

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH : COCHIN**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 171/Coch/2023
Assessment Year : 2009-10

M/s. Parisons Estates and Industries Pvt. Ltd., 6/1183, Kunhipari Buildings, Calicut – 673 032. PAN: AADCP3225C	Vs.	The Assistant Commissioner of Income Tax, Circle – 1(1), Kozhikode.
APPELLANT		RESPONDENT

Assessee by	:	Shri Surendranath Rao, CA
Revenue by	:	Smt. Leena Lal, Snr. AR

Date of Hearing	:	13-03-2025
Date of Pronouncement	:	10-06-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 20/01/2023 in respect of the A.Y. 2009-10 and raised the following grounds:

"1. The order of the Assessing officer is against law and facts.

2. The Commissioner of Income Tax (Appeals) should have appreciated that the application of Rule 7 and Rule 8 as well as considering income from sale of tea manufactured from bought tea leaves and income from sale of tea dust as agricultural income has been consistently followed by the assessee for a number of years. For the past several years

, assessments have been completed under section 143(3) and the computation of income from agricultural and non-agricultural activities by applying Rule 7 and Rule 8 have been accepted by the department. The Commissioner of Income Tax (Appeals) should have noted that even when the AO has issued only an intimation u/s 143(1), the concept of "reasons to believe" is still relevant and is a pre-requisite and there is no blanket authority for the AO to disturb the finality of an intimation u/s 143(1) . As long as the condition of "reason to believe" is not justified there cannot be valid jurisdiction .

3. The Commissioner of Income Tax (Appeals) did not consider that on receipt of the reasons recorded, the appellant had filed detailed objections against commencing of reassessment proceedings. The assessing officer however proceeded to complete the assessment without countering the objections of the appellant by a speaking order. Proceeding with the assessment without first disposing the objections filed against reassessment would make the entire reassessment proceedings void ab-initio.

4. The Commissioner of Income Tax (Appeals) failed to note that what is referred to in Rule 7 is " any agricultural produce " and hence there is no prohibition in applying the same to income from manufacture of tea. The AO failed to note that a harmonious reading of Rule 7 and Rule 8 would reveal that both Rules could be simultaneously applied and Rule 7 would apply when crops grown by the assessee are used for further processing and Rule 8 prescribed the statutory percentage of the composite income from manufacture and sale of tea which was exigible to Income Tax.

5. When the method followed by the appellant was accepted by the department in the earlier years ; the Commissioner (Appeals) is not justified in upholding the assessment order when the underlying facts have not changed. Even though Res-Judicata principle is not applicable to tax proceedings, but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

PRAYER

For these grounds and such other grounds as may be urged at the time of hearing it is prayed that the order of reassessment be set aside."

2. The brief facts of the case are that the assessee is a company engaged in the cultivation of tea plantations, manufacturing and sale of tea and trading of wheat and edible oils. During the assessment year, the assessee filed their return of income declaring a total income of Rs. 1,41,96,346/-. The case of the assessee was reopened u/s. 147 and notice u/s. 148 was issued. Thereafter, a notice u/s. 143(2) was issued for which the assessee appeared and filed the details called for from time to time. The assessee is having the tea plantation and also manufacturing tea out of the said plantation. In addition to that, the assessee also purchases tea leaves from the other estates and manufactured the tea and sold the tea dust. The assessee also traded wheat and edible oils. The assessee furnished the computation of the total income in which the assessee had claimed the deduction of the market value of the cultivated tea leaves under Rule 7 of the Income Tax Rules. Thereafter, the assessee also applied Rule 8 of the Rules and claimed 60% of the income as relating to the agricultural activities and 40% as the income arising out of the trading. The assessing officer had not accepted the method of computation for the reason that the assessee is cultivating tea in their own estates and manufactured tea out of it and also bought tea leaves from other estates and manufactured the tea at their factory. Therefore, the AO had treated the cultivation of tea leaves and manufacturing the tea is a business activity and therefore the only Rule to be applied to the facts and circumstances of the present case is Rule 8. The AO had not accepted the computation on the reason that the assessee is not eligible to claim the deduction of market value of any agricultural produce since the assessee had used the tea leaves cultivated by them as a raw material as well as the tea leaves purchased from the other estates and therefore Rule 7 could not be applied to the facts and circumstances of the case. The AO observed that the claiming of deduction of the market value of

the agricultural produce under Rule 7 and further reducing the income to 40% under Rule 8 is not correct.

3. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and raised the legal ground that the reopening of the assessment u/s. 147 is bad in law since no new materials were found out by the authorities to invoke the said provision. The assessee also contended that on merits, the computation made by the assessee in which the Rule 7 as well as the Rule 8 has been applied is in order and also in accordance with the various decisions of the High Courts. The Ld.CIT(A) had elaborately discussed the issue in detail and dismissed the appeal on both counts. As against the said order of the Ld.CIT(A), the assessee is in appeal before this Tribunal.

4. At the time of hearing, the Ld.AR filed a paper book in which the arguments and the other documents were filed. The assessee also enclosed some decisions of the Tribunal as well as the High Courts for the proposition that the reopening of the assessment is bad in law. Apart from that, the assessee also filed a compilation of two judgments of the Hon'ble Gujarat High Court and Hon'ble Calcutta High Court and an order of the Tribunal in support of his contention that both Rule 7 as well as 8 would apply to the facts and circumstances of the case.

5. The Ld.DR relied on the order of the authorities below and prayed to dismiss the appeal filed by the assessee.

6. We have heard the arguments of both sides and perused the materials available on record.

7. In the present appeal, there are two issues involved, one relates to the jurisdiction of the AO to reopen the assessment u/s. 147 of the Act and the

other relates to the applicability of Rule 7 and 8 of the IT Rules in the facts and circumstances of the present case.

8. Insofar as the legal ground raised by the assessee that the reopening u/s. 147 is not a valid one since no new material came to the light of the AO, we are of the view that the Ld.CIT(A) had discussed the issue and gave a finding that "Since there was no order u/s. 143(3), there is no requirement of new materials coming to the light of the AO for reopening the case." As rightly held by the Ld.CIT(A), the AO found that the computation of income made by the assessee in which both Rules 7 and 8 were applied is not correct and therefore in order to correct the said mistake, the AO had invoked section 147 of the Act. Therefore sufficient reasons are available to reopen the assessment u/s. 147 of the Act. Further, as rightly stated by the Ld.CIT(A), there was no assessment u/s. 143(3) of the Act and therefore the question of new materials available for making the reassessment is not arisen in the present case. We, therefore, accepted that the reopening made by the AO is in order.

9. The assessee is having a tea plantation from which they obtain tea leaves which were utilised for the manufacture of tea. The tea leaves obtained from the tea plantation is admittedly an agricultural activity. Further, the assessee had purchased tea leaves from other estates and used the said tea leaves as raw materials for the manufacture of tea. From the above said facts, it is clear that the assessee has grown tea leaves in their estates and processed the said leaves and manufactured tea in their factory premises. Similarly, the assessee had also procured the tea leaves from other estates and processed and manufactured tea. Therefore, the assessee had manufactured tea out of the tea leaves grown in their estates as well as tea leaves purchased from other estates. The said activity of cultivating tea plantation is an agricultural activity. The other activity of purchasing the tea leaves from the other estates and thereafter tea was manufactured in the

factory premises of the assessee is nothing but a trading activity done by the assessee.

10. Now let us consider the Rule 7 of the Income Tax Rules and the circumstances under which the said Rule can be applied to the issue on hand.

"D. Special Cases

Income which is partially agricultural and partially from business .

7. (1) In the case of income which is partially agricultural income as defined in section 2 and partially income chargeable to income-tax under the head "Profits and gains of business", in determining that part which is chargeable to income-tax the market value of any agricultural produce which has been raised by the assessee or received by him as rent-in-kind and which has been utilised as a—raw material in such business or the sale receipts of which are included in the accounts of the business shall be deducted, and no further deduction shall be made in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent-in-kind.

(2) For the purposes of sub-rule (1) "market value" shall be deemed to be : —

(a) where agricultural produce is ordinarily sold in the market in its raw state, or after application to it of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render it fit to be taken to market, the value calculated according to the average price at which it has been so sold during the relevant previous year;

(b) where agricultural produce is not ordinarily sold in the market in its raw state or after application to it of any process aforesaid, the aggregate of—

(i) the expenses of cultivation;

(ii) the land revenue or rent paid for the area in which it was grown; and

(iii) such amount as the [Assessing Officer] finds, having regard to all the circumstances in each case, to represent a reasonable profit."

11. In the said Rule, it was clearly mentioned that if the assessee is having an agricultural income as well as the income chargeable under the profit and gains of business, to determine which part is taxable, the market

value of the agricultural produce raised by the assessee has to be deducted and the balance income should be taxed under the head profit and gains of business.

12. Similarly, Rule 8 of the IT Rules reads as follows:

“Income from the manufacture of tea.

8. (1) Income derived from the sale of tea grown and manufactured by the seller in India shall be computed as if it were income derived from business, and forty per cent of such income shall be deemed to be income liable to tax.

(2) In computing such income an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted, if such area has not previously been abandoned [, and for the purpose of determining such cost, no deduction shall be made in respect of the amount of any subsidy which, under the provisions of clause (30) of section 10, is not includible in the total income.]”

13. From the reading of the above Rule, we understand that the income from the manufacture of tea which was grown by the assessee, is to be arrived as per the said Rule. The Rule specifically states that the income derived from the sale of tea grown and manufactured by the seller in India shall be computed in which 60% would be treated as an agricultural income and 40% of such income will be treated as income liable to tax.

14. In the present case, the assessee is having both types of activities i.e. one income derived from the sale of tea grown in their estates and tea was manufactured out of which and the other relates to the purchase of tea leaves from the other estates and tea was manufactured out of it and sold.

15. The first activity carried on by the assessee would come under Rule 8 which specifically deals with the income from the manufacture of tea. The second activity carried on by the assessee would be a trading activity and therefore in respect of the income earned from the tea manufactured out of the tea leaves purchased from the other estates could not be determined based on Rule 8. Both the Rules 7 and 8 will apply on different facts and

therefore we do not think that both the provisions could apply to the facts and circumstances of the present case.

16. Rule 8 is a special provision which deals with the income from the manufacture of tea and therefore the income received by the assessee through the sale of tea manufactured by it out of their own raw materials would be computed as per Rule 8 of the IT Rules. The other activity carried on by the assessee that the purchase of tea leaves from the other estates and manufactured tea would not be an income from the manufacture of tea under Rule 8 but the same could be treated as a trading income.

17. Rule 7 is not a specific provision deals with the income from the manufacture of tea but it speaks about the income which is partly agriculture and partly from business. When there is a specific provision, which deals with the income from the manufacture of tea, the general provision Rule 7 which deals with the agricultural income from the agricultural produce could not be taken as a correct provision for determining the income. Therefore the income should be determined under Rule 8 of the Rules. The other activities of procuring the tea leaves from the other estates and manufacturing the tea out of it, for sale can be classified as a trading activity. In such circumstances, the AO had correctly disallowed the deduction claimed under Rule 7 of the IT Rules and computed the income based on Rule 8.

18. The judgments relied on by the assessee reported in [1978] 111 ITR 495 (Gauhati) in the case of CIT vs. Haroocharai Tea Co. is also on different facts. In the said judgment, the Hon'ble Gauhati High Court had considered the issue whether the lease rent received by the assessee on leasing the tea estate would be an agricultural income or not. On the said facts, the Hon'ble Gauhati High Court had held that the lease rent received by the assessee by leasing out the tea estate is an agricultural income and assessable only at 40% as per Rule 8 of the IT Rules. Therefore the said

judgment would not apply to the facts and circumstances of the present case.

19. Similarly, another judgment of Hon'ble Calcutta High Court reported in 203 ITR 547 in the case of CIT vs. Kothari Plantations & Industries Ltd. in which the facts involved are that the assessee cultivates tea leaves and manufacturing tea there from and therefore as per Rule 8, 40% of the income can be brought to tax. The above judgment of the Hon'ble Calcutta High Court is in fact supports the finding given by us.

20. Similarly, the assessee also relied on the order of the Cochin Tribunal reported in [2018] 62 ITR (Trib) 451 in the case of Kannan Devan Hills Plantations Co. Pvt. Ltd. Vs. ACIT in which the issue came up for consideration is whether the sale of import licenses would form part of the income treated as income under Rule 8 of the IT Rules. The Tribunal had treated the said income obtained from the sale of import licenses as part of tea operations and would fall under Rule 8 of the IT Rules. The above finding of the Tribunal also does not support the case of the assessee. In none of the judgments and the order, the Courts had granted approval for applying both Rule 7 and 8 in respect of the disputes raised in the appeal.

21. Therefore, we have no hesitation to hold that the income obtained by the assessee from the sale of tea manufactured out of the tea leaves obtained from their plantation could be computed only under Rule 8 of the I.T. Rules. In respect of the tea manufactured out of the tea leaves procured from other estates, it could be treated only as a trading activity and the said income could not be added to the income derived from the sale of tea manufactured out of the raw materials grown by the assessee in their plantation and therefore the market value of the tea leaves grown in their estate and the tea leaves purchased from other estates could not be deducted as per rule 7.

22. Further, the above said proposals and the mode of computation were also accepted by the assessee during the assessment proceedings which was also mentioned in the assessment order in para no. 16. Therefore, the dispute raised by the assessee is an afterthought and deserves to be dismissed.

23. We are, therefore, of the view that the order of the AO as well as the Ld.CIT(A) has to be upheld. Insofar as the argument made by the assessee that the assessee had followed the said practice of computation of income under Rule 7 and 8 in respect of the earlier several years which was also accepted by the department, we are of the view that each assessment year is a separate unit and also the res judicata would not be applicable to the tax proceedings. Therefore the plea raised by the assessee that the assessment should not be disturbed also does not hold good.

24. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 10th June, 2025.

Sd/-
(INTURI RAMA RAO)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Cochin,
Dated, the 10th June, 2025
/MS /

Copy to:

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|---------------|---------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Cochin |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Cochin