

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No.	निर्धारण वर्ष/ A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
202/Hyd/2018	2009-10	Agri Gold Farm Estates India Private Limited, Hyderabad [PAN: AADCA9678C]	Deputy Commissioner of Income Tax, Central Circle-2(4), Hyderabad
1222/Hyd/2018	2010-11		
1223/Hyd/2018	2011-12		
1224/Hyd/2018	2012-13		
1669/Hyd/2018	2013-14		
1670/Hyd/2018	2014-15		
1887/Hyd/2018	2015-16		
214/Hyd/2018	2009-10	Deputy Commissioner of Income Tax, Central Circle-2(4), Hyderabad	Agri Gold Farm Estates India Private Limited, Hyderabad [PAN: AADCA9678C]
796/Hyd/2018	2010-11		
1173/Hyd/2018	2011-12		
1174/Hyd/2018	2012-13		
1175/Hyd/2018	2013-14		
1176/Hyd/2018	2014-15		
1177/Hyd/2018	2015-16		

निर्धारिती द्वारा/Assessee by: Shri M.V. Prasad, AR
राजस्व द्वारा/Revenue by: Shri Jeevan Lal Lavidiya, CIT-DR

सुनवाई की तारीख/Date of hearing: 20/04/2023
घोषणा की तारीख/Pronouncement on: 26/04/2023

आदेश / ORDER

PER BENCH:

Aggrieved by the order(s) passed by the learned Commissioner of Income Tax(Appeals)-12, Hyderabad (“Ld.CIT(A)”) in the case of Agri Gold Farm Estates India Private Limited (“the assessee”) for the assessment years 2009-10 to 2015-16, both the assessee and Revenue preferred these appeals. Facts involved for all these assessment years are similar and mostly the grounds of appeal. We, therefore, deem it just and convenient to dispose of these appeals by way of this common order, taking the appeals for the assessment year 2011-12 in ITA No. 1223/Hyd/2018 filed by the assessee and ITA No. 1173/Hyd/2018 filed by the Revenue respectively, as lead cases. For the assessment years 2010-11, 2012-13, 2013-14 & 2014-15, assessee preferred appeals with a delay stating that the Director of the assessee-company was in prison from February, 2016 and was released on 08/06/2018 and immediately after release he filed the appeals, but the delay occurred. As a matter of fact, learned DR fairly concedes to condone the delay. Recording the same, we condone the delay and proceed to hear the matter on merits.

2. There was a search and seizure operation under section 132 of the Income Tax Act, 1961 (‘the Act’), in the case of the assessee on 23/01/2015 and pursuant thereto notice under section 153A was issued on 19/08/2015 followed by notices under section 142(1) of the Act, but the assessee did not

respond to any of such notices, and, therefore, the learned Assessing Officer proceeded under section 144 of the Act basing on information available on record and concluded the assessment by order dated 30/12/2016 making four additions, namely, addition to the business income, deemed income under section 56(2)(vii)(a) of the Act, cash credit under section 68 of the Act and interest income. Learned Assessing Officer made an addition on account of business income by estimating the same at 15% of the gross receipts keeping in view the line of business of the assessee and also that there are certain deficiencies in making huge cash payments. Learned Assessing Officer also found that the assessee acquired the shares of M/s. Agri Gold Food and Farm Products Private Ltd., and other companies for a consideration less than the aggregate Fair Market Value. Hence, he added the difference. Apart from this, learned Assessing Officer also made an addition under section 68 of the Act by treating the share premium and the share capital received in cash as un-explained cash credits. Learned Assessing Officer also made an addition under the head 'income from other sources'.

3. Assessee preferred appeal before the learned CIT(A) and produced additional evidence under rule 46A of the Income Tax Rules, 1962 ('the Rules'). Learned CIT(A) obtained remand report from the learned Assessing Officer. On an appraisal of the material before him and taking note of the fact that in the cases of the Agri Gold Group, estimation of profit was consistently made at 5%, learned CIT(A) directed the learned Assessing Officer to adopt the rate of 5% for estimation of net profit subject to the quantum of profits returned by the assessee. Learned CIT(A) sustained the addition made under section 68 of the Act in respect of the share application money and premium. Learned CIT(A), however, directed the learned Assessing Officer to treat the interest income as 'income from business'. On the aspect of adding the difference of the market value of the shares

acquired and the sale consideration, learned CIT(A) directed the learned Assessing Officer to adopt a revised working for calculation of the Fair Market Value of such shares after considering the TDS and advance tax.

4. Challenging the deletions directed by the learned CIT(A), Revenue and aggrieved by the additions to the extent they are sustained by the learned CIT(A), assessee preferred appeals.

5. At the outset, it is submitted on behalf of the assessee that at relevant time during the assessment proceedings, pursuant to the issuance of notice under section 153A of the Act and also during the first appellate proceedings, unfortunately, all the persons responsible for the affairs of the company were in judicial custody and, therefore, the assessee could not produce all the relevant books, vouchers etc., before the authorities to prosecute the case diligently. Learned AR produced the copy of the certificate dated 26/02/2019 issued by the Superintendent, District Jail, Eluru and also the letter dated 24/11/2016 addressed by Shri A.V.Rama Rao, Chairman of the Agri Gold group to the DCIT, Hyderabad. He further submitted that given an opportunity, the assessee is ready to produce all the material before the learned Assessing Officer to prove their case and get the assessment done on merits. He submitted that precisely on this ground on earlier occasions, a Co-ordinate Bench of this Tribunal in the batch of cases concerning the group concerns restored the file to the learned Assessing Officer for fresh adjudication, after affording opportunity to the assessee to produce all the material at their custody. He produced the copies of the orders in ITA No. 16/Hyd/2018 and batch dated 29/11/2022 in the case of DCIT vs. Agri Gold Constructions P. Ltd., and ITA No. 1220/Hyd/2018 and batch dated 16/03/2023 in the case of M/s. Dream Land Ventures Private Limited and batch, the same forms part of record.

6. Per contra, learned DR submitted that the assessee produced additional evidence before the learned CIT(A) under rule 46A of the Rules, learned CIT(A) considered the same to obtain the remand report, such material was considered by the learned Assessing Officer to submit the remand report and basing on it, learned CIT(A) took a plausible view. He, therefore, submitted that the assessee had sufficient opportunity before the authorities below. Learned DR, however, fairly conceded that in various batches of cases involving the group concerns of Agri Gold group, the Co-ordinate Benches of the Tribunal took the view that it would be in the interest of justice, to restore the issue to the file of learned Assessing Officer with a direction to adjudicate the same afresh, after giving due opportunity of being heard to the assessee.

7. We have gone through the record in the light of the submissions made on either side. It could be seen from the copies of the orders in ITA No. 16/Hyd/2018 and batch dated 29/11/2022 in the case of DCIT vs. Agri Gold Constructions P. Ltd., and ITA No. 1220/Hyd/2018 and batch dated 16/03/2023 in the case of M/s. Dream Land Ventures Private Limited and batch, the facts are identical and the Co-ordinate Bench of this Tribunal took the view to set aside the impugned orders and to restore the issue to the file of the learned Assessing Officer for giving an opportunity to the assessee to dispose of the matters according to law. It is clear from the certificate dated 26/02/2019 issued by the Superintendent, District Jail, Eluru and also the letter dated 24/11/2016 addressed by Shri A.V.Rama Rao, Chairman of the Agri Gold group to the DCIT, Hyderabad that the Chairman, Vice Chairman, Managing Directors and others were in custody between the period 12/02/2006 and 23/10/2018 and lodged in District Jail, Eluru.

8. This material clearly establishes that from 12/02/2016 to 23/10/2018 all the persons responsible for the affairs of the company were in custody

and in their absence, as claimed by the learned AR, some part of the material was produced before the authorities. There is nothing contrary to disbelieve the statement of the learned AR that the assessee could not prosecute the proceedings before the authorities diligently due to the fact of non-availability of the persons responsible for the affairs of the company. In fact, this peculiar circumstance is taken note by the Co-ordinate Benches of this Tribunal in the cases of the group concerns on earlier occasions as is evidenced by the copies of the orders in ITA No. 16/Hyd/2018 and batch dated 29/11/2022 in the case of DCIT vs. Agri Gold Constructions P. Ltd., and ITA No. 1220/Hyd/2018 and batch dated 16/03/2023 in the case of M/s. Dream Land Ventures Private Limited and batch (supra).

9. Having regard to the peculiarity of the facts, we are of the considered opinion that it would be in the interest of justice to set aside the impugned orders and to restore the matters to the file of the learned Assessing Officer to adjudicate the same afresh, after giving an opportunity of being heard to the assessee and also to produce all the relevant material at their custody. We hold and direct accordingly. The grounds of appeals of both the assessee and the Revenue for the assessment year 2011-12 are accordingly treated as allowed for statistical purpose.

10. Coming to the assessment year 2012-13, facts and grounds in these two appeals are identical to the assessment year 2011-12, hence the same conclusion will apply to this assessment year also for these appeals too.

11. In the appeals for the assessment year 2009-10 and 2010-11, there is no addition under section 56(2)(vii)(a) of the Act and in respect of the assessment years 2013-14 to 2015-16, addition under section 68 of the Act was not there, and all the other three additions are there. Facts are similar to the assessment year 2011-12 in which year, it was held that such issues

require verification at the end of the learned Assessing Officer. We, therefore, set aside the impugned orders for all these years also, and restore the matters to the file of the learned Assessing Officer to adjudicate the same afresh, after giving an opportunity of being heard to the assessee and also to produce all the relevant material at their custody. Hence, all these appeals of assessee and Revenue are also treated as allowed for statistical purposes.

Order pronounced in the open court on this the 26th day of April, 2023.

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 26/04/2023

TNMM

Copy forwarded to:

1. M/s. Agri Gold Farm Estates India Private Limited, C/o. M.V. Prasad,
Chartered Accountant, D.No. 60-7-13, 4th Line, Siddhartha Nagar,
Vijayawada.
2. Dy. Commissioner of Income Tax, Central Circle-2(4), Hyderabad.
3. Pr.CIT(Central)-Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ASSISTANT REGISTRAR
ITAT, HYDERABAD