आयकर अपीलीय अधिकरण पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", 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.2754/PUN/2016

निर्धारण वर्ष / Assessment Year : 2012-13

The Dy. Commissioner of Income Tax,
Circle 1(2), Pune .... अपीलार्थी/Appellant

Vs.

Genuine Seeds Pvt. Ltd.,
A-3, Sheetal Apartments,
DP Road, Aundh,
Pune – 411007 .... प्रत्यर्थी / Respondent

PAN: AADCG0085F

आयकर अपील सं. / ITA No.793/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

The Income Tax Officer,
Ward 1(4), Pune .... अपीलार्थी/Appellant

Vs.

Genuine Seeds Pvt. Ltd.,
A-3, Sheetal Apartments,
DP Road, Aundh,
Pune – 411007 .... प्रत्यर्थी / Respondent

PAN: AADCG0085F

अपीलार्थी की ओर से / Appellant by : Shri Pankaj Garg
प्रत्यर्थी की ओर से / Respondent by : Shri M.R. Shirude

सुनवाई की तारीख / **Date of Hearing : 12.06.2019**		घोषणा की तारीख / **Date of Pronouncement: 27.06.2019**

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

Both the appeals filed by Revenue are against separate orders of CIT(A)-1, Pune, dated 21.09.2016 and 13.01.2017 relating to assessment years 2012-13 and 2013-14 against respective orders passed under section 143(3) / 250 of the Income-tax Act, 1961 (in short 'the Act').

2. Both the appeals filed by Revenue relating to the same assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience. However, in order to adjudicate the issues, reference is being made to the facts and issues in ITA No.2754/PUN/2016, relating to assessment year 2012-13.

3. The Revenue in ITA No.2754/PUN/2016, relating to assessment year 2012-13 has raised the following grounds of appeal:-

(i) The Order of the Ld. CIT(A) is contrary to law and to the facts and circumstances of the case.

(ii) The Ld. CIT(A) grossly erred in directing the AO to treat the assessee's income as agricultural income u/s 2(1A)(b)(ii) of the Income Tax Act, 1961 and to exclude the said income u/s 10(1) of the Act.

(iii) The Ld. CIT(A) grossly erred in ignoring the fact that the activity of the assessee consisted mainly of flowering plants developed out of imported seeds and the said activity had none of the ingredients of basic operations integral to agriculture.

(iv) The Ld. CIT(A) grossly erred in failing to appreciate and correctly apply the ratio of the decision of the Hon'ble Supreme Court in the case of CIT vs Raja Benoy Kumar Sahas Roy, 32 ITR 466, wherein carrying on of basic operations by expanding human skill and labour on land had been held as an essential prerequisite of agriculture and, as per the said ratio the assessee's activity would not amount to agriculture at all.

(v) The Ld. CIT(A) grossly erred in failing to appreciate that the green house itself does not constitute land/earth and in holding that

Explanation 3 of section 2(1A) would apply irrespective of whether the basic operations have been carried out on land or not which is not only extraneous to the said explanation but also does not flow there from.

(vi) For these and such other grounds as may be urged at the time of hearing, the order of the Ld. CIT(A) may be vacated and that of the AO restored.

4. The only issue raised in the present appeals is the treatment of activity of growing of hybrid seeds is whether agricultural activity or not.

5. Briefly, in the facts of the case, the assessee company was engaged in production of high yielding hybrid seeds. The assessee was growing the said hybrid seeds. The claim of assessee was that growing of hybrid seeds involve carrying out of agricultural operations jointly with the land owners and hence, it was engaged in carrying on the agricultural activities. The assessee was purchasing seeds and then producing hybrid seeds in the net houses and marketing the same. The Assessing Officer was of the view that the said activity carried on by assessee is not agricultural activity. Hence, receipts of ₹ 5,54,19,293/- were treated as income of assessee and exemption claimed under section 10(1) of the Act was denied to assessee. The Assessing Officer holds that profit earned of the same was to be brought to tax as income from non-agricultural business activity.

6. The CIT(A) vide para 7 of appellate order notes that the assessee was engaged in the business of seed production under net houses created on land taken from farmers on lease. The assessee was producing hybrid seeds with the help of farmers and exporting the same to various countries. The total sales receipts as per Profit and Loss Account were ₹ 5.54 crores and after considering various expenses, there was loss of ₹ 1.22 crores. The books of

account were audited by an auditor but the assessee had shown the entire receipts of ₹ 5.54 crores as agricultural income, which was claimed as exempt. The CIT(A) observed that the assessee itself was responsible for creating the mess as it had declared total receipts as agricultural income. The CIT(A) further notes that the Assessing Officer also failed to appreciate the facts of case and had taxed the entire receipts of ₹ 5.54 crores even though there was loss of ₹ 1.22 crores, as per Profit and Loss Account, which was noted by Assessing Officer in para 4 of assessment order. The CIT(A) in this regard observed that when there was loss of ₹ 1.22 crores in entire operations, there was no question of treating the entire receipts of ₹ 5.54 crores as income of assessee and the Assessing Officer should have calculated the income / loss properly and then, should have decided taxability of the same or otherwise. The CIT(A) thus, holds that where there was no income of ₹ 5.54 crores as per computation of total income, the addition of same was not warranted.

7. The next issue which was adjudicated by CIT(A) vide para 8 onwards was whether the activity carried on by assessee fell within category of agricultural activities or not and held that the same becomes academic. However, he also notes that the issue stands covered in favour of assessee by Pune Bench of Tribunal in ACIT Vs. Ajeet Seeds Ltd. in ITA Nos.109 to 115/PN/2012, relating to assessment years 2002-03 to 2008-09, order dated 22.03.2013. The relevant portion of order of Tribunal is reproduced at pages 21 to 23 of appellate order and the CIT(A) held that even on merits, there was no need to treat the same as business income.

8. The Revenue is in appeal against the order of CIT(A).

9. The learned Departmental Representative for the Revenue pointed out that where the assessee was engaged in growing of hybrid seeds, then the issue was whether it was agricultural activity or not. The learned Departmental Representative for the Revenue fairly pointed out that entire receipts of ₹ 5.54 crores was assessed as income of assessee though CIT(A) at page 7 notes the fact that there was loss in the said activity carried on by assessee.

10. The learned Authorized Representative for the assessee on the other hand, pointed out that the issue now stands covered by the judgment of jurisdictional High Court at Aurangabad Bench, wherein the order of Tribunal in CIT Vs. Ajeet Seeds Ltd. (supra) has been upheld. The learned Authorized Representative for the assessee also placed reliance on the decision of Pune Bench of Tribunal in bunch of appeals with lead order in ITA No.642/PUN/2015, relating to assessment year 2011-12, order dated 02.11.2018, which had also decided similar issue applying the ratio laid down by jurisdictional High Court.

11. We have heard the rival contentions and perused the record. The only issue arising in the present appeal is whether the activity carried on by assessee of growing hybrid seeds and its sale / export thereof is an agricultural activity carried on by assessee and the income arising therefrom, is or is not assessable to tax under section 10(1) of the Act. In the first instance, it may be mentioned that the Assessing Officer had assessed the income in the hands of assessee at ₹ 5.54 crores which were the total receipts from the activity carried on by assessee. The order of Assessing Officer thus, suffers from infirmity in this regard as what is to be taxed in the hands of assessee is the income / loss

arising from any venture and not the total receipts from any activity carried on by assessee. Admittedly, the assessee himself had reported the receipts at ₹ 5.54 crores and claimed the same to be exempt under section 10(1) of the Act; but had also enclosed audited Profit and Loss Account, in which it had declared loss of ₹ 1.22 crores. In this regard, the CIT(A) has correctly held that there is no merit in the order of Assessing Officer in assessing total receipts in the hands of assessee and at best, the Assessing Officer could have determined the loss / income assessable in the hands of assessee. We uphold the findings of CIT(A) in this regard.

12. Coming to next issue of assessability of income arising from the activity carried on by assessee of growing hybrid seeds and whether the same is agricultural activity. We find that the issue now stands squarely covered by the order of Aurangabad Bench of Hon'ble Bombay High Court in CIT Vs. Ajeet Seeds Ltd. in Income Tax Appeal Nos.20 to 26 of 2014, judgment dated 18.06.2015, wherein it was noted that assessee's income arose from sale of breeder and foundation seeds. The Hon'ble High Court vide para 4 observed that when breeder seeds and foundation seeds are grown successfully, lot of scientific help was required and it was only after such skilful and scientific process, such seeds were grown. The question which was before the Hon'ble High Court was whether growing of such seeds does not amount to agricultural activity. The Revenue has in turn, relied on the decision of Hon'ble High Court of Karnataka in CIT Vs. Namdhari Seeds (P.) Ltd. (2011) 341 ITR 342 (Kar). The Hon'ble High Court held that the basic premise on which assessee's case was based had no relation whatsoever with the judgment of the Hon'ble High Court of Karnataka in CIT Vs. Namdhari Seeds (P.) Ltd. (supra). Then,

addressing the issue whether growing of breeder and foundation seeds would amount to agriculture, it was held that the answer had to be affirmative. The relevant para 7 reads as under:-

> *"7. Coming back to the question, as to whether growing breeder and foundation seeds would amount to 'agriculture', the answer has to be affirmative. It is not denied that for growing breeder and foundation seeds, seeds are sown in filed and usual agricultural operations, basic and subsequent, are undertaken utilizing human skill. In addition to this, measures are taken for restricting role of nature. Such measures are only taken in enhancing the yield. Such measures, thus, have nothing to do with the biological growth that takes place in the soil or such other substratum where the seeds are sown. An agriculturist while growing his crops, is known to have used conventional as well as scientific method for reducing hostile interplay of natural forces on his crop. When such activity is taken to highest standard, it would still not make the growing operation a synthetic one. Thus, growing seeds can never be non-agricultural. In view of this, we do not see any substantial question of law in these appeals."*

13. The CIT(A) while deciding the issue in the present case had in turn, relied on the decision of Pune Bench of Tribunal in ACIT Vs. Ajeet Seeds Ltd. (supra), which has been confirmed by the Hon'ble High Court. Consequently, we hold that growing of hybrid seeds in the case of assessee can never be held to be non-agricultural activity. Hence, the assessee is entitled to claim deduction under section 10(1) of the Act.

14. Similar is the proposition in respect of growing of foundation seeds, which is also adjudicated by the Hon'ble Bombay High Court.

15. Following the ratio laid down by the Hon'ble Bombay High Court in CIT Vs. Ajeet Seeds Ltd. (supra), we allow the claim of assessee and dismiss the grounds of appeal raised by Revenue.

16. The facts and issues in ITA No.793/PUN/2017 are similar to the facts and issues in ITA No.2754/PUN/2016 and our decision in ITA No.2754/PUN/2016 shall apply *mutatis mutandis* to ITA No.793/PUN/2017.

17. In the result, both the appeals of Revenue are dismissed.

Order pronounced on this 27th day of June, 2019.

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

पुणे / Pune; दिनांक Dated : 27th June, 2019.

GCVSR

<u>आदेश की प्रतिलिपि अग्रेषित</u>/<u>Copy of the Order is forwarded to</u> :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Pune;
4. The Pr.CIT-1, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune