have been admitted. Admittedly, the claims are made at the first instance before the Assessing Officer. The supporting evidences which the counsels sought to have filed, admittedly have not been filed. The stated shortcoming could have been addressed before the statutorily provided Forum of the First Appellate Authority. No justifiable reason is available on

record to show why the said forum was to be treated as a post office and the justice dispensation should be mechanical and robotic.

- The law does not perceive the First Appellate Forum as an empty, meaningless Forum. Sub-sections (4) and (5) of section 250 and clause (c) of sub-section (1) of section 251 read along with sub-rule (4) of rule 46A of the Income-tax Rules, 1962 has more than adequately empowered the Commissioner (Appeals) to call for necessary evidences to ensure that justice is done. The said Forum has specifically been created to redress the grievances of the taxpayer and its relevance and existence cannot be allowed to be undermined. The judicial remedy of appeal cannot be allowed to be treated as an empty ritual and a meaningless mechanical exercise.
- In the facts of the present case, admittedly a farmer asserting facts known to be correct and undeniably true according to his knowledge and thus may have entertained the belief that these facts may not be required to be substantiated. Thus, the assessee may not have lead evidence demonstrating his stated activity nor any evidence of any agricultural land holding before the Assessing Officer. However, when the Statute has provided an Appellate Forum to seek the fresh evidences considering the facts in support of the stated claims which admittedly is relevant and crucial evidence for determining the issues, the evidences if sought to be made available, should have been accepted and, in fact, in the absence of assessee's prayer, the Commissioner (Appeals) having the power to call for supporting evidences should himself have directed the assessee to place the evidence on record in support of its claim made by way of grounds raised. It is for the tax authorities to assist such taxpayers to be tax compliant instead of forcing such assessee towards unscrupulous advisers who may instead initiate him towards adopting unscrupulous strategies aimed towards circumventing the law. The fundamental fact that only just and due taxes for the state is to be collected at all stages, should not be ignored. To gather tax for the State based on the ignorance of the taxpayers can never be the aim of State Administration. The impugned order, accordingly, having failed to address the issues cannot be upheld and is set aside.
- The revenue sought to maintain the impugned order even though it is unable to address why the evidences which go to the root of the matter as they were relevant and crucial for deciding the issue should not be admitted solely because it was not made available to the Assessing Officer. The impugned order is set aside back to the file of the Assessing Officer.