

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “SMC-A”, BANGALORE**

Before Shri George George K, Judicial Member

ITA No.36/Bang/2020 : Asst.Year 2016-2017

M/s.Jayanti Botanical Gardens 45, 2 nd Cross CR Layout JP Nagar, 1 st Phase Bangalore – 560 078. PAN : AALFJ3264C.	v.	The Income Tax Officer Ward 4(3)(3) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Varun S., CA
Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

Date of Hearing : 03.03.2021	Date of Pronouncement : 04.03.2021
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ORDER

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 01.11.2019. The relevant assessment year is 2016-2017.

2. The grounds raised read as follows:-

“1. That in any case and in view of the matter, the action of the Learned ITO in framing the impugned Assessment Order is bad in law and is opposed to the facts and circumstances of the case and thus liable to be set aside.

2. That the Learned CIT(A) and the Learned ITO while disallowing the exemption claimed u/s 10(1) of the Act, disregarded the fact and circumstances of the case and has concluded proceedings by ad-hoc disallowance of 50 percent of the exemption by erroneously considering that the Appellant is engaged in contract work and such component cannot be categorized as Agricultural Income.

3. That the Learned CIT(A) and Learned ITO failed to appreciate the modus operandi of the Appellant's business which also includes buying saplings from other nurseries,

planting them in its farm, nurturing, nursing and growing to the required level.

4. *That the Learned IT Authorities erred in deciding the Appellant's eligibility of exemption u/s 10(1) of the Act on the basis of only one single document without considering the other contracts / documents.*

5. *That the Learned ITO and Learned CIT(A) erred in appreciating the provisions of section 2(1A) of the Act which defines "agricultural income". The relevant extract of the same is provided below: "...Explanation 3 – For the purpose of this clause, any income derived from saplings or seedling grown in a nursery shall be deemed to be agricultural income....."*

6. *That the Learned CIT(A) erred in placing reliance on the ruling of Karnataka High Court in the case of CIT v. Namdhari Seeds Pvt. Ltd. (2011) 16 taxmann.com 83 (Kar) without appreciating that the facts in the present case are different.*

7. *The Appellant / Company craves to leave to add, alter, modify, amend, substitute or delete all or any of the above Grounds of Appeal.*

8. *For these and other grounds that may be argued at the time of personal hearing, the Appellant prays that the Order be set aside and appropriate relief be granted by providing complete exemption u/s 10(1) of the Act."*

3. The brief facts of the case are as follow:

The assessee is a firm running a Nursery, which sells various types of plants and saplings. For the assessment year 2016-2017, the return of income was filed on 06.03.2018 declaring 'NIL' income. The assessment was selected for scrutiny by issuance of notice u/s 143(2) of the I.T.Act. The assessee had claimed exempted agricultural income amounting to Rs.20,11,009. To examine the correctness of the same, notice u/s 142 of the I.T.Act was issued. The details called for were electronically uploaded by the assessee-firm. On verification of the records, the A.O. was of the view that the

entire income credited to the profit and loss account cannot be termed as agricultural in nature. According to the A.O., the assessee had undertaken composite contracts whereby the assessee has not only sold plants but also undertaken work for softscape, landscaping etc. Therefore, the A.O. held that the portion relating to other than supply of plants and saplings cannot be characterized as agricultural income and such portion of income cannot be entitled to exemption u/s 10(1) of the I.T.Act. The A.O. further noticed that certain plant and saplings are not sold by the assessee from its own nursery, but are purchased from other suppliers. Taking into consideration the totality of facts, the A.O. concluded that 50% of Rs.20,11,009, which was claimed as exempt u/s 10(1) of the I.T.Act, has to be brought to tax as the same cannot be termed as agricultural income. Therefore, the assessment was completed by treating a sum of Rs.10,05,509 as exempted agricultural income and balance sum of Rs.10,05,500 as profits and gains of business or profession, and accordingly brought to tax.

4. Aggrieved by the order of assessment, the assessee preferred an appeal to the first appellate authority. The CIT(A) after minutely examining the purchase order, the invoices etc., held that the amounts received by the assessee was on account of composite contract which includes not only supply of plants but also softscape work and landscaping. The CIT(A) by referring to the definition of agricultural income under the Income-tax Act, held that only income derived from sale of saplings and seedlings grown in assessee's nursery alone can

be termed as agricultural income. The CIT(A) by placing reliance on the judgment of the Hon'ble jurisdictional High Court in the case of CIT, Central v. Namdhari Seeds (P) Ltd. reported in 341 ITR 342 concluded that the A.O. is justified in treating 50% of the exempted income as income from business or profession.

5. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal. The learned AR has filed a paper book comprising of 256 pages enclosing therein the submissions, the judicial pronouncements relied on, copy of purchase order by M/s.Nam Estates Private Limited, financial statements of the assessee and the sister-concern for the assessment year 2016-2017, etc. In the written submission filed before the Tribunal, the learned AR has more or less reiterated the submissions made before the lower authorities. It was stated by relying on the judgment of the Hon'ble Apex Court in the case of CIT v. Raja Benoy Kumar Sahas Roy reported in 32 ITR 466 (SC), for cultivation of land does not comprise merely of raising the products of the land in the narrower sense of the term like tilling of the land, sowing of the seeds, planting, and similar work done on the land but also includes the subsequent operations for raising the plant. It was submitted that primary and subsequent activities form one integrated activity of the agriculturist. In other words, the learned AR submitted that not only the primary operations, but also the secondary operations also form an integral activity of agricultural operation. In this context, the learned AR submitted that the assessee-firm is not only supplying plants

and seeds but also undertaking softscape in the premises of its clients. Therefore, softscape undertaken by the assessee is nothing but an agricultural operation as enumerated in the judgment of the Hon'ble Apex Court in the case of CIT v. Raja Benoy Kumar Sahas Roy (supra).

6. The learned Departmental Representative, on the other hand, submitted that income derived from sale of saplings and seedlings grown in the nursery alone shall be deemed as agricultural income. The assessee in this case had not only sold saplings and seedlings grown in the nursery but also undertaken softscape in the premises of its clients, which by no stretch of imagination can be termed as agricultural operations. The learned DR submitted that in the given facts and circumstances of the case, the Income-tax Authorities is justified in estimating the non-agricultural income at the rate of 50% of the total net income shown as exempted u/s 10(1) of the I.T.Act.

7. I have heard rival submissions and perused the material on record. Section 2(1A) of the I.T.Act defines agricultural income. Section 2(1A) of the I.T.Act reads as follow:-

2(1A) "agricultural income" means-

(a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes ;

(b) any income derived from such land by-

(i) agriculture ; or(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market ; or (iii) the sale by a cultivator or receiver of rent-in-kind of

the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause ;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on :

Provided that(i) the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building, and(ii) the land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated—(A) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand ; or(B) in any area within the distance, measured aurally,—(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten thousand but not exceeding one lakh ; or(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than one lakh but not exceeding ten lakh ; or(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten lakh.

Explanation 1.— For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of this section ;

Explanation 2.— For the removal of doubts, it is hereby declared that income derived from any building or land referred to in sub-clause (c) arising from the use of such building or land for any purpose (including letting for residential purpose or for the purpose of any business or profession) other than agriculture falling under sub-clause (a) or sub-clause (b) shall not be agricultural income.

Explanation 3.— For the purposes of this clause, any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income ;

Explanation 4.— For the purposes of clause (ii) of the proviso to sub-clause (c), "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year ;

7.1 From the reading of the above section, it is clear that income derived from sale of saplings and seedling grown in a nursery shall deemed to be agricultural income. The meaning of word "agriculture" is no more *res integra* in view of the judgment of the Hon'ble Apex Court in the case of CIT v. Raja Benoy Kumar Sahas Roy (supra). The relevant portion of the judgment reads as follow:-

"Agriculture" in its primary sense denotes the cultivation of the field and is restricted 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. These are basic operations and require the expenditure of human skill and labour upon the land itself.

Those operations which the agriculturist has to resort to and which are absolutely necessary for the purpose of effectively raising produce from the land, operations which are to be performed after the produce sprouts from the land, e.g., weeding, digging the soil around the growth, removal of undesirable undergrowth, and all operations which foster the growth and preservation of the same not only from insects and pests but also from deprecation from outside, tending, pruning, cutting harvesting and rendering the produce fit for the market would all be agricultural operations when taken in conjunction with the basic operations. The human labour and skill spent in the performance of these subsequent operations cannot be said to have been spent on the land itself.

The mere performance of these subsequent operations on the products of the land, where such products have not been raised on the land by the performance of the basic operations, would not be enough to characterise them as agricultural operations; in order to invest them with the character of agricultural operations these subsequent operations must necessarily be in conjunction with and in continuation of the basic operations which are the effective cause of the products being raised from the land. The subsequent operations divorced from the basic operations cannot constitute by themselves agricultural operations.

Only if this integrated activity which constitutes agriculture is under- taken and performed in regard to any land can that land be said to have been used for 'agricultural purposes' and the income derived therefrom be said to be 'agricultural income' derived from the land by agriculture, under section 2(i) of the Indian Income-tax Act, 1922.

Agriculture comprises within its scope the basic as well as the subsequent operations described above regardless of the nature of the products raised on the land. These products may be grain or vegetable or fruits which are necessary for the sustenance of human beings, including plantations and groves, or grass or pasture for the consumption of beasts or articles of luxury such as betel, coffee, tea, spices, tobacco, or commercial crops like cotton, flax, jute, hemp, indigo. All these are products raised from the land but the term agriculture cannot be confined merely to the production of grain and food products for human beings and beasts; it must be understood as comprising all the products of the land which have some utility either for consumption or for trade and commerce and would also include forest products such as timber and sal, and piyasal trees, casuarina plantations, tendu leaves and horra nuts.

There is no warrant at all for extending the term 'agriculture' to all activities which have some relation to the land or are in any way connected with the land, for the term agriculture cannot be dissociated from the primary significance thereof, which is that of cultivation of the land. The extension of the term 'agriculture' to denote such activities as breeding and rearing livestock, dairy farming, butter and cheese-making, and poultry farming is an unwarranted distortion of the term."

7.2 A careful reading of the above clearly shows that unless the assessee has carried out the basic operations upon the land, i.e., tilling of the land, sowing of the seeds, planting, etc., requiring the expenditure of human skill and labour upon the land, it cannot be said that the income earned by the assessee is agricultural income. Further, reveals that subsequent operations would also be agricultural operations if taken in conjunction with basic operations. However, subsequent operations by itself would not be considered as agricultural operations. Hence, if any income is earned by carrying out the subsequent operations without carrying out the basic operations then such income would not be considered as agricultural income. It further declares that the nature of the product is irrelevant. The agricultural product would not only

include products for sustenance of human being but also products of utility for a trade and commerce.

7.3 To adjudicate the issue, the terms of the agreement, the purchase order, the invoices etc. need to be examined in order to determine the scope of work undertaken by the assessee-firm, whether it is mere supply of saplings and seedlings grown in its nursery or is it a composite contract which goes beyond, by undertaking work in client's site, by supply of soil, supply of fertilizer, insuring the plant, engaging horticulturists, etc. The copies of the PO, invoices of the assessee and the sister-concern are placed from pages 219 to 238 of the paper book filed by the assessee. Annexure 1A of the final bill of quantity issued by M/s.Nam Estates Private Limited clearly show that the assessee had undertaken composite contracts and payments were not merely received for sale of saplings or seedlings grown by the assessee in its nursery but also preparing the client's site, supply of soil, supply of fertilizer, engaging manpower including Senior Horticulturists, insurance, making pits, planting and other related works besides the supply of plants.

7.4 As mentioned earlier, by virtue of *Explanation 3* to section 2(1A) of the I.T.Act, income derived from sale of saplings and seedlings grown in assessee's nursery alone is deemed to be agricultural income. The Hon'ble Apex Court in the case of CIT v. Raja Benoy Kumar Sahas Roy (supra) had held that the basic operation plus the secondary operation which is in conjunction or separately would constitute agricultural operation. The

basis operation is upon land, i.e., tilling open land, sowing of the seeds, planting etc. The subsequent operations are those which have to be resorted to after produce sprouts from the land, e.g., weeding, digging the soil around the growth, removal of undesirable undergrowth, 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.

7.5 In the instant case, the primary operation is done in assessee's nursery will confine only with regard to growing of plants and saplings. The subsequent operation, i.e., supply of fertilizer, supply of soil, engaging Horticulturists, insuring the plant, making pits and other related activities even assuming it is secondary operation is never carried out in assessee's nursery but in client's site. Plants and saplings are planted in the client's site and became the property of the client. Thereafter the assessee's role is only to tend these plants and saplings. The services so performed are in the nature of maintenance and cannot be termed as secondary operation in the strict sense of the term. Therefore, I hold that the income derived by the assessee by activities other than sale of plants raised in its own nursery is not in the nature of agricultural income falling within the definition of section 2(1A) of the I.T.Act.

7.6 The judicial pronouncement relied on by the assessee is distinguishable on facts for the reason that in those case, both

primary and secondary agricultural operations as enumerated by the Hon'ble Apex Court in the case of CIT v. Raja Benoy Kumar Sahas Roy (supra) was carried out in assessee's land, whereas, in the instant case, only growing of saplings and seedlings is undertaken in assessee's nursery and the other activities such as preparation of land, supply of soil, supply of fertilizer, engaging Horticulturists, insuring etc. even assuming it as secondary operation to the primary operation was never carried out in assessee's nursery but in client's site. For the aforesaid reasoning, I am of the view that the CIT(A)'s order confirming the assessment order is correct and in accordance with law and I uphold the same. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on this 04th day of March, 2021.

**Sd/-
(George George K)
JUDICIAL MEMBER**

Bangalore; Dated : 04th March, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-4, Bangalore.
4. The Pr.CIT-4, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore