

आयकर अपीलिय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ B ‘ Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.137/Hyd/2022		
Assessment Year: 2015-16		
Madhu Velayudhan, Jeedimetla, Hyderabad. PAN : AGZPV7853R.	Vs.	Income Tax Officer, Ward – 11(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Ms. S. Sandhya.
Revenue by:		Shri K. Madhusudhan, CIT-DR
Date of hearing:		19.10.2022
Date of pronouncement:		20.10.2022

ORDER

Per Laliet Kumar, J.M.

The appeal of the assessee for A.Y. 2015-16 arises from the order of Principal Commissioner of Income Tax, Hyderabad - 2 dt.28.03.2021 invoking proceedings under section 263 of Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee read as under :

“1. The order of the Hon'ble Principal Commissioner of Income Tax, Hyderabad-2 is erroneous both on facts and in law.

2. The Hon'ble Pr. Commissioner of Income Tax erred in holding that there is any error in the assessment order passed u/s 143(3) dated 19.12.2017 for the assessment year under consideration;

3. The Hon'ble Pr. Commissioner of Income Tax ought to have considered the fact that the Assessing Officer examined the agricultural income admitted of Rs.57,16,613/- and accepted the same as exempted income.

4. The Hon'ble Pr. Commissioner of Income Tax erred in holding that the income derived from banana saplings does not represent agricultural income;

5. The Hon'ble Pr. Commissioner of Income Tax erred in setting aside the assessment by passing order u/s 263 particularly when there is neither an error nor any prejudice is caused to the revenue.”

2.1. The appeal filed by the assessee is barred by limitation by 334 days. He has moved a condonation petition explaining reasons thereof. We have heard both the parties on this preliminary issue. In this connection, the assessee has filed an affidavit for condonation of the said delay wherein, it was, inter-alia, affirmed that due to lock down imposed by the central government as preventive measures to contain the spread of Covid-19 from 23/03/2020, caused the impugned delay in filing the appeal belatedly. We rely on Case law Collector Land Acquisition Vs. Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No. 9488 & 9489/2019 dated 17 December, 2019, hold that such a delay; supported by cogent reasons, deserves to be condoned so as to make way for the cause

of substantial justice. We accordingly hold that assessee's impugned delay in filing this appeal is neither intentional nor deliberate but due to the circumstances beyond his control. The same stands condoned. Case is now taken up for adjudication on merits.

3. Facts of the case, in brief, are that assessee in individual, who is engaged in the business of production and sale of Tissue Culture Plants, filed his return of income for A.Y. 2015-16 on 15.08.2015 admitting income of Rs.1,05,000/- and agricultural income of Rs.57,16,613/-. The case was selected for scrutiny under CASS to verify the agricultural income claimed by the assessee. Thereafter, notice u/s 143(2) of the Act was issued on 19.09.2016 and served on the assessee. Assessee had furnished the information as called for. After verification of the information, income returned by the assessee was accepted.

4. The ld.PCIT on perusal of record noted that as the assessee kept the purchased plants in the laboratory for further growth under special conditions using chemicals, controlled temperature etc. and thereafter, sold them to the farmers. As such, the income derived from the above activity does not fall under the definition of 'agricultural income' as defined u/s 2(1A) of the Act for which exemption is allowed and the said income should be treated as 'business income'. However, the Assessing Officer had accepted the said income derived from sale of banana saplings as 'agricultural income' and allowed exemption u/s 10(1) of the Act.

Hence, the order of Assessing Officer passed u/s 143(3) of the Act dt.19.12.2017 was erroneous and prejudicial to the interest of revenue. He therefore, issued a show cause notice u/s 263 of the Act to the assessee on 03.02.2020 asking to file his objections as to why the sale of banana saplings shall not be treated as business activity and not as agricultural activity. The objections of the assessee were rejected and the ld.PCIT held that the order of Assessing Officer was erroneous and prejudicial to the interest of revenue and hence, he had set aside the order passed by the Assessing Officer.

5. Feeling aggrieved with the order of ld.PCIT passed u/s 263 of the Act, assessee is now in appeal before us.

6. Before us, the ld.AR for the assessee has submitted that in the present case, the Assessing Officer has examined the activities of the assessee and thereafter, had completed the assessment. It was the contention of the assessee that the assessee had filed a note on the nature of the activities of the assessee along with the supporting documents. However, the Assessing Officer has allowed the claim of the assessee without discussing the submissions of the assessee.

7. Per contra, ld. DR had submitted that in the present case, no enquiry was made by the Assessing Officer and even no question was asked by the Assessing Officer for the purpose of finding of the reasons for allowing the activities of the assessee to

arrive to a conclusion that the activities of the assessee are agricultural activities or not. Ld. DR had also produced the copy of note sheet of the Assessing Officer and also submitted that there is no issuance of questionnaire by the Assessing Officer to the assessee.

8. In rebuttal, the ld. AR had submitted that the action on the part of the ld.PCIT is incorrect as the activities of the assessee had been examined and further the assessee was into developing of sapling for getting high yield of banana plants. The following submissions were filed by the ld. AR for the assessee.

“The only question in this appeal is whether cultivation of banana saplings is an agricultural activity or not. For this purpose, it is necessary to consider the stages of growth of banana saplings. The appellant is submitting the photographs of the banana saplings cultivated by the appellant. The stages of cultivation of banana saplings are submitted hereunder.

First stage:

The first stage is selection of the sucker. The fruit bearing banana trees are grown on the soil and they are the source for the selection. Around such trees, young saplings are obtained. They are grown on the soil. Out of many such saplings only the healthy ones are selected for the purpose of re-planting. This process is evidenced from the photograph No.1 annexed to these submissions.

Second stage:

After selection of the healthy saplings, they are cleaned carefully.

Third stage:

The third stage is that such saplings are cut into sizes so as to enable them to be kept in chemical solution. In the fourth stage, they are again cleaned with the chemical solution and are improvised.

The fifth stage is to arrange the, cleaned saplings into the bottles which contain liquid manures. The young saplings grow in the bottles.

The next stage is the saplings so grown are removed and re-planted in primary and secondary hardening soils. Thus, the suckers are re-planted on the soil for growth.

The above information on the activities of the appellant clearly indicate that the soil is the basis for the growth of the banana saplings/banana trees.

As is clear by now, the process of agriculture is the cultivation of the land and growing of plants etc., with human skill and effort. The assessee submits that the land would mean prepared soil.

The words "soil" and "land" are defined by the Black's Law Dictionary.

The definition of the word 'Land' :

In the most general sense, "comprehends any ground, soil, or earth whatsoever; as meadows, pastures, woods, moors, waters, marshes, furies and heath. Co.Litt 4a. 'The word "land" included not only the soil but everything attached to it, whether attached by the course of nature, as trees, herbage, and water, or by the hand of man, as buildings and fences.

"Land" is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock and other substance."

ii The definition of the word `soil':

The word "soil" is defined by Random House Dictionary - The Unabridged Edition to include "any place or condition providing the opportunity for growth or development".

It can be seen that the major part of the activities are on the soil. The process of selection, pruning, removing, processing, developing and re-planting would clearly indicate that the human effort is involved. It is submitted that the agriculture would mean "cultivation of land with human effort". The appellant cultivate the land and grows banana plant which is useful for reaping bananas. This would come within the meaning of agriculture as mentioned by the Madras High Court in the case of CIT Vs Soundarya Nursery reported in 241 ITR 530 the relevant portion of which is extracted hereunder:

"8. All the products of the land, which have some utility either for consumption or for trade or commerce, if they are based on land, would be agricultural products. Here, it is not the case of the revenue that without performing the basic operations, only the subsequent operations, as described in the decision of the Apex Court have been performed by the assessee. If the plants sold by the assessee in pots were the result of the basic operations on the land on expending human skill and labour thereon and it was only after the performance of the basic operations on the land, the resultant product grown on such part thereof as was suitable for being

nurtured in a pot, was separated and placed in a pot and nurtured with water and by placing them in the greenhouse or in shade and after performing several operations, such as weeding, watering, manuring etc. they were made ready for sale as plants all these operations would be agricultural operations and all this involves human skill and effort. Thus, the plants sold by the assessee in pots were the result of primary as well as subsequent operations comprehended within the term 'agriculture' and they are clearly the products of agriculture".

The Ahmedabad Bench of ITAT in the case of DCIT Vs Best Rose Biotech Limited held that development of Green House Floriculture product is an agricultural process.

In view of the above, the appellant submits that it is an agricultural operation and the income derived represents agricultural income.

Further, the definition given to the word "agricultural income" is explained by introduction of Explanation 3 which says "any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income". Therefore, the appellant submits that the Assessing officer is not justified in holding that the operations carried on by the appellant are not agricultural operations and that the income is assessable without granting exemption.

The appellant also relies on the decision of the Hon'ble Special Bench of ITAT, Hyderabad in the case of DCIT ' Vs Inventaa Industries Pvt. Ltd, a copy of which is annexed, wherein it is held that growing of Mushrooms is an agricultural operation."

9. We have heard the rival submissions and perused the material on record. For the purpose of arriving at the conclusion whether the order passed by the Assessing Officer was erroneous and prejudicial to the interest of Revenue, it is essential to find out whether the Assessing Officer has applied his mind in the case of the assessee or not at the time of scrutiny assessment. In the present case, the case was selected for scrutiny to verify whether the income claimed by the assessee was agricultural income or not. In the present case, no question was asked by the Assessing Officer

during the scrutiny assessment to verify whether the income disclosed by the assessee to an extent of Rs.57,16,613/- was an agricultural income. Nothing has been done by the Assessing Officer and the Assessing Officer without making any enquiry had allowed the claim of the assessee treating the same as agricultural income. In our view, the Explanation 2 to section 263 make it abundantly clear that the order passed by the Assessing Officer would be erroneous and prejudicial to the interest of revenue, when no enquiry has been made by the Assessing Officer. In the present case, neither any enquiry has been made by the Assessing Officer nor any questions were asked to the assessee nor any information was called for. Therefore, we have no hesitation to hold that the order passed by the Assessing Officer was erroneous and prejudicial to the interest of revenue within the meaning of section 263 of the Act. In view of the above, we do not find any error in the order passed by Id.PCIT.

10. Another reason for recording the above said finding is that in the subsequent A.Y. i.e., 2016-17, the Assessing Officer had passed the order on 06.12.2019 and confirmed the addition to an extent of Rs. Rs.70,77,107/- by treating the same as 'business income' as against 'agricultural income' claimed by the assessee. Similarly, for A.Y. 2017-18 the Assessing Officer after elaborate discussion had also concluded that the activities of the assessee do not fall within the realm of 'Agriculture' and had held the amount of Rs.16,71,532/- as business income instead of agricultural income. It was submitted by the Id. AR that the appeals for these

two assessment years were filed by the assessee before the ld.CIT(A). We notice that in the present case, a show cause notice was issued on 03.02.2020 i.e., much after passing of these orders for two assessment years u/s 263 and the ld.PCIT had come to conclusion that the assessee is not into agricultural activities. However, the ld.PCIT had thoroughly examined the activities of the assessee during 263 proceedings and had recorded the finding that the activities of the assessee though are in the nature of business however, the Assessing Officer has not recorded any finding in the assessment order despite the specific selection of the CASS for treating the income as “agricultural income”. In the light of the above, we do not find any merit in the appeal of the assessee and accordingly, the appeal of the assessee is dismissed.

11. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 20th October, 2022.

Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 20th October, 2022.

TYNN/sps

Copy to:

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2	Income Tax Officer, Ward - 11(2), Hyderabad.
3	Principal Commissioner of Income Tax, Hyderabad - 2.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order