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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 742/2023

PR. COMMISSIONER OF INCOME TAX-7.....Appellant

Through: Mr. Puneet Rai, SSC with Mr. Rishabh Nangia & Mr. Ashvini Kumar, Advs.

versus

WAHID SANDHAR SUGARS LTD. .....Respondent

Through: Dr. Rakesh Gupta, and Mr. Dushyant Agrawal, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **23.08.2024**

1. We note that the controversy which stood raised in the instant appeal, namely, whether the sale of sugarcane seeds by the respondent-assessee could be claimed as agricultural income was succinctly noticed in our order of 11 December 2023. That order is extracted hereinbelow: -

> **"CM No.63842/2023**
>
> 1. Allowed, subject to just exceptions.
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> **ITA 742/2023 & CM No.63843/2023** ***[Application filed on behalf of the appellant seeking condonation of delay of 16 days in filing the appeal]***
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> 2. This appeal concerns Assessment Year (AY) 2015-16.
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> 3. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 29.05.2023 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
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> 4. A perusal of the assessment order dated 12.12.2017 shows that the Assessing Officer (AO) made an addition amounting to

Rs.9,45,04,432/-. This addition was made as the AO concluded that the consideration received by the respondent/assessee from sale of sugarcane seeds was not agricultural income. It is the revenue's case that the seeds were sold to farmers who, in turn, gave the sugarcane grown by them for being processed by the respondent/assessee.

5. The record discloses that the sugarcane seeds were sold by the respondent/assessee in the open market to farmers at the rates notified by the concerned statutory authority.

5.1 The record also shows, and something which the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] has recorded in his order dated 27.05.2019, that in the previous years, the subject transaction has been accepted by the appellant/revenue. The details in this regard are given in paragraph 4.9 of the CIT(A) order, which, for convenience, is set forth hereafter:

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)

6. As is evident, for two AYs, i.e., AY 2011-12 and AY 2013-14, the respondent/assessee was subjected to scrutiny assessment and orders under Section 143(3) of the Income Tax Act, 1961 [in short, "Act"] were passed. 6.1 The CIT(A) employed the consistency principle and, accordingly, deleted the addition made by the AO. The Tribunal has affirmed the view taken by the CIT(A).

7. Mr Puneet Rai, learned senior standing counsel, who appears on behalf of the appellant/revenue, says that he would like to place the orders passed by the AO in the previous AYs before this court

7.1 Leave in that behalf is granted.

8. Accordingly, list the matter on 18.01.2024."

2. It appears to have been urged at that stage that in the absence of

the assessment orders for **Assessment Years**[1] 2011-12 and 2013-14 being available on the record, it would not be possible to ascertain whether the aspect of agricultural income had been duly examined. It was in the aforesaid light that we had requested the respondent to place the assessment orders as well as the record pertaining to the assessment undertaken in those two AYs for our consideration. Pursuant to the liberty so granted, the same has been duly placed on our record.

3. We note that during the course of assessment for AY 2013-14, the **Assessing Officer**[2] on 24 November 2015 had drawn out a questionnaire seeking responses on various issues from the assessee. One of the questions which was pointedly raised was with respect to agricultural income as shown and the expenses incurred in connection therewith. We further note that query no. 9 of that questionnaire called upon the respondent-assessee to answer why the income from sugarcane production be not treated as business income instead of agricultural income in light of the nature of business undertaken by it.

4. While responding to the aforesaid, the respondent-assessee not only provided details of the total sale proceeds received from transactions pertaining to sugarcane seeds, it also categorically asserted that the agricultural income claimed is restricted to the revenue received from the sale of sugarcane seeds alone. These and other relevant details were duly set forth in paragraphs 11 to 14 of their response.

5. Responding to an identical notice which had thereafter been issued and pertained to the same AY, the aspect was again explained

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[1] AYs
[2] AO

by the assessee in terms of its letter of 15 February 2016. That letter carries details similar to those which have been noticed hereinabove. Apart from the above, the assessee also appears to have placed relevant extracts of its books of accounts for the perusal of the AO.

6. Of equal significance are the details which were set forth in yet another communication of 26 February 2014 and which pertained to AY 2011-12. Here too details in respect of the sale of sugarcane seeds have been alluded to.

7. It is therefore apparent that it would be incorrect to assume that the aforesaid aspects pertaining to the sale of sugarcane seeds were not examined or borne in consideration by the AO.

8. In view of the aforesaid and since no other material fact is brought to our attention which may even tend to indicate that the facts which obtained in AY 2015-16 were distinct from those which obtained in AYs 2011-12 and 2013-14, we find no error having been committed by the Tribunal.

9. The decision impugned fails to give rise to any substantial question of law.

10. The appeal shall consequently stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 23, 2024/*neha*