

**(2008) 05 P&H CK 0064**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

Commissioner of Income Tax

APPELLANT

Vs

Jarnail Singh

RESPONDENT

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**Date of Decision:** May 12, 2008

**Acts Referred:**

- Income Tax Act, 1961 - Section 260A

**Citation:** (2009) 316 ITR 160 : (2008) 174 TAXMAN 57

**Hon'ble Judges:** Rakesh Kumar Garg, J; Rajive Bhalla, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

Rakesh Kumar Garg, J.

The revenue has filed the present appeal u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as the "Act") against the order dated 21-8-2007 passed by the Tribunal, Chandigarh Bench "B" in ITA No. 963/Chd/2006 and has sought to raise the following substantial question of law:

Whether in the facts and circumstances of the case and in law the order of the Tribunal is perverse, being based on conjectures and surmises and the findings of the assessing officer as well as the Commissioner (Appeals) have been ignored without any cogent material?

2. The assessee declared agricultural income at Rs. 7,50,000 from cultivation of 36 acres of own agricultural land and 6 acres of leased agricultural land. In support of the said declaration, the assessee produced revenue record, J Forms and claimed that the agricultural income was net of expenses @ 25 per cent. However, the submissions of the assessee were not accepted by the assessing officer, who determined the agricultural income of the assessee at Rs. 5,52,561 holding that the yield declared was high. The remaining income of Rs. 1,97,439 was taxed as income from other sources vide order dated 16-1-2006.

3. Being aggrieved, the assessee filed an appeal before the Commissioner (Appeals) who confirmed the action of the assessing officer and dismissed the appeal filed by the assessee vide his order dated 24-10-2006.

4. Not satisfied with the order of the Commissioner (Appeals), an appeal before the Tribunal was filed by the assessee, which was allowed vide order dated 21-8-2007. While allowing the appeal, the Tribunal held that the assessee, who is an agriculturist, has produced evidence on record, in support of his claim and income declared by him on estimate basis is bona fide. The findings of the Tribunal in this regard are reproduced:

I have considered the rival submissions carefully. Firstly, it is abundantly clear from the record that the assessee has declared agricultural income in the past also. The factum of the assessee being engaged in the activity yielding agricultural income in the past as well as during the year under consideration is not in dispute. The dispute essentially revolves around the quantum of agricultural income declared for the reason that the assessee does not maintain any regular books of account in this regard. The assessee claimed to have estimated his agricultural income by reducing from the gross sale realization the expenses to the extent of 25 per cent. This manner of declaring agricultural income itself shows that it has been declared on estimate basis. Now the issue is as to whether the estimate made by the assessee can be construed as reasonable considering the claim of agricultural operations carried out, size of land holdings, past history, etc. In this context, we find that the assessee has attempted to explain that it had 36 acres of land under cultivation, partly owned by him and partly belonging to his brother in addition to 6 acres of land taken on lease. The assessing officer did not accept the plea of the assessee with respect to the leased land for the reason that it was not substantiated. Insofar as the non-acceptance of the quantum of agricultural income is concerned, the assessing officer referred to a journal of Haryana Agricultural University to deduce as to what should be per acre yield from the land owned by the assessee. On that basis, he held that the yield declared by the assessee was high. In my considered opinion the approach of the assessing officer was manifested by the reason that in the absence of the books of account, the agricultural income was not verifiable. This aspect is justified. However, the approach adopted thereafter by the assessing officer of not going by the material adduced by the assessee in support of the estimate is also wrong for the reason that there is no finding much less a whisper that the material sought to be relied upon by the assessee was lacking in credibility. In fact the certificate of average income per acre of land obtained from village "Patwari" which indicates an income level of Rs. 36,000 per acre, cannot be brushed aside. Moreover, the assessee submitted the "J Forms" evidencing sale of agricultural produce but subjecting the same to microscopic scrutiny to cull out the yield etc. is an unjustified exercise. What the assessing officer was to essentially do was to only verify the estimates made by the assessee. No doubt, there is always an element of subjectivity in estimation. Unless it can be made out that the estimate is

on a wild basis or is totally lacking in bona fides only then the assessing officer would be justified in substituting his estimates in the place of estimation done by the assessee. There is no such exercise on the part of the assessing officer emerging in the instant case. Having regard to the aforesaid discussion, in my view the assessing officer was not justified in rejecting the claim of the assessee for having derived agricultural income of Rs. 7,50,000 for the year under consideration. Moreover, in the immediately preceding year, the assessee has declared agricultural income of Rs. 7,00,000. No doubt, the income for assessment year 2002-03 has not been subjected to scrutiny assessment yet the trend of income declared cannot be lost sight of while considering the efficacy of income declared by the assessee.

Moreover, there is no material on record to show any vested interest or motive with the assessee to declare agriculture income higher than the actual amount. This is for the reason that the copies of the bank account do not show any investment made by the assessee. In fact, the assessee has supported his plea by filing an affidavit to the effect that the income earned during assessment year under consideration was spent on agriculture inputs or household expenses. Thus, the estimate declared by the assessee can be construed as bona fide. Therefore, I am inclined to uphold the stand of the assessee.

5. Ms. Urvashi Dhugga, learned Counsel for the revenue, has argued that the agricultural income declared by the assessee was on an estimate basis and the same was on the higher side considering the yield available from the land in question and therefore, the findings of the Tribunal are perverse and are based upon conjectures and surmises and the findings of the assessing officer as well as the Commissioner (Appeals) have been ignored without any written material on record.

6. We have heard learned Counsel for the revenue and perused the record.

7. We find no merit in the contention raised by the Counsel for the revenue appellant. The Tribunal has given a pure finding of fact after considering the evidence on record with regard to the agricultural income of the assessee. We find that the approach adopted by the assessing officer, by not relying upon the material produced by the assessee in support of the estimation of income is wrong, because there is no finding that the material sought to be relied upon by the assessee was lacking in credibility. The certificate of average income per acre of land issued by the village Patwari indicates the income level of Rs. 36,000 per acre which cannot be ignored. Moreover, the assessee had submitted the Forms evidencing the sale of agricultural produce. No doubt, there is always an element of subjectivity in estimation. However, if it can be made out that the estimate is without any basis or is totally lacking the bona fides only then the assessing officer would be justified in substituting his estimate in place of the estimation of agricultural income done by the assessee. There is no such situation in this case. In fact, there is no material on record to show any vested interest or motive with the assessee to declare the

agricultural income higher than the actual amount.

8. Thus, no substantial question of law arises in the present case and the appeal is dismissed being without any merit.