

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'B' Bench, Hyderabad**

**BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER AND**  
**SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

आ.अपी.सं /ITA Nos.225, 226 & 227/Hyd/2024  
(निर्धारण वर्ष/Assessment Years:2015-16, 2016-17)

Shri Madhu Velayudhan, Hyderabad. PAN:AGZPV7853R (Appellant)	<b>Vs.</b>	Income Tax Officer, Ward-11(1), Hyderabad. (Respondent)
निर्धारिती द्वारा/Assessee by:	Shri S. Rama Rao, Advocate	
राजस्व द्वारा/Revenue by:	Shri Kumar Pranav, CIT-DR	
सुनवाई की तारीख/Date of hearing:	12/08/2024	
घोषणा की तारीख/ Date of Pronouncement:	19/09/2024	

**आदेश/ORDER**

**PER MADHUSUDAN SAWDIA, A.M:**

These appeals are filed by Shri Madhu Velayudhan (“the assessee”), feeling aggrieved by the separate orders passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (“Ld. CIT(A)”), all dated 31.01.2024 for the A.Y.s 2015-16 and 2016-17. Since common issues are involved in the appeals, they are heard together and are being adjudicated in this consolidated order, taking facts from ITA No.225/Hyd/2024, being lead appeal.

2. The grounds raised in this appeal by the assessee reads as under :

*“ 1. The order of the learned Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law.*

*2. The learned Commissioner of Income-Tax (Appeals) erred in holding that the income derived of Rs.57,16,613/- represents income from business and not income from agriculture.*

*3. The learned Commissioner of Income-Tax (Appeals) ought to have seen that the appellant has grown Baby Banana plants initially on the land; they were treated by the assessee and were again planted on land for growing into a plant.*

*4. The process as a whole is agricultural process and the same should have been considered as such by the Hon'ble Commissioner of Income-Tax (Appeals) and ought to have allowed the appeal filed by the appellant.*

*5. The learned Commissioner of Income-Tax (Appeals) erred in holding that the activity of the growth of Banana Plant was not carried on earth but was grown in a laboratory.*

*6. The learned Commissioner of Income-Tax (Appeals) ought to have seen that the growth of Banana sapling is on earth.*

*7. The learned Commissioner of Income-Tax (Appeals) ought to have seen that the activity carried on by the assessee is fitting into the term "Agricultural Income" defined in Sec.2(1A) of the I.T. Act.*

*8. The learned Commissioner of Income-Tax (Appeals) erred in holding that the decision of the Supreme Court in the case of CIT Vs Raja Benoy Kumar Sahas Roy reported in 32 ITR 466 (SC) would apply to the facts of the case.*

*9. The learned Commissioner of Income-Tax (Appeals) erred in not following the decision of the Special Bench of the jurisdictional Hon'ble ITAT, Hyderabad in the case of CIT Vs Inventaa Chemical Industries Ltd. in ITA No.1015 to 1018/Hyd/15 vide order dated 9.7.2018 which is placed before him.*

*10. The learned Commissioner of Income-Tax (Appeals) ought to have considered the fact that the provisions of Sec.2(1A) were amended by introduction of Explanation 3 to the said section with effect from 1.4.2009 wherein it is provided it is provided that the income derived from banana saplings grown in a Nursery is deemed to be agricultural income.*

*11. Any other ground that may be urged at the time of hearing.”*

3. Brief facts of the case are that, the assessee is in the activity of production and sale of Banana Sapling. The assessee filed his return of income for the A.Y. 2015-16 on 15.08.2015 declaring total income of Rs.1,05,000/- and

agriculture income of Rs.57,16,613/-. The case was selected for limited scrutiny under CASS to verify the agricultural income. The learned Assessing Officer ("Ld. AO") completed the scrutiny proceedings u/s.143(3) of the Income Tax Act, 1961 ("the Act") on 19.12.2017 accepting the returned income. Subsequently the Learned CIT, Hyderabad-2 ("Ld.CIT") on 28.03.2021 by order u/s 263 of the Act set aside the order of the Ld. AO dated 19.12.2017 with a direction to redo the assessment de novo, treating the income from agricultural income as business income. After the direction of Ld. CIT dated 28.03.2021, the Ld. AO passed order u/s.143(3) r.w.s. 263 r.w.s. 144B of the Act on 14.03.2022, treating the agriculture income of Rs.57,16,613/- as business income and assessed the total income at Rs. 58,21,613/-.

4. Aggrieved with the order of Ld. AO the assessee filed appeal before the Ld. CIT(A) , who affirming the findings of the Ld. AO, dismissed the appeal of the assessee.

5. Aggrieved with the order of Ld. CIT(A) the assessee is in appeal before us. The solitary ground raised before us is on account of treatment of agriculture income of Rs.57,16,613/- as business income by the revenue authorities. The Ld. AR submitted that the only question in this appeal is whether cultivation of banana saplings is an agricultural activity or not. For this purpose, he furnished the photographs of the banana saplings cultivated by

the assessee and submitted the various stages of cultivation of banana saplings. He submitted that the sucker is originally grown in the soil and is only for the purpose of multiplication of the same, some process in the laboratory is being done, but after the process in the laboratory the multiplied saplings are taken to the soil, where all the operations are conducted to make the saplings ready for sale in the nursery. He submits that since the sucker is originally developed in the soil and ultimately taken to the soil for growing the saplings by conducting all the agricultural operations, the income derived is agricultural income. Further he placed reliance on Explanation 3 to section 2(1A) of the Act to say that any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income. He relied on the decision of Special Bench of the Tribunal in the case of DCIT Vs Inventaa Industries Ltd in ITA No.1015 to 1018/Hyd/2015 dated 09/07/2018 and Vyjayanthi Mudapaka in ITA 557/Hyd/2024 dated 14/07/2024 in support of his contention.

6. Per contra, the Ld. DR relied on the orders of revenue authorities and requested the Bench to uphold the addition made by the revenue authorities. He also submitted that the assessee had grown banana saplings using chemicals in a lab and not naturally on land. Therefore, the growing of banana saplings and further sale of it should be treated as business activity. He further submitted that the assessee is in the business of producing and selling banana

saplings by adopting tissue culture methodology. Learned DR further submitted that the plant tissue culture is used by the assessee to reproduce clones of plant to get multiple plants("Plantlets") with same traits by placing various tissues of the mother plant in container and require medium which is definitely not consisting of land or soil. The Ld. DR relying on the decision of Hon'ble Supreme Court in the case of CIT vs. Raja Benoy Kumar Sahasrai [1957] 32 ITR 466 (SC), further submitted that till generation of Plantlets from Suckers the basic operations i.e. tilling of the land, sowing of the seeds, planting and similar operations on the land are missing in the case of the assessee and in the absence of the basic operation, the subsequent operations do not acquire the characteristic of agricultural operations. Therefore, the Ld. DR submitted that the activity carried out by the assessee is in the nature of business activity and he prayed before the bench to uphold the order of revenue authorities.

7. We have gone through the record in the light of the submissions made on either side. As we understand from the record and the submissions the activity of the assessee involves two stages. First one is from purchase of sucker till generation of Plantlets thereof in the laboratory and the second stage is generation of banana sapling from Plantlets.

8. It has sufficiently come on record that in the first stage, there is no involvement of soil and as a matter of fact in the statement recorded by the

Revenue, it was admitted on behalf of the assessee that no soil was put to use during the process in the laboratory. Even the other events necessary to describe a process as agriculture, in the light of the decision of Hon'ble Apex Court in the case of CIT Vs. Raja Benoy Kumar Sahasrai [1957] 32 ITR 466 (SC), are not to be found to have performed during this laboratory stage. It goes without saying that the process in the laboratory doesn't answers description of agriculture.

9. At the other stage, after Plantlets left the laboratory, however, the process is akin to the normal agricultural operations, because the soil is used, watering is done, weeding is performed, labour is employed and all other necessary things as described in the decision of Raja Benoy Kumar Sahasrai (supra) are performed. Apart from this Explanation 3 to section 2(1A) of the Act clarifies that any income arriving from sapling or seedling grown in nursery shall be deemed to be agricultural income. Income derived from this activity is agricultural income. We are fortified in our view that the second stage comes within the description of agriculture by the Special Bench decision of the Tribunal in the case of DCIT Vs Inventaa Industries Ltd in ITA No.1015 to 1018/Hyd/2015 dated 09/07/2018 and Vyjayanthi Mudapaka in ITA 557/Hyd/2024 dated 14/07/2024.

10. Following the ratio of these two decisions, we hold that stage two operations conducted by the assessee fall in the definition of agriculture. Following the view taken by the Tribunal in similar matters, we hold that the income derived by the assessee from the operations conducted after the Plantlets left the laboratory, till the Sapling is sold in the nurseries is agricultural income and the Assessing Officer is directed to take this income only as agricultural income. Accordingly, the appeal of the assessee is partly allowed .

**ITA No.226/Hyd/2024 for A.Y. 2016-17 :**

11. The facts in this appeal are identical to the facts involved in the appeal in ITA No.225/Hyd/2024 for the A.Y. 2015-16. We have already decided the issue in ITA No.225/Hyd/2024 for the A.Y. 2015-16 and partly allowed the appeal of the assessee . Following similar reasonings, we hold that, the appeal of the assessee in ITA No.226/Hyd/2024 for the A.Y. 2016-17 is also partly allowed .

**ITA No.227/Hyd/2024 for A.Y. 2016-17 :**

12. In the quantum appeal, we held that the question whether the income claimed by the assessee is agricultural income or not, involved the debatable

issue as to the nature of such income and therefore, we are of the opinion that no penalty shall follow consequent to the decision on such debatable issue. We, therefore, hold that the penalty cannot be sustained and the Assessing Officer is directed to delete the same.

13. In the result, ITA No.225 & 226/Hyd/2024 are allowed in part and ITA No.227/Hyd/2024 is allowed.

**Order pronounced in the open Court on 19th Sep., 2024.**

Sd/-

**(K. NARASIMHA CHARY)**  
JUDICIAL MEMBER

Sd/-

**(MADHUSUDAN SAWDIA)**  
ACCOUNTANT MEMBER

Hyderabad.

Dated: 19.09.2024.

\* Reddy gp

**Copy of the Order forwarded to :**

1.	Shri Madhu Velayudhan, Plot No.56, Subhash Nagar, Bhagyalakshmi Colony, Jeedimetla, Hyderabad-500 055
2.	ITO, Ward 11(1), Hyderabad.
3.	Pr.CIT, Hyderabad.
4.	DR, ITAT, Hyderabad.
5.	Guard file.

BY ORDER,