

TAXATION OF AGRICULTURAL INCOME — A NEED OF THE HOUR

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1. Introduction :

In India, about 60 percent of the population depends on agriculture and allied activities. The income earned on agriculture activity and capital gain on sale of agricultural land is exempted from payment of income tax.

In a country, where majority of people depend on agriculture but the majority of lands in India are held by a very few people and some families holds hundreds of acres of lands and earning crores of tax free income on agriculture and some people declares more agriculture income than what they earn and some declare agricultural income even where they do not have an agricultural lands and also do not cultivate the agricultural lands.

Before the present Income Tax Act of 1961, the Income Tax Act of 1860 taxed agricultural income till 1886. There were some specific acts to tax agricultural income — in Bihar (1938), Assam (1939), Bengal (1944), Orissa (1948), Uttar Pradesh (1948), Hyderabad (1950), Travancore and Cochin (1951) and Madras and Old Mysore State (1955) — and some still have it.

2. Definition and concept of Agricultural Income under Income Tax Act:

Section 10(1) of the Income Tax Act defines, Agricultural Income as, any rent or revenue derived from land which is situated in India and is used for agricultural purposes by the performance of a cultivator, receiver of rent in kind and includes income derived from any building which is in the vicinity of the said land.

Though the Agricultural Income is exempted under the Act, but the burden of proof whether the income is agriculture or not depends on the assessee and the same is confirmed by the Supreme Court in the case of *Mrs. Bacha F. Guzdar v. CIT*¹ and *CIT v. R Venkataswamy Naidu*². To claim exemption of agricultural income, the person need not be the owner of the agricultural land, even a tenant also can claim exemption of agricultural income, the same is also clarified by The Privy Council that whether the owner or a tenant who derives income from agricultural operations shall be entitled to claim exemption as decided in *Raja Mustafa Ali Khan v. CIT*³. The profit earned by the merchant's who trade in agricultural produce and do not have any link or relation with the agricultural land shall not claim the income earned by them to be the agricultural income, the same is confirmed by the Madras High Court and clarifies that the merchant's profit trading in agricultural crops is not an agricultural income *CIT v. Maddi Venkatasubbayya*⁴. To claim an income to be an agricultural income there should be direct nexus between the assessee and the agricultural land and the same is held by the Privy Council in *Premier Construction Co. Ltd. v. CIT*⁵ that merely an indirect connection with agriculture shall not take the character of agricultural income. Even the interest received by the lender in the form of agricultural produce cannot claim it to be an agricultural income, the same is held in the case of *Cassin v. CIT*⁶ and

1. [1955] 27 ITR 1 (SC)
2. [1956] 29 ITR 529 (SC)
3. [1948] 16 ITR 330 (PC)
4. [1951] 20 ITR 151 (Mad.)
5. [1948] 16 ITR 380 (PC)
6. 6 ITC 41

interest or salary received by a partner from his partnership firm out of its agricultural income is also not an agricultural income the same is held in *Bhagwandas v. Agricultural ITO*⁷ and interest on compensation for compulsory acquisition of land is also not an agricultural income as held in *Tubi Ram v. Land Acquisition Officer*⁸ supreme court also held that dividend paid by company out of agricultural income is not exempted from tax since the dividend has been paid out of capital profits in the case of *Mrs. Bacha F. Guzdar*⁹ supra also followed in *J. Thomas & Co. v. C.AIT*¹⁰.

Apart from the above, the Courts held in different cases that the following incomes are not agricultural incomes, as they do not satisfy the basic conditions laid down in the provision.

1. Sale of forests, trees, wild grasses, fruits and flowers grown spontaneously and without human effort.
2. Salt produced by flooding of the land with sea water and then extracting salt there from.
3. Stone quarries.
4. Breeding of livestock.
5. Dairy farming, butter and cheese making.
6. Poultry farming and fisheries.
7. Preservation of potatoes by refrigeration.
8. Bricks making.
9. Supplying surplus water to other agriculturists.
10. Selling of standing crops, agricultural produce purchased by the assessee.

7. 70 ITR 128

8. [1993] 66 Taxmann. 127/199 ITR (Punj & Har.)

9. Supra 3

10. [1958] 34 ITR 454 (Cal.)

11. Letting out of land and Godowns for storing crops.

12. Royalty of mines.

3. Agricultural income earned in other countries:

Income tax Act clearly distinguishes the agricultural income earned in India and agricultural income earned outside India *i.e.*, the income earned from the land situated at outside India. The Income earned from the land situated in India is completely exempt from tax and whereas agricultural income earned from the land situated outside India is fully taxable¹¹ as a business income and shall be added to the total income of the Resident Person subject to the tax avoidance agreements entered by India with the countries from where Agricultural Income is earned.

4. Clubbing of Agricultural Income and Non-Agricultural income for rate purposes:

The clubbing provisions of Agricultural income with non-agricultural income are applicable, where the Individual, HUF, AOP or BOI has taxable income under the other heads of income and also having agricultural income more than Rs.5,000. In this method of calculation, the Agricultural Income is taken only for rate purposes, after clubbing both agricultural and non-agricultural income, the result will be the non-agricultural income is taxable in the higher slab rate of tax.

5. Public Interest Litigation on exemption of Agricultural Income:

A Public Interest Litigation filed by an Advocate *Hari Chand Arora* in the Punjab and Haryana High Court¹² questioning the exclusion of agricultural income from the

11. Section 28 of the Income Tax Act, 1961

12. Indian Express, Newspaper dated 03-10-2021

total income which is highly arbitrary and discriminatory as even rich farmers had been given benefit under this provision. Mr. Arora has cited the affidavits filed by various political leaders during the recent Assembly elections to plead his case. He has referred to submissions made by leaders such as *Prakash Singh Badal*, *Sukhbir Singh Badal*, *Manpreet Singh Badal*, *Rana Gurjit Singh*, *Kuljit Singh Nagara* and *Bhupinder Singh Hooda* to substantiate his contention that “*rich leaders, running other business empires are also availing benefit of such exemption*”. The division bench issued notices to the concerned for their response. the Centre said that the decision to levy tax on agriculture income lies with the State Governments and it can impose it only if States pass a resolution under Article 252 of the Constitution authorising the Centre to do it.

6. Reasons for exemption of Agricultural Income:

From the inception of the Republic under our Constitution, agriculture and the taxation of agricultural incomes has been a state subject. Accordingly, Section 10(1) of the Income Tax Act, 1961, exempts agricultural income from taxation by the Central Government.

Even States may have been reluctant to tax agriculture incomes is that they did not wish to antagonise the vote bank of agriculturists. Moreover, India's State Legislatures have typically been populated by land owners who have been loath to impose a tax on themselves.

Another reason is that agriculture has typically been one of the hard-to-tax sectors, alongwith small businesses and services. In India in particular, agriculture is even harder to tax as it is based largely on cash transactions which are hard to track and trace. Cash transactions not routed through the banking system are difficult to verify

and be used for assessment of agricultural incomes. Books of accounts are not maintained except in the plantation sector.

In India the agriculture sector is hugely unequal, both in terms of land holdings and incomes. As per the latest National Sample Survey, the landholding pattern of agricultural households reveals that the vast majority – almost 70% – have marginal holdings of below 1 hectare, and a very small percentage – only 0.4% – hold significant lands of over 10 hectares. Even the proportion of agricultural households holding a decent sized plot of land which could yield a sufficient amount of income for a household, *i.e.*, between 4 and 10 hectares is very small. In fact, the very small agricultural households have to rely on other incomes – wages/salaries, or non-farm business – to supplement the meager agricultural incomes to eke out a living. Those holding 10 plus hectares of land, while being only 0.4% of all agricultural households, capture almost 4% of all agricultural incomes.

7. Why Agricultural Income need to be taxed:

Agricultural land holdings greater than 4 hectares are just 4% of the total agricultural households but with a share of agricultural income in excess of 20 percent. of course, it goes without saying that those with higher holdings have very high incomes which all go completely un-taxed.

One factor not discussed much in the public discourse is the fact that it is not just individuals who benefit from the tax exemption of agricultural income. There are a large number of companies, including large multinational companies, who also benefit from this exemption.

According to data put out by the income tax department, reported in the Times of

India, in the nine-years period from financial year 2006-07 up to 2014-15, 2,746 income tax cases declared Rs.1 crore plus agricultural incomes. Agricultural income declared by taxpayers, in returns filed up to November 28, 2014, for exemption in the 2014-15 assessment year, stood at Rs.9,338 crores. So, the exemption for agricultural incomes ends up benefiting medium and large farmers and agricultural companies, which was surely not the intended outcome. The fact is, the small and marginal farmers – and that is the vast majority, based on NSS figures – are simply eking out subsistence livings, and their incomes are in any case far below the minimum threshold limit of Rs.2,50,000 of personal income taxation to ever be taxable.

The agriculture sector has long acted as a tax shelter. Taxpayers wishing to convert black money into white money show ownership of ancestral property in villages. They are able to obtain fictitious receipts from traders of agricultural commodities as evidence that they have produced and sold agricultural produce.

A famous case of artificially boosting agricultural income was reported¹³ that of a prominent politician, former CM of Himachal Pradesh, Mr. *Veerabhadra Singh* who owns apple orchards in Shimla. Until 2009, the orchards yielded annual profits of Rs.10 lakhs to Rs.20 lakhs. But in 2012, he filed revised income tax returns showing earnings of Rs.6.15 crores from the orchards over a period of three years. The investigation by the income tax department found the apples were shipped on scooters, oil tankers and motorcycles to a non-functional mandi where they were sold to unknown firms with non-existent addresses. In effect, the bumper harvest of apples was a fabrication, and that unaccounted income from other sources was passed off as agricultural income. Surprisingly, he has

declared his agricultural land value as Rupees Eighty lakhs only in his affidavit before the Election Commission.

The extended ‘assured income support’ scheme for farmers (PM-Kisan), which was approved by the present Government in its first cabinet meeting after taking over, will also benefit over eight lakhs big landholders — those who own over 10 hectares (nearly 25 acres) of land. While such landholders account for just 0.6% of farmers overall, their numbers in some States like Punjab (5.5%) and Rajasthan (4.7%) are high.

The prestigious scheme of Telangana Government “Rythu Bhandu” *i.e.*, income support scheme to every farmer at the rate of Rs.5,000 per acre also lacks rationality between the small farmers and the farmers who are otherwise rich and having huge lands.

It is estimated that just by bringing to tax the incomes of the top 4.1% of total agricultural households, at an average tax of 30%, as much as Rs. 25,000 crores could be collected as agriculture income tax. The amount that would be brought to tax as a result of plugging the tax loophole would be in addition to this direct revenue.

8. Conclusion:

There should be an amendment to the Constitution – tax agricultural income or it should be taken in concurrent list such as Goods and Services Tax Act or State Government can levy tax on agricultural income. The States must exercise their constitutional power and shall work out the best modes of levying tax on the agricultural income with least effect on small and medium farmers and to see the agricultural income should be brought into the economy.

Any person owns Ac.10-00 or more of agricultural land shall compulsory file the

13. The Economic Times e-Paper dated 24-10-2012

Income Tax Return and declare their income from agriculture irrespective of the income earned and shall be calculated in the manner prescribed under the provisions of Income tax and shall also apply the provisions of set off and carry forward of loss from agriculture under the said provisions.

Agricultural income showing more than Rs.10 lakhs in the income tax returns shall be evidenced by the receipts issued by the agricultural market committee or any other proof of receipt and the same should be verified with the deposits in the bank accounts and all the payments as far as possible shall be made other than cash and evidenced by bills, vouchers *etc.*

Capital Gains on Agricultural land must be brought into tax system. The Capital gain is the difference between sale value and acquisition value and if there is any appreciation in the value of land paying 10% or 20% of capital gain tax shall not be a problem to any person including the agriculturist.

TDS provisions under the income tax Act shall also apply to the sale of Agricultural land where the sale consideration is more than Rs.50 lakhs, as on today it is outside the purview of the Act.

Reporting of Non-Agricultural Income as Agricultural income should be seriously verified. There should be different columns in the income tax return one for the cultivator and the other for the owner of the land. Most of the tax evaders show the agricultural income as cultivator though they do not have any Agricultural land and convert their non-agricultural income into agricultural income and claims exemption.

Thus the agricultural income must be brought into tax net giving exemptions to small farmers either in terms of land holdings or in terms of income earned or in both the criteria and tax higher income group in the national interest is the need of the hour.

THE SAVEY OF HUMAN RIGHTS VOYAGE

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A right delayed is a right denied

What are we having this liberty for? We are having this liberty in order to reform our social system, which is full of inequality, discrimination and other things, which conflict with our fundamental rights.

—Baba Saheb Dr. Bhim Rao Ambedkar