

**IN THE INCOME TAX APPELLATE TRIBUNAL  
NAGPUR BENCH, NAGPUR**

**BEFORE SHRI P. K. BANSAL, VICE PRESIDENT  
AND SHRI PAWAN SINGH, JUDICIAL MEMBER**

I.T.A. No.229/NAG/2014  
Assessment year:2009-10

M/s Permanent Agrotech Pvt. Ltd. 27-A, Kotwal Nagar, Nagpur. PAN:AACCP 1584 H (Appellant)	Vs.	A.C.I.T., Circle-2, Nagpur. (Respondent)
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I.T.A. No.250/NAG/2014  
Assessment year:2009-10

A.C.I.T., Circle-2, Nagpur. (Appellant)	Vs.	M/s Permanent Agrotech Pvt. Ltd. 27-A, Kotwal Nagar, Nagpur. PAN:AACCP 1584 H (Respondent)
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Assessee by	Shri Manoj Moryani, Advocate
Revenue by	Shri A. R. Ninave, D.R.
Date of hearing	23/11/2017
Date of pronouncement	24/11/2017

**ORDER**

**PER P. K. BANSAL, V.P.**

These cross appeals have been filed against the order of CIT(A) dated 18/02/2014 relating to assessment year 2009-10.

2. The assessee has taken the following effective ground of appeal in its appeal:

- "1. *On the facts and circumstances of the case the Hon'ble CIT(A) was arbitrary and unjustified in restricting the exemption available u/s 10(1) of the I.T. Act to Rs.1,24,59,303/- instead of Rs.3,70,68,305/- as claimed by the assessee.*"

3. In its appeal the Revenue has taken the following effective ground of appeal:

*"1. Whether on the facts and circumstances of the case, the CIT(A) was justified in accepting the agricultural income at Rs.1,00,00,000/-."*

4. The only issue involved in the appeal filed by both the parties relates to the estimation of agricultural income earned by the assessee.

5. The facts of the case, in brief, are that the assessee is a private limited company mainly engaged in the business of construction during the year. The assessee submitted the return on 30/09/2009 declaring total income of Rs.1,16,27,421/-. Subsequently, assessment was completed u/s 143(3) of the Act on a total income of Rs.14,86,95,726/- in which the Assessing Officer treated the agricultural income declared by the assessee at Rs.3,46,09,022/- by taking the gross agricultural receipt amounting to Rs.3,70,68,305/- as income from other sources. When the matter went before the CIT(A), the CIT(A), after appreciating the facts as well as going through the decision of Hon'ble Bombay High Court in the case of CIT vs. P. C. Joshi [1993] 202 ITR 1017, Hon'ble Delhi High Court in the case of CIT vs. Krishan Kumar Kapoor [2001] 251 ITR 150 (Del) and also the decision of Nagpur Bench of this Tribunal in I.T.A.No.273/Nag/2005 dated 06/10/2006 for the assessment year 2001-02. From the decision of Nagpur Bench of the Tribunal, the CIT(A) noted that in that case the Assessing Officer has estimated the net agricultural income at nil per acre while the Tribunal for the assessment year 2001-02 estimated the agricultural income at Rs.30,463/- per acre. The CIT(A) also noted the finding recorded by the Assessing Officer under para 3 which reads as under:

*"The assessee is showing agricultural income worth Rs.3.46 crores from land of 577 acres. If we consider that the whole of the land was cultivated (it was later found that more than 150*

*acres of land was uncultivated), then the land to income ratio works out to Rs.60,000/-per acre. The assessee has not produced even the basic evidence regarding agricultural income let alone the impossible results."*

and ultimately estimated the income of the assessee @Rs.60,000/- per acre as mentioned by the Assessing Officer taken 211.49 acres land to be the cultivated land out of the total land owned by the assessee 577.25 acres and thus, worked out the gross agricultural receipt at Rs.1,26,89,400/- and after allowing the expenditure, he restricted the agricultural income to Rs.1,00,00,000/-.

6. We have heard the rival submissions, carefully considered the same along with the orders of the tax authorities below. We noted that the assessee is a private limited company. The accounts of the assessee during the impugned assessment year are duly audited. The assessee has duly filed the audited report and the audited balance sheet with the Annexures. The assessee is owning 577.25 acres of agricultural land. This fact has not been denied by either of the party. The assessee returned the net agricultural income at Rs.3,46,09,022/- after deducting from the gross receipt sum of Rs.3,70,68,305/-, agricultural expenses of Rs.24,59,303/-. The Assessing Officer issued the notice to the assessee u/s 142(1) and asked the assessee to file various details with reference to the agricultural land and the name and addresses of the persons from whom the consideration was received in cheque as well as in cash and it was noted that the assessee has received consideration towards the agricultural produce to the extent of Rs.1,70,68,304/- through cheque. Rest of the consideration was shown to be received in cash. The assessee has duly filed the copies of 7/12 extracts and on that basis the Assessing Officer after obtaining the information from the Tehsildar, District Superintendent, Agriculture Officer, Jt. Director APMC Kalamna and also after issuing the

notice to various parties u/s 133(6) noted that the assessee has the agricultural land to the extent of 577.25 acres and out of which only 150 acres of land is uncultivated and therefore, the remaining land of 420 acres is cultivated as observed by the CIT(A) also at para 8.4 of his order. The Assessing Officer also mentioned in para 3 of his order that the ratio of the land to income works out to Rs.60,000/- per acre but ultimately without rejecting the books of account of the assessee took the whole of the gross agricultural receipt of Rs.3,70,68,305/- to be the income from other sources instead of accepting it to be the agricultural receipt and added the same in the total income of the assessee instead of adding a sum of Rs.3,46,09,022/- which was claimed by the assessee to be the agricultural income. We also noted when the matter went before the CIT(A), the CIT(A) took the view as if the assessee has cultivated land to the extent of 211.49 acres and estimated the gross yield thereon @Rs.60,000/- per acre which comes to Rs.1,26,89,400/- and ultimately restricted the agricultural income to Rs.1,00,00,000/-. We have gone through the orders of the authorities below as well as the evidence and documents relied on before us, we noted that Nagpur Bench of this Tribunal in I.T.A.No.273/Nag/2005 while deciding the similar issue in assessment year 2001-02 held as under:

*"Though the AO has expressed the opinion that agricultural expenses are low, he has not pointed out any instances or does not corroborate his conclusion with any relevant material. In these circumstances, the action of the AO in rejecting the income as shown in the P & L Account for agricultural income was not justified. The conclusions of the CIT(A) in this regard are, therefore, held to be proper and call for no interference. Once the books of accounts are accepted as correct, there can be no justification for the AO to reject the income from agriculture as shown by the assessee. We also find that there is absolutely no basis for the AO to have come to the conclusion that Rs,20,000/- per acre would be the proper agricultural income in the case of the assessee. In the circumstances, we hold that the income from agriculture as declared by the*

*assessee has to be accepted and the CIT(A) is justified in directing the AO to accept the agricultural income as declared by the assessee. The order of the CIT(A) deleting the addition of Rs. 19,93,155/- under the head income from other source is, therefore, sustained and this appeal of the revenue is dismissed."*

In this decision, we also noted that the Tribunal has also referred to another decision of Nagpur Tribunal in the case of Bhausahab G. Mulak in I.T.A.No. 929 to 932/NAG/1995 wherein the Tribunal has held 11% of the gross agricultural receipt as reasonable expenses to arrive at acceptable agricultural income. We also noted that in that case the CIT(A) has accepted agricultural income @Rs.30,463/- per acre. In this case, we noted that the Assessing Officer has not rejected the books of account of the assessee and without rejecting the books of account went on estimating the income of the assessee. Since the assessee has not taken any plea in this regard, the only course left out before us relates to the estimation of the agricultural income. It is not denied that the assessee is owning the agricultural land to the extent to the extent of 577.25 acre. The Assessing Officer in para 3 of its order has specifically mentioned that out of the said land, 150 acres was uncultivated land therefore, the cultivated land comes to 427.25 acres. The CIT(A), we noted, while estimating the gross agricultural receipt, has accepted the agricultural yield @Rs.60,000/- per acre. On the basis of the decision of Nagpur Tribunal in I.T.A.No.273/Nag/2005 in which during the assessment year 2001-02 the agricultural income was estimated at Rs.30,463/- per acre. Learned counsel for the assessee, before us, submitted the extracts of the agricultural land from page 42 as well as details of the agricultural produce by him. Keeping in view the fact that the assessee has taken more than two crops from the land, the estimation of agricultural yield, in our opinion, @Rs.60,000/- per acre is on lower side. We, therefore, direct the

Assessing Officer to estimate the yield @Rs.65,000/- per acre in respect of 427.25 acres of land. Learned counsel for the assessee even through vehemently contended before us that in some of the 7/12 extracts, the crop has not been properly mentioned and therefore, out of the rest land also the assessee got the income by way of agricultural produce but in the absence of any contrary evidence being brought on record, we dismiss this plea of Learned counsel for the assessee. Thus, estimation of the agricultural yield @Rs.65,000/- per acre, the gross agricultural receipt will come to Rs.2,87,51,250/-. Thus, the gross agricultural receipt in the case of the assessee will come to Rs.2,87,51,250/-. We also noted that this Tribunal in the case of Bhausahab G. Mulak in I.T.A.No. 929 to 932/NAG/1995 has held 11% of the gross agricultural receipt as reasonable expenses. No contrary decision was brought to our knowledge. We, therefore, respectfully following the said decision, direct the Assessing Officer to take the agricultural expenses at 11% of the said sum of Rs.2,87,51,250/- which comes to Rs.31,62,632/-. Thus, the Assessing Officer is directed that the agricultural income of the assessee be restricted to Rs.2,56,00,000/- in place of Rs.1,00,00,000/- as directed by the Assessing Officer.

7. In the result, the appeal of the assessee is partly allowed while the appeal of the Revenue is dismissed.

(Order was pronounced in the open court on 24/11/2017)

**Sd/.**  
**(PAWAN SINGH)**  
**Judicial Member**

**Sd/.**  
**( P. K. BANSAL )**  
**Vice President**

Dated:24/11/2017  
\*Singh