

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**Before Sh. N. K. Saini, AM and Sh. Kuldip Singh, JM**

**ITA No. 5345/Del/2015 : Asstt. Year : 2012-13**

Rohtas Projects Ltd., 806-807, Indra Prakash Building, 21, Barakhamba Road, Connaught Place, New Delhi	Vs	Pr. CIT(C), 7/81-B, Tilak Nagar, Kanpur
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCR7598H</b>		

**ITA No. 5346/Del/2015 : Asstt. Year : 2012-13**

Reeco Structural Pvt. Ltd., 806-807, Indra Prakash Building, 21, Barakhamba Road, Connaught Place, New Delhi	Vs	Pr. CIT(C), 7/81-B, Tilak Nagar, Kanpur
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCR0509G</b>		

**ITA No. 5347/Del/2015 : Asstt. Year : 2012-13**

Hydric Farms Inputs Ltd., Flat No. 2F-50B, Madhu Vihar Extn. Patparganj, New Delhi-110092	Vs	Pr. CIT(C), 7/81-B, Tilak Nagar, Kanpur
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AABCH3997B</b>		

**Assessee by : Sh. Sanjay Kumar Garg, CA &  
Sh. Akarsh Garg, CA  
Revenue by : Sh. Amit Jain, Sr. DR**

<b>Date of Hearing : 19.04.2018</b>	<b>Date of Pronouncement : 23.04.2018</b>
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**ORDER**

**Per N. K. Saini, AM:**

These three appeals by the assesseees are directed against the separate orders each dated 16.06.2015 of the Id. Pr. CIT(C), Kanpur.

2. Since, the issues involved are common in all these appeals which were heard together so these are being disposed off by this common order for the sake of convenience and brevity.

3. At the first instance, we will deal with the appeal in ITA No. 5347/Del/2015 in the case of Hydric Farms Inputs Ltd., New Delhi Vs Pr. CIT(C), Kanpur. Following grounds have been raised in this appeal:

*"1. BECAUSE the "Pr. CIT" has erred in law and on facts in observing that the regular assessment order dated 15.10.2014 had been passed by the Assessing Officer without examining/making enquiries on various issues [as specified in the notice under section 263(1) dated 23.0.2015] and on that ground in holding the said assessment order to be erroneous and also prejudicial to the interest of revenue so as to assume jurisdiction to set aside the same.*

*2. BECAUSE the assessment order dated 15.10.2014 accorded fully with the provisions of law and it could not have been held to be erroneous and prejudicial to the interest of revenue so as to empower the "Pr. CIT" to set aside the said assessment order, with the direction to the Assessing Officer to make assessment afresh "after taking into account the points made above on the merits of the case as well as documents submitted by the assessee during the course of assessment proceedings, and other information found during the course of search."*

3. *BECAUSE, while exercising the revisionary jurisdiction under section 263 in relation to the regular assessment order dated 15.10.2014 for the assessment year 2012-13, the "Pr. CIT" has failed to appreciate and missed to note that*

*a) neither the event of search and seizure under section 132(1) that had taken place long back on 09.07.2008 nor the order dated 26.11.2010 passed by the Hon'ble Income Tax Settlement Commission, New Delhi under section 245D(4) covering the assessment year 2003-04 to 2010-11) did not have any bearing so far as assessment year 2012-13 was concerned;*

*b) net agricultural income as disclosed by the "appellant" was not only fully verifiable from the records kept and maintained by the "appellant" in regular course, the same was in conformity with past also;*

*c) no defect having been found out (even in the revisionary proceedings under section 263) the quantum of agriculture related income (derived mainly from sale of saplings) could not be said or held to be unusual.*

*and accordingly the revision of the assessment order dated 15.10.2014 is based on wrongful assumption of jurisdiction which is not tenable either on facts or in law.*

4. *BECAUSE in any case in the grounds referred to and relied upon by the "Pr. CIT", for revision of regular assessment order dated 15.10.2014 are wholly vague, indefinite, remote and farfetched and wholly irrelevant, so much so that even the case laws referred to in the impugned order are not relevant on the facts of the instant case, with the result that the order dated 16.06.2015 is wholly vitiated.*

***WITHOUT PREJUDICE TO THE AFORESAID***

5. *BECAUSE the order dated 16.06.2015 passed by the "Pr. CIT" under section 263 of the Act is wholly illegal as having been passed without giving the "appellant" a due and effective opportunity of being heard.*

6. *BECAUSE the "Pr. CIT", instead of hurrying up the proceedings, so as to conclude the same on 10.04.2015 should have accepted the legitimate request (made by the "appellant") for adjournment for one month.*

7. *BECAUSE the "appellant" had sought for adjournment on very cogent grounds and refusal of the "Pr. CIT" to grant such adjournment beyond 10.04.2015 was wholly unjust and even lacked in bonafide as;*

*a) limitation for passing the order under section 263 in relation to the assessment order dated 15.10.2014, was due to expire on 31.03.2016;*

*b) notice under section 263(1) was issued on 23.03.2015, fixing the date of hearing on 30.03.2015;*

*c) on 30.03.2015 the "appellant" had duly appeared through its authorized representative and sought for one month's time for making compliance of the said notice;*

*d) the adjournment was granted upto 10.04.2015 only, and after the said date the "Pr. CIT" took more than two months in passing the order under section 263, on 16.06.2015; and*

*e) even after that, his office took nearly two weeks in serving the order on the assessee/appellant*

*8. BECAUSE the order appealed against is contrary to the facts, law and principles of natural justice.”*

4. Vide Ground Nos. 5 to 7, the main grievance of the assessee relates to the effective opportunity of being heard not given by the Pr. CIT.

5. Facts of the case in brief are that the assessee filed the return of income on 30.09.2012 declaring an income of Rs.62,12,825/-. The AO, however, completed the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act) at an income of Rs.64,09,844/- vide order dated 15.10.2014 by making the addition of Rs.1,97,019/- on account of telephone expenses. Thereafter, the Pr. CIT exercised his powers u/s 263 of the Act and observed that the assessment order dated 15.10.2014 had been passed by the AO without examination and that the order was found to be erroneous and also prejudicial to the interest of revenue for the following reasons:

*“1. The case was selected for scrutiny on CASS with the reasons of having large agricultural income, large interest related to exempt income u/s 14A and large increase in unsecured loans.*

*2. There are a large number of inter related transactions. These have not been examined properly.*

*3. All the replies/submission of the assessee have been considered without any independent verification.*

*4. Assessee has claimed finance cost of Rs.1,77,40,524/-. As per balance sheet assessee company has made loan/advances of Rs. 24,46,30,023/- to related parties.*

*Further as per reply dated 20.6.2014 the assessee company has given advance to sister concern for purchase of agricultural land. However there is no evidence/agreement to sale in this regard available on record. Further there is investment of Rs. 1,96,67,550/- in group companies and in shares. AO has not examined this aspect for the angle of disallowance of interest/finance cost incurred due to loans taken.*

*5. Assessee has declared agricultural receipts of Rs. 3,36,75,250/- against which expenses of Rs. 51,66,011 /- has been claimed and net agricultural income of Rs. 2,85,09,239/- has been declared and claimed as exempt being agricultural income. It was stately earned on account of sale of sapling. Few basic issues in this regards have remained to be examined:*

*(a) Whether it represents agricultural income in the first place?*

*(b) What are the expenses attributable in earning this agricultural income which is exempt in view of section 14A? If a separate P&L account is prepared, the result would be as under:-*

	<i>Receipt(in Rs.)</i>	<i>Net profit (in Rs.)</i>	<i>Net profit rate</i>
<i>Agriculture related (claimed exernpt)</i>	<i>3,36,75,250/-</i>	<i>2,85,09,239/-</i>	<i>84.66%</i>
<i>Non agriculture related</i>	<i>37,05,25, 289/-</i>	<i>64,55,921/-</i>	<i>1.74%</i>
<i>Total</i>	<i>40,42,00,539/-</i>	<i>3,49,65,160/-</i>	<i>8.65%</i>

*This analysis clearly indicates that there is abnormal profit declared in respect of exempt income and very low profit declared in respect of taxable income. As per section 14A(2) of the IT Act, 1961 " The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of total income under this Act in accordance with such method as may be prescribed. If the Assessing*

*Officer is not satisfied with the correctness of claim of the assessee in respect of such expenditure in relation to income which does not form part of total income under this Act.*

*A simple perusal of above chart clearly indicates that assessee has shown very high net profit for agricultural activities and leading a conclusion that agricultural income has purposely been inflated for claim that exemption of tax u/s 10 of the IT Act. As already indicated above in such a situation the Assessing Officer should have made enquiry about the nature of crop, the mode of their crops as well as expenses incurred in earning that income. The net profit rate 84.66% from agricultural activity is unreasonable to the purpose of cash crop. In fact the assessee should have submitted a detailed audited account with respect to the agricultural income as provided to the Finance Act in sub-section (2) of section 2 of Chapter II dealing with rates of Income tax. In terms of sub-section (3) of section 13 of the Finance Act, the agricultural income is to be calculated in accordance with part IV of the First Schedule which prescribed rules for computation of net agricultural income. The perusal of the entire records indicate that no computation as provided in Part IV of First Schedule has been carried out by the Assessing Officer.*

*As per details of agricultural income submitted by the assessee during the assessment proceedings and which is forming part of assessment record, the assessee has stated that besides sale of agricultural input through 69 retail shops called Khushali Kendra across UP, he is also engaged in cultivation and selling of sapling/seedling of various varieties grown in the land owned by the company as well as land taken on lease with owners at various locations. Now as per balance sheet, land owned by the assessee company is only worth Rs.10,73,440/-. Earning income of Rs.2.85 crore from land valued at Rs. 10.73 lakhs is not justified from any*

*stretch of imagination. In P&L account cultivation expenses of Rs.51,66,011/- has been debited and claimed as only expenses pertaining to agricultural income. This submission of the assessee that sapling are also shown on leased land is not apparently correct, as no such rent expenses with respect of lease rent have been claimed. The A.O. has also failed to make enquires about the same. No proper working of agricultural income has been provided by the assessee, thus this aspect of agriculture income as well as corresponding expenses has not been properly examined?*

*(a) What exactly is the land holding and whether it is capable of generating that much income?*

*(b) What is the expenditure in relation to this agriculture income?*

*All these aspects have not been examined by the AO.”*

6. The Id. Pr. CIT asked the assessee to show cause as to why the order u/s 143(3) of the Act dated 15.10.2014 should not be considered as erroneous and prejudicial to the interest of revenue within the meaning of Section 263(1) of the Act and as to why remedial action should not be taken. He fixed the date of hearing on 30.03.2015. In response, the assessee sought adjournment requesting for one month time. However, the hearing was fixed again on 06.04.2015 on that date also the assessee sought adjournment. The Id. Pr. CIT fixed the date of compliance on 10.04.2015. On the said date also, the authorized representative of the assessee sought adjournment. However, the Id. CIT(A) decided the case *ex-parte* and held that the order passed by the AO was

erroneous and prejudicial to the interest of revenue and set aside the same.

7. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that the request for adjournment was made to the Id. CIT(A), since the mother of the authorized representative got burnt and was going through medical treatment. In support of the above contention, he furnished the copy of letter dated 06.04.2015 addressed to the Pr. CIT(C), Kanpur. It was further submitted that the assessee was facing the hardship, for that reason time was sought but the Id. Pr. CIT held that the assessment order passed by the AO as erroneous and prejudicial to the interest of revenue without giving a proper opportunity of being heard to the assessee, even when a sufficient time was available with the Id. Pr. CIT to decide the case because it was not going to be barred by limitation. It was reiterated that the assessee could not collect the relevant informations within a short span of time and the authorized representative of the assessee was not available due to the burn injuries to his mother who was hospitalized and that the Id. Pr. CIT(C) passed the *ex-parte* order in violation of natural justice.

8. In his rival submissions, the Id. Sr. DR supported the impugned order passed by the Pr. CIT and submitted that ample opportunities of being heard were provided by the Id. Pr. CIT but the assessee did not cooperate, so there was no alternative except to pass the *ex-parte* order on merit.

9. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the authorized representative of the assessee sought adjournment since his mother got burnt and was hospitalized but the Id. Pr. CIT passed the impugned order *ex-parte* in haste. It is well settled law that nobody should be condemned unheard as per the *maxim "audi alteram partem"*. We, therefore, considering the totality of the facts of the present case, deem it appropriate to set aside this case back to the file of the Id. Pr. CIT(C) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

10. The facts in ITA Nos. 5345 & 5346/Del/2015 are identical to the facts involved in ITA No. 5347/Del/2015. Therefore, our findings given in the former part of this order shall apply *mutatis mutandis* in case of all the three assessees.

11. In the result, the appeals of the assessees are allowed for statistical purposes.

(Order Pronounced in the Court on 23/04/2018)

Sd/-  
**(Kuldip Singh)**  
**JUDICIAL MEMBER**

Sd/-  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 23/04/2018**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**