

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD ' A ' BENCH, HYDERABAD.**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
(Through Virtual Hearing)**

ITA No.1573/Hyd/2019 (Assessment Year : 2014-15)		
Dy. Commissioner of Income Tax, Circle 3(2), Hyderabad.	Vs.	M/s. Super Agriseeds Pvt. Ltd., Hyderabad. PAN AAICS 0900J
Appellant		Respondent

Appellant By : Shri Lakka Bhushanam (D.R.)

Respondent By : None.

Date of Hearing : 5.7.2021.

Date of Pronouncement : 23.08.2021.

O R D E R

Per Shri S.S. Godara, J.M. :

This assessee's appeal for Asst. Year 2014-15 arises from the Commissioner of Income Tax (Appeals)-9, Hyderabad's order dt.25.07.2019 passed in case No.10425/CIT(A)-9/Hyd/2018-19 in proceedings under Section 144 of Income Tax Act, 1961 ('the Act').

Heard both the parties. Case file perused.

2. Coming to the Revenue's sole substantive grounds that the CIT(A) has erred in law and on facts in holding that the assessee is entitled for 10(1) exemption of its income derived from sale of agriculture produce; both the learned representatives took us to detailed lower appellate discussion to this effect reading as under :

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3. Aggrieved with the above order, the appellant is in appeal by raising following grounds of appeal and statement of facts:

"1. The order of the AO determining the income at Rs.17,26,52,026 by treating agricultural income of Rs.16,99,63,316 as business income is not only erroneous both on facts and law is contrary to the provisions of the I.T. Act.

2. The AO failed to appreciate that the appellate authority on similar facts in an appeal for the earlier assessment year has held it to be agricultural income only following a decision of the jurisdictional high court which is binding on the AO, and thereby erred in treating Rs.16,99,63,316 as business income as against claim of agricultural income.

Statement of facts

The appellant is a private Company engaged in cultivating and selling quality seeds for agricultural purposes. It has filed its return of income through e-filing on 27-3-2015 admitting an income of Rs.26,88,710. The AO took up the case for scrutiny on the ground that the same is selected under CASS but has not stated the specific issue that is to be scrutinized. The appellant could not respond to the notices as the company is not functional and there is no staff to prepare and submit the required information. However in response to final show cause letter with regard to proposal to treat the agricultural income of Rs.16,99,63,316 as business income the appellant has submitted that it is from agricultural operations only and cannot be treated as business income. The AO must be aware that for the earlier years when similar action was taken by the AO treating the agricultural income as business income the Honourable CIT(A) following the decision of the Tribunal which in turn has followed jurisdictional high court decision has allowed the appeal directing to treat the income as agricultural income only. In spite of the fact that the issue is settled by the Jurisdictional high court and such a decision is binding on the AO, the AO proceeded to treat the agricultural income of Rs.16,99,63,316 as business income and determined the income at Rs.17,26,52,026. The present appeal is against this order.

3.1 During the appellate proceedings the appellant filed written submission on 19.05.2017 as under:

"1. The appellant is before the Honourable CIT(A) on the following grounds:

i. The order of the AO determining the income at Rs. 17,26,52,026 by treating agricultural income of Rs. 16,99,63,316 as business income is not only erroneous both on facts and in law, is contrary to the provisions of the I.T. Act.

ii. The AO failed to appreciate that the appellate authority on similar facts in an appeal for the earlier asst, year has held it to be agricultural income only following a decision of the jurisdictional high court which is binding on the AO, and thereby erred in treating Rs. 16,99,63,316 as business income as against claim of agricultural income.

2. Before making submissions on the grounds of appeal filed along with appeal memorandum, the Appellant desires to raise additional ground (which is arising from the assessment order) but could not be raised in the appeal memorandum.

i. On the facts and in the circumstances of the case, the AO erred in passing an asst, order, exparte, failing to appreciate that there was participation on behalf of Appellant in the asst, proceedings and the required details to the extent relevant was filed on record.

ii. Without prejudice, the exparte order passed by the AO is non-est in law and has apparent errors, as he has not taken into account the judgement of Jurisdictional High Court in the case of Prabath Agri Biotech Limited and that of the order of the jurisdictional ITAT in the Appellant's own case and as well as Vibha Agrotech Limited, which are already available on record for Ay 2011-12 and Ay 2012-13.

3. It is respectfully submitted that the additional grounds raised above, strictly speaking, are not additional grounds as the same arise from the asst, order. Further, the grounds raised by the Appellant are more of legal in nature which does not require fresh investigation into facts and are apparent on the face of the asst, order. It is therefore submitted that there may not be requirement of calling for a remand report on the above grounds and the same may kindly be admitted.

SUBMISSION ON MERITS RELATING TO ADDITIONAL GROUND:

1st Additional Ground:

4. The AO on the alleged ground that Appellant has not responded to the statutory notices issued has passed exparte asst, order. However, as could be seen from the asst, order, the Appellant did participate in the asst, proceedings by filing submissions vide letter dated 09.06.2016 enclosing copies of ITR-V, Statement of Total Income, Financials for FY 2013-14 and Form 26AS. Even to the final show cause notice issued on 14.12.2016, the Appellant did respond by filing letter dated 23.12.2016 by submitting that it had carried on basic agricultural operations and therefore all subsequent operations to raise and harvest the crop are also

treated as agricultural as to for which of the notices, the Appellant did not respond. In the said circumstances, it is prayed that the Hon'ble Commissioner (Appeals) may kindly quash the finding of the AO setting the Appellant exparte and determining by invoking provisions of section 144 of the Income Tax Act, 1961 (hereinafter "the Act").

2nd Additional Ground:

5. It is settled-position of law that the judgements of Jurisdictional High Court and that of Jurisdictional Tribunal are binding on all the officers functioning in their respective jurisdiction. In the present case, the issue whether the activity carried on by the Appellant is agricultural, or not fell for consideration right from Asst, year 2011-12 onwards. The Appellant has made claim of agricultural income right from Ay 2011-12. As a matter of fact, for the Ay 2011-12 the matter travelled all the way up to Hon'ble ITAT, and the matter was remanded back to the file of the AO with direction. The consequential proceedings for the Ay 2011-12 pursuant to such directions are pending before the Id. AO. It is submitted that the order passed by the Hon'ble ITAT in ITA.No. 909/Hyd/2015, dated 10.02.2016 contain directions as to how the agricultural income has to be determined. For the sake of ready reference the same is extracted below:

"Having regard to the rival contentions and the material on record, we find that assessee is involved in the activity of Research and Development of high quality seeds and also in production, processing and marketing of hybrid/improved variety of seeds. From the above description and also from the huge R&D expenditure of Rs. 1,21,20,901 incurred by the assessee, we can see that the assessee is involved in the process of scientific research for development of good and high yielding seeds. This involves certain processes in the laboratories followed by agricultural operations in the filed by which the parent/foundation seeds are produced. These foundation seeds are then multiplied by reproducing them by agricultural operations to get the marketable produce. As seen from the recitals in the asst, order, the assessee is producing the parent seeds which are sold to seed production organizers/farmers. It is the income from the sale of such parent seeds that is claimed as agricultural income. The details of the processes, if any, undertaken by the assessee in the laboratories prior to carrying out the agricultural activities to get the parent seeds have not been produced by the assessee nor was it asked for by the authorities below. Unless and until the details are called for and verified, it cannot be determined whether the entire income is agricultural income or not. If, on verification, it is found that some of the process was carried out in the assessee's laboratories, then to such extent, it would not be agricultural income. We find that neither the A.O. nor the CIT(A) have examined as to the proportion of the business operations and the agricultural operations carried out by the assessee company. Without doing this exercise, the Ld.CIT(A), has allowed the claim of the assessee as regards agricultural income and directed the A.O. to allow the expenditure on Research and Development in the ratio of turnover of the agriculture and business activities which in our view, is not reasonable. In view of the same, we deed it fit and proper to remit the issue to the file of the A.O. with a direction to first examine and bifurcate activities carried on by the assessee into agricultural and non-agricultural operations and thereafter to allow the income from agricultural activity as agricultural income and also to allow the expenditure on Research and Development in the ratio of the expenditure incurred by the assessee on such activity.

6. Assuming (without admitting) that the Appellant has not responded to the notices issued by the Id. AO, still the financial information was filed on record and the AO could have determined the agricultural income in terms of the order passed by the Hon'ble ITAT rather than repeating the same findings, which did not find favour with the Appellate Authorities.

7. It is respectfully submitted that not considering the directions/observations of the Hon'ble Jurisdictional Tribunal leads to apparent mistake from the face of the record. It is submitted that the Id.AO has not considered the binding decision of jurisdictional ITAT cited above, nor has made any reference to judgement of Hon'ble Jurisdictional High Court in the case of Prabath Agro Biotech Limited. It is therefore submitted that the asst. order suffers from serious legal errors and cannot be sustained.

8. It is settled proposition of law that even in a case of best judgement asst. order, the AO has to pass the asst. order judicially by taking into consideration all the relevant facts available on record and the law handed down by jurisdictional Tribunal or High Court and Hon'ble Supreme Court. In the present case, the Id. AO has not considered the order of jurisdictional ITAT in Appellant's own case especially when the consequential proceedings for Ay 2011-12 pursuant to remand from ITAT, are still pending on his file. Further, the Id. AO has not considered the order of jurisdictional ITAT in the case of Vibha Agrotech Limited and that of judgement of Hon'ble Jurisdictional High Court in the case of M/s.Prabhat Agri Biotech Limited.

The copies of financials for F.Y. 2013-14, Order of ITAT for Ay 2011-12, order of ITAT in Vibha Agrotech Limited and the judgement of Hon'ble Jurisdictional High Court in the case of Prabath Agri Biotech Limited are enclosed hereto.

It is prayed that the Hon'ble Commissioner (Appeals) may kindly admit the additional grounds and deal with the same on merits as submitted above.

SUBMISSIONS ON GROUNDS RAISED IN APPEAL MEMORANDUM

9. The activity of the appellant is primarily focused on production of seeds (foundation seeds as well as commercial seeds), Research & Development, processing and packing of the seeds, sales and marketing of seeds. The Appellant filed its return of income admitting an income of Rs.26,88,710 besides agricultural income of Rs. 16,99,63,316.

10. The consistent stand of the Appellant is that it enters into lease agreement with the farmers, supplies foundation seeds and supervises the cultivation. The farmers are paid for the services rendered. The farmers have no right whatsoever on the produce as entire produce belongs to the appellant only. Contrary to what has been opinioned by the Id. AO in his order, the Appellant is herewith submitting a note on Research Activity vis-a-vis Agricultural Activity (which was filed for Ay 2011-12). It is prayed that the same may kindly be treated as part of these written submissions. The appellant also relies upon the following judgements which are on the subject:

- i. CIT Vs. Raja Benoy Kumar Sahas Roy (32 ITR 466) - SC;
- ii. K.Laxman and Company Vs. CIT (239 ITR 597)- SC;

- iii. CIT Vs. Soundarya Nursery (241 ITR 530)- Mad HC;
- iv. DCIT Vs. Vibha Agrotech Limited (40 SOT 558).

A copy of note on research activity vis-a-vis agricultural activity filed for Ay 2011-12, which is equally relevant for the present asst, year is enclosed hereto.

It is prayed that the appeal may be allowed as prayed for."

4. The Commissioner of Income Tax(A)-3, Hyderabad in appellants own case as mentioned in the ITAT order allowed the appeal by following the decisions of the Hon'ble jurisdictional High Court in the case of Prabhat Agri Biotech Ltd., (ITTA.No.88 of 2014 dated 21.02.2014 (A.P.) (HC) and also the Coordinate Bench decision of ITAT in the case of DCIT vs. Vibha Agrotech Ltd., 40 SOT 558 (Hyd.) held the sum of Rs.1,43,23,000/- as agriculture income but with regard to the assessee's claim of R & D expenses, he remitted the issue to the file of the A.O. with a direction to allow the expenditure on research and development in the ratio of the turnover of the agriculture produce and business activities.
 - 4.1 On appeal by the department, the Hon'ble tribunal Hyderabad 'A' Bench in appellants own case for A.Y. 2011-12 in ITA No. 909/Hyd/2015 has held as under on this issue:

"Having regard to the rival contentions and the material on record, we find that assessee is involved in the activity of Research and Development of high quality seeds and also in production, processing and marketing of hybrid/improved variety of seeds. From the above description and also from the huge R & D expenditure of Rs.1,21,20,901 incurred by the assessee, we can see that the assessee is involved in the process of scientific research for development of good and high yielding seeds. This involves certain processes in the laboratories followed by agricultural operations in the field by which the parent/foundation seeds are produced. These foundation seeds are then multiplied by reproducing them by agricultural operations to get the marketable produce. As seen from the recitals in the assessment order, the assessee is producing the parent seeds which are sold to seed production organizers/farmers. It is the income from the sale of such parent seeds that is claimed as agricultural income. The details of the processes, if any, undertaken by the assessee in the laboratories prior to carrying out the agricultural activities to get the parent seeds have not been produced by the assessee nor was it asked for by the authorities below. Unless and until the details are called for and verified, it cannot

be determined whether the entire income is agricultural income or not. If, on verification, it is found that some of the process was carried out in the assessee's laboratories, then to such extent, it would not be agricultural activity and proportionate income would not be agricultural income. We find that neither the A.O. nor the CIT(A) have examined as to the proportion of the business operations and the agricultural operations carried out by the assessee company. Without doing this exercise, the Ld. CIT(A), has allowed the claim of the assessee as regards agricultural income and directed the A.O. to allow the expenditure on Research and Development in the ratio of turnover of the agriculture and business activities which in our view, is not reasonable. In view of the same, we deem it fit and proper to remit the issue to the file of the A.O. with a direction to first examine and bifurcate activities carried on by the assessee into agricultural and non-agricultural operations and thereafter to allow the income from agricultural activity as agricultural income and also to allow the expenditure on Research and Development in the ratio of the expenditure incurred by the assessee on such activity.

- 4.2 Respectfully following the order of the Hon'ble tribunal, the Assessing Officer is directed to compute the income as computed for the A.Y. 2011-12.

3. Suffice to say, it has come on record that this tribunal's co-ordinate bench order in assessee's case (ITA No.909/Hyd/2015) itself has settled the issue that such an income derived from agricultural operations is entitled for section 10(1) exemption. No distinction on facts or law has come Revenue's side. We therefore adopt judicial consistency to confirm the CIT(A)'s order.

No other ground has been pressed before us.

4. This Revenue's appeal is dismissed.

Order pronounced in the open court on 23rd Aug., 2021.

Sd/-

Sd/-

(LAXMI PRASAD SAHU)

(S.S. GODARA)

Accountant Member

Judicial Member

Hyderabad, Dt. 23.08.2021.

* Reddy gp

Copy to :

1.	M/s. Super Agriseeds Pvt. Ltd., 8-3-1503, 5 th Floor, Aakash Ganga, Plot No.144, Srinagar Colony, Hyderabad-500 073
2.	DCIT, Circle 3(2), Hyderabad.
3.	Pr. C I T-3, Hyderabad.
4.	CIT(Appeals)-9, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.