

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

Appeal No.	Appellant	Respondent	Assessment Year
ITA No. 2246/Bang/2018	M/s. Namdhari Seeds Pvt. Ltd., Sri Sai Arcade, No. 8, 12 th Cross, 1 st Phase, Rajarajeshwari Nagar, Bangalore – 560 098. PAN: AAACN6725E	The Deputy Commissioner of Income Tax, Circle – 5(1)(2), Bangalore.	2005-06
ITA No. 2247/Bang/2018		The Assistant Commissioner of Income Tax, Circle – 3 (2)(1), Bangalore.	2015-16
ITA No. 591/Bang/2020		The Income Tax Officer, Ward – 5(1)(1), Bangalore.	2016-17
ITA Nos. 491 to 493/Bang/2020		The Deputy Commissioner of Income Tax, Circle – 5(1)(1), Bangalore.	2006-07 to 2008-09
ITA No. 494/Bang/2020		The Deputy Commissioner of Income Tax, Circle – 5(1)(2), Bangalore	2009-10
ITA No. 570/Bang/2020		The Joint Commissioner of Income Tax (OSD), Circle – 5 (1)(1), Bangalore.	2007-08
ITA No. 571/Bang/2020		The Deputy Commissioner of Income Tax, Circle – 5(1)(1), Bangalore.	2010-11
ITA No. 572/Bang/2020		The Deputy Commissioner of Income Tax, Circle – 5(1)(1), Bangalore.	2013-14
ITA No. 573/Bang/2020		The Joint Commissioner of Income Tax (OSD), Circle – 5 (1)(1), Bangalore.	2013-14
ITA No. 574/Bang/2020		The Income Tax Officer, Ward – 5(1)(1), Bangalore.	2014-15

Assessee by	:	Smt. Suman Lunkar, CA
Revenue by	:	Shri Pradeep Kumar, CIT (DR)

Date of Hearing	:	04-01-2022
Date of Pronouncement	:	11-01-2022

ORDER

PER BENCH

Present appeals filed by assessee for Assessment Years 2005-06 to 2010-11 and 2013-14 to 2016-17 against separate orders of Ld.CIT(A).

2. Brief facts of the case are as under:

The assessee is in the business of cultivation, production and marketing of hybrid seeds. It earns revenue from following 3 kinds of activities:

1. Growing, processing and sale of seeds from owned lands and leased lands;
2. Growing, processing and sale of seeds from contract farming and
3. Purchase and sale of imported seeds purchased from the market.

3. At the outset, the Ld.AR submitted that, this issue was first dealt by *Coordinate Bench* of this *Tribunal* for assessment year 2001-02 in ITA No. 3102/Bang/2004 by order dated 14.07.2006. She submitted issue of disallowance of deduction under section 10(1) was the subject matter of appeal before this Tribunal, which travelled to Hon'ble Karnataka High Court and now pending before Hon'ble Supreme Court at the behest of assessee.

4. At the outset, it is necessary to record the brief history of litigation on this issue in these appeals as under:

The issue of allowability of exemption u/s 10(1) in respect of income from sale of seeds has been in constant litigation and the matter has been carried in appeal before various judicial fora.

The revenue has disallowed assessee's claim for exemption u/s 10(1) of the Act. The Revenue contends that assessee's operations are not agricultural operations but business operations and taxed the assessee's entire income from growing, processing and sale of seeds, as non agricultural income.

The *Coordinate Bench* in its order in assessee's own case for Assessment Year 2001-02 in ITA No. 3102/Bang/2004 dated 14.07.2006 ruled the matter partially in favour of the assessee. In respect of assessee's income from growing, processing and sale of seeds by the assessee from its own land, leased land and also from agreement farming, 90% of income was held to be agricultural income by the *Tribunal*. Balance 10% income was held to be attributable to the activity of processing grown seeds into 'certified seeds' and was held to be taxable business income in the hands of the assessee.

5. The ratio in above order of the *Tribunal* was followed in subsequent Assessment Years under appeal in ITA No. 979/Bang/2006 dated 07.11.2007, ITA 743/Bang/2007 dt. 08.02.2008, ITA 744/Bang/2007 dt. 08.02.2008, ITA 742/Bang/2007 dt. 08.02.2008, ITA 1066 to 1068/Bang/2006 dt. 24.08.2007, ITA 621 – 623/Bang/2007 dt. 07.03.2008 for A.Ys. 1998-99 to A.Y. 2004-05.

6. Revenue and assessee further carried the issue before Hon'ble High Court. The question raised before Hon'ble High Court by revenue was as under:

“whether the appellate authorities were correct in holding that the activity carried on by the assessee by trading in imported seeds agricultural activity on land taken on lease and contract farming considered agricultural income which was exempt under section 10 (1) of the Act”

7. Hon'ble High Court in ITA No. 75/2007 (being revenue's appeal) for assessment year 2001-02 has summed up the issue alleged in para 3-6 of its order at page 108 of paper book for A.Y 2005-06. Hon'ble court framed the question of law to be answered as under:

“1. Whether the Tribunal was right in holding that income derived by the assessee from manufacturing of seeds and sale of the same would amount to agricultural income which would be exempt under section 10 (1) of the Act?”

2. Whether the Tribunal was right in not taking into consideration the fact that assessee could not have had agricultural land in view of the provision of section 79-A of Karnataka Land Reforms Act?”

8. In appeal filed by assessee being ITA No. 284/2007 following question of law was admitted by Hon'ble High Court:

“whether the Tribunal having held that hybrid seeds produced by the appellant was agricultural produce and income there from these agricultural income, was right in law in holding the process of certification of hybrid seeds produced by the appellant to make it marketable could not be held to be a process originally employed by the cultivator and to that extent the income derived

could not be treated as agricultural income as defined under section 2 (1A) of the act?"

9. Hon'ble High Court while considering the 1st question in revenue's appeal and the question admitted in assessee's appeal opined that, entire amount earned by assessee is to be treated as business income and assessing officer was justified in treating the said sum as income under the head business income. Categorical observation by Hon'ble High Court in order dated 24.10.2011 is in para 58 at page 185 of paper book for A.Y. 2005-06.

10. The said Hon'ble Karnataka High Court in assessee's own case for assessment year 1998-99 to 2004-05 has been reported in (2012) 341 ITR 342 had held that contract farming done by assessee cannot be treated as agricultural income and that assessee is not eligible to claim exemption under section 10(1) of the Act in respect of revenue generated from contract farming. For the sake of convenience we reproduce para 58 of the order passed by orderable Karnataka High Court in this regards:

"58. Therefore the view of the 1st appellate authority that hundred percent of the operations up to conversion of the foundation seed as agricultural activities conducted by the assessee company and therefore income deserves to be exempted from tax under section 10(1) of the act is erroneous. Similarly exemption given by the tribunal for 90% of the income is also erroneous. We opine that the tribunal was justified in treating 10% of the income as business income which involved in processing foundation seeds to certified seeds. In that view of the matter, we hold that the entire income amounts to business income of the assessee and assessing officer was justified in treating the total income as business income....."

11. The matter from the year subsequent to Assessment Year 2004-05, also went upto Income Tax Appellate Tribunal and the Income Tax Appellate Tribunal followed in earlier order of 90%: 10% ratio for these year also. These orders were also taken up for *High Court*. The *Hon'ble High Court* in case of Namdhari Seeds (being assessee's sister concern) in ITA 346/2012 by order dt. 18.07.2014 remitted the matter back to Ld.AO for fresh consideration based on the directions given in Paras 11 to 15 of the order at

page 210 of paper book for A.Y.: 2005-06. Relying upon this decision, in assessee's case for Assessment Year 2005-06 in ITA Nos. 342 of 2010, the Hon'ble High Court set aside the assessments to the files of Ld.AO to redo the assessment after considering the directions given in the order passed in ITA No. 346 of 2012(supra). Copy of above referred High Court orders are available at page nos. 244 to 246 of paper book.

12. Against both orders of Hon'ble High Court of Karnataka in both assessees, the appeals have been preferred before Hon'ble Supreme Court of India. The Special Leave Petitions of the assessee for all the year have been admitted by the Apex Court. The matter are pending before the *Hon'ble Supreme Court* in case no. SLP(C).. CC No. 003547/2016 vide order dated 03.02.2016 on following questions of law.

"2. QUESTIONS OF LAW:

The following questions of law of general public importance arise for consideration by this Hon'ble Court:

I. Whether the Hon'ble Karntaka High Court had the jurisdiction u/s 260A, while directing the Assessing Authority to record a finding on the following facts:

a) "What is the extent of land the Assessee hold in the States where they are growing seeds and then looking into the relevant Land Reforms Act to find out whether they are entitled to hold such land or if so, under what provisions of the Act. Consequently, what would be the legal effect in respect of excess.land held by them?"

b) In cases where there Is a total prohibition of taking the land on lease, if the assessee has entered Into an arrangement with the land owners irrespective of the nomenclature given, whether the income derived from such agricultural operation would be construed as an agricultural income as defined under Section 2(1)(A) of the Act to be eligible for exemption under Section 10(1) of the Act?"

d) In answering these points, the Assessing Authority shall take note of the provisions of the Land Reforms Act of that particular State, the judgments relied on by the parties and then In the light of the facts of each case, shall decide the case on merits and in accordance with lam, without being in any way Influenced by any of the findings recorded either by this Court of by the impugned orders. "

II. Whether the Hon`ble High Court faded to appreciate that income from seed will be Agriculture Income

irrespective of the applicability of land reforms legislations under Entry 46 of List II of the Seventh Schedule of the Constitution of India?

III. Whether the Hon'ble High Court erred in issuing such directions regarding the Karnataka Land Reforms Act when a Division Bench of the Karnataka High Court in the case of Manasa House Building Society reported in AIR 2006 Kar 273 had held that it is not for other authorities to look into the adherence under the Land Reforms Act?

IV. Whether, In order to constitute agricultural income, there is a requirement for a person to be the owner or tenant of the land under Section 2(1A) of the Income Tax Act?

V. Whether Agrarian reforms can be examined by the Assessing Authority while Assessment of Income under the Income Tax Act?

VI. Whether the Land Reform Acts fall outside the purview of the Income Tax Act?"

Before Hon'ble Supreme Court following issues are pending for adjudication.

The assessee has also sought leave on following issues without prejudice to the main questions alleged hereinabove.

"A. Because the Hon'ble Karnataka High Court, while remanding the matter to the Assessing Authority, failed to appreciate that the Land Reform Acts falls outside the purview of the Income Tax Act. It is submitted that the observations of the Hon'ble High Court that the facts regarding agrarian reforms has not been examined is not relevant to the issue under consideration as these are extraneous factors and will not have any impact on the law unless there is a legislative amendment by the Parliament."

13. Be that as it may after the remand as per High Court's order dated 02/08/2014 the Ld.AO in the assessment orders, held that income received from contract farming has to be assessed as Business income and not as agricultural income. For this proposition, the Ld.AO relied on the decision of High Court at first instance. It is submitted that with respect to own and leased lands, it has been held by the Assessing Officer that the assessee is eligible for exemption u/s 10(1) of the Act only with respect to agricultural income from lands held within the prescribed limits as per the Agrarian laws and the income earned from land held in excess of Agrarian laws are not eligible for exemption u/s 10(1) of the Act and same are to be assessed as

Business income. Further, 10% of the eligible agricultural income, has been treated as Business Income.

13.1 Adverting to the present facts of the case for years under consideration, it is noted that the authorities below in the present facts of the case made categorical observation that assessee has not provided any details regarding about the revenue generated out of each streams of land. Admittedly, assessee still carries out the activities under the same 3 categories, as has been considered in the preceding assessment years by Hon'ble High Court.

13.2 We note that for A.Ys. 1998-99 to 2004-05, the issue travelled for the second round before this *Tribunal* wherein it was remanded back to the Ld.AO. The present situation is that the decision of *Hon'ble Karnataka High Court* vide orders dated 24.10.2011, 18.07.2014 and 02.08.2014 in the preceding Assessment Years directed the Ld.AO to re-examine the issue based on land holdings by assessee in excess and the permitted limits, which is sub judice before *Hon'ble Supreme Court*. We therefore deem it fit and proper to remand these issues back to the Ld.AO. The Ld.AO is directed to decide these appeals in accordance with the view taken by *Hon'ble Supreme Court* in assessee's own case.

Accordingly, grounds raised by assessee stands allowed for statistical purposes.

In the result, all the appeals of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 11th January, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 11th January, 2022.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore