

BEFORE HON'BLE SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

AND

SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 1009/PUN/2024

निर्धारण वर्ष / Assessment Year : 2020-21

Callus Biotech Pvt. Ltd.

R/s 735, A/p Kandgaon,

Radha Nagari Rd., Tal: Karveer,

Kolhapur-416001.

PAN: AADCC5440J

..... अपीलार्थी / Appellant

बनाम / V/s

National e-Asstt Centre,

New Delhi.

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Mr Rajendra Agiwal ['Ld. AR']

Revenue by : Mr Umashankar Prasad ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 22/08/2024

घोषणा की तारीख / Date of Pronouncement : 22/08/2024

आदेश / ORDER

Per G. D. Padmahshali, AM;

The assessee is in appeal against DIN & Order No. ITBA/NFAC/S/250/2023-24/1062466111(1) dt. 12/03/2024 passed u/s 250 of Income-tax Act, 1961 ['the Act' hereafter] by National Faceless Appeal Centre, Delhi ['NFAC' hereafter] which in turn arisen out order of assessment passed u/s 143 r.w.s. 144B of the Act by the National e-Assessment Centre, New Delhi ['AO' hereinafter] anent to assessment year 2020-21 ['AY' hereinafter].

2. The long and short of the case is that;

2.1 The assessee is a company registered under the provisions of the Companies Act, 1956 is engaged in activity of agri-bio-technology & tissue cultural activities pertaining to new plant production from a plant tissue called

Apical Meristem i.e. 'Micropropagation' etc. ['the activities' hereinafter] Treating the income earned therefrom ₹65,54,310/- as exempt u/s 10(1) of the Act, the assessee filed its return of income ['ITR' hereinafter] declaring NIL taxable income. The case of the was subjected to scrutiny u/s 143(2) of the Act for verifying the large agricultural income claimed as exempt.

2.2 Dismantling the claim of assessee of having carried out the agricultural operation in totality, the Ld. AO treated 50% of assessee's operation as agricultural and balance operation as non-agricultural being carried out in laboratory. Consequently, while framing the assessment u/s 143(3) of the Act the Ld. AO restricted the claim of exempt agricultural to 50% i.e. ₹32,77,155/- and balance ₹32,77,155/- i.e. 50% total claim brought to tax as business income.

2.3 Aggrieved assessee unsuccessfully contested the aforestated denial in an appeal before first appellate authority.

2.4 Further aggrieved, the assessee brought the dispute before us in present appeal on the following grounds;

General Ground

1. *The Ld. CIT(A) erred in confirming the order passed by the Ld. AO assessing the total income at Rs. 32,28,840.*

Grounds on merits

2. *The Ld. CIT(A) erred in upholding the order passed by the Ld. AO denying the exemption of 50% of agriculture income of Rs. 65,54,310 declared by the appellant and thereby holding 50% of "Agriculture Income" which comes to Rs. 32,77,155 as taxable income from "Business".*



3. *The Ld. CIT(A) and the Ld. AO erred in not appreciating the operations carried out by the appellant which clearly constitutes as agriculture activity of tissue culture resulting in saplings and seedlings which are sold to nurseries.*

4. *The Ld. CIT(A) and Ld. AO erred in not appreciating the scope of explanation 3 to section 2(1A) of the Income Tax Act which has been 'inserted by the Finance Act 2008 w.e.f. 1st April 2009 expanding the scope of "Agriculture Income" from sapling and, seedlings.*

5. *The Ld. CIT(A) and Ld. AO erred in holding that 50% of the income is "Agriculture income" and 50% is "Taxable Business Income" without reference to any substantive provision in the act to the effect to reach to such conclusion.*

6. *The Ld. CIT(A) and Ld. AO erred in not following the circular of CBDT no. 112009 of 27 .03.2009. They should have appreciated that circulars issued are binding on the authorities.*

7. *The Ld. CIT(A) erred in holding that income derived from sale of saplings and seedlings grown in nursery "alone" can be termed as "Agriculture Income" when the statutory language of explanation 3 to section 2(1A) does not contain the word "alone" and thereby the Ld. CIT(A) erred in upholding the order of the Ld. AO denying partial exemption of "Agriculture Income".*

Denial of natural justice

8. ***The Ld. CIT(A) erred in not taking the cognizance of the appellant's grievance that the Ld. AO not granted the opportunity of hearing by mode of Video Conferencing.***

Initiation of Penal

9. *The Ld. AO erred in initiating penalty u/s 270A of the Act. The appellant craves to add, alter, delete all, or any of the grounds of appeal on or before hearing.*

3. Heard the rival submission on the limited issue of violation of principle of natural justice and subject to rule 18 of Income Tax Rules, 1963 perused the material placed on record and considered the facts of the case in the light of judicial precedents pressed into service.

4. From primary rival submissions; we could briefly note that, the assessee company is engaged in tissue culture process involving micro-propagation techniques. A variety of operations commencing from obtaining desired plant for sale to farmers & commercial nurseries are carried out in-house by the assessee. This process starts from acquisition of good quality Mother plant which is then used for tissue culture in well-equipped laboratory. The required tissue of interest is then sterilized which is marked as the initiation phase of tissue culture. Later in the multiplication phase, the Sterilized plant of initiation phase is put into a medium of growth regulators and appropriate nutrients helpful for the multiplication of cells. In next Rooting & shooting phase, the growth hormones are added for genesis of Roots and further kept under observance. All these processes are carried out in a conditioned laboratory under expert technical supervision. Thereafter process continues with Primary hardening phase, where plants with adequately developed shoots & roots are taken out from medium and kept in Green Houses in controlled environment with the use of soil. Further in Secondary hardening phase, plants are moved to Nurseries to equip them for field conditions before being sold to farmers. The latter two processes invariably are carried out with the use & on soil.

5. During the course of assessment, the Ld. AO did consider former process and came to a conclusion that, only 50% of activities/process falls within the category of 'agricultural' thus within the meaning of section 2(1A) of the Act. Hence 50% of net results/profit earned by the assessee was treated as such and balance 50% was treated as non-agricultural. Thus claim for exemption u/s



10(1) of the Act accordingly restricted to 50% and resultantly balance 50% brought to tax as business income. In an appeal, vide solitary para 5.2 of the impugned order the Ld. NFAC perfunctory upheld the assessment.

6. We note that, while framing the assessment the Ld. AO failed to provide any logical premise for drawing delineation & marking such *ad-hoc* bi-furcation of surplus/profit into 50% agri and 50% non-agri. The splitting of profit into agri-&-non-agri is without first identifying out of the processes as to which process *per-se* in his opinion do not fall within the meaning of 'agricultural' as defined by section 2(1A) of the Act. The direct slicing of profit by the Ld. AO on *ad-hoc* basis badly lacks appropriate reasoning, therefore the said fractionization is in our considered view is bereft of any rational.

7. *Per contra* without providing any independent findings & reasons in support of the Ld. NFAC simply echoed the Ld. AO's version in confirming the assessment. Since the impugned adjudication turned blind eye to video-conferencing request and declared the assessee batter as '*pavilion out*' without allowing it come to ground & explain its version, the adjudication in our considered view not only therefore suffered from violation of principle of natural justice but also from the compliance of s/s (6) of section 250 of the Act.

8. Strictly the proceedings under the Act are purely governed by principle of natural justice. In *M. Chockalingam and M. Meyyappan v. CIT, Madras, (1963) 48 ITR 34 (SC)*, *Hidayatullah, J*, speaking for the court observed that the authorities acting under the Act have to act judicially and one of the



requirements of judicial action is to observe principle of natural justice in reaching their conclusions and is to give a fair hearing to a assessee before deciding against him/it, else the assessment/adjudications turns out to be irregular.

9. In ‘Civitech Developers Pvt. Ltd. vs. ACIT’ [2021, 440 ITR 398 (Del)], ‘C. Chellamuthu Vs PCIT’ [2023, WP 23385/2022 (Mad)], ‘Venkateshwara Jewellery Vs ITO’ [2024, WP 11098/2024 (Mad)], ‘Phari Projects Pvt. Ltd. Vs ITO’ [2024, 165 Taxmann.com 116 (Cal)] the Hon’ble Courts have set-aside the assessments/adjudications by the tax authorities for not providing Video Conferencing while deciding the issue against the assessee.

10. In view of the above, we are constrained to set-aside the impugned order as it suffered from sufficient opportunity of hearing to the assessee and from the compliance of mandate of s/s (6) of section 250 of the Act and remand the file back to the Ld. NFAC for *de-novo* adjudication in accordance with law without being influenced by any of the observations made hereinabove

11. In result, the appeal is allowed for statistical purposes in above terms.

In terms of rule 34 of ITAT Rules, order pronounced in open court on this Thursday 22nd day of August, 2024.

-S/d-

VINAY BHAMORE
JUDICIAL MEMBER

पुणे / PUNE ; दिनांक / Dated : 22nd day of August, 2024.

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1.अपीलार्थी / The Appellant.

4. The NFAC, Delhi, New Delhi

Ashwini

2. प्रत्यर्थी / The Respondent.

5. DR, ITAT, SMC Bench, Pune

-S/d-

G. D. PADMAHALI
ACCOUNTANT MEMBER

3. The Pr.CIT, -Concerned

6. गार्डफाइल / Guard File.

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary

आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune