

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री अनिल चतुर्वेदी, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI ANIL CHATURVEDI, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1106/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Dy. Commissioner of Income Tax,  
Circle – 1(2), Pune

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Futura Bioplants Pvt. Ltd.,  
2413, East Street Kumar Capital,  
Camp, Pune – 411001

PAN : AABCF2544E

.....प्रत्यर्थी / Respondent

प्रत्याक्षेप सं. / CO No.17/PUN/2019

निर्धारण वर्ष / Assessment Year : 2013-14

Futura Bioplants Pvt. Ltd.,  
2413, East Street Kumar Capital,  
Camp, Pune – 411001

PAN : AABCF2544E

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Dy. Commissioner of Income Tax,  
Circle – 1(2), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.G. Agiwal  
Revenue by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 11-07-2019

घोषणा की तारीख / Date of Pronouncement : 04-09-2019

**आदेश / ORDER****PER VIKAS AWASTHY, JM :**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-1, Pune dated 08-02-2017 for the assessment year 2013-14. The assessee has filed Cross Objections in the appeal filed by the Revenue.

2. Shri R.G. Agiwal appearing on behalf of the assessee submitted at the outset that the Revenue in appeal has assailed the findings of Commissioner of Income Tax (Appeals) on solitary issue in allowing assessee's claim of deduction u/s. 10(1) of the Act. The corresponding grounds have been raised by the assessee in ground Nos. 1 to 4 of the Cross Objections. This issue has already been considered and adjudicated by the Tribunal in assessee's own case in ITA No. 1271/PUN/2015 by the Department for the assessment year 2011-12 decided on 17-01-2018. Identical grounds were raised by the Department in assessment year 2011-12 and in the Cross Objections, the assessee had also raised similar grounds. Thus, the issue raised by the Department in its present appeal and the ground Nos. 1 to 4 raised by the assessee in Cross Objections are squarely covered by the decision of Tribunal.

2.1 The ld. AR further submitted that in ground No. 6 of the appeal by the Department, the Department has assailed the findings of Commissioner of Income Tax (Appeals) in allowing assessee's claim of depreciation in full. The ld. AR submitted that the assessee had computed

depreciation Rs.1,55,30,241/- as per the provisions of Companies Act, 1956, whereas, as per provisions of Income Tax Act the amount of depreciation comes to Rs.1,47,92,549/-. Thus, there is difference of Rs.7,37,692/- in the calculation of depreciation. The ld. AR submitted that since the entire income of assessee has been held to be exempt being agricultural income, the disallowance even if made would be tax neutral.

2.2 In respect of ground Nos. 5 and 6 of Cross Objections relating to assessee's claim of exemption on foreign exchange gain on agricultural income, the ld. AR submitted that identical grounds were raised in assessment year 2011-12. The Tribunal adjudicated this issue in favour of assessee.

3. On the other hand Shri M.K. Verma representing the Department fairly admitted that the issue raised by the Department in ground Nos. 1 to 5 of the appeal has already been considered by the Tribunal in assessee's own case in assessment year 2011-12.

4. Both sides heard. Orders of the authorities below perused. The Revenue in ground Nos. 1 to 5 of the appeal has assailed the findings of Commissioner of Income Tax (Appeals) in allowing assessee's claim of exemption in respect of income earned from the saplings/flowering plants grown by the technique of tissue in laboratory. We find that similar grounds were raised by the Department in ITA No. 1271/PUN/2015 (supra). The Tribunal after considering the facts of the case and various decisions on this issue and CBDT Circular No. 1/2009 dated 27-03-2009 concluded as under :

*“13. From the above, it is the settled legal proposition that the income arising from the saplings and seedlings constitute the exempt income within the meaning of the Explanation 3 to section 2(1A) r.w.s. 10(1) of the Act irrespective of the fact whether basic operations have been carried out on land. Such income is deemed as an exempt agricultural income, thus qualifying for exemption u/s.10(1) of the Act. Accordingly, grounds raised by the Revenue stand dismissed. Therefore, order of the CIT(A) does not call for any interference on this issue. Accordingly, the grounds raised by the Revenue stands dismissed.”*

5. Both sides are unanimous in stating that the facts germane to the issue in the assessment year under appeal are identical to assessment year 2011-12. Thus, in the light of decision of Co-ordinate Bench in assessee's own case in assessment year 2011-12, the ground Nos. 1 to 5 of the appeal by the Revenue are dismissed.

6. In ground No. 6 of the appeal, the Revenue has assailed the findings of Commissioner of Income Tax (Appeals) in allowing assessee's claim of depreciation. There is different of Rs.7,37,692/- in the depreciation as claimed by the assessee and as computed by the Assessing Officer. Since, the income of the assessee has been held to be agricultural income, the computation of depreciation by whatever method would really not have any tax effect. The addition being tax neutral has no bearing on tax incidence on the assessee. Accordingly, ground No. 6 of the appeal by the Revenue is dismissed.

7. The ground Nos. 7 and 8 of the appeal by the Revenue are general in nature, hence, require no adjudication.

8. In the result, the appeal of Revenue is dismissed.

**CO No. 17/PUN/2019**

9. The ground Nos. 1 to 4 of the Cross Objections are corresponding to the issue raised by the Revenue in ground Nos. 1 to 5 of its appeal. The assessee is Cross Objections has supported the findings of Commissioner of Income Tax (Appeals). Since, we have dismissed the said grounds of Revenue, the ground Nos. 1 to 4 of Cross Objections have become infructuous and the same are dismissed as such.

10. In ground Nos. 5 and 6, the assessee has assailed the findings of Commissioner of Income Tax (Appeals) in not allowing foreign exchange gain/loss. The assessee has filed statement giving the details of foreign exchange gain and loss for the Financial Year 2012-13 i.e. relevant to the assessment year 2013-14 as under :

Sr. No.	Particulars	Amount of foreign exchange gain/loss Rs.
1	Revenue Creditors	-5,71,490
2	Revenue Debtors	12,39,062
3	Revaluation at the year-end (unrealized gain)	10,98,201
	<b>Total</b>	<b>17,65,774</b>

11. We find that similar issue was raised by the assessee in Cross Objections for assessment year 2011-12. The Tribunal after analyzing the entire issue held as under :

*“24. Referring to the amount of Rs.1,19,514/-, i.e. the gain earned on account of “Capital Creditors”, Ld. AR fairly submitted that assessee has no objection if the claim of exemption on the foreign exchange earnings of Rs.1,19,514/- (capital expenditure account) is denied. He fairly submitted, the same is derived in the context of import of the fixed assets and certainly not relatable to the sale of the saplings/seedlings.*

25. On hearing both the parties, considering the said concession of Ld. AR for the assessee and without going into the other arguments of the Ld. AR, we find the order of CIT(A) does not call for any interference on these receipts and for the said reason. We direct the AO to tax the same as non-agricultural income, a taxable revenue in the hands of the assessee for the year under consideration.

26. Similar argument or concession is given by the Ld. AR for the assessee with regard to (1) loss of Rs.29,530/- earned on account of "Revenue Creditors" (2) Rs.3,75,230/- the earnings on the foreign exchange deposited in the Exchange Earners Foreign Currency Account ( in short 'EEFC') of the assessee. On these two issues, like in the case of capital expenditure account, the foreign exchange gain/loss is due to revaluation of the balance of foreign exchange appearing in the credit of the assessee in the said account. AO is directed to tax these receipts of three types (Rs.1,19,514 +3,75,230 (-)29,530) as non-agricultural income.

27. Finally, regarding the gain of Rs.10,40,664/- earned on account of Revenue Debtors, it is the case of the assessee that these amounts represents gains accrued to the assessee and directly derived from the sale proceeds payable to the assessee by the debtors. The same constitutes gains derived from the sale of the saplings/seedlings. Therefore, the same should be considered as derived from agricultural activity of the assessee. Ld. AR for the assessee brought our attention to the various decisions which are of course decided in the context of 80IB/10A of the Act. However, they are delivered in the context of the crucial expression "derived" and the same should help the Bench in taking the decision.

28. On going through the same, we find the foreign exchange gain was considered as derived from the sales activity receivable from the Debtors and the said gain is found eligible for claim of deduction u/s.80IB/10A of the Act. The expression "derived" is used commonly in all these sections including the Explanation 3 to section 2(1A) of the Act. In our view, the same logic and reasoning is applicable when it comes to the provisions of section 10(1) r.w. Explanation 3 to section 2(1A) of the Act. Accordingly, the claim of the assessee on the income of Rs.10,40,664/- is allowed in favour of the assessee. To that extent, the order of the CIT(A) stands reversed and therefore, this part of the grounds raised by the assessee are allowed."

12. Both the sides have fairly admitted that the issue of allowability of foreign exchange gain on agriculture income in the assessment year under appeal is identical to the one decided by the Co-ordinate Bench in assessment year 2011-12. Since, the facts and dispute are same, the findings given by Co-ordinate Bench on this issue would *mutatis mutandis* apply in assessment year under appeal. Accordingly, the ground Nos. 5

and 6 raised in Cross Objections by the assessee are partly allowed on similar lines.

13. In the result, the Cross Objections by the assessee are partly allowed.

**14. To sum up, the appeal of Revenue is dismissed and the Cross Objections by the assessee are partly allowed.**

Order pronounced on Wednesday, the 04<sup>th</sup> day of September, 2019.

Sd/- (अनिल चतुर्वेदी / Anil Chaturvedi) लेखा सदस्य / ACCOUNTANT MEMBER	Sd/- (विकास अवस्थी / Vikas Awasthy) न्यायिक सदस्य / JUDICIAL MEMBER
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पुणे / Pune; दिनांक / Dated : 04<sup>th</sup> September, 2019.

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-1, Pune
4. The Pr. Commissioner of Income Tax-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune