

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1480/Bang/2024
Assessment Year: 2018-19

Mrs. Sabena Prakash Kala Farm Subramanyapura Post Channasandra Bengaluru 560 061 PAN NO : AGAPP9843N	Vs.	ITO Ward-3(2)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri Darshan Bhatt & Sri Sirish Kumar, A.Rs
Respondent by	:	Sri Ganesh R Ghale, Standing Counsel for department

Date of Hearing	:	12.09.2024
Date of Pronouncement	:	04.12.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of the Id. CIT(A)/NFAC dated 10.6.2024 vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1065518508(1) for the AY 2018-19 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”).

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

1. The learned Commissioner of Income Tax (Appeals) ["learned CIT(A)" in brevity] has erred in confirming the order passed under the provisions of section 143(3) by the learned Assessing Officer in so far as it is against the Appellant, is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the case.
2. The learned CIT(A) has erred in upholding the order of the learned Assessing Officer where in the taxable income of the Appellant has been determined at Rs.35,84,720 as against the income of Rs.1,31,250 returned by the Appellant on the facts and circumstances of the case.
3. The learned CIT(A) has erred in law in upholding the treatment of the agricultural income of Rs.34,53,468 as income under the head Income from Other Sources by the learned assessing officer on the facts and circumstances of the case.
4. The learned CIT(A) ought to have appreciated the fact that the Appellant is carrying on the Agricultural activity and it is through such activity, the income has been generated by the Appellant during the impugned assessment year on the facts and circumstances of the case.
5. Without prejudice to the above, the activity carried out by the Appellant is held as non-agricultural in nature, the learned CIT(A) ought to have directed the learned Assessing Officer to apply the provisions of section 44AD of the Act in determining the taxable income of the Appellant. Thus, the taxable income earned by the Appellant should have been computed in accordance with the provisions of section 44AD of the Act for the impugned assessment year on the facts and circumstances of the case.
6. Without prejudice to the above, the learned CIT(A) ought to have considered the expenditures incurred by the Appellant during the financial year in determining the taxable

income for the impugned assessment year under the facts and circumstances of the case.

7. The learned CIT(A) ought to have determined the total income based on commercial principle by considering net profit earned from the agricultural activity for the impugned financial year under the facts and circumstances of the case.
8. The learned CIT(A) failed to appreciate the facts that, the learned assessing officer failed to consider the Board Circular No.14 (XI-35) of 1955 dated 11/04/1955 and failed in his duty to freely advise the assessee and further can rectify the mistake caused by the assessee and guide the assessee by giving proper relief and claims for the impugned assessment year under the facts and circumstances of the case.
9. Without further prejudice, the learned CIT(A) ought to have considered the fact that the Appellant is carrying on agriculture activity and ought to have allotted the income on proportionate basis between the agricultural income and business income on the facts and circumstances of the case.
10. Without prejudice the learned Assessing Officer erred in law in levying interest under the provisions of section 234B of the Act on the facts and circumstances of the case.
11. Without prejudice the learned Assessing Officer erred in law in initiating the penalty proceedings under the provisions of section 274 read with section 270A of the Act on the facts and circumstances of the case.
12. The Appellant craves to add, alter, delete or substitute any of the grounds urged above.
13. In view of the above and other grounds as may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.

3. The brief facts of the case are that the assessee filed his return of income for the AY 2018-19 on 29.8.2018 by declaring total taxable income of Rs.1,31,250/- and exempt agricultural income of Rs.34,53,468/-. The return was processed u/s 143(1) of the Act dated 22/09/2018 on a total income of Rs.1,31,250/-. Thereafter, the case was selected for a limited scrutiny through CASS on the issue of "Agricultural income" and accordingly, statutory notices u/s 143(2) as well as u/s 142(1) of the Act along with questionnaire were issued on different dates. The assessee did not file any submissions/details in compliance to any of the notices issued u/s 143(2) & 142(1) of the Act and accordingly for the sake of natural justice, a final show cause notice was issued and served on the assessee asking to explain as to why the income of the assessee should not be modified according to the draft assessment order reproduced in the show cause notice. On the same day the assessee submitted the details called for and after considering the submissions, the contention of the assessee was not accepted for the following reasons:

- i *The assessee as per Schedule EI — details of exempt income shows gross agricultural receipts at Rs.34,53,468/-. At the same time, the net agricultural income is also shown at Rs.34,53,468/-. Thus, the assessee has not claimed any expenses for the agricultural activities. The contention of the assessee cannot be accepted as agricultural activities would require expenses.*
- ii *The assessee in its submission has shown agricultural produce such as coconut and vegetable. but, no bills of sale are submitted. She has just mentioned the agriculture proceeds are directly sold to the customers, vegetable vendors and that there is no agreement or supporting documents. Most of the sales are for cash.*
- iii *The assessee has submitted that the nature of business activities is supply and maintenance of plants. Sample invoices of monthwise receipts are submitted.*
- iv *The assessee has submitted Service Agreement entered on 01.04.2018 between her and Le Meridien Bangalore Hotel. This agreement pertains to A.Y.2019-20 and not to the year under*

consideration. However, the assessee has not submitted any agreement between her and the parties with whom she has entered into transaction on which TDS was also deducted.

- v *Without prejudice to the above, even if the agriculture activities are accepted, the payment received by the assessee is payment to contractors under section 194C which does not form to be agriculture activities.*
- vi *The Proprietary concern of the assessee M/S. Kala Farm is involved in nursery activities for decorative plants. This activity cannot be considered as agricultural activities as TDS is deducted u/s.194C of the I.T. Act.*
- vii *The assessee did not prove with documentary evidences that the business undertaken with various parties for which TDS is deducted are related to the agriculture income which is shown as exempt income.*
- viii *Further, it is seen that for A.Y.2017-18, the assessee has filed appeal against the treatment of agriculture income as income from other sources. In order to maintain consistency, in current year also, the income from agriculture activities is treated as income from other sources*

3.1 In view of the above facts, the AO held that assessee is not able to substantiate her claim of agricultural income. Further, the AO also observed that in assessment year 2017-18, the assessee has filed appeal against the treatment of agricultural income as income from other sources. Therefore, in order to maintain consistency in the current year also, the agricultural income earned of Rs.34,53,468/- is brought to tax and is added to the total income of the assessee as income from other sources u/s 56 of the Act and assessed on a total income of Rs.35,84,718/- u/s 143(3) r.w.s. 143(3A) r.w.s. 143(3B) of the Act.

3.2 Aggrieved by the assessment completed u/s 143(3) of the Act, the assessee preferred an appeal before the Id. CIT(A)/NFAC. The Id. CIT(A)/NFAC affirmed the view taken by the AO and dismissed the appeal with the following observations:

1. When a person is engaged in agricultural activities, he has to incur certain expenses for the said activity. The assessee has failed to substantiate whether the said expenses were incurred by him or not. Further the assessee also failed to prove the genuineness and established that the activity carried by him is pertaining to the agricultural activities.

2. The assessee had claimed that nature of business of the assessee was supply and maintenance of plants. Furthermore, net agricultural income is shown at Rs.34,53,468/- which prima facie means assessee had not incurred any expenditure towards the said agricultural activity as claimed by the assessee. Although assessee submitted that it had incurred expenses but have not claimed the same with the agricultural income. However, in the opinion of the ld. CIT(A), to substantiate the same no documentary evidence were submitted by the assessee.

3. Further, on the claim of the assessee that without prejudice if the activity carried out is held to be as non-agricultural in nature, the AO ought to have applied provisions of section 44AD of the Act in determining taxable income of the assessee, the ld. CIT(A) was of the view that section 44AD of the Act is pertaining to the presumptive taxation wherein if any person engaged in the eligible business not maintaining the books of accounts can opt for the said presumptive taxation and the deemed total income of the assessee shall be a percentage of the total receipts/turnover i.e. 8%. However, it is also to note that if the actual profit of the said person is higher than the said deemed profit, then the said actual profit shall be chargeable to taxation.

3.3 In the instant case, the Id. CIT (A) held that the Net profit as claimed by the assessee in the return of income amounting to Rs.34,53,468/-, is also higher than the deemed profit and hence, the said declared net profit would have been chargeable to taxation and accordingly, was of the view that he find no reason to interfere with the order of AO and all the grounds of appeal of the assessee were dismissed by the Id. CIT(A).

3.4 Aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before this Tribunal.

4. The assessee has filed a paper book comprising 271 pages consisting of following documents:-

Sl.No.	Particulars	Page No.
1.	Written Submission	77 – 91
2.	Copy of ITR V and Form ITR 3 for AY 2018-19	92 – 138
3.	Copy of intimation U/s.143(1) of the Act for AY 2018-19	139 – 147
4.	RTC copies of the land held by the Appellant at Anekal Taluk	148 – 149 ^
5.	Brief description of agricultural activities and processes carried out	150 – 151
6.	Sample copies of sale bills, sample copies of certain agreements and purchase orders for FY 2017-18	152 – 185 r
7.	Copy of Form 26AS for AY 2018-19	186 – 193
8.	Copy of certificate of registration from Karnataka State Organic Certification Agency (KSOCA)	194
9.	Sample copies of invoices for sale of agricultural products	195 – 226
10.	Copy of the order the Hon'ble High Court of Madras in case of Commissioner of Income -tax Vs. <u>Soundarya Nursery</u> [2002] 123 Taxman 372 (Madras)	227 – 229

11.	Copy of the judgement of Hon'ble High Court of Madras in the case of Commissioner of Income -tax, Chennai Vs. K.N. Pannirselvam [2017] 77 taxmann.com 24 (Madras)	230 – 235
12.	Copy of the judgement of Hon'ble Income Tax Appellate Tribunal, Bangalore in the case of <u>Labland Biotechs (P.) Ltd. Vs. Income-tax Officer</u> [2024] 164 taxmann.com 702 (Bangalore - Trib.)	236 – 240 ✓
13.	Copy of bank account statement for FY 2017-18	241 – 256
14.	Copy of the judgement of Hon'ble Bangalore Tribunal in the case of <u>Jayanti Botanical Gardens Vs. Income Tax Officer</u> , ward 4(3)(3), Bangalore [2021] 128 taxmann.com 178 (Bangalore - Trib.)	257 – 262 ✓
1.	Cover letter	263 -
2.	Copies of original RTCs of the land held by the Appellant at Anekal Taluk	264 – 267
3.	Translated copies of above RTC	268 – 271

4.1 Before us, the Id. A.R. of the assessee submitted that the assessee is growing saplings & seedlings (Ordinary as well as decorative & ornamental plants) and supplying the same to various Corporate clients. The process of growing plants involved the following activities- (i) preparation of soil beds (ii) propagation of plants by way of several methods/ways from which plants are prepared, such as from seeds, cutting, gootying and layering, inarching/grafting, etc. were done. Further, Id. A.R. of the assessee submitted that all the plants have been prepared only on the lease land owned by the assessee and they are not grown in the pots directly. After several agriculture operation carried out in the land, they are again transplanted in suitable containers including pots and are kept at the proper places i.e. shed, green house and sunny areas and trees were grown on land directly. The resultant plants which are transferred to pots are sold to corporates and the payment is received through banking channels only. Further, Id. A.R. of the assessee submitted that since all the customers are corporates, they have also deducted TDS u/s 194C of the Act. It was the submission that without ploughing of the land, no growth

of plant is possible except that of required small sized soil beds i.e. each bed measuring 2 to 3 ft. wide and 10 to 15 ft. long and number of such beds are required along with other type of soil beds for growing, cutting, gooty, etc. Further, for ploughing such sized soil beds conventional tractor etc. are not required. It has been explained that seed/ cutting/ gooty are sown in the land to take new plants and submitted that assessee firm is not doing any trading of plants and in fact it has been developing and growing plant from its birth to the point of sale and therefore, the assessee has been carrying out agricultural activity and his income is agricultural income exempted from the income tax act.

5. The Id. D.R. on the other hand supported the order of the Authorities below and submitted that the land is recorded in the name of the Government & the same is not owned by the assessee. Further the ROR submitted by the assessee is of the year 2021 and also no crops were mentioned in the Record of Rights (ROR). The Id. Standing Counsel argued that the assessee has failed to establish/substantiate whether any expenses were incurred for the said agriculture activities and therefore, the authorities below has rightly treated the same under the head "income from other sources". Lastly the standing counsel submitted that the payers have deducted the tax u/s 194C as Contract receipts which cannot even in imagination be treated as Agriculture receipts.

6. We have heard the rival submissions and perused the materials available on record. The assessee has a plant Nursery operated in the name of Kala Farm, wherein the assessee grows saplings and seedlings (Ordinary as well as decorative & ornamental plants) and supplying the same to various Corporate & Offices. The assessee also enters into a contract with the corporate customers for the supply of the plants as well as maintenance of such plants at the location of the customer itself. As agreed with

the customers, the assessee maintains the plants by putting the manure to plants, monitoring its growth, re-cutting/replanting etc by visiting the location of the customer and also charges separately for Maintenance, containers & Transport. Before us, the assessee produced the copies of sale bills/Invoices raised, copy of offer letter and the copies of purchase orders relating to the financial year 2017-18 (placed at page 152 to 185 of the paper book). On going through the same, we find that the assessee had supplied the Small plants, Medium Plants, Large Plants & Extra Large Plants to various Corporate. Further we also find that the assessee had charged consolidated Amount for the Maintenance, Containers & Transport separately in the invoices. Further, we also find from the copy of 26AS submitted (Page186-193 of P.B) for the AY 2018-19 that certain corporate customers have deducted the tax at source u/s 194C of the Act on the whole Amount paid or credited as they had entered into an single contract with the assessee for supply & maintenance of the plants without considering the real nature of income earned by the assessee. On going through the purchase order of Tata Tele Services Ltd. placed in page 152 to 157 of paper book, we find that assessee has entered into an agreement for supply and maintenance of indoor plants. Taking into consideration all the above facts, we are of the considered opinion that the assessee is involved in two types of activities-

1. Growing the Saplings & seedlings plants (Ordinary as well as Ornamental & decorative) and supplying them.
2. Maintenance of plants including change of plants at the customer sites on a weekly basis to upkeep the plants along with providing containers/ planter boxes & transportation charges.

6.1 It is an undisputed fact that the assessee had claimed the entire Gross Receipts from the above two activities as agriculture Income amounting to Rs.34,53,468/- as exempt Income under section 10(1) of the Act in the Schedule EI of the Return of Income. As submitted by the AR, the assessee has not claimed any expenditure relating to the agriculture activities in the Return believing that the entire gross receipts are exempts. In fact before the Id. CIT(A)/NFAC, the assessee submitted that she has incurred various expenses relating to agricultural activities like salary & wages, maintenance, purchase of seeds, supplements/manure, telephone expenses, electric expenses & in support of her claim she also produced the copy of the bank statement but the Id. CIT(A)/NFAC disbelieved the claim as no documentary evidence were produced to substantiate the same. Further It is also an undisputed fact that the assessee is also registered as an individual producer vide registration No.ORG-1806-001036 under the name and style of Kala Farm before the Karnataka State Organic Certification Agency (KSOCA) placed in page 194 of the paper book. Further, the assessee submitted the details of the agricultural activity carried on by the assessee placed in page 150 to 151 of the paper book, which reads as under:

Agricultural Activity Details:

The Appellant is in to growing decorative plants and supplying the same to various clients by sale or renting the same to them. Also, maintenance of such plants in the premises of the clients.

1. The process of growing of decorative and ornamental plants are as follows:

(i) **Preparation of soil beds:** For preparation and growth of plants, land has to be prepared. Soil is softened by tilling of soil and after soil so dug is dried so that insects below the soil level are killed by sun heat. Manure of various kinds, prepared at our farm called organic manure, Jeeva Amrutha etc, even neem and soap nut used grows on our farm these are mixed with the soil and such mixture is spread on the land. Soil beds are kept at a level of 4-6 inches above the surrounding ground level and such soil beds are prepared generally of 2 to 3 feet wide and 10 to 15 feet long so that weeding, watering, putting manure, etc. can easily be carried out. On such soil beds seeds are sown to germinate.

For putting the cutting/gooty soil beds are prepared 6 inches to 1 foot wide and again 10 to 15 feet long. After germination of seed and/or gooty/cutting, when the plant is established on such soil bed, they are shifted either in pots or in land depending upon the requirement of heat, water, shade, etc.

(ii) **Propagation of plants:** There are several methods/ways from which plants are prepared.

(a) **From seed:** The process require for germination of seed has been explained in brief in para (i) above.

(b) **Cutting:** A cutting is taken from the mother plant and planted in the prepared soil bed. Roots from such cutting germinates in few months. When plant is established, the same is transferred from such soil bed to either pot or at appropriate place in the land for its further growth.

(c) **Gootyng:** On a branch of a mother plant a slit is made and, on that portion, hormones are applied and covered with manure and soil and wrapped with jute/polythene. The wrapped portion is watered regularly till roots emerges at that point. When there are sufficient roots, it is cut and transferred to land/pot for its own separate growth for its onward sale.

(d) **Layering:** A branch of the mother plant is bent down and a slit is made in the stem and some hormones are applied. This is presented into soil so that the slit stem is under the soil. Watering is done regularly. From such slit portion roots start emerging. When there is a reasonable growth of roots, that portion is cut from the mother plant and it

becomes a new plant, the plant so prepared is fully established, it is again shifted to either in pot or appropriate place in land.

(e) Inarching/grafting: There are several methods of grafting. In rose graft is taken from the portion of stem which is about to break for a new stem and the same is placed by putting a slit in the ordinary rose plant and is tied up from up and down side by polythene. After a month or two a new branch from that portion emerges. That new branch is of the quality of rose from which cut and the new plant is of good quality rose. In other process, seedlings prepared in soil bed which are transferred to pots are taken to the mother trees for inarching i.e., a branch of mother plant is bent and tied with the seedling after both branches are slit. The slit branches are tied with jute/coconut fibre. That portion is watered regularly and the new plant is separated after 3 to 4 months. The plant so prepared is of the same species that of mother plant irrespective of the quality of the seedling.

(f) There are few plants in which sprouting takes place from its root level, for such purposes hormones and special manures are provided to such plants for better development of such process. Sprouts so generated are taken out, in the month of July and/or February only, by loosening the roots of mother plant and such small sprouts are separated from mother plant to become new plant.

In the process of propagation mortality rate of plants is very high.

2. As it has been explained earlier that without ploughing of land, no growth of plant is possible except those that require small sized soil beds i.e., each bed measuring 2 to 3 feet wide and 10 to 15 feet long and number of such beds are required along with other type of soil beds for growing, cutting, gooty, etc. For ploughing such sized soil beds, conventional tractor etc. are not required. The seed/cutting/gooty are sown in the land to take new plants. When plants are established only then they are shifted in suitable containers or appropriate place in land.
3. All plants have been prepared only on land owned by the Appellant. They have not been grown in the pots directly, but they are, after several operations carried out in the land, as explained in brief in above paras, transplanted in suitable containers including pots and are kept at the appropriate places, i.e., shade, green house, and sunny areas and the trees were grown on the land directly. The resultant plants which are transferred to pots are sold to or rented to various clients. The payment is received through banking channel. Since some of the customers were companies, they had deducted TDS under section 194C and made the payment of balance amount to the Appellant.

6.2 Further, on going through the copies of records of rights, farming and crop From No.16, for the land used by the assessee for cultivation placed at page 148 to 149 of the paper book as well as page 264 to 267 of the paper book, we also find that under the name, father's name and address of the person in possession of the land, it is mentioned as "Sabena Ravi Prakash" and the cultivation method mentioned as "self".

6.3 Before proceeding further, it is appropriate to take note of section 2(1A) as well as section 10(1) of the Act for the purpose of this case which read as under:

Section 2 in The Income Tax Act, 1961

2. Definitions.

In this Act, unless the context otherwise requires,—

(1A)"agricultural income" means—

(a)any rent or revenue derived from land which is situated in India and is used for agricultural purposes;

(b)any income derived from such land by—(i)agriculture; or(ii)the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or(iii)the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause;

(c)any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on :

Provided that—

(i)the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building, and

(ii)the land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated—

(A)in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand; or

(B)in any area within the distance, measured aerially,—

(I)not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten thousand but not exceeding one lakh; or

(II)not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than one lakh but not exceeding ten lakh; or

(III)not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten lakh.

Explanation 1.—For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included

any income arising from the transfer of any land referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of this section.

Explanation 2.—For the removal of doubts, it is hereby declared that income derived from any building or land referred to in sub-clause (c) arising from the use of such building or land for any purpose (including letting for residential purpose or for the purpose of any business or profession) other than agriculture falling under sub-clause (a) or sub-clause (b) shall not be agricultural income.

Explanation 3.—For the purposes of this clause, any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income.

Explanation 4.—For the purposes of clause (ii) of the proviso to sub-clause (c), "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;

Section 10. Incomes not included in total income.

In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

(1) agricultural income ;”

6.4 On a plain reading of the explanation 3 to section 2(1A) of the Act which is inserted by the Finance Act, 2008 w.e.f. 1.4.2009 clearly states that the income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income. Further, the Division Bench of the Hon'ble High Court of Madras in the case of CIT v. Soundarya Nursery [2000] 241 ITR 530/ 123 Taxman 372 (Mad.) held that even the plants grown in pots is an agricultural activity as they involve as the activities of agriculture farming like seeding, weeding, watering, manuring etc. At Paragraphs 8 and 9 of the Judgment, it has been held as follows:-

8. *All the products of the land, which have some utility either for consumption or for trade or commerce, if they are based on land, would be agricultural products. Here, it is not the case of the revenue that without performing the basic operations, only the subsequent operations, as described in the decision of the Apex Court have been performed by the assessee. If the plants sold by the assessee in pots were the result of the basic operations on the land on expending human skill and labour thereon and it was only after the performance of the basic operations on the land, the resultant product grown or such part thereof as was suitable for being nurtured in a pot, was separated and placed in a pot and nurtured with water and by placing them in the green house or in shade and after performing several operations, such as weeding, watering, manuring, etc., they were made ready for sale as plants all these operations would be agricultural*

operations and all this involves human skill and effort. Thus, the plants sold by the assessee in pots were the result of primary as well as subsequent operations comprehended within the term 'agriculture' and they are clearly the products of agriculture.

9. So far as the seeds are concerned, we are surprised that, that question should have been raised at all by the revenue, as it is not possible for the seeds to exist without the mother plants, and the mother plant, it is nobody's case, was not grown on land. It is also not the case of the revenue that the seeds were the result of the wild growth and not on account of cultivation by the assessee. The seeds were clearly a product of agriculture and the income derived from the sale of seeds, was agricultural income.

6.5 In the present case, as the assessee is also involved in the activity of growing & supplying saplings & seedlings plants (Ordinary as well as decorative & Ornamental) and also submitted the details of the agricultural activity carried on by the assessee placed in page 150 to 151 of the paper book, we find that the assessee is involved in all the activities of agriculture farming like seeding, weeding, watering, manuring etc. Further relying on the decision of the Division Bench of the Hon'ble High Court of Madras in the case of CIT v. Soundarya Nursery cited supra we held that If the plants sold by the assessee in container/planter boxes were result of the basic operations on the land on expending human skill and labour therein and it was only after the performance of basic operations on the land , the resultant product grown or such part thereof as was suitable for being nurtured in a pot, was separated and placed in a pot and nurtured with water and by placing them in the green house or in shade and after performing several operations, such as weeding, watering, manuring, etc., they were made ready for sale as plants all these operations would be agricultural operations and all this involves human skill and effort. Thus, the plants sold by the assessee in pots were the result of primary as well as subsequent operations comprehended within the term 'agriculture' and they are clearly the products of agriculture.

We are also disinclined to agree with the view of the lower Authorities that merely because the assessee has not declared the expenditures relating to the agricultural activities in her return, the total income of which are exempt under section 10(1) of the Act, the entire Gross receipts earned from agriculture activities will be chargeable to tax under the Income from Other Sources. Further we also failed to understand that merely because the payer has deducted the tax at Source U/s 194C of the Act as Contract receipts, then how the nature of the activity carried out by the assessee i.e. Agricultural activity will change. If that were the case, then why AO treated the entire Contract receipts as Income from Other Sources u/s 56 & not as the Profits & Gains of Business or Profession U/s 28 of the Act.

6.6 Further, We are also of the view that the assessee's claim of the entire agricultural receipt amounting to Rs.34,53,468/- as exempt u/s 10(1) of the Act by declaring the same in schedule EI of the return of income is also not tenable. As discussed earlier, the assessee is also charging the consolidated amount in her Invoice for the maintenance of the plants at the customer sites along with the supply of containers/planter boxes & transportation. Therefore, in our view, these maintenance & supply activities at the customer site cannot be treated as agricultural income as no agricultural operation is required to be carried out for the maintenance, Supply of container & transportation. Therefore, in our considered view, the contention of the assessee that entire income earned of Rs.34,53,468/- are in the nature of agricultural income exempt u/s 10(1) of the Act cannot be accepted and accordingly, we set aside this limited issue to the file of AO to consider the same in the above terms and the supply & sale of the saplings & seedlings (Ordinary as well as ornamental & decorative) may be treated as "agricultural income" exempted u/s 10(1) of the Act and amount

received towards maintenance activity of the plant at the customer site along with the supply of containers/planter boxes & transportation charges may be treated as “ Profits & gains of business or profession” chargeable u/s 28 of the Act. The assessee is also directed to produce all the relevant documents/records related to the maintenance activities, supply of containers/planter boxes & transportation and the AO shall allow all the relevant expenditure incurred with respect to said activities in accordance with law. Needless to say the reasonable opportunity of being heard must be provided to the assessee. It is ordered accordingly.

7. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 4th Dec, 2024

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 4th Dec, 2024.
VG/SPS
Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.