

**आयकर अपीलीय अधिकरण, "एस.एम.सी", न्यायपीठ, कटक**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, CUTTACK**

श्री चन्द्र मोहन गर्ग, न्यायिक सदस्य के समक्ष ।

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

आयकर अपील सं./ITA Nos.511/CTK/2017 & 293/CTK/2018

(निर्धारण वर्ष / Assessment Years :2008-2009 & 2009-2010)

|  |     |                               |
|--|-----|-------------------------------|
| M/s Mittal Plantations,<br>Jyoti Mill Campus, Souraguda,<br>Jeypore-764005 | Vs. | ITO, Jeyopre Ward,<br>Jeypore |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>ABAFM 0671 J</b>               |     |                               |
| (अपीलार्थी /Appellant)   | ..  | (प्रत्यर्थी / Respondent)     |

निर्धारिती की ओर से /Assessee by : Shri D.K.Sheth, AR  
राजस्व की ओर से /Revenue by : Shri Subhendu Dutta, DR  
सुनवाई की तारीख / Date of Hearing : **06/02/2019**  
घोषणा की तारीख/Date of Pronouncement **14/02/2019**

**आदेश / O R D E R**

The above appeals filed by the assessee against the order of CIT(A)-1, Bhubaneswar, dated 14.09.2017 & 18.04.2018 passed in First Appeal Nos.0032/16-17 & 0352/16-17 for the assessment years 2008-2009 & 2009-2010.

2. Since the issue in both the appeals of the assessee are identical, therefore, both the appeals have been heard finally and disposed off by this consolidated order. For the sake of completeness, the facts mentioned in ITA No.511/CTK/2017 are taken into consideration and the grounds raised therein read as under :-

1. *For that, the learned Commissioner has erred in holding the agricultural income as non-agricultural income or as business income by ignoring all the submissions including the documentary evidences which indicate that the appellant is engaged in agricultural operations.*

2. *For that, while the learned Commissioner (Appeals) has erred in merely upholding the assessment on the plea that no remand report was available in the appeal record for the assessment year whereas it was the learned Commissioner himself who ought to have sought for a remand report from the learned assessing officer.*
3. *For that, the learned Commissioner ought to have exercised his powers and sought the remand report once again from the field officers if he felt it was necessary for him before disposing the appeal. Not seeking a remand report from the field authorities and then upholding the assessment on the plea that such a remand report is not available in the record has resulted in a gross miscarriage of justice.*
4. *For that, the learned Commissioner appears to have vindictively passed the order without referring to his own appeal order (for AY 2010-11) even though his attention was invited to his order by reversing his own stand on a flimsy ground.*

Prayer

*For these and other reasons as may be urged at the time of hearing of the appeal, the Appellant prays that the Hon'ble Tribunal may be kind enough to allow the appeal in its entirety and annul the assessment and for this act of kindness, the Appellant shall ever remain obliged.*

3. Brief facts of the case are that the assessee is engaged in agricultural operations, namely, coffee plantation and derives income only from sale of coffee seeds and black pepper. The assessee filed return of income electronically on 06.04.2015 disclosing the total income for the A.Y.2008-2009 at Rs.7,95,389/-. Thereafter the AO completed the assessment assessing total income of the assessee at Rs.7,95,390/- and treated the same as business income and passed order u/s.147/143(3) of the Act, dated 30.03.2016.
4. In the First Appeal, the Id. CIT(A) confirmed the action of the AO observing that in absence of complete evidence, the claim of agricultural income for the relevant previous year cannot be accepted.
5. Now, the assessee is in further appeal before the Tribunal.

6. Ld. AR submitted that both the authorities below have erred in holding the agricultural income as business income, ignoring the fact that the assessee is engaged in agricultural operations. It was also the contention of the Id. AR that the AO has considered and adopted only selective portions of the submissions of the assessee which would suit his purpose to assess the income to tax while deliberately and consciously ignoring other submissions and even the field inquiry report, which if considered, would lead to an undoubted conclusion that the assessee is, in fact, engaged in agricultural operations. Accordingly, Id. AR prayed for allowing the appeal of the assessee.

7. *Per Contra*, Id. DR submitted that the assessee has failed to substantiate its claim before the AO producing any evidence of earning of any agricultural income in the course of assessment proceedings and the documents which have been provided by the assessee before the authorities below are related to M/s Anjani Kumar Agarwal(HUF) and not relating to the present assessee. Therefore, both the authorities below have taken a plausible view in not accepting the income of the assessee as agricultural income and prayed for dismissal of the appeal of the assessee.

8. I have heard the arguments of both the sides and perused the relevant material placed on record of the Tribunal. Prima facie, the contention of the assessee is that the assessee is engaged in agricultural activities, i.e. coffee plantation, which has a long life and yields fruit throughout its life for about 15-20 years after an initial gestation period of

2-3 years, however, the CIT(A) has ignored the remand report of the subsequent period which was already available in record. Ld. AR also drew the attention of the Bench to para 4 of the report submitted by the ITO, Jeypore Ward, Jeypore, dated 21<sup>st</sup> November, 2016 for the assessment year 2010-2011, a copy of which is placed on record of the Tribunal, which reads as under :-

*“4. IIT of this office deputed to conduct a field enquiry regarding the genuineness of the agricultural activities carried out by the firm. He visited the areas under coffee plantations as claimed by the assessee and submitted his report stating that there is indeed coffee plantations and black pepper cultivations at the sites of M/s Mittal Plantations. As per the IIT’s report after yielding; the coffee seeds undergo two processes i.e. pulping and drying. Pulping the process of forceful peeling of skin of coffee seeds with water which is done through a machine. The machine is also installed in the campus of the plantation area. After pulping it is dried on a big cement platform. After the two processes the coffee seeds are packed up and sold to M/s Anjani Kumar Agrawal (HUF). With regard to black pepper seeds, it is reported that it is directly sold in the local market/local vendors.”*

9. Accordingly, Id. AR submitted that on the basis of above report submitted by the AO, the CIT(A) has accepted the income of the assessee for the assessment year 2010-2011 as agricultural income. However, for the assessment year under consideration i.e A.Y.2008-2009, the CIT(A) did not accept its earlier order for the A.Y.2010-2011 as there is no enquiry report of the AO on remand. From the above, it is observed that the assessee is engaged in the agricultural activities since the assessment year 2008-2009 and derives income from the sale of coffee seeds and black pepper, which has not been disputed by both the authorities below. I find that both the tax authorities below have focused only on the clause (iii) of the partnership deed which states that, “(iii)

Purchase coffee seeds from other growers for the purpose of re-sale.” However, the AO has not detected even a single instance of purchase of coffee seeds from any supplier to suggest that the assessee was engaged in trading and not in growing of coffee seeds. In my opinion, holding an ‘agricultural activity’ as ‘non-agricultural activity’ by the AO cannot be said to be reasonable as the AO has merely restricted himself to one of the objectives mentioned in the partnership deed ignoring the facts of the case and documents which amply indicate that the assessee was, in fact, engaged in agricultural activity and that too after finding the existence of the plantation during the field visit. With regard to the judgment of Hon’ble Supreme Court in the case of CIT Vs. Raja Binoy Kumar Sahas Roy, [1957] 32 ITR 466, as relied upon by the AO, Id. AR submitted that this decision of the Hon’ble Supreme Court is squarely applicable to the case of the assessee. Ld. AR drew the attention of the Bench to the relevant observations of the Hon’ble Supreme Court, which read as under :-

*“We have, therefore, to consider when it can be said that the land is used for agricultural purposes or agricultural operations are performed on it. Agriculture is the basic idea underlying the expressions "agricultural purposes" and "agricultural operations" and it is pertinent therefore to enquire what is the connotation of the term "agriculture". As we have noted above, the primary sense in which the term agriculture is understood is agar—field and cultra—cultivation, i.e., the cultivation of the field, and if the term is understood only in that sense agriculture would be restricted only to cultivation of the land in the strict sense of the term meaning thereby, tilling of the land, sowing of the seeds, planting and similar operations on the land. They would be the basic operations and would require the expenditure of human skill and labour upon the land itself. There are however other operations which have got to be resorted to by the agriculturist and which are absolutely necessary for the purpose of effectively raising the produce from the land. They are operations to be performed after the produce*

*sprouts from the land, e.g, weeding, digging the soil around the growth, removal of undesirable undergrowths and all operations which foster the growth and preserve the same not only from insects and pests but also from depredation from outside, tending, pruning, cutting, harvesting, and rendering the produce fit for the market. The latter would all be agricultural operations when taken in conjunction with the basic operations above described, and it would be futile to urge that they are not agricultural operations at all."*

10. From the above observations of the Hon'ble Supreme Court, it is clear that the basic conception is the essential *sine qua non* of any operation performed on the land constituting agricultural operation. If the basic operations are there, the rest of the operations are found themselves upon the same. In the present case in hand, the assessee before the AO submitted that it is not necessary that coffee seeds are to be sown every year for the plant to grow. The coffee plant has a long life often spanning more than 2 decades. The plantations were developed during 1998-1999 at which time an estimated 65,000 seeds saplings were sown. Therefore, it can be inferred that the assessee has fulfilled the basic operations to grow the coffee plants on the land. During the assessment proceedings, the assessee has shown sale of coffee seeds and black pepper to the tune of Rs.11,58,200/- against which the assessee firm has claimed expenses on account of fertilizers & pesticides of Rs.1,88,231/- and labour charges of Rs.1,74,580/-, thereby arrived at net profit from agriculture of Rs.7,95,389/-. However, the AO brought the same to tax as business income instead of agricultural income in the hands of the assessee, to which the CIT(A) has confirmed the same.

11. It is pertinent to mention here that for the subsequent assessment year i.e. A.Y.2010-2011, the CIT(A), after receiving the remand report

from the AO, has observed that the assessee is involved in coffee plantation and cultivation of black pepper. Further the CIT(A) observed that the AO could not bring on record any evidence to show that the assessee was having non-agricultural activities and, therefore, accepted the income of the assessee as agricultural income and exempted the same from tax. However, for the year under consideration the AO has noted that the assessee firm is involved in trading of coffee seeds. But, there is neither any mention in the assessment order by the AO that from whom the assessee has purchased the coffee seeds nor any evidence has been brought on record to presume that the assessee firm is involved in the trading of coffee seeds. The AO has also accepted the income and expenditure of the assessee. I also find that for the subsequent year i.e. A.Y. 2010-2011 field enquiry was conducted and it was seen that there is indeed coffee plantations and black pepper cultivations at the sites of M/s Mittal Plantations-assessee and the CIT(A) allowed the income of the assessee as agricultural income vide order dated 04.01.2017, passed in I.T.Appeal No.0168/15-16. However, for the assessment year under consideration i.e.A.Y.2008-2009 disputing the object clause of the partnership deed of the assessee firm, went with the findings of the AO that the assessee is involved in trading of coffee seeds, ignoring the remand report of the subsequent period and other clauses i.e. clause (i) & (ii) which provides for growing coffee in the lands already owned by the partners or to be acquired and the firm was precisely carrying out the activity laid in the first two objectives only. Merely holding that object

clause (iii) of the partnership deed of the assessee states that 'purchase coffee seeds from other growers for the purpose of re-sale' and without bringing any cogent material on record by the revenue to show the activities of the assessee in trading of coffee seeds, does not way out for the CIT(A) to confirm the action of the AO even without calling for any further remand report. Therefore, I do not find any justification in orders of both the lower authorities and looking to the agricultural activities as enquired through the ITO, Jeypore Ward, Jeypore by the CIT(A) for the subsequent year, I direct the AO to allow the net agricultural income shown by the assessee in the return of income for the A.Y.2008-2009 as agricultural income instead of business income. I order accordingly.

12. Similar grounds have been taken by the assessee in its appeal for the assessment year 2009-2010. As I have decided the issue in favour of the assessee while considering the appeal of the assessee for assessment year 2008-09, therefore, the findings given by me in the aforesaid appeal shall apply *mutatis mutandis* to this appeal also. Accordingly, this appeal of the assessee for the assessment year 2009-2010 is also allowed to the terms indicated above.

**13. In the result, both the appeals of the assessee are allowed.**

Order pronounced in the open court on this 14/02/2019.

**Sd/-**  
**(CHANDRA MOHAN GARG)**  
न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 14/02/2019

प्र.कु.मि/PKM, Sr.P.S.



**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant- .  
M/s Mittal Plantations,  
Jyoti Mill Campus, Souraguda,  
Jeypore-764005
2. प्रत्यर्थी / The Respondent-  
ITO, Jeyopre Ward, Jeypore
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Senior Private Secretary)**

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack