

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 3049/MUM/2024
Assessment Year: 2020-21**

Fresh Bowl Horticulture Pvt. Ltd., 502, Nirmala Apartment, Jp Road, Rajkumar Bus stop, Mumbai – 400058 (PAN : AACCF2581Q)	Vs.	Income Tax Officer Mumbai
(Assessee)		(Respondent)

Present for:

Assessee : Shri K. Gopal, AR
Revenue : Shri Ankush Kapoor, CIT, DR

Date of Hearing : 25.07.2024
Date of Pronouncement : 14.10.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2024-25/1063882764(1), dated 03.04.2024 passed against the assessment order by the Assessing Officer, MUM-W-(413)(91), Mumbai, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the “Act”), dated 21.09.2022 for Assessment Year 2020-21.

2. The moot point raised by the assessee in the present appeal is in respect to income derived from cultivation and sale of white button mushrooms whether to be treated as business income instead of agricultural income, reported by it within the meaning to section 10(1)

of the Act. In the alternate, assessee has also raised a ground that Id. Assessing Officer ought to have allowed the expenditure incurred in cultivation of white button mushrooms and also the depreciation from the gross sales.

3. Brief facts of the case are that assessee is a Private Limited Company engaged in cultivation and sale of edible white button mushrooms. It was incorporated in 2013 and owns approximately 36.5 acres of land in Kurnool District of Andhra Pradesh. Assessee cultivates mushrooms by way of soil based 'vertical' farming in a controlled environment. Assessee filed its return of income at 16.12.2020 reporting total income of Rs. 68,223/- on account of interest income after showing gross agricultural receipts at Rs. 22,27,04,010/- from cultivation of mushrooms and claimed the same as exempt u/s 10(1) of the Act as disclosed in Schedule EI of the return form. Case was selected for scrutiny under CASS to examine the issues of "high liabilities as compared to low income/receipts and large agricultural income". Details were called for which assessee furnished proof of land ownership, financial statements along with notes, computation of income, and other details before the Id. Assessing Officer. On verification of the said details, Id. Assessing Officer observed that mushrooms are grown by the assessee in 'growing rooms' under controlled conditions in racks placed on shelves and on compost (manure) which is prepared with paddy straw, horse manure, chicken manure, gypsum and urea, which is not land and the income earned from processing of white button mushroom is in the nature of business. Therefore, Id. Assessing Officer completed the assessment u/s 143(3) r.w.s 147 of the Act making addition of Rs. 22,27,04,010/- on account of agricultural income (claimed exempt) by

treating it as business income and determined total assessed income at Rs. 22,27,72,230/-.

3.1. While making the addition, ld. Assessing Officer further relied on following case laws to conclude that the process or activities undertaken by the assessee are not agricultural in nature:

- a. Chander Mohan v. ITO (ITA No. 377 and 389 (Chd.) of 2012)
- b. CIT v. Raja Benoy Kumar Sahas Roy (1957) 32 ITR 466 (SC)
- c. Smt. Manyam Meenak shamma v. CWT (1967) 63 ITR 534 (AP)
Syed Rafiqur Rahman v. CWT (1970) 75 ITR 318 (Pat.)
- d. CIT v. Green Gold Tree Farmers (P.) Ltd. 2007 Tax LR 609
(Uttranchal)
- e. Ms Blue Mount Food Products Limited v. ITO (ITA No. 1128
(Bang.) of 1983)

3.2. On the basis of the above cited case laws, ld. Assessing Officer made the following observations:

- a. Edible button mushrooms are neither plants nor fruits or vegetables, but rather fungus in its strictest sense of scientific classification
- b. Process includes growing or cultivating the mushrooms in tray without making use of fields or lands as tilling of land is not required
- c. Process includes use of artificial environment conditioning for growth and cultivation of mushrooms.

4. Aggrieved, assessee went in appeal before ld. CIT(A). Before, ld. CIT(A), assessee submitted that all the parameters required under section 2(1A) of the Act for considering an income as agricultural

income have been complied with by the assessee. According to it, firstly, the revenue earned by the assessee has been derived from land situated at Kurnool which is used specifically for agricultural purpose and is situated in India. Secondly, it had adopted all such activities which are ordinarily employed by a cultivator so as to render the product marketable. Lastly, assessee has not performed any other additional activity other than those which are essential to transport the mushrooms in order to sell the same in the market. Hence, assessee fulfilled all the parameters under section 2(1A) of the Act and thus, the income earned from sale of mushrooms is agricultural income, exempt under section 10(1) of the Act.

4.1. According to assessee, ld. Assessing Officer failed to consider the clarification issued by the Ministry of Agriculture vide Notification No. D.O. No.6-9 96-Hort. dated 12th Sept., 1997, wherein it has been clarified that mushroom production be treated as agricultural activity and that mushrooms are an agricultural commodity.

4.2. In order to justify the claim u/s. 10(1) of the Act, assessee strongly submitted that meaning of the word 'land' includes soil or any material coming out of the earth. Assessee is using soil as its base for cultivation of mushroom and for that purpose, it is using the agricultural lands situated at Kurnool District, Andhra Pradesh. Therefore, the meaning of the "land" includes a part of the material of the earth, which includes soil. The mushrooms are grown naturally on the soil and in controlled conditions which facilitate its growth by providing the nutrients to the soil; fertilizers, water etc. The soil is cultured and the conditions necessary for production of mushroom are provided. Further, vertical space is used for the growth of

mushrooms instead of horizontal space on land for the purpose of cultivation of mushrooms.

4.3. Assessee explained in detail the processes employed for the purpose of cultivating the said mushrooms:

Stage I. Preparation of soil suitable for growing button mushroom. The following ingredients are utilized for the preparation of soil:

- < Paddy/Wheat Straw
- < Sugarcane Bagasse
- > Chicken/Cow/Horse Manure
- > Gypsum
- > Sufficient water

Stage-II: All above ingredients are mixed properly along with water to prepare the soil for the mushrooms to grow. This mixture is transferred to bunker for fermentation process which is kept for 6 days. Post fermentation process the soil is moved to tunnel for pasteurization and conditioning. This process takes place in the period of 6 days.

Stage-III: After pasteurization, the compost is moved into growing room along with spawn (seed). This compost is placed in the vertical beds for better utilization of space since the growing rooms have a controlled environment. Normally, the suitable controlled condition varies between the temperatures of 12 to 27 degree Celsius for the effective growth of Button Mushroom. The layer of compost in the

vertical shelves is normally of 200 mm thickness. In this stage spawn run (i.e. spreading of Spawn) takes about 12 days to 20 days.

Stage IV: After the SPAWN Run, the beds are cased with casing soil of about 50 mm thickness. The casing soil is prepared by mixing Corr Pith, Ballclay soil with suitable other micro nutrients and SPAWN. Then Case Run is allowed for the SPAWN to spread on casing Soil. This requires 6-8 days. After this venting is done by giving Air, Temperature, CO₂ and moisture to SPAWN upon which it starts forming, Pins.

Stage- V: After the Pins, the mushroom grows into harvest in 13-21 days. The Harvesting is done in 2-3 flushes (picking).

4.4. In view of the above, assessee submitted that the abovementioned activities/process together constitutes an agricultural activity and the income derived out of the said process is agricultural in nature. Hence, ld. Assessing Officer is not justified in treating the income derived from the above-mentioned process as business income.

4.5. In terms of section 2(1A), assessee contended that an income qualifies as an agricultural income on the fulfilment of the following conditions:

- a. The revenue shall be derived from land which is situated in India and is used for agricultural purposes.

- b. The cultivator of the land shall only adopt such activities ordinarily employed to render the produce fit to be taken to the market.
- c. The cultivator should not perform any other activity other than the ones mentioned in the clause to sell the produce in the market.

4.6. Assessee submitted that all the three parameters mentioned above have been complied with in the following manner-

a) Firstly, the land is situated in Kurnool district of Andhra Pradesh, India. According to Black's Law Dictionary, "land" is the solid material of the earth, whatever may be the ingredients which it is composed of whether soil, rock or other substance." "Land" included not only the soil but everything attached to it, whether attached by the course of nature, as trees, herbage, and water, or by the hand of man, as buildings and fences. Further, according to Random House Dictionary, The Unabridged edition, the word "soil" includes "any place or condition providing the opportunity for growth or development." Soil is the material in the top layer of the surface of the earth on which plants can grow and is a non- renewable resource. Land is a part of the earth, while soil refers to one part of the land. Thus, the term 'land' includes 'soil'. Soil comprising of compost made from ingredients such as Paddy Straw, Sugarcane Bagasse, Chicken manure and Gypsum is prepared and processed in the manner mentioned above. Such soil is the basis for production of mushrooms. Hence, it would be pertinent to note that the soil as defined in the above paragraph has been used to derive the revenue which is the proceeds of sale of Mushroom.

b) Secondly, assessee submitted that the following activities are employed in the ordinary course to raise the produce-

1. It had not carried on any additional activity other than those which are essential to carry the cultivated mushrooms to markets and has not employed or carried on activities except those as mentioned in the abovementioned paragraph.

i. Preparation of soil

ii. Fermentation and Pasteurization of soil.

iii. Transfer of soil along with the spawn to controlled rooms. formation of Pins.

iv. Spawn run, Application of Casing Soil, and Growth of Mushrooms from Pins and

v. Harvesting of mushrooms

2. Above activities are essential ingredients for cultivation of mushroom in a conditioned environment on the soil specially prepared to achieve the object of growing the mushrooms. This technique adopted can be considered as universal in nature. Hence, the activities carried on by the assessee are normal and essential agricultural to grow mushrooms.

c) Lastly, assessee submitted that it has not carried on any additional activity other than those which are essential to carry the cultivated mushrooms to markets and has not employed or carried on activities except those as mentioned in the abovementioned paragraph.

4.7. In a detailed reply to show cause notice (SCN) it was pointed out by the assessee that all the issues raised and case laws relied upon by the ld. Assessing Officer were considered in the decision of the Hon'ble Special Bench of the Tribunal in the case of DCIT vs. Inventaa Industries (P.) Ltd (2018) 172 ITD 1 (Hyd)(SB). All the case laws mentioned in the SCN were considered by the Hon'ble Special Bench while deciding the issue in favour of the assessee.

4.8. Assessee also relied on the decision of Chennai ITAT in DCIT v. British Agro Products (India) Pvt. Ltd. in ITA No.969 & 970/Chny/2022 wherein after relying on the decision of the Hon'ble Special Bench in Inventaa Industries (supra) held that cultivation and sale of white button mushroom is an agricultural activity and income derived therefrom is exempt from income-tax.

5. After considering the submission made by the assessee, ld. CIT(A) did not find favour with the same and upheld the view taken by the ld. Assessing Officer that growing of white button mushrooms is in the nature of business activity. Aggrieved, assessee is in appeal before the Tribunal.

6. Before us, ld. Counsel for the assessee placed on record a paper book containing 157 pages along with certain other documents in support of the claim made in this appeal. At the outset, ld. Counsel pointed out that assessee had appropriately made a disclosure in its return of income in Schedule - EI - Details of Exempt Income by reporting gross agricultural receipts at Rs.22,27,04,010/-. In this respect, it was submitted that inadvertently expenditure incurred on agriculture could not be keyed in which resulted in gross agricultural receipts reported as net agricultural income for the year. He also

pointed out that in the same return form in Schedule GST-information regarding turn over/gross receipt reported for GST, assessee had made disclosure of annual value of outward supplies as per GST return filed by it against its GSTIN reporting the same amount as gross agricultural receipts. The fact of inadvertent mistake which occurred in filing the return was brought to the notice of the Assessing Officer in the course of the assessment proceedings, in the submission made dated 07.01.2021. Ld. Counsel also pointed that the Director of the assessee company, Dr. V.K.V. Prasad is a PhD in agriculture with immense experience of more than 30 years in various agribusiness including cultivation of mushrooms. This fact was also brought to the notice of ld. Assessing Officer.

7. Ld. Counsel pointed out that the factual matrix of the present case and the issue contested herein is squarely covered by the decision of Hon'ble Special Bench of ITAT, Hyderabad in the case of DCIT vs. Inventaa Industries (P.) Ltd. (supra), wherein the words "land" and "soil" were elaborately dealt upon with purposive interpretation. He referred to the question which was posed before the Hon'ble Special Bench. The same is reproduced as under:

"Whether in the facts and in the circumstances of the case, the income from production and sale of mushrooms can be termed as 'agricultural income' under the Income Tax Act, 1961 ?"

7.1. Summary of submissions made by the assessee before the Hon'ble Special Bench is as under:

- (a) The assessee's object is to produce a nutritious vegetable required for the increased population.

- (b) For production of mushrooms agricultural lands are used.
- (c) The lands held by the assessee are agricultural lands and are treated as such by the banking authorities and also the Revenue authorities.
- (d) The base for production is land/soil prepared with paddy straw, manure and other ingredients.
- (e) The soil so prepared is cultivated by providing manures, pesticides, water and other necessary ingredients.
- (f) The process of production is the same as in any other agricultural produce/plant.
- (g) Seeds are obtained from the matured mushroom; they are spawn over the processed soil; watering is done periodically, the growth is observed and harvesting is done.
- (h) The whole cycle is like growing any other vegetable plant;
- (i) The Government departments; financial institutions; world organisation; the food organisations treated mushroom as agriculture.

7.2. Thus, in the given set of facts and circumstances, following the issues arose for the consideration of Hon'ble Special Bench, so as to answer the question referred to it :

- (i) "Land" is immovable property. Soil is part of land. If "soil" is placed in trays or pots and when operations are carried out on

this "soil", which is detached from land, for production of mushroom, could such activity be termed as agricultural activity?

(ii) Is mushrooms a "fungi" or "vegetable or plant"? Is the income derived from the production and sale of mushroom, agricultural income if the product is a 'fungi'?

(iii) When agricultural production is done in "controlled conditions", does it cease to be agricultural operation resulting in the income derived therefrom not being agricultural income ?

7.3. On all the above three issues, the Hon'ble Special Bench gave its observations and findings, relevant portion of which is reproduced as under:

(i) On "Land" is immovable property. Soil is part of land. If "soil" is placed in trays or pots and when operations are carried out on this "soil", which is detached from land, for production of mushroom, could such activity be termed as agricultural activity?

"12.15. "Soil" is a part of the land. Land is also part of earth. The upper strata of the land is soil and this is cultured and made fit for production of crops, vegetables and fruits etc., by enriching the soil. When such soil is placed on trays, it does not cease to be land and when operations are carried out on this "soil", it would be agricultural activity carried upon land itself.

12.16. If the strict interpretation, as argued by the learned standing counsel is accepted then, when "soil" attached to earth is cultivated, it is agricultural activity and when "soil" is cultivated after detaching the same from earth, it is not agricultural activity. Such an interpretation in our view, would be unintended and unfair. The only part of the land that is cultivable, and which is useful for agricultural activity is "soil" which is the top layer of land. Then whether such soil is attached to land or is placed in containers above the land should in our humble view, not make a difference. Though these strong arguments of the learned standing counsel appealed to us ab initio on an analysis of the purpose for which the term is to be interpreted, we are unable to persuade ourselves to accept the same. If the term 'agri' is 'field', then 'field' can be on land or on a 'terrace' or on a 'pot', 'tray' etc., In view of the above discussions, we hold that it is important to distinguish between the meaning of

the term 'soil' from 'land', because the cultured top strata of the earth's surface, which is fit for arable cultivation, is actually what is required for agricultural purposes and this top layer (being 'soil') is one on which actual agricultural growth takes place. In contrast, the meaning attributed to land (primarily as an immovable object) is of a wide import. For the purpose of understanding the nexus between an agricultural operation and an agricultural land, what needs to be inferred from the term "land" is that, the cultured top layer of the earth, which is fit for any sort of cultivation, is land for this purpose. Hence, in our opinion, the soil which is placed on the vertical space above the land in trays, in one sense of the term, is also land."

(ii) On is mushroom a "fungi" or "vegetable or plant"? Is the income derived from the production and sale of mushroom, agricultural income if the product is a 'fungi'?

"14.2. On a careful consideration of the material on record, we conclude that mushroom, is not a "vegetable" "plant" or an "animal" but a "fungus".

14.3. The contention of the assessee is that, what is produced by performing the basic operations on the soil, is an agricultural product, even though the product is not a "plant" or the "flower" or a "vegetable" or a "fruit". It was emphasised that the nature of the product is irrelevant as far as it is produced by performing some basic operations on the soil.

14.4. In the case of CIT v. Raja Benoy Kumar Sahas Ray (supra), as already stated, it is laid down that the "product" should be "raised on the land" by "performing some operation on land by expenditure of human skill and labour" and that the "product" should be "of some utility for consumption, for trade and commerce".

14.5. The term "product" is defined as:

(a) an article of substance i.e. manufactured or refined for sale.

(b) A thing or person that is the result of an action or process,

(c) A product in modern times is also defined as a item or thing which is offered for sale. A product can be a service or an item. It can be physical or in virtual or cyber form."

14.6. It is clear that we cannot restrict the word "product" to "plants", "fruits", "vegetables" or such botanical life only. The only condition is that the "product" in question should be raised on the land by performing some basic operations. Mushroom produced by the assessee is a product. This product is raised on land/soil, by performing certain basic operation. The product draws nourishment from the soil and is naturally grown, by such operation on soil which require expenditure of "human skill and labour". The product so raised has utility for consumption, trade and commerce and hence would qualify as an "agricultural product" the sale of which gives rise to agricultural income.

14.7. Mushroom, like vegetables and other crops or plants are grown on soil/land and are always attached to the soil until harvested. They draw their

nourishment from the soil only. The product mushroom does not arise from any secondary agricultural operation. Unlike in the case of *CIT v. Kokine Dairy* (No. 2) [1938] 6 ITR 502 (Rangoon) relied on by the learned Assessing Officer it cannot be said that production of mushroom is remotely connected with land. This product arises from land and is attached to land during growth and thereafter, just like 'plants' or a 'crop'. Comparison made by the learned Assessing Officer with sale of silk cocoons by relying on the judgment in the case of *K. Lakshmansa and Co. v. CIT* [1981] 128 ITR 283 (Karn) is wrong, as on facts silkworms feed on mulberry leaves and are not products which are raised from land. Mulberry leaves which are product arising from land, are fodder to silk worms.

14.8. Hence, we conclude that mushroom on the facts and circumstances of this case is an agricultural product raised from land.

(iii) When agricultural production is done in "controlled conditions", does it cease to be agricultural operation resulting in the income derived therefrom not being agricultural income?

"The third issue is whether agricultural production done under 15 "controlled conditions", results in the "product" so raised not being a 'product from agricultural activity.

15.1. Each and every agricultural operation involves certain procedures and protocols. Certain conditions are necessary for natural growth of the product. The degree of control and the type of scientific input differs from product to product. The type of soil to be used, the nature of agricultural operations to be undertaken, material required to be used to enrich the soil, the timing of sowing, transplanting, harvesting etc., the quantity and quality of inputs such as water, fertilizer, pesticides etc. to be used and the timing at which they have to be used, are all controls that a farmer exercises in every type of agricultural activity. There can be no agriculture without controlling the conditions of production by human intervention. Just because the degree of control of the conditions are greater in some cases, as compared to others, the product produced out of such process would not cease to be an agricultural product. The degree of control is irrelevant in arriving at a conclusion on this issue. With the advancement of technology, every aspect of production is monitored and controlled, so as to obtain optimum use of the produce. This is true with the use of greenhouse technologies.

15.2. The Income-tax Appellate Tribunal Pune Bench in the case of *Asst. CIT v. K. F. Bio Plants (P.) Ltd.* (Pune Bench 'A', I. T. A. No. 1110/ PN/2011 dated September 25, 2012) held that the nature of agricultural income would not change merely because agricultural operation was carried out in a greenhouse under a controlled environment. The assessee in that case was engaged in the business of plant floriculture and tissue culture, and claimed exemption of income as being agricultural income under section 10(1) of the Act. The Assessing Officer disallowed the exemption on the ground that basic operation was done in a greenhouse. The Income-tax Appellate Tribunal held that the

involvement of a green- house and controlled environment would not change the nature of agricultural income. We endorse this view.

8. Per contra, ld. CIT, DR placed strong reliance on the orders of authorities below.

9. We have heard both the parties and perused the material on record. We have also gone through the contents of the paper book and the decision of Hon'ble Special Bench in the case of Inventaa Industries (P.) Ltd (supra). The facts as narrated above are undisputed in terms of assessee carrying on the activity of cultivation of white button mushrooms and its sale. The only point for our consideration is its treatment whether as agriculture income which if so treated is then exempted u/s. 10(1) of the Act or as business income which then is to be subjected to income-tax after taking into consideration claim of expenditure incurred by the assessee towards carrying out activities and also the depreciation thereof.

9.1. The fact pattern in the present case and the one dealt by the Special Bench are identical in nature. The issues dealt by the Hon'ble Special Bench to address the question referred to it squarely covers the case of the assessee in the present appeal before us. The process employed by the assessee and the one discussed in the said decision are same. Various case laws relied upon by ld. Assessing Officer as well as the ld. CIT(A) have already been elaborately dealt in the said decision and therefore are not again discussed for distinguishing the same. In the said decision treatment of cultivation of white button mushrooms under GST laws and by various other Government Departments / Ministries has also been dealt with. Respectfully following the decision of the Hon'ble Special Bench in the case of Inventaa Industries (P.) Ltd. (supra) under identical fact pattern, we

allow the claim of the assessee for treating the cultivation and sale of white button mushroom as agriculture activity resulting in the agriculture income exempted u/s. 10(1) of the Act. Accordingly, grounds taken by the assessee in this respect are allowed. Since, we have held the income as agriculture income, the alternative grounds raised by the assessee are rendered infructuous and hence not adjudicated upon.

10. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 14 October, 2024

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 14 October, 2024

MP, Sr.P.S.

Copy to :

1. The Assessee
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai