

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

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

ITA No. 372/Bang/2023
Assessment Year : 2017-18

M/s. Namdhari Seeds Pvt. Ltd., No. 8, Sri Sai Arcade, 12 th Cross, 1 st Phase, Ideal Homes Township, Rajarajeshwari Nagar, Bangalore – 560 098. PAN: AAACN6725E	Vs.	The Assistant Commissioner of Income Tax, Circle – 5(1)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Suman Lunkar, CA
Revenue by	:	Ms. Neera Malhotra, CIT-DR

Date of Hearing	:	26-06-2023
Date of Pronouncement	:	26-06-2023

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against order dated 29/03/2023 passed by NFAC, Delhi for A.Y. 2017-18 on following grounds of appeal:

- “1. The learned Commissioner of Income tax (Appeals) has erred in passing the order in the manner passed. The appellate order by Commissioner of Income tax (Appeals) disposing the appeal filed by the appellant is bad in law and is liable to be quashed in toto.*
- 2. In any case and without prejudice, the learned Commissioner of Income tax (Appeals) has erred in disposing appeal without going to merits of the case on the ground that appellant had not filed any written submission in support of the appeal. The appellant having filed grounds of appeal, the learned Commissioner of Income tax (Appeals) should have decided the issue on merits on*

the available facts and records and the dismissal of appeal in limine, without deciding on merits and therefore the order is liable to be quashed.

3.1 In any case, the Assessing Officer having not made the assessment/computation of income in the assessment order makes the order bad in law and such order is liable to be quashed.

3.2 In any case, and without prejudice, in the assessment order, the Assessing Officer has erred in treating the agriculture income as business income. The agriculture income as earned by the appellant is to be considered as such.

3.3 In any case and without prejudice, the calculation and computation of business income is erroneous, excessive and unreasonable.

4. The learned Commissioner of Income tax (Appeals) has erred in confirming the disallowance of reimbursement of research expenditure as done by the Assessing officer. On the facts and circumstances of the case and the law applicable, the entire expenditure being incurred in the course of and for the purpose of carrying on business is to be allowed as claimed by the appellant.

5. The learned Commissioner of Income tax (Appeals) has erred in disallowing a sum of Rs. 43,43,836/- by invoking provisions of Section 14A read with Rule 8D(2) of the Income Tax Rules. On the facts and circumstance of the case the provisions of section 14A are not applicable to the appellant at all. The disallowance being erroneous is to be deleted.

6. In any case, the computation of income and tax etc, in the computation sheet attached to assessment order is bad in law and without any basis and hence to be totally disregarded.

7. In view of the above and other grounds to be adduced at the time of hearing, it is requested that the impugned assessment order as passed by CIT(A) be quashed or atleast

a) The agricultural income as returned by appellant be accepted.

b) The treatment part of agricultural income as business income by the Assessing Officer be dis regarded

c) Disallowance of Research Expenditure be deleted.

d) Disallowance made u/s. 14A be deleted.

e) The appellant be given other relief as per law.”

2. Brief facts of the case are as under:

2.1 This present appeal was instituted on 24.01.2020 against Order dated 25.12.2019, passed u/s 143(3) of the Income Tax

Act. 1961 (hereinafter referred to as the Act") by the ALIT. Circle-5(1)(1). Bangalore (hereinafter referred to as the 'AO), for the Asstt. Year 2017-18. As per Form 35, the date of Service of order was 26.12.2019 and thus the Appeal is found to have been file without any delay. This appeal was subsequently migrated to the National Faceless Appeals Centre in terms of Notification No. F. No.187/4/2020-ITA-1 dated 25.09.2020 issued by CBDT, New Delhi.

2.2 The assessee company is engaged in the production and trading of vegetable and flower seeds. For the assessment year 2017-18, the assessee had filed return of income on 30.10.2017 disclosing total loss at Rs.2,60,24,096/-. The case was selected for Complete Scrutiny. The AO passed order u/s 143(3) of the Act on 25.12.2019 and made addition of Rs. 43,43,836/- on account of disallowance u/s 14A r.w.r. 8D(2).

2.3 Being aggrieved by the above addition. the assessee is in appeal against the said Order under section 143(3) of the IT Act. 1961.

2.4 The Ld.CIT(A) issued notices to the assessee on 23.01.2021, 06.03.2023, 14.03.2023 and 21.03.2023 in which the last date of submissions were fixed for 08.02.2021, 10.03.2023, 20.03.2023 and 27.03.2023 respectively, for which there were no compliance and assessee did not file any submission in response to the same.

2.5 In view of this non-compliance from the assessee's side, the NFAC confirmed the order of Ld.AO.

Aggrieved by the order of Ld.CIT(A), the assessee preferred appeal before this *Tribunal*.

3. Before us, the Ld.AR submitted that all the notices stated in para 2.4 above were issued electronically through ITBA portal. The person incharge was not conversant with ITBA portal and failed to see or verify the notices sent electronically. Hence, he failed to take note of the above notices and failed to represent the case before the NFAC.

4. The Ld.DR submitted that assessee has not make use of opportunities given to it before this NFAC. Hence, appeal be decided on merit only.

We have heard the rival submissions and perused the materials available on record.

5. In this case, admittedly, assessee has not participated before NFAC by filing requisite information and the NFAC decide the issue ex-parte. In our opinion, in the interest of justice, it is appropriate to remit the entire issue in dispute to the file of NFAC to decide the issue afresh after giving an opportunity of hearing to the assessee.

In the result, the appeal filed by assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 26th June, 2023.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 26th June, 2023.
/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