आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं
श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष

BEFORE MS. SUSHMA CHOWLA, JM AND
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.2265/PUN/2014
निर्धारण वर्ष / Assessment Year : 2010-11

The Assistant Commissioner of Income Tax,
Circle – 14, Pune,
2nd Floor, PMT Commercial Complex,
Swargate, Pune 411 037.

..... अपीलार्थी / Appellant

बनाम v/s

K F Bioplant Pvt Ltd.,
2413, Kumar Capital, East Street,
Camp, Pune 411 001.

PAN : AABCK4309E

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Rajeev Kumar
प्रत्यर्थी की ओर से / Respondent by: Shri Rajendra Agiwal

सुनवाई की तारीख / Date of Hearing : 09.03.2017		घोषणा की तारीख / Date of Pronouncement: 30.03.2017

आदेश / ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the Revenue is emanating out of the order of Commissioner of Income Tax (A) – I, Pune dt.30.05.2014 for the assessment year 2010-11.

2. The relevant facts as culled out from the material on record are as under :-

2.1 Assessee is a company stated to be engaged in the business of plant floriculture / tissue culture. Assessee electronically filed its return of income for A.Y. 2010-11 on 01.10.2010 declaring total income at Rs.3,53,273/-. The case was selected for scrutiny and thereafter the assessment was framed u/s 143(3) of the Act vide order dt.27.02.2013 and the total income was determined at Rs.10,14,79,040/-. Aggrieved by the order of AO, assessee carried the matter before Ld. CIT(A), who vide order dt.30.05.2014 (in appeal No.PN/CIT(A)-I/ITO Wd.11(3)/Pn/47/2013-14) granted substantial relief to assessee. Aggrieved by the order of Ld. CIT(A), Revenue is now in appeal before us and has raised the following grounds :

> "*1. The Ld. Commissioner of Income Tax (Appeals) grossly erred in directing the Assessing Officer to treat the assessee's income as agricultural income u/s 2(1A)(b)(i) of the Income Tax Act, 1961 and to exclude the said income u/s 10(1) of the Income Tax Act,1961.*
>
> *2. The Ld. Commissioner of Income Tax (Appeals) erred in ignoring the facts that there is no basic place in a green house and tissue culture laboratory which cannot be termed as land or nursery for growing plants.*
>
> *3. The Ld. Commissioner of Income Tax (Appeals) grossly erred in ignoring the facts that sale of the assessee consisted mainly of flowering plants developed out of imported mother plants in a tissue culture laboratory and not grown in a nursery.*
>
> *4. For the facts and such other reasons as may be urged at the time of hearing, the order of Ld. Commissioner of Income Tax-(Appeals) may be vacated and that of the Assessing Officer be restored."*

3. Before us, at the outset, Ld.D.R. submitted that though Revenue has raised various grounds but the sole issue is whether the income earned by the assessee is exempt being agricultural income.

4. During the course of assessment proceedings, AO noticed that assessee had shown agricultural income of Rs.10,04,85,506/- and it was claimed to be exempt u/s 10(1) of the Act being from agricultural activities. AO noted that in A.Y. 2004-05, the contention of the assessee of the income being agricultural income was not accepted and the income was held as business income and not from agricultural activities. He has noted that the order for A.Y. 2004-05 was also confirmed by Ld. CIT(A). He thereafter held that since the facts and circumstances of the case for the year under consideration were similar to A.Y. 2004-05, he therefore for similar reasons, concluded that assessee was not engaged in any agricultural activity and accordingly the income of Rs.10,04,85,506/- that was declared as agricultural income has to be assessed as profit and gains of business from non-agricultural business activities. Aggrieved by the order of AO, assessee carried the matter before Ld. CIT(A), who decided the issue in favour of assessee by holding as under :

> *" 4.3.4 For rejecting the claim of agricultural income made by the appellant for the assessment year under appeal, the Assessing Officer has solely replied on the findings. Conclusions drawn in the assessment year 2004-05 which have been now reversed by the Hon'ble Tribunal in their order as discussed above. On the same issue, the appeal filed by the revenue against the order of the CIT(A) for the A.Y. 2009-10 in appellant's case was also dismissed by the ITAT, Pune in ITA No.2217/PN/2012 dated 24/12/2013 by relying on the decision of the Tribunal for the A.Y.2004-05. Since nothing has been brought on record to show that the factual situation for the assessment year under appeal differs from that existed in the A.Y. 2004-05 and A.Y.2009-10, I am constrained to follow the decision of the ITAT on the issue.* ***Accordingly, respectfully following the decision of the ITAT, Pune in appellant's own case for the A.Y.2004-05 and A.Y.2009-10, the Assessing***

Officer is directed to treat the income derived from floriculture and tissue culture as agricultural income and exclude the said income from total income under section 10(1) of the Act, for the assessment year under appeal. Ground No. 1 and 2 of appeal are allowed."

Aggrieved by the order of Ld. CIT(A), Revenue is now in appeal before us.

5. Before us, Ld.D.R. supported the order of AO. Ld.A.R. on the other hand, reiterated the submissions made before AO and Ld. CIT(A) and further submitted that AO while deciding the issue against assessee AO had mainly followed the reasoning of the AO for A.Y. 2004-05. He submitted that when the matter for A.Y. 2004-05 was carried before Tribunal, the Hon'ble Tribunal decided the issue in favour of the assessee. He further submitted that in A.Y. 2009-10, the Co-ordinate Bench of the Tribunal, following the order in assessee's own case for A.Y. 2007-08 had decided the issue in favour of the assessee. He pointed to the relevant findings of the order that are placed in paper book. He therefore submitted that in such circumstances the order of Ld. CIT(A) needs to be upheld. He thus supported the order of Ld. CIT(A).

6. We have heard the rival submissions and perused the material on record. The issue in the present case is whether the income derived from the business of plant floriculture / tissue culture is exempt u/s 10(1) of the Act. We find that identical issue arose in assessee's own case in earlier years. While

deciding the issue in A.Y. 2009-10, the Co-ordinate Bench of the Tribunal (vide order dt.24.12.2013 in ITA No.2217/PN/2012) and following the decision of Co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2007-08 (in ITA No.1110/PN/2011 dt.25.09.2012) had decided the issue in favour of assessee by holding as under :

> *"4. We have heard the parties. We find that this issue has already been decided in favour of the assessee by the ITAT, "B" Bench, Pune being ITA No. 146/PN/2008 order dated 26-03-2009. The said decision has been followed by the Tribunal in assessee's own case for the A.Y. 2007-08 in ITA No. 1110/PN/2011 order dated 25-09-2012. The operative part of the said decision on this issue is as under:*
>
> *3. We find that the Tribunal has allowed the identical claim of the assessee on the identical set of facts in the A.Y. 2004-05. The said order of the Tribunal is followed in the other years also being A.Ys. 2001-02, 2003-04 and 2005-06 and 2006-07 being ITA Nos. 1274 to 1278/PN/2010, common order dated 22.2.2012. The operative part of the order of the Tribunal in ITA Nos. 1274 to 1278/PN/2010 dated 22nd February 2012 is as under:*
>
> *"7. We find that the Tribunal in the case of assessee for the A.Y. 2004-05 has discussed an identical issue in detail before deciding the same in favour of the assessee. The Tribunal while deciding the issue has taken strength from several decisions including decision of Hon'ble Supreme Court in the case of CIT Vs. Raja Benoy Kumar Sahas Roy (Supra), Hon'ble Madrash High Court in the case of CIT Vs. Soundarya Nursery, 241 ITR 530(Mad.) and of Hon'ble Allahabad High Court in the case of Jugal Kishore Arora Vs. DCIT, 269 ITR 133 (Allhad.). The relevant para Nos. 33 to 40 of the decision of the Tribunal in the case of the assessee for A.Y. 2004-05 (supra) are being reproduced hereunder for a ready reference :*
>
> *"33. In our considered view, therefore, the operations carried out on the facts of the case before us are agricultural operations in nature. The objections taken by the authorities below are devoid of any legally sustainable merits/. Applying the ratio of the Hon'ble Supreme Court's judgment in the case of Raja Benoy Kumar Sahas Roy (supra), the income from these operations has to be treated as agricultural income.*
>
> *34. We would also like to deal with Hon'ble Madras High Court's judgment in the case of CIT Vs. Soundarya Nursery*

(supra) at this stage. As far as the facts of the case were concerned, Their Lordships, inter alia, noted as follows:

> *The Tribunal, after considering all the relevant facts, as also the applicable law, concluded that the assessee's activities are to prepare seedlings on scientific lines: that the other plants are grown on prepared beds on lands owned by it and the plants are then grafted or budded ; that' the resulting grafts are transplanted in suitable containers and are reared in green houses or in shade and after they take root, they are transmitted to large containers filed with top soil and manure, etc, till they establish themselves; and thereafter those plants are sold and that the primary source of the plant is the mother plant, which is reared on earth and for which activities, certainly contribution of human labour and energy are essential.*

35. Their Lordships thus clearly noted "the primary source of the plant in the assessee's activities was the mother plant, which is reared on earth and for which certainly contribution of human labour and energy was essential". These observations equally apply to assessee's case as well.

36. In Soundarya Nursery's case, Hon'ble Madras High Court, after taking note of the law laid down by the Hon'ble Supreme Court in the case of Raja Benoy Kumar Sahas Roy (supra) and the facts of the case, observed as follows:

> *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 is 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 are made ready for sale as plants all these questions would be agricultural operations 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.*

37. When we apply the above tests to the facts of the present case, and we bear in mind our findings that basic operations are carried out in the present case, which require human skill and labour, and subsequent operations, no matter how sophisticated, if that be used against the assessee, are only to foster the growth and to protect the produce, we find that the income from these operations can only be said to be agricultural income. Their Lordships were also dealing with a situation in which operations were carried on in a greenhouse. Therefore, merely because a greenhouse in involved, the nature of operations would not change. Learned CIT(A) has distinguished this precedent on the ground that in assessee's case, basic operations have not been carried out on land. That premises itself, for the detailed reasons set out earlier in this order, rests on a unsustainable legal foundation. The basic operations have been, and can only be, carried out on the land. The fact that this land is in a greenhouse does not change the character of operations. The distinction was thus wrongly made out by the CIT(A), in our considered view, the principles laid down by the Hon'ble Madras High Court's judgment in the case of Soundaraya Nursery (supra) apply to the facts of the case before us as well.

38. We may also refer to Hon'ble Allahabad High Court judgment in the case of Jugal Kishore Arora Vs DCIT (269 ITR 133). In this case, Their Lordships, after taking note of and analyzing the landmark Supreme Court judgment in the case of Raja Benoy Kumar Sahas Roy (supra), also observed that "the nature of produce raised has no relevance to the character that "the nature of produce raised has no relevance to the character of agricultural operation". It was noted that cultivation of flowers of artistic and decorative value would also be included in the scope of agricultural operations. This observation will also apply to the facts of the present case.

39. We may mention that our attention was also invited to Explanation (3) to Section 2(1A) of the Act which has been inserted by the Finance Act, 2008. This Explanation provides that any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income and, therefore, irrespective of whether the basic operations have been carried out on land, such income will be treated as agricultural income qualifying for exemption under section 10(1) of the Act. Learned counsel has contended that this Explanation is retrospective in effect inasmuch as it is merely clarificatory in nature. We are taken through the budget speech by the Finance Minister, Explanatory Memorandum to the Finance Bill and other documents to support the contention that this amendment in law was merely clarificatory. Our attention was thus invited to several judicial precedents in which it is noted that even while an amendment is stated to be prospective in application, but held to be retrospective in effect. On the basis of these elaborate arguments, it was submitted that, in any event, based on this clarificatory

amendment in law, basic operations having been carried out on land is no longer sine qua non for treating income as agricultural income. This plea was clearly an alternative plea. Since we have allowed the basic plea of the assessee and we have held that the basic operations were carried out on land, it is not really necessary to deal with this alternative plea which is only academic in the present content. We leave it at that.

40. In view of the above discussions, and for the reasons set out above, we are of the considered view that the authorities belong indeed erred in law and on facts of this case in holding that the impugned income is not agricultural income. We, therefore, direct the Assessing Officer to treat the said income as agricultural income under section 2 (1A)(b)(i) of the Act. As a corollary to this direction, the Assessing Officer shall also exclude the said income from the total income under section 10(1) of the Act. The assessee gets the relief accordingly." Since the issue raised is fully covered by the decision of Pune Bench of the Tribunal in the case of assessee itself for the A.Y. 2004-2005, under similar set of facts, we do not find infirmity in the first appellate order on the issue in favour of the assessee based on the said order of the Tribunal under similar facts during the assessment year under consideration. The same is upheld. The grounds involving the issue are thus rejected."

4. As the issue is identical in this year, we find no reason to take different view. We, therefore, following the orders of the Tribunal in assessee's own case referred (Supra), confirm the order of the Ld. CIT(A) and dismiss all the grounds taken by the Revenue.

5. We, therefore, following the decisions of this Tribunal in assessee's own case, confirm the order of the Ld. CIT(A) on this issue.

6. In the result, the Revenue's appeal is dismissed. Pronounced in the open Court on 24-12-20"

7. Before us, Revenue has not placed any material on record to demonstrate that the aforesaid decision of the Co-ordinate Bench of the Tribunal has been set aside by Higher Judicial Authorities nor has pointed any distinguishing feature in the facts of the case for the year under consideration and that of earlier years. In view of the aforesaid facts and respectfully following the decision of the Co-ordinate Bench of the Tribunal in

assessee's own case in A.Y. 2009-10 and for similar reasons, we find no reason to interfere with the order of Ld. CIT(A) and **thus, the grounds of Revenue are dismissed.**

8. **In the result, the appeal of the Revenue is dismissed.**

Order pronounced on 30th day of March, 2017.

Sd/-	**Sd/-**
(**SUSHMA CHOWLA**)	(**ANIL CHATURVEDI**)
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 30th March, 2017.
Yamini

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. Commissioner of Income Tax-V, Pune.
4. Commissioner of Income Tax (A) – VI, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **"ए"** / DR, ITAT, "A" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy//

सहायक रजिस्ट्रार/ Assistant Registrar,
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.