
(2011) 02 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Appeal No's. 396 of 2005, 92 and 93 of 2006, 195 and 525 of 2007 and 582 of 2008 and 74 of 2010.

Commissioner of Income Tax

APPELLANT

Vs

Rana Gurjit Singh

RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:

Income Tax Act, 1961 — Section 2(1A), 260A, 7(1), 7(2)

Income Tax Rules, 1962 — Rule 7, 7(1), 7(2)

Citation : (2012) 340 ITR 108

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ajay Kumar Mittal, J.—By this order, seven appeals, i.e., income tax Appeals Nos. 396 of 2005, 92 and 93 of 2006, 195 and 525 of 2007, 582 of 2008 and 74 of 2010 are being disposed of as learned counsel for the parties are agreed that identical questions of law are involved therein, except in income tax Appeal No. 74 of 2010 wherein one additional substantial question of law has been raised.

2. Before proceeding further, it must be mentioned at this stage that the paper-books of the aforesaid appeals have not been received from the concerned branch as the same are said to have been burnt in the fire incident that took place in the premises of this court on the night of January 30, 2011. Learned counsel for the appellant has made available two copies of paper-books of each appeal to the court for reconstruction of the files. The said copies are taken on record and the paper books of the appeals are treated as having been reconstructed. For purpose of disposal, facts have been taken from income tax Appeal No. 396 of 2005.

3. This appeal u/s 260A of the income tax Act, 1961 (for short "the Act"), has been filed by the assessee against the order dated March 23, 2005, passed by the income tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh (in short

"the Tribunal"), in I. T. A. Nos. 303 and 536/ Chandi/2000, relating to the assessment year 1997-98.

4. The following substantial questions of law have been claimed, in income tax Appeal No. 396 of 2005 which are common in all the appeals for determination by this court :

(i) Whether the processing of raw peas into pea seeds is a process ordinarily employed by the cultivator within the meaning of section 2(1A)(b)(ii) or 2(1A)(b)(iii) in spite of the admission of the assessee in his statement on oath dated February 28, 2000, that there was Hindustan Lever Canning Plant which provides ready market for raw peas ?

(ii) Whether the hon"ble income tax Appellate Tribunal has erred in holding that the assessee only employed an ordinary procedure of uprooting the plant and after thrashing and winnowing the same converted such plant of raw peas into pea seeds with a view to take the same as fit to be taken to market as there was no ready market available for sale of raw peas in spite of the fact that the admission of the assessee in his statement on oath dated February 28, 2000, that there was Hindustan Lever Canning Plant which provides ready market for raw peas ?

(iii) Whether the hon"ble income tax Appellate Tribunal has erred in holding that there is no incremental profit to be taxed as non-agricultural income under rule 7(1) and 7(2) if the prevailing market rate of raw peas is taken into consideration, whereas the assessee in his calculations before the Assessing Officer on June 9, 2000, has himself worked out the incremental profits."

5. In income tax Appeal No. 74 of 2010, in addition to the aforesaid questions, the following substantial question of law has also been claimed :

(iv) Whether, on the facts and circumstances of the case and in law, the hon"ble income tax Appellate Tribunal was justified in deleting the addition of Rs. 39,60,875 made by the Assessing Officer on account of bogus capital formation and directing the Assessing Officer to tax Rs. 25,04,762 as short-term capital gain on sale of shares, whereas the assessee had comprehensively failed to prove the genuineness of the transaction ?

6. The facts, in brief, necessary for adjudication as narrated in the appeal, are that the respondent-assessee was, inter alia, engaged in cultivating and growing raw peas and also in the process of converting them into pea seeds so as to render them fit for sale and also selling the processed seeds in the market and to various growers. The assessee filed its return of income for the assessment year under reference, on September 11, 1997, declaring income of Rs. 4,800. The assessee was, thus, having non-agricultural income as well as the income from sale of processed seeds. In the return, the assessee claimed that the income from the above two sources was his agricultural income u/s 2(1A) of the Act. The Assessing Officer, however, disallowed the above claim of the assessee and on

observing that the agricultural income claimed by the assessee was covered under rule 7 of the income tax Rules, 1962, and, accordingly, calculated the non-agricultural income at Rs. 74,73,041, bringing it to the ambit of tax. The assessment was, thus, completed at total income of Rs. 75,21,041, vide order dated March 29, 2000.

7. In the appeal filed by the assessee before the Commissioner of income tax (Appeals) (for short "the CIT(A)") the action of the Assessing Officer was confirmed, vide order dated March 14, 2001. The Commissioner of income tax (Appeals), however, restricted the non-agricultural income to the extent of 30 per cent., i.e., at Rs. 27,83,255, and held that the remaining 70 per cent, income formed part of agricultural income. It was observed that the raw peas were to undergo the process of producing pea seeds and quantity of the resultant product so procured would be less in weight due to drying in the said process.

8 Feeling not satisfied with the order of the Commissioner of income tax (Appeals) both the assessee and the Revenue preferred separate appeals before the Tribunal. The Tribunal, vide the order under appeal dismissed the appeal of the Revenue and accepted that of the assessee. It was observed in plain terms that the conversion of raw seeds into pea seeds could not be held as non-agricultural as the raw seeds were a highly perishable item that might result in prospective loss in the absence of marketability therefor.

9. It is how the Revenue is in appeal before this court.

10. We have heard learned counsel for the parties and perused the record.

11. As regards questions (i) to (iii), the primary issue for consideration by this court is, whether the assessee who was cultivating raw peas and converting them into pea seeds rendering them fit for sale was carrying on an agricultural activity and the income which was derived therefrom was agricultural income u/s 2(1A) of the Act.

12. Learned counsel for the Revenue submitted that the Tribunal has erred in holding that the activity of conversion of raw peas into pea seeds by the assessee was an agricultural activity and the income derived therefrom was exempt being agricultural income. Learned counsel relied upon State of Rajasthan, etc. Vs. Rajasthan Agricultural Input Dealers Association, etc., Seth Banarsi Das Gupta Vs. Commissioner of Income Tax, Commissioner of Income Tax, Trivandrum Vs. Relish Goods, and Commissioner of Income Tax Vs. Jalna Seeds Processing and Refrigeration Co. Ltd., Controverting the aforesaid contentions, learned counsel for the assessee on the strength of the principles enunciated in Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, , urged that the Tribunal had correctly appreciated the legal position and the income derived by the assessee was agricultural income.

13. We have given our thoughtful consideration to the submissions made by the counsel for the parties.

14. It would be advantageous to refer to the principle of law culled out by the apex court in Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, . The Supreme Court defined the scope of the term "agriculture" in the following terms (page 508) :

As we have noted above, the primary sense in which the term "agriculture" is understood is agar--field and cultra-- cultivation, i.e., the cultivation of the field, and if the term is understood only in that sense, agriculture would be restricted only to cultivation of the land in the strict sense of the term meaning thereby, tilling of the land, sowing of the seeds, planting and similar operations on the land. They would be the basic operations and would require the expenditure of human skill and labour upon the land itself. There are, however, other operations which have got to be resorted to by the agriculturist and which are absolutely necessary for the purpose of effectively raising the produce from the land. They are operations to be performed after the produce sprouts from the land, e.g., weeding, digging the soil around the growth, removal of undesirable undergrowths, and all operations which foster the growth and preserve the same not only from insects and pests but also from depredation from outside, tending, pruning, cutting, harvesting and rendering the produce fit for the market. The latter would all be agricultural operations when taken in conjunction with the basic operations above described, and it would be futile to urge that they are not agricultural operations at all. But even though these subsequent operations may be assimilated to agricultural operations, when they are in conjunction with these basic operations could it be said that even though they are divorced from these basic operations they would nevertheless enjoy the characteristics of agricultural operations ? Can one eliminate these basic operations altogether and say that even if these basic operations are not performed in a given case the mere performance of these subsequent operations would tantamount to performance of agricultural operations on the land so as to constitute the income derived by the asses-see therefrom agricultural income within definition of that term ?

We are of opinion that the mere performance of these subsequent operations on the products of the land, where such products have not been raised on the land by the performance of basic operations which we have described above would not be enough to characterise them as agricultural operations. In order to invest them with the character of agricultural operations, these subsequent operations must necessarily be in conjunction with and a continuation of the basic operations which are the effective cause of the products being raised from the land. It is only if the products are raised from the land by the performance of these basic operations that the subsequent operations attach themselves to the products of the land and acquire the characteristic of agricultural operations. The cultivation of the land does not comprise merely of raising the products of the land in the narrower sense of the term like tilling of the land, sowing of the seeds, planting, and similar work done on the land but also includes the subsequent operations set out above all of which operations, basic as well as subsequent, form the integrated activity of the agriculturist and the term

"agriculture" has got to be understood as connoting this integrated activity of the agriculturist. One cannot dissociate the basic operations from the subsequent operations and say that the subsequent operations, even though they are divorced from the basic operations can constitute agricultural operations by themselves. If this integrated activity which constitutes agriculture is undertaken and performed in regard to any land that land can be said to have been used for "agricultural purposes" and the income derived therefrom can be said to be "agricultural income" derived from the land by agriculture.

15. In the appeals preferred by both the sides, which were disposed of by a common order, the Tribunal observed as under :

9.2 So far as the contention of the assessee on account of such processing of raw seeds into pea seeds is concerned, the assessee has claimed that the same has been made only keeping in view the fact that there was no ready market for sale of huge quantity of raw seeds produced by him and since raw seeds was a perishable item it was processed into pea seeds keeping in view the ready market as well as time of perishing of such pea seeds, on the other hand. The Revenue has basically disputed such processing of raw seeds on the ground that no such activity was undertaken on the land itself to enable the assessee to claim the same as agricultural income, whereas in the case of Sudisha Farm Nursery (supra), relied upon by the assessee, the Delhi Bench has held that all the operations are not necessarily carried out on the land itself. The case of Soundarya Nursery, relied upon by the assessee also supports the plea of the assessee which says that it is not possible for the peas to exist without the mother plants, hence the same has to be treated as agricultural income. We also find that the hon^{ble} Supreme Court in the case of Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, has held that integrated activity which constitutes agricultural is undertaken and performed in regard to any land that land can be said to have been used for agricultural purposes.

9.3 So far as application of the provisions of rules 7(1) and 7 (2) are concerned, we find that the Assessing Officer while calculating non-agricultural income of the assessee has taken cost of raw pea seeds at 960 kgs. at Rs. 7 per kg. instead of 4000 kgs. at Rs. 7 per kg. without giving any reasons thereof. We also find that the Commissioner of income tax (Appeals) while restricting such non-agricultural income at 30 per cent, has agreed that more raw pea seeds are required to produce pea seeds. However, while restricting the same at 30 per cent, the Commissioner of income tax (Appeals) has not given any basis for the same, whereas the assessee has claimed that it was growing 4000 kg. raw pea seeds per acre, whereas pea seeds processor per acre was 960 kgs. as evident from page 2 of the paper book. Such production of raw pea seeds and pea seeds per acre has not been rebutted either by the Assessing Officer or the Commissioner of income tax (Appeals). If the prevailing market rate was also accepted by the Assessing Officer at Rs. 7 per kg. to raw pea seed is taken into consideration, then it is apparent that the assessee had no incremental profit to be taxed as

non-agricultural income u/s 7(1) and 7(2).

9.4 We, therefore, based on the above facts and circumstances of the case and considering the totality of facts of the present case, various judgment of the courts, orders for subsequent assessment years, the calculation made by the Assessing Officer and the Commissioner of income tax (Appeals) while working out non-agricultural income in the hands of the assessee, find that such addition/disallowance in the hands of the assessee on account of non-agricultural income is not justified, as the conversion of raw seeds into pea seeds cannot be held as non-agricultural merely on the ground that there was a complete change from raw seeds into pea seeds which was not justified keeping in view the fact that the assessee changed such raw seeds into pea seeds, observing that the same was a highly perishable item which would have resulted in prospective loss in absence of marketability for the same.

9.5 So far as the observations of the Assessing Officer in treating such sale of pea seeds as non-agricultural income is concerned, we find that he has treated the same as non-agricultural on the following two grounds :

- (a) it required processing in the form of drying, thrashing, winnowing, etc., and
- (b) peas have marketability in raw form and any produce that has marketability in raw form if processed becomes partly agricultural and partly non-agricultural.

The Assessing Officer has further observed that the assessee in this case has failed on two tests as laid down u/s 2(1A)(b)(ii) :

- (i) the process employed by the assessee in converting raw peas into pea seeds is not ordinarily employed by a cultivator; and
- (ii) it is not employed to render the produce the peas raised by the assessee fit to be taken to market.

We, however, from a perusal of different process of converting raw peas into pea seeds employed by the assessee, find that he has not employed any substantial technique or mechanism to convert raw peas into pea seeds and such conversion of raw peas into pea seeds has only been made keeping in view the fact that there was no ready market available for sale of raw peas and raw peas being perishable item was converted into pea seeds by just uprooting the plant as a whole and then by simply drying, thrashing and winnowing such uprooted pea plant converted into pea seed for which ready market was available and such pea seeds have a comparable long life than raw peas. Before coming to any conclusion, we find it pertinent to mention herebelow the definition of "agricultural income", as laid down u/s 2(1A)(b)(ii), as also considered by the Assessing Officer, which reads as under :

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." The above

definition clearly says that the performance by a cultivator ordinarily employed to render the produce raised or received by him fit to be taken to market suggests that in the present case also the assessee only employed an ordinary procedure of uprooting the plant and after thrashing and winnowing the same converted such plant of raw peas into pea seeds with a view to take the same as fit to be taken to market as there was no ready market available for sale of raw peas. We also find that apart from the above activity employed by the assessee, the Revenue has not pointed out any other mechanism used by him for conversion of raw peas into pea seeds. Hence, in our considered view, the Assessing Officer as well as the Commissioner of income tax (Appeals) were not justified in treating such sale of pea seeds by the assessee as non-agricultural income in view of the facts that the assessee only employed ordinary procedure for converting his product raw peas into pea seeds keeping in view the marketability of the same. Hence, we feel that the assessee was entitled for claim of agricultural income u/s 2(1A)(b)(ii) of the Act."

9.6 We also do not find any justification in the order of the Commissioner of income tax (Appeals) in sustaining 30 per cent, of sale of pea seeds by invoking rule 7(1) and 7(2), keeping in view the above discussion and considering the fact that the calculation made by the Assessing Officer was not correct and if correct calculation would have been done, there was no incremental profit available to the assessee and hence the Commissioner of income tax (Appeals) was not justified in sustaining the order of the Assessing Officer to the extent of 30 per cent, sale of pea seeds. We, therefore, delete the addition sustained by the Commissioner of income tax (Appeals) on account of non-agricultural income and accept the grounds raised by the assessee and reject the sole ground raised by the Revenue in this regard.

16. A perusal of the aforesaid observations shows that the Tribunal had recorded a finding that the assessee was involved in the process of converting the raw peas into pea seeds wherein no substantial technique or mechanism was to be employed and the conversion of raw peas into pea seeds had only been done keeping in view that there was no market readily available for sale of raw peas. It is further clear from the above observations that the raw peas being perishable item was converted into pea seeds by just uprooting the plant as a whole and then by drying, thrashing and winnowing such uprooted pea plant for which ready market was available. In view of these observations, it was held that the assessee was carrying on agricultural activities and the income derived from that was his agricultural income. The findings recorded by the Tribunal noticed above deleting the addition sustained by the Commissioner of income tax (Appeals), have not been shown to be perverse. After considering the matter in entirety and applying the principles laid down in Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, we are of the opinion that the income derived by the assessee from the pea seeds was agricultural income and, thus, not exigible to tax.

17. Referring to the judgments relied upon by the learned counsel for the Revenue, suffice it to notice that the same were based on individual fact situation involved therein and are of no assistance to the Revenue.

18. Accordingly, questions Nos. (i) to (iii) noticed above are answered in favour of the assessee and the income tax Appeals Nos. 93 of 2001, 92 of 2006, 396 of 2005, 195 and 525 of 2007 and 582 of 2008 are dismissed.

19. The additional question in income tax Appeal No. 74 of 2010 is, whether the transaction made by the assessee who had allegedly purchased the shares of M/s. Rassi Cement Ltd. for Rs. 14,56,512 on December 3, 1997, and had sold the same for Rs. 39,61,275 on January 29, 1998, was a genuine transaction ?

20. It is not disputed that M/s. Rassi Cement Ltd. was a company which was not listed on the stock exchange. Learned counsel for the assessee could not show that the said company which was not listed on the stock exchange, had the appreciation in the value of its share as claimed by the assessee during the period of less than two months, i.e., from December 3, 1997, to January 29, 1998. Further, as per the material on record, in spite of the sale of shares having taken place in the year 1998, the payment thereof was made to the assessee in the next assessment year, the detail of which is given below :

Date

D. D. No.

Amount (in Rs.)

20-4-1999

777321

9,01,250

20-4-1999

777320

9,01,250

20-4-1999

777322

7,01,050

21-4-1999

777330

1,212.50

21. Furthermore, no explanation, much less a plausible explanation had been furnished by the assessee as to why the payment was delayed for about one year

and three months. The findings recorded by the Tribunal are not based on the material and, thus, stands vitiated. The submission of the learned counsel for the appellant that the same is legally not sustainable being based on misappreciation of evidence is accepted. Accordingly, it is held that the transaction of purchase and sale of shares of M/s. Rassi Cement Ltd. was not a genuine transaction. Consequently, question No. (iv) raised in income tax Appeal No. 74 of 2010 is answered in favour of the Revenue and against the assessee. The appeal is, thus, partly allowed in the manner indicated above.