`IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'B', HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No. 667/Hyd/2017
Assessment Years: 2012-13

Pravardhan Seeds Pvt. Ltd., Hyderabad. PAN – AAAAFCP0118A	vs.	Asst. Commissioner of Income-tax, Circle – 16(2), Hyderabad.
Appellant		Respondent

Assessee by:	Shri C.S. Subramanyam
Revenue by:	Shri YVST Sai
Date of hearing:	20/11/2018
Date of pronouncement:	30/01/2019

<u>O R D E R</u>

<u>PER S. RIFAUR RAHMAN, AM:</u>

This appeal filed by the assessee is directed against the order of CIT – 4, Hyderabad, dated, 24/03/2017 for AY 2012-13, passed u/s 263 of the Income-tax Act, 1961 (in short 'the Act').

2. Brief facts of the case are, assessee company engaged in the business of seed production of cotton and other crops, filed its return of income for the AY 2012-13 on 27/09/2012, declaring a loss of Rs. 3,42,17,916/-, while book profit u/s 115JB was admitted at Nil. AO passed the assessment order u/s 143(3) of the Act on 30/03/2015 accepting the loss returned.

3. On perusal of assessment records and return of income submitted by the assessee, the CIT – 4, exercising powers

vested u/s 263 of the Act, held that the order passed by the AO is erroneous and prejudicial to the interests of revenue, for the reason that the AO while passing the order u/s 143(3) allowed the agricultural relief u/s 10(1) without making inquiries or verification, which should have been made in respect of the claim of agricultural relief allowable u/s 10(1) of the Act. Accordingly, a notice u/s 263 of the Act issued to the assessee.

4. In response to the said notice, the assessee filed written submissions on 20/01/2017, in which, it was contended that the nature of activity carried out by the assessee company, the operation constituting the agricultural activity, the role of the assessee etc., had been explained before the AO.

4.1 The assessee referred to the decision of the Hon'ble High Court of AP in the case of Prabhat Agri Biotech Ltd., a group company to submit that the activities of the assessee were exactly similar to the said company.

4.2 The assessee further submitted that since the AO had examined the information submitted and come to a conclusion that the income from sale of hybrid seeds was not taxable in view of the said judicial pronouncement, and, therefore, the order passed by him was not erroneous and prejudicial to the interests of revenue.

5. After considering the submissions of the assessee, the CIT observed that the AO did not examine the fact that whether the production of seeds by adopting planned, scientific and specialized procedure in departure from basic agricultural operation in the instant case could still be claimed as agriculture. Further, he observed that he did not even call

for the details of contracts to examine their nature or any other details to examine that the activities undertaken by the assessee were identical to those that of any farmer would carry in his own land. In view of the above observations, the CIT set aside the order of AO and directed to redo the assessment after duly examining the above issue, reiterating the reason that the AO passed the order without making enquiries or verification as should have been made to examine the claim in respect of agricultural relief made u/s 10(1) of the Act.

6. Aggrieved by the order of CIT, the assessee is in appeal before us raising the following grounds of appeal:

> *"1. The order of the Learned Commissioner of Income tax is against law, weight of evidence and probabilities of the case.*
>
> *2. The learned Commissioner of Income Tax erred in holding that the assessment order passed u/s 143(3) of the Income-tax Act, 1961 in the case of the assessee for Assessment Year 2012-2013 is erroneous in so far as it is prejudicial to the interests of revenue.*
>
> *3. The learned Commissioner of Income Tax having appreciated inquiry and detailed response by the assessee during the assessment proceedings, erred in holding that assessment has been completed without making enquiries or verification as should have been made to examine the claim in respect of agricultural relief u/s 10(1) and thus erred in holding that the order passed is erroneous.*
>
> *4. The learned Commissioner of Income Tax erred in concluding that the Assessing Officer wrongly applied the ratio laid down by the judgments relied upon by the assessee.*
>
> *5 The learned Commissioner of Income Tax erred in concluding that the Assessing Officer failed to make enquiries in order to ascertain the real nature of the income claimed as received from agricultural operations.*

For the above grounds and such other grounds that may be urged at the time of hearing, the appellant prays that the appeal be allowed. The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary."

7. The ld. AR of the assessee reiterated the submissions as made before the revenue authorities and filed written submissions before us, which were submitted before the revenue authorities in the paper book.

8. Ld. DR, on the other hand, filed synopsis of arguments, in which, he relied on various cases and referring to the Explanation 2 to section 263(1) (inserted with effect from 01/06/2015), submitted that if in the opinion of the Principal CIT, any order passed without making inquiries or verification or passed allowing relief without enquiring into the claim shall be deemed to be erroneous in so far as it is prejudicial to the interests of revenue. He, therefore, submitted that in the instant, case, there was a valid opinion formed by the Pr. CIT that the exemption u/s 10(1) was granted without enquiry, hence, the revision u/s 263 is a valid revision.

9. Considered the rival submissions and perused the material on record. As submitted before the AO as well as before the CIT by the assessee, the activities undertaken by the assessee in growing and production of seeds are as under:

i) Selection of fields, service provider through farm supervisors to enter in to agreement.

ii) Issue of foundation seeds and cultivation and farm cultivation inputs.

iii) Land preparation, sowing, transplanting, roughing, data selling, pest and fertilizer application, internal cultivation, irrigation, weeding ploughing and pollination.

iv) Inspection of fields by production staff

v) Harvesting and produce supply to processing units (own or third party units)

vi) Seed quality testing, drying, ginning, delinting, chemical coating, packing including labelling as per the Seed Act,1966.

vii) Packed seed distribution and sales.

9.1 It was the submissions of the assessee that since seeds are derived from mother plants grown on land, they are considered as agricultural produce, hence, the production of seeds by farming is an agricultural activity of the company. Further, since the company gets cultivation done under its supervision and at its own cost and risks as stated above, the company can be said to be a grower of agricultural produce and hence is considered as an "agriculturist". Since the risk and rewards associated with the agricultural operations lies with the company and are borne by the Company and the company has an insurable interest on the farm produce, "the activities carried on by the company was in the nature of agricultural activities" and" the sale of the agricultural produce falls within the scope of agricultural income". Since the above satisfy the condition mentioned in sub clause(iii) of clause of (b) of section 2(1A) of the Income tax Act, 1961, the income arising there from would fall within the ambit of "agricultural income" as was held by the Apex Court in "CIT Vs Raja Benoy Kumar Sahar Roy, 32 ITR466".

9.2 The production of seeds and marketing is regulated by The Seeds Act, 1966 and the seeds cannot be marketed unless they are processed, tested and labelled.

9.3 On agricultural processing, the Apex Court had an occasion to consider the import and scope at the "process ordinarily employed by the cultivator". In "Dooars Tea Company Limited Vs. Commissioner of Agriculture, Income-tax, 44 ITR 6" and" K. Lakshman & Co. and Another Vs CIT, 239 MR 597 " the Apex Court held that the process should be to make produce rarketable. It should not change the character and nature of the produce without resulting in an altogether new product. Then it would be agricultural income.

9.4 Applying the above principles, it can be construed that the processing carried on by the Company is ordinary process 'employed by the cultivator to be fit for marketing, for the following reasons:

> The processes carried on ;by the Company are much normal process carried on by a cultivator and as required oy a statute i.e., The Seeds Act, 1966 .

> The products remain the same even after processing where we remove unfilled seeds and foreign matter.

> The seeds remain as seeds remain after processing.

> It retains its nature and character as seeds as produced on plants in field.

> No new product has evolved or emerged from the seeds on account of the processing.

Therefore, the operations carried out by the Processing Division of the Company falls within sub-clause (ii) of clause (b) of section 2(1A) of the Income-tax Act, 1961.

9.5 In view of the foregoing, since the activities carried on by the company was in the nature of agricultural activities and the income arising there from falls within the ambit of "agricultural income", the company is eligible for claim of exemption under section 10(1) of the Income-tax Act, 1961.

9.6 The assessee relied on the decision of the Hon'ble High Court of AP in the case of assessee's sister concern, Prabhat Agri Biotech Ltd., vide ITTA No. 88 of 2014, wherein the Hon'ble Court held as under:

> *"In this case, we find that the assessee claimed for exemption under Section 10(1) of the Income Tax Act, 1961 treating the income generated from the sale of basic/foundation seeds as agricultural income. Therefore, the question is whether the income arising from out of the sale of seeds can be treated to be income otherwise than the agricultural income. No one can dispute that the seed is the product of agricultural activity and the seeds cannot be sold commercially, unless it is produced by agricultural activity."*

9.7. Though the order of AO is cryptic, but, after obtaining the information from the assessee and relying on the decision of the Hon'ble AP High Court in assessee's sister concern, the AO allowed the claim of the assessee u/s 10(1) of the Act. Hence, the findings of the CIT that the AO allowed relief u/s 10(1) without making inquiries or verification. are not proper.

9.8. As regards ld. DR's reference to Explanation 2 to section 263(1), we rely on the decision of of the Mumbai Benches of ITAT in the case of Shri Anil L. Todarwal Vs. Pr. CIT in ITA No. 3498/Mum/2017 vide order dated 2nd January, 2018 wherein the coordinate Bench has held as under:

> *"9. We are not oblivious of the fact that the legislature, vide the Finance Act, 2015, by making available Explanation 2 to Sec. 263 on the statute w.e.f 01.06.2015, had therein provided certain circumstances, under which the order passed by the A.O, if, it is in the opinion of the Principal Commissioner or Commissioner so, shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue. However, exercise of such deemed powers conferred on the revisional authority as per Explanation 2 have to construed by strictly confining and subject to satisfaction of the conditions contemplated therein. We are of the considered view that to the extent making of inquiries*

and verification which in the opinion of the CIT the A.O should have made, as contemplated in Clause (a) Explanation 2, though gives an edge to the opinion of the CIT as regards the inquiries and verifications which the A.O should have made, but then, such inquiries and verifications are not only required to be relevant for adjudication of the issue, but also should point out as to how the view arrived at by the A.O by not taking recourse to such inquiries and verification, can be faulted with and held to be wrong. We thus are of the considered view that now when the assessee had in the course of proceedings before the A.O proved that the foreign commission was paid to the foreign commission agents for services rendered abroad, which thus did not cast any obligation on the assessee to withhold tax while making such payment, therefore, the observation of the Principal CIT that the assessee had neither submitted an order under Sec. 195 of the Act, nor the prescribed certificate in Form No. 15CA of the Chartered Accountant, specifying that the deduction at source on such commission paid was not required to be made, in itself is rendered as redundant. Thus, in the absence of any statutory obligation on the assessee for withholding tax on the aforesaid payment, neither of the aforesaid verifications as were sought by the Principal CIT did survive any more. We are of the considered view that the Principal CIT in the backdrop of the aforesaid facts as emerges from the record, and was also pleaded by the assessee before him, had however not shown as to how the view taken by the A.O was found to be erroneous. We thus are of the considered view that as in the case of the present assessee, the necessary inquiries or verifications for leading to the conclusion that the claim of the assessee as regards the payment of foreign commission on the export sales was in order, were made by the A.O, therefore, it can safely be concluded that the order passed by him was not without making inquiries or verifications which should have been made. Still further, as regards the payment of local commission of Rs.33,000/- , we have perused the material which was furnished by the assessee during the course of the assessment proceedings, as well as his reply to the notice under Sec.133(6). We find that the assessee had through out been claiming that the amount of Rs.33,000/- was paid to Shri Pratap Singh towards supervision charges and formed part of his salary. We have given a thoughtful consideration to the aforesaid facts in the backdrop of the material available on record and are of the considered view that the A.O only after necessary deliberations on the aforesaid claim of the

assessee had accepted the same. We are of the considered view that now when the A.O after necessary deliberations had accepted that the payment made to Sh. Pratap Singh was by of salary, therefore, the provisions of Sec. 194H contemplating an obligation for deduction of tax at source on payment of commission was not attracted. We are of the considered view that the observation of the Principal CIT that the amount paid to Sh. Pratap Singh was by way of commission and not salary, on which the assessee had defaulted to deduct tax at source, without pointing out as to on what basis he had so concluded, and as to what all inquiries or verification the A.O should have made, thus, cannot be accepted. We are of the view that now when a plausible view had been arrived at by the A.O accepting the claim of the assessee that the amount paid to Shri Pratap Singh towards supervision charges was by way of salary, therefore, the order passed by the A.O could not have been faulted with by holding that the same was erroneous in so far as it was prejudicial to the interest of the revenue. We thus are of the view that the assumption of jurisdiction by the Principal CIT to revise the assessment order passed by the A.O, even in respect of the issue of payment of commission to Sh. Pratap singh cannot be sustained and is liable to be vacated. We thus in the backdrop of our aforesaid observations are of the considered view that now when the A.O after making necessary inquiries and verifications which should have been made by him in the course of the assessment proceedings and the queries raised vide notice under Sec. 133(6), had arrived at a plausible view, which we are afraid the Principal CIT had not been able to show as to how the same was erroneous, nor as to what all inquiries and verification leading to a contrary view should have been made by him, therefore, are unable to persuade ourselves to be in agreement with the Principal CIT that the order passed by the A.O under Sec. 143(3) was erroneous in so far it was prejudicial to the interest of the revenue, therein rendering it liable to be revised under Sec. 263 of the Act. We may further observe that we are in agreement with the contention of the ld. A.R that merely because the A.O had not referred about the inquiries and verifications carried out by him in respect of the issue under consideration in the body of assessment order, the same would not vest jurisdiction with the CIT to revise the order, as long as such exercise so carried out by the A.O can be gathered from the record. We find that our aforesaid view is fortified by the judgments of the Hon'ble High Court of Bombay in the case of CIT Vs.

> *Fine Jewellery (India) ltd. (2015) 372 ITR 303 (Bom), Commissioner of Income-tax Vs. Gabrial India Ltd.(1993) 203 ITR 108 (Bom) and MOIL Ltd. Vs. CIT-1, Nagpur (2017) 396 ITR 244 (Bom). We thus in the backdrop of our aforesaid observations are of a strong conviction that the Principal CIT had traversed beyond the scope of his jurisdiction and revised the order passed by the A.O under Sec. 143(3), dated 29.01.2015, which as observed by us hereinabove, was passed by the A.O after making the necessary inquiries and verifications in respect of the issues under consideration."*

9.9. In view of the above discussion, we notice that the assessee has submitted the written submissions on agricultural activities and filed the case law claiming that the activities of the assessee are exactly similar to M/s Prabhat Agri Biotech Ltd. (supra). This was not disputed by ld. CIT. Further, assessee brought to our notice that AO has asked for various details including the lease details on the date of hearing (email sent by the AR to the company after hearing with the AO on 06/01/2015). In our considered view, the assessment order need not discuss all the points, but, AO or assessee should bring on record that AO has made enquiry and relevant information was submitted before him. In our view, the claim of the assessee, on the agricultural activity particularly peculiar, as in the case of assessee, AO should have called for the leased agreement with the farmers and evaluated how the activities of the assessee are exactly similar to M/s Prabhat Agri Biotech. No doubt AO asked for the information, but, there is no record that assessee has actually submitted that before the AO. It clearly shows that AO has not made enquiry in this case, but, merely accepted the contention of the assessee.

9.10 Further, in our view, no doubt, AO has not applied his mind, but, the CIT has not established how the order of AO is

prejudicial to the interests of revenue. Looking at the facts submitted before us and the findings of Hon'ble Jurisdictional High Court that the seeds cannot be produced without basic agricultural activities, in our view, CIT should not stop merely on finding that the order is erroneous but also has to establish that the order of AO is prejudicial to the interests of revenue. In the given case, the only missing link is the verification of lease agreement with the farmers and activities whether it is similar to the Prabhat Agri Biotech or not. This could also be verified by Id. CIT and established that it is prejudicial to the interests of revenue. Ld. CIT has failed in this aspect. This is in line with the decision of Hon'ble Supreme Court in the case of Malabar Industrial co. Ltd., 243 ITR 83(SC) and CIT Vs. Green World Corporation 314 ITR 81 (SC). Therefore, in our view, no doubt, the assessment order is erroneous but not prejudicial to the revenue considering the case law submitted before us. As per the Hon'ble AP High court, seeds cannot be produced without basic agricultural activities. The assessee has sold the seeds and must have carried out the agricultural activities in order to produce the seeds. Hence, we set aside the order of CIT passed u/s 263 of the Act and the order of the AO is restored. Accordingly, ground raised by the assessee are allowed.

10. In the result, appeal of the assessee is allowed.

Pronounced in the open court on 30th January, 2019.

Sd/-	Sd/-
(P. MADHAVI DEVI)	(S. RIFAUR RAHMAN)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Hyderabad, dated 30th January, 2019.

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Copy forwarded to:

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2. *ACIT, Circle – 16(2), Hyderabad.*
3. *CIT - 4, Hyderabad*
4. *Addl. CIT, Range – 16, Hyderabad*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*