

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “B”, HYDERABAD**

BEFORE

**SHRI LALIET KUMAR, JUDICIAL MEMBER
AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

ITA No.264/Hyd/2023		
Assessment Year: 2018-19		
A G Bioteck Laboratories (India) Ltd., Qutubullapur, Ranga Reddy District. PAN : AABCA7336D	Vs.	The Income Tax Officer, Ward – 1(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri Pawan Kumar Chakrapani, CA	
Revenue by:	Ms. K. Haritha, CIT-DR	
Date of hearing:	03.12.2024	
Date of pronouncement:	11.12.2024	

ORDER

PER LALIET KUMAR, J.M:

The appeal filed by the assessee is directed against the order of Principal Commissioner of Income Tax, Hyderabad – 1 dated 16.03.2023 passed u/s 263 of the Act relating to the year 2018-19.

2. The grounds raised by the assessee read as under :

“1. The order of the learned Pr. Commissioner of Income Tax is erroneous in law and on the facts of the case.

2. The learned Pr. Commissioner of Income-tax erred in holding that the assessment order dated 23.01.2021 passed by the Assessing Officer in the assessee's case for the A.Y 2018-19 is erroneous in so far as it is prejudicial to the interests of revenue as the Assessing Officer ignored the decision of the jurisdiction ITAT in the assessee's own case.

3. The learned Pr. Commissioner of Income-tax erred in holding that the Assessing Officer failed to enquire into the aspect whether the income derived on the activity carried on by the appellant is agriculture or not, apart from ignoring the binding decision of the Hon'ble ITAT in the assessee's own case holding the same as not agricultural income in the earlier years particularly when the view taken by the Assessing Officer is supported by other decisions of Hon'ble Income Tax Appellate Tribunal and even higher judicial forums.

4. The learned Pr. Commissioner of Income-tax erred in setting aside the assessment order dated 23-01-2021 to the file of the AO, to the limited extent to verify the issues involved in light of the judgement of the Hon'ble ITAT in the assessee's own case and re-compute the income accordingly by giving an opportunity of being heard and pass an order in accordance with law.

3. The brief facts of the case are that assessee company e-filed its return of income on 22-01-2019 declaring NIL income and reporting net agricultural income of Rs. 1,06,73,944/-. The return was processed under Section 143(1) of the Income Tax Act, 1961, on 15-05-2019. Thereafter, the case was selected for "Limited Scrutiny" and notice u/s 143(2) was issued on 22-09-2019 and delivered via email. Thereafter, a notice under Section 142(1), along with a questionnaire, was issued on 30-11-2020, requiring

information by 15-12-2020, but the assessee did not comply. A reminder was sent on 24-12-2020, and the assessee sought a 15-day adjournment on 26-12-2020 and finally, furnished the required details on 07-01-2021. After verifying the details furnished by the assessee, Assessing Officer completed the assessee u/s 143(3) r.w.s. 143(3A) and 143(3B) of the Act, assessing the total income as nil.

4. On perusal of the assessment record, the learned PCIT observed that Assessing Officer has completed the assessment accepting the income returned without enquiring into the aspect whether the income derived on sale of tissue culture plants is agricultural income and opined that Assessing Officer has failed to enquire into the same while passing the assessment order and hence, issued show cause notice as to why the assessment order should not be revised u/s 263 of the Act. In response, assessee filed written submissions stating that the nature of the activity carried out by the assessee is agricultural and therefore, the income earned thereon, is agricultural income. On perusal of the profit and loss account for the year ended 31.03.2018 and also based on the information available on record, learned PCIT observed that assessee company grows and sells plants using tissue culture techniques under controlled conditions, which are not basic agricultural operations and the learned PCIT further mentioned that as per the orders of Hon'ble ITAT, Hyderabad Bench, in its order dated 13-07-2017 (ITA Nos. 1055 & 1034/Hyd/2016) for AYs 2011-12 and 2012-13, income from such

operations is business income and that assessment order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of revenue and therefore, set aside the assessment order to the limited to extent to verify the issues involved in light of the judgment of the Hon'ble ITAT and recompute the income accordingly.

5. Aggrieved with the order passed by the learned PCIT, the assessee is now in appeal before us.

6. Before us, Id.AR submitted that the case of the assessee was selected for limited scrutiny and the scope of the assessment was to verify the claim of the agricultural income by the assessee. Ld.AR has also submitted that the assessee in reply to the notice issued by the Assessing Officer has given a note of agricultural activities are available at page 29 of the written submissions, which is to the following effect :

“The Nursery production activities are established in 2.05 Acres at Sy No. 86 Pudur village, Medichal Mandal in RR Dist, and more than 8 Acres in Sy. Nos. 182, 184, 185, 187, 193, 194 parts at Palamakula Village in Medak Dist., owned by the Company and 13 Acres of surrounding land in Sy No 193, 159, 180, 182, 188 of Palamakula village of Medak Dist. on lease.

In the Nursery Production areas, the company developed the land and established the irrigation source, watering facility, and made the land suitable for growing seedlings. Land was also prepared for mixing the potting mixture with manures, fertilizers, and micronutrients, which were transferred to poly bags using the company's own labor and labor from outside for day-to-day activities. Regular nursery operations for seedling production include vegetative propagules such as cuttings, budding, and grafting for plant production. Seedlings are grown in poly bags or nursery

bags up to the ready-to-use stage and supplied to farmers. For example, the company sells Insulin plants in nursery bags at Rs. 100 to 250 per plant based on the age and size of the plants, which contributes to major income turnover, whereas tissue culture Banana plants are sold at Rs. 12/- per plant only.

Under Nursery Production, the company has also established green shade nets and small naturally ventilated green/poly houses for the maintenance of nursery plants.”

7. The LD.AR further submitted that in response to the notice issued by the Assessing Officer, the assessee had provided a note explaining the agricultural activities carried out. The AR further submitted that the assessee is involved in nursery production of seedlings as well as the sale of tissue culture banana plants. It was pointed out that at page 70 of the paper book, the assessee had declared the income from the sale of tissue culture plants as business income. The ld.AR further submitted that the learned PCIT while examining the case, relied upon the assessee's own case decided by the ITAT in ITA No. 1055/Hyd/2016 dated 13.07.2017, wherein it was held that income from tissue culture operations constitutes business income and not agricultural income. The ld.AR also submitted that the assessee has already aligned its treatment of income from tissue culture with this decision.

8. Per contra, ld.DR has relied upon the order of learned PCIT and submitted that the order of learned PCIT was based on the order of jurisdictional Tribunal wherein the Tribunal has held that

the income arisen from sale of tissue culture is business income and not an agricultural income.

9. We have heard the rival submissions and perused the material available on record. Admittedly in the present case, the assessee has demonstrated before us that the income derived from tissue culture has been shown by it as business income which is in line with the decision of Co-ordinate Bench of the Tribunal, wherein it was held that the income arose from sale of tissue culture is a business income. In our view, once it has been deleted by the assessee and so considered by Assessing Officer then no fault can be found in the assessment order of the Assessing Officer. Moreover, the learned PCIT has relied upon the decision of co-ordinate Bench of the Tribunal wherein the co-ordinate Bench of the Tribunal has held that the income earned by the assessee on tissue culture is a business income. We are failed to understand that once the assessee itself has accepted that income earned by it from sale of tissue culture is business income then where is the occasion for the Assessing Officer to consider it otherwise and further, there is no reason for the learned PCIT to come to the conclusion that the Assessing Officer has not applied his mind and passed the order contrary to law. In our view, the order of the learned PCIT seems to be passed by wrongly carrying the impression that the assessee has claimed the sale of tissue culture plants as agricultural income, hence, there was no occasion for invoking section 263 of the Act. Consequently, we find no justification for

the learned PCIT's interference in the AO's order and accordingly, the order of learned PCIT is hereby quashed and the order of the Assessing Officer is restored. Accordingly, the appeal of the assessee is allowed.

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

Order pronounced in the Open Court on 11th December, 2024.

Sd/- (MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 11.12.2024.

TYNN/sps

Copy to:

S.No	Addresses
1	A G Bioteck Laboratories (India) Ltd. 226/A, Bachupally Village, Qutbullapur Mandal, Rangareddy District – 500090.
2	The Income Tax Officer, Ward – 1(1), Hyderabad.
3	Pr.CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order