

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU “A” BENCH, BENGALURU**

**Before Shri Chandra Poojari, Accountant Member
and
Shri Keshav Dubey, Judicial Member**

ITA No. 608/Bang/2024 (Assessment Year: 2017-18)		
Labland Biotechs Pvt. Ltd. #01, 8th KM, KRS Road Metagalli, Mysuru 570016 PAN – AAACL2892A (Appellant)	vs.	The Income Tax Officer Ward - 1(1), Mysuru (Respondent)
Assessee by:	Shri V. Srinivasan, Advocate	
Revenue by:	Shri Guru Kumar S., Addl. CIT-DR	
Date of hearing:	28.05.2024	
Date of pronouncement:	09.07.2024	

ORDER

Per: Keshav Dubey, J.M.

This appeal at the instance of the assessee is directed against DIN & order No. ITBA/NFAC/S/250/2023-24/1062548837(1) dated 13.03.2024 passed by the National Faceless Appeal Centre, Delhi (CIT(A)) under Section 250 of the Income Tax Act, 1961 (the Act) for Assessment Year (AY) 2017-18.

2. The assessee has raised the following grounds of appeal: -

- “1. *The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
2. *The learned Commissioner of Income tax [Appeals] / National Faceless Appeal Centre [NFAC for short] is not justified in confirming the assessment of a sum of Rs.87,39,282/- as income from other sources under the facts and in the circumstances of the appellant's case.*
 - 2.1 *The learned CIT[A]/NFAC failed to appreciate that the income derived by the appellant is from agriculture operations, which is exempt u/s.10[1] of the Act read with explanation of section 2[1] of the Act and consequently, the learned CIT[A]/NFAC*

ought to have deleted the addition made in the assessment order and accepted the Nil income reported by the appellant.

- 2.2 *The learned CIT[AJ]/NFAC is not justified in holding that the appellant had not furnished any submissions alongwith documentary evidence against the finding of the A.O., although the appellant had filed written submissions along with the documentary evidences, which are reproduced in the appellate order and thereby is not justified upholding the addition of Rs.87,39,282/- under the facts and in the circumstances of the case.*
- 2.3 *The learned CIT[AJ]/NFAC failed to appreciate that the income derived by the appellant from agriculture operations were accepted in a scrutiny assessment for the immediately preceding year and therefore, there was no justification to reject the claim of the appellant for exemption u/s. 10[1] of the Act under the facts and in the circumstances of the appellant's case.*
3. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s 234A and 2348 of the Act which under the facts and in the circumstances of the appellant's case deserves to be cancelled.*
4. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”*

3. The brief facts of the case are that the assessee, a biotechnology company, claimed to be formed for research, development, production of plant tissue culture and sale of nursery plants & allied activities. For the Asst. Year 2017-18 the assessee company e-filed its return of income on 24.11.2017 declaring total income at Nil with a claim for credit for TDS amounting to Rs.10,788/- and claimed exemption of Agricultural Income to the extent of Rs.87,39,282/-. The assessee company claimed the sale of plants and seeds are in the nature of agricultural income and it is exempted in terms of Section 10(1) read with explanation (3) to Section 2(1A) of the Act. Thereafter the case of the Assessee was selected for scrutiny. Statutory notices under Section 143(2) as well as under Section 142(1) of the Act were issued calling for details/information. The assessee furnished the details of ownership of land,

ledger copy of sale Register, water charges, power & fuel, repair and maintenance as well as bank statements from 01.04.2015 to 31.03.2017. Thereafter the Assessing Officer (AO) completed the assessment under Section 143(3) of the Act on 29.12.2019 on a total assessed income of Rs.87,39,282/- as against the Nil income returned by the assessee as the full details like complete address, date of order, date of supply, information of order of sale of plants/tissue, when it is supplied, mode of supply, mode of sale consideration received are not been furnished by the assessee. Further, the AO observed in his order that the company is in the habit of not providing any information sought for from the department. Aggrieved, by the aforesaid Order passed U/s 143(3) of the Act, the assessee filed appeal before the CIT(A).

4. The Id. CIT(A) dismissed the appeal of the assessee by observing as follows: -

“The company has incurred expenditure exceeding Rs. 20,000/- per day and paid it in cash, however, name of the person, address etc., have not been furnished.

The company is in the habit not providing any information sought for from the department. The quality of the print take by the company of bank statement is very difficult to identify the date, cheque no, name of the person and amount involved. No supporting documents in support of Note No 2(2) to 21 of 44AB report has not been furnished with the letter dated 27.12.2019. In view of this payment for sales received by the company through cheque could not be verified as the information was also given only on 27.12.2019 just three days before the time barring date for completion of assessment by 31.12.2019. In the absence of the relevant documentary evidences the claim for income from Agriculture cannot be accepted. For these reasons the income of the company is brought to tax under the income from other sources. Accordingly, the assessment is concluded by making an addition of Rs. 87,39,282/- under the income from other sources and thereby disallowing the claim of income from Agriculture from the company.

7.1.3 The appellant has not furnished any submission along with documentary evidence against the finding of the AO in the assessment order. In view of the above, addition made by the AO for Rs. 87,39,282/- under the income from other sources by disallowing the claim of income from Agriculture of the appellant is confirmed. In

view of the fact that there is no material on record to warrant interference in the order of Assessing Officer, the Grounds of Appeal are hereby dismissed.

5. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The assessee has filed a paper book comprising 45 pages enclosing therein copies of the following: -

“1. Copy of the written submissions dated 20/07/2023 filed before the Commissioner of Income-tax [Appeals]/ NFAC alongwith the following :-

1.1 Annexure-1: Copy of the ITR Ack alongwith the computation of total income and financials for the Asst. year 2017-18

1.2 Annexure-2: Copy of the notice u/s.143[2] of the Act dated 14/08/2018

Copy of the notice u/s.142[1] of the Act dated 03/12/2019

Copy of the appellant's response filed on 28/12/2019 before the ITO, Ward-1[1], Mysore alongwith e-filing Ack.

1.3 Annexure-3 - Copy of the decision of the Hon'ble ITAT, "B" Bench Bangalore in the case of case of the appellant for the assessment year 2009-10 in ITA No.879/Bang/2015 dated 18/12/2015

1.4 Annexure-4: Copy of the order of assessment passed u/s.143[3] rws 254 dated 30/12/2016 for the Assessment year 2009-10

1.5 Annexure-5: Copy of the order of assessment passed u/s.143 [3] of the Act dated 13/12/2018 for the assessment year 2016-17”

6. Before us the Id. A.R. of the Assessee submitted that the Id. CIT(A) failed to appreciate the fact that the income derived by the assessee is from agricultural operations, which is exempt under Section 10(1) of the Act read with explanation 3 to Section 2(1A) of the Act. Further, the learned A.R. of the assessee argued that the assessee had filed written submissions along with documentary evidences before the authorities below and therefore the learned CIT(A) was not justified in confirming the assessment of a sum of Rs.87,39,282/- as income from other sources. Further, the learned A.R. vehemently submitted that the company is maintaining proper books of accounts and the same were audited by a Chartered Accountant. The AO has

also accepted the source of agricultural income in the past and also brought to our attention to pages 31 to 38 of the paper book wherein the copy of the order of the Hon'ble ITAT 'B' Bench, Bangalore in the own case of the assessee for the AY 2009-10 in ITA No. 879/Bang/2014 dated 28.12.2015, as held to be agricultural income. Further, the learned A.R. drew our attention to pages 43 to 45 of the paper book, i.e., the assessment order made U/s 143(3) for the AY 2016-17 dated 13.12.2018 passed in the own case of assessee in which the same income is held to be agricultural income under the similar facts and circumstances and submitted that the rule of consistency should be followed by the Revenue.

7. The learned D.R., on the other hand, supported the orders of the authorities below and submitted that as no details were furnished before the AO with regard to the nature and source of income accordingly the source could not be properly explained by the assessee. The authorities below has rightly treated the income under the head 'Income from Other Sources' amounting to Rs. 87,39,282/-.

8. We have heard the rival contentions and perused the material on record. The undisputed fact is that the assessee is a biotechnology company formed for research, development, production of plant tissue cultures, sale of nursery plants and allied activities with regard to agriculture. The Assessee claimed that the sale of plants and seeds is an agriculture Income and it is exempted U/s 10(1) read with explanation 3 to Section 2(1A) of the Act which is accepted by the revenue in the past as can be seen from the Assessment Order passed for the Asst. Year 2009-10 & Asst. Year 2016-17. Further this Tribunal in the assessee's own case in ITA No. 879/Bang/2015 for the Asst. Year 2009-10 has set aside the orders of the lower authorities and remit the issue regarding the claim of the assessee regarding agriculture nature of its income back to AO for consideration since none of the lower authorities have considered these issues with the following observations-

11. I have perused the orders and heard the rival contentions. Basis of charge of Income-tax has been set out in Section 4(1) of the Act which is reproduced hereunder :

*(1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and *subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income of the previous year of every person :*

Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.

12. A reading of the above clearly show that the charge of tax is on total income. Agricultural income is exempt u/s.10(L) of the Act which falls in Chapter II of the Act. Heading of Chapter III is "Incomes which do not form part of total income". Thus the items of income specified in Section 10(1) of the Act or Chapter III of the Act would not be a part of total income. There cannot be a charge of tax u/s.4(1) of the Act on anything other than total income. As per the assessee, nature of its income was agricultural. Irrespective of the fact whether assessee had preferred a claim in this regard or not, the charge of tax under the Act can only be on total income of an assessee. Exemption of agricultural income given to an assessee u/s.10(1) of the Act is not dependent on a claim made through a return of income, since a charge of tax can only be on total income and total income cannot include therein any agricultural income. Explanation 3 to Section 2(1A) of the Act which defines agricultural income clearly states that income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income. Said Explanation has been inserted by Finance Act, 2008, w.e.f. A. Y.2009-10. Impugned assessment year being 2009-10, Explanation was squarely applicable. However, what we find is that none of the lower authorities had gone into the claim of the assessee that income from saplings and seedlings grown in a nursery was eligible for exemption u/s.10(1) of the Act, has already been mentioned above. Question of disallowance of any expenditure may become irrelevant if income of the assessee is considered agricultural in nature. Similarly the question of computation of book profit may also not arise once income of the assessee is held to be agricultural in nature, since it would not come within the scope of total income. Nevertheless since none of the lower authorities have considered these issues, I am of the opinion that the matter requires a fresh look by the AO. I set aside the orders of lower authorities and remit the issue regarding the claim of the assessee regarding agricultural nature of its income back to the AO for consideration in accordance with law. For reasons mentioned earlier, I do not find it necessary to decide on any of the issues raised by the Revenue as also other issues in assessee's cross objection. AO shall be free to consider these issues also when the matter is considered afresh."

During the course of the Assessment proceedings the assessee has produced the details such as ownership of land deriving income from sale of nursery plants and tissues, ledger copy of sale register, water chargers, power and fuel,

repair and maintenance, as well as bank statements for the period 01.04.2015 to 31.03.2017. Therefore under the above mentioned facts & circumstances & in view of the above observations of this bench we are also of the opinion that as per the explanation 3 to section 2(1A) of the Act which defines agriculture income clearly states that income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural Income and the same cannot be taxed as Income from Other Source . However as the AO as well as Id.CIT(A) observed that on perusal of Sales register, the full details like complete address and date of order, date of supply, nature of order of sale of plant/tissue, when it is supplied, mode supply, mode of sale consideration received, etc. have not been furnished during the course of the Assessment proceedings amounting to Rs. 1,73,50,000/- from different parties therefore, for this limited purpose of examining the same, the matter should go back to the file of the AO . We, therefore, set aside the order the CIT(A) and remand this issue to the file of the AO for the limited purposes of the examination of above details not produced during the course of assessment proceedings. Needless to say the AO shall provide reasonable opportunity of hearing to the assessee. The assessee is also directed to cooperate & furnish the necessary details in support of its claim & not to seek any other adjournment without just cause. It is ordered accordingly.

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

Order pronounced in the open Court on 09th July, 2024.

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bengaluru, Dated: 09th July, 2024
n.p.

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bengaluru*
5. *Guard File*

By Order

//True Copy//

*Assistant Registrar
ITAT, Bengaluru*