IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "H" : DELHI]

BEFORE SHRI G. S. PANNU, PRESIDENT
A N D
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं/.I.T.A No.6508/Del/2019
निर्धारणवर्ष/Assessment Years:2015-16

DCIT, Circle : 27 (1) New Delhi.	**बनाम** **Vs.**	M/s. Wahid Sandhar Sugars Ltd., 407, New Delhi House, 27-Barakhamba Road, New Delhi – 110 001.
		PAN No. AAACW4600K
अपीलार्थी / Appellant		**प्रत्यर्थी/ Respondent**

निर्धारितीकीओरसे **/Assessee by :**	N o n e.
राजस्वकीओरसे **/ Department by :**	Shri Vivek Verma, [CIT] - D. R.; & Shri Sanjay Kumar, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	21/04/2023
उद्घोषणाकीतारीख/Pronouncement on :	29/05/2023

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the Revenue against the order of the ld. Commissioner of Income Tax (Appeals)-9 [hereinafter referred to

CIT (Appeals)] New Delhi, dated 27.05.2019for assessment year 2015-16.

2. The Revenue has raised the following substantive grounds of appeal:-

> "1. On facts and circumstances of the case and in law,Ld. CIT (Appeals) erred in law in deleting the addition ofRs.9,45,04,432/- made by the AO treating theagriculture income declared by the assessee asBusiness income.
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> 2. On facts and circumstances of the case and in law, Ld. CIT(A) erred in law in deleting the addition of Rs.6,72,537/- made by the AO in respect of outstanding liabilities of sundry creditors u/s 41(1) of Income Tax Act1961.
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> 3. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs.95,84,849/- made under rule 8D(2)(iii) by holding that, for the purpose of calculation of Average value of investment only the investments yielding non taxable income have to be considered and not all investments as taken by the AO."

3. In spite of service of notice none appeared on behalf of the assessee. Therefore, we dispose of this appeal by hearing the ld. DR.

4. Ground No. 1 of grounds of appeal is in respect of deletion of addition of Rs.9,45,04,432/- made by the Assessing Officer treating the agricultural income as business income. The assessee is engaged in the business of manufacture and sale of sugar filed its return of income on 19.09.2015 declaring loss of Rs.24,89,78,279/- for the assessment year 2015-16. In the course of assessment proceedings the assessee was show caused as to why the agricultural income earned by the assessee should not be treated as

an ancillary activity linked to the business of manufacture and sale of sugar as the final product of which is the sugar and its by-products and why its by-products should not be treated as part of business. The assessee contended that it cultivates the sugar seeds on the agricultural land situated in Punjab and furnished copy of Khasra khatauni for perusal of the Assessing Officer. It was also contended that the cultivation of activities carried out by the assessee company to sow sugar cane seeds is purely an agricultural activity and hence the company satisfies the condition of section 2(1A) of the Act. It was contended that revenue from sale of sugar seeds cannot be treated as taxable business income. It was also contended that the assessee possess its agricultural land which is utilized by the assessee to cultivate the sugar cane seeds and sell them in the open market. Therefore, it was contended that since income from sale of sugar cane seeds is derived from agricultural land the same has to be treated as agricultural income and as exempt under section 10(1) of the Act. The assessee placed reliance on the decision of the Hon'ble Andhra Pradesh High Court dated 21.02.2014 in ITA. 88/2014 and also the decision of the Hon'ble Supreme Court in the case of Radhasoami Satsang Vs. CIT [193 ITR 321 (SC)]. Not convinced with the submission of the assessee the Assessing Officer treated income of Rs.9,45,04,432/- from the sale of sugar cane seeds under the head income from business as against the claim of the assessee as agricultural income.

5. On appeal the ld. CIT (Appeals) deleted the addition observing that the income derived from similar activities in the past previous years had been accepted by the Revenue without any adverse finding and the same has been treated as agricultural

income. The ld. CIT (Appeals) following the decision of the Hon'ble Supreme Court in the case of Radhasoami Satsang Vs. CIT (supra) and the decision in the case of CIT v. Excel Industries Ltd. [(2013) 358 ITR 295 allowed the claim of the assessee observing as under:-

> "4.8 I have considered the facts of the case in light of the submission made by the appellant and the applicable law in this regard. In order to claim the exemption under section 10(1) assessee must per meets the definition of agriculture income laid down under the provision of section 2(1A) of the Act, 1961. The provisions of section 2(1A) defines that the agriculture income is any rent or revenue derived from land which is situated in India and is used for agricultural purposes.
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> 4.9 From the perusal of the facts, it is noted that appellant company itself cultivated the cane seeds on its own possessed agriculture land situated in India which can be evident from copy of khasra of the land provided, and derived the revenue from the sale of cane seeds to local farmers in the open market at rate notified by Department of Agriculture, Government of Punjab. Assessee company fulfill the definition of agriculture income as defined under-section 2(1A) of the Act, 1961. Importantly, the income derived from similar and identical activities in the past previous years has been accepted by the revenue without any adverse finding and the same has been treated as agriculture income. The details of the same extracted from submission of the appellant is as follows:

A.Y.	Income Returned In INR (Loss)	Income Assessed In INR (Loss)	Agriculture Income as per ITR	Accepted Agriculture Income under assessment	Assessed under section
2011-12	(21,41,829)	(21,41,829)	2,18,80,000	2,18,80,000	143(3)
2012-13	(4,07,19,780)	(4,07,19,780)	2,98,34,098	2,98,34,098	143(1)
2013-14	NIL	NIL	5,22,46,970	5,22,46,970	143(3)
2014-15	NIL	NIL	8,18,62,303	8,18,62,303	143(1)

4.10 In view of my detailed deliberation on facts as above, judicial precedents relied by the AO being distinguished on facts and following principle of consistency wherein has been any change in fact and circumstances during the current previous year viz a viz past years and thereby applicability of the ratio of judgment in the case of Radhasoami Satsang v. CIT, (1992) 193 ITR 321 and CIT v. Excel Industries Ltd. [2013] 358 ITR 295 wherein the Hon'ble Court has held thus:

"In Radhasoami Satsang v. CIT, (1992) 193 ITR 321, Hon'ble Supreme Court held that "We are aware of the fact that strictly speaking res judicata does not apply to Income-tax proceedings. Again each assessment year being a unit, what is decided in one year may not apply in the following year 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. We are therefore, of the view that these appeals should be allowed."

In case CIT v. Excel Industries Ltd. [2013] 358 ITR 295, Hon'ble Supreme Court held that It appears from the record that in several assessment years, the Revenue accepted the order of the Tribunal in favour of the assessee and did not pursue the matter any further but in respect of some assessment years the matter was taken up in appeal before the Bombay High Court but without any success. That being so, the Revenue cannot be allowed to flip-flop on the issue and it ought let the matter rest rather than spend the tax payers' money in pursuing litigation for the sake of it,"

I am of considered view that the impugned addition of Rs.94504432/- treating as business of income against the claim of Appellant as agricultural income and exempt u/s 10(1) of the Act is not justified. Therefore, addition of impugned amount on these grounds is directed to be deleted. Appellant succeeds in these grounds."

6. On a careful perusal of the order of the ld. CIT (Appeals) we do not see any valid reason to reverse the findings of the ld. CIT (Appeals) for the reason that in the past assessment years while making scrutiny assessments under section 143(3) of the Act the Assessing Officer has accepted the stand of the assessee that activities of cultivating of sugar cane seeds as agricultural activity and the income derived therefrom is agricultural income. We do not see any valid reasons to deviate from the stand taken by the revenue from earlier years as there was no change in facts. Ratio of the decision of the Hon'ble Supreme Court in the case of Radhasoami Satsang Vs. CIT (supra) was rightly applied by the ld. CIT (Appeals). Thus, we sustain the order of the ld. CIT (Appeals) and reject the ground raised by the Revenue.

7. Coming to ground No. 2 of the grounds of appeal of the Revenue it is directed against deletion of addition of Rs.6,72,537/- made under section 41(1) of the Act in respect of outstanding balances in sundry creditors accounts. While completing the assessment the Assessing Officer noticed that there are outstanding sundry credits for more than three years and since the assessee has not shown any steps have been taken for recovery, any legal proceedings are pending he concluded that these balances are no longer payable and brought to tax under section 41(1) of the Act.

8. On appeal the ld. CIT (Appeals) following the decision of the Hon'ble Supreme Court in the case of CIT vs Sugauli Sugar Works (P.) Ltd. [102 taxmann 713 (SC)] deleted the addition observing as under:-

> "8.1 I have considered the fact of the case and contention of the AR of the appellant. I have gone through the submission and details of creditors on record. The Law as per the provisions of Section 41(1) of the Act read with judicial

pronouncements provide that when a loss on expenditure or trading liability which has been allowed as deduction shall be charged to income in case the assessee has obtained sum benefit in respect of such trading liability by the way of remission or cessation thereof etc. The write off by the assessee in the Books of Accounts unilaterally shall also amount remission or cessation thereof.

8.2 The facts on record provide that there was situation that the remission or cessation of the liability was made by the third party and the A.O. had also not conducted any inquiry to find and establish the same. It is also not the case that the said credit has been written off in the appellant's books of account in the previous year.

8.3 Reliance is placed on the judicial precedent in the case of Commissioner of Income Taxvs Sugauli Sugar Works (P.) Ltd. 102 taxmann 713 (SC) where on similar facts andcircumstances the Hon'ble Apex Court held thus:

"Section 41 contemplates that the obtaining by the assessee of an amount either in cash or in any other manner, whatsoever, or a benefit by way of remission or cessation and it should be of a particular amount obtained by him. Thus, the obtaining by the assessee of a benefit by virtue of remission or cessation is sine qua non for the application of this section. The mere fact that the assessee has made entry of transfer in his accounts unilaterally will not enable the department to say that section 41 would apply and the amount should be included in the total income of the assessee.

Just because an assessee made an entry in his books of account unilaterally, he cannot get rid of his liability. The question whether the liability is actually barred by limitation, is not a matter which could be decided by considering the assessee's case alone but it is a matter which has to be decided only if the creditor is before the concerned authority. In the absence of the creditor, it is not possible for the authority to come to a conclusion that the debt was barred and had become unenforceable. There may be circumstances which may enable the creditor to come with a proceeding for enforcement of the debt even after expiry of the normal period of limitation as provided in the

> Limitation Act. The principle that expiry of period of limitation prescribed under the Limitation Act cannot extinguish the debt but it will only prevent the creditor from enforcing the debt is well- settled.
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> Mere entry in the books of account of the debtor made unilaterally without any act on the part of the creditor would not enable the debtor to say that the liability had come to an end. Apart from that that would not by itself confer any benefit on the debtor as contemplated by the section. Therefore, the High Court was right in holding that the assessee's unilateral entry in the accounts transferring the amount to the capital reserve account would not bring the matter within the scope of section 41.
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> Accordingly, the appeal was to be dismissed."
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> 8.4 In view of the above deliberation and relying on the judicial precedents, the addition of Rs.672537/- which is still recognized in the books of accounts of the appellant companyis directed to be deleted. Hence, the ground of appeal is upheld."

9. On careful consideration of the observations and findings of the ld. CIT (Appeals) we do not see any infirmity in the decision of the ld. CIT (Appeals) in deleting the addition made under section 41(1) of the Act. We sustain the order of the ld. CIT (Appeals) and reject the ground raised by the Revenue.

10. The last ground of appeal is directed against deletion of disallowance of Rs.95,84,849/- made under Rule 8D(2)(iii). The ld. CIT (Appeals) considering the submissions of the assessee that only .5% of average value of investments which yielded the exempt income should be considered for the purpose of disallowance under Rule 8D(2)(iii), held that the Assessing Officer wrongly computed the disallowance and deleted the excess disallowance. Even otherwise in view of the decision of the Special Bench in the case of ACIT Vs. Vireet Investment (P) Ltd.

[165 ITD 27 (Del.) (SB)] and also the decision of the Hon'ble Delhi High Court in the case of ACB India Ltd. Vs. CIT [374 ITR 108] only those investments which yielded Tax free dividend income should be considered for disallowance under Rule 8D(2)(iii). Therefore, we see no infirmity in the order passed by the ld. CIT (Appeals). The ground raised by the Revenue is rejected.

11. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on : **29/05/2023.**

Sd/-	**Sd/-**
(G. S. PANNU)	**(C. N. PRASAD)**
PRESIDENT	**JUDICIAL MEMBER**

Dated : 29/05/2023.

MEHTA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक / Assessee
2. राजस्व / Revenue
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण, DELHI/ DR, ITAT, DELHI
6. गार्ड फाइल / Guard file.

By order

ASSISTANT REGISTRAR
ITAT,New Delhi.

Date of dictation	23.05.2023
Date on which the typed draft is placed before the dictating Member	25.05.2023
Date on which the typed draft is placed before the Other Member	29.05.2023
Date on which the approved draft comes to the Sr. PS/PS	29.05.2023
Date on which the fair order is placed before the Dictating Member for pronouncement	29.05.2023
Date on which the fair order comes back to the Sr. PS/PS	29.05.2023
Date on which the final order is uploaded on the website of ITAT	29.05.2023
Date on which the file goes to the Bench Clerk	29.05.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	