

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES : BENCH "A" HYDERABAD**

(Through Video Conference)

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

I.T.A. No. 317/Hyd./2017

A.Y : 2009-10

M/s Vibha Agrotech Ltd.
Hyderabad
[PAN: AAACV8157A]

vs. Dy.CIT , Circle 17(2)
Hyderabad

I.T.A. No. 591/Hyd./2017

A.Y : 2009-10

Dy.CIT, Circle 17(2)
Hyderabad

vs. M/s Vibha Agrotech Ltd.
Hyderabad

I.T.A. No. 1900/Hyd./2019

A.Y : 2010-11

M/s Vibha Agrotech Ltd.
Hyderabad

vs. Dy.CIT, Circle 17(2)
Hyderabad

I.T.A. No. 318/Hyd./2017

A.Y : 2012-13

M/s Vibha Agrotech Ltd.
Hyderabad

vs. Dy.CIT, Circle 17(2)
Hyderabad

I.T.A. No. 592/Hyd./2017

A.Y : 2012-13

Dy.CIT, Circle 17(2)
Hyderabad

vs. M/s Vibha Agrotech Ltd.
Hyderabad

(Appellant)

(Respondent)

For Assessee: Shri P. Murali Mohana Rao, C.A.
For Department: Sri Ashok Kardana, D.R.

Date of Hearing : 03/06/2021
Date of Pronouncement : 12/07/2021

ORDER

PER S.S. GODARA, J.M.

The instant batch of 5 appeals pertains to a single assessee M/s Vibha Agrotech Limited. The first and foremost AY 2009-10 involves assessee's and Revenue's cross appeals ITA 317 & 591/Hyd/2017 arising against the CIT(A)-5 Hyderabad's order dated 30th January, 2017 in case no. 291/2015-16. The taxpayer's appeal ITA 1900/Hyd/19 for AY 2010-11 is directed against the CIT(A)-1 Hyderabad's order dated 11.10.2019 passed in case no.325/2016-17. Last AY 2012-13 contains assessee's and Revenue's cross appeals ITA 318 & 592/Hyd/2017 against the CIT(A)-5 Hyderabad's order dated 30th January, 2017 passed in case nos.54/2015-16 Relevant proceedings are u/s 143(3) r.w.s. 254, sec.144 r.w.s. 254 and sec143(3) of the Income Tax Act, 1961 [for short 'the Act']; assessment year wise respectively.

Heard both the parties. Case files perused.

2. It emerges at the outset that all the five appeals raise identical issue(s) of assessee's sec.10(1) agricultural income, exemption claim(s) of Rs.56,27,97,619/-, 79,44,01,327/- and 85,03,66,869/- along with sec. 35(2AB) weighted deduction(s) of Rs.18,19,42,296/-, 27,58,38,297/- and 23,85,72,556/- (assessment year wise) respectively.

2.1. We notice with able assistance of both the parties this is the second round of proceedings qua the instant twin issues in former two AYs AY 2009-10 and 2010-11. This tribunal's coordinate bench order dated 28.5.2014 in assessee's appeal for AY 2009-10 ITA 1799/Hyd/2012 had restored the same back to the Assessing Officer as under.

"27. However, since this issue has been raised for the first time by the assessee before us, the AO has no occasion to examined this ground of the assessee. Being so, in view of this, it is appropriate to remit the issue to the file of the AO

to see whether the assessee taken land on lease from farmers, engaged the services of farmers for production of hybrid seed, took entire produce from the farmers, reimbursed the entire expenses of cultivation to the farmers and if the farmers are not given for the produce except reimbursement of the entire charges incurred by them and repayment of labour charges then only the assessee could be considered as it has carried on agricultural operations itself so as to treat income of the assessee as agricultural income. Accordingly, the AO is directed to examine afresh the case of the assessee in the light of the order of the Tribunal in the case of Advanta India Ltd. (supra) since the assessee has pleaded that the assessee's case is similar to the case of M/s. Advanta India Ltd. and the AO shall give adequate opportunity of hearing to the assessee and he shall not be prejudiced by the earlier order of the Tribunal in assessee's own case."

2.2. We further find that the tribunal's remand order dated 24.7.2015 in assessee's appeal ITA 135/Hyd/15 for AY 2010-11 had adopted the above extracted directions mutatis mutandis whilst restoring the impugned issue(s) back to the file of Assessing officer. Learned Co-ordinate bench had also treated assessee's weighted deduction claim raised u/s 35(2AB) as a consequential one as well subject to the outcome of the former remand order.

2.3. There is further no dispute between the parties that both the learned lower authorities; and more particularly the Assessing officer in AY 2012-13 were by his foregoing reason only, whilst declining assessee's sec.10(1) agricultural income as well as sec 35(2AB) weighted deduction claims.

3. Learned DR at this stage sought to highlight the fact that the CIT(A)'s order for first AY 2009-10 has been passed after considering the assessee's written submissions where as his latter twin orders record the assessee's failure in not only producing all the relevant details but also having not put in appearance even in the lower appellate proceedings.

4. We have given our thoughtful consideration to rival contentions against and in support of impugned sec.10(1) and sec35(2AB) weighted deduction disallowances. Coming to the AYs 2010-11 and 2011-12, learned DR fails to dispute that although the CIT(A) had sought for remand report from the Assessing Officer, his findings under challenge in para 81 page 18 have simply brushed aside the assessee's detailed evidences in support of its twin claim(s). The factual position is almost similar in the other AYs 2009-10 and 2012-13. And more so in view of the prima facie clinching fact that this has not been the first and foremost year for the assessee having raised the impugned deduction claim(s). Learned counsel further stated that the assessee company had also seen corporate disputes in the intervening period.

Faced with this situation, we deem it proper to restore the instant twin issues back to the Assessing officer once again for his second round of fresh factual verification in tune with tribunal's directions for AY 2009-10. Learned counsel at this stage has undertaken to file all the necessary details before the Assessing officer at assessee's risk and responsibility in consequential proceedings. We therefore restore the instant twin issues back to the file of Assessing officer by reiterating our directions in AY 2009-10 for his afresh adjudication as per law within three effective opportunities of hearing at assessee's risk and responsibility only.

The assessee's appeal ITA 1900/Hyd/2019 and ITA 318/Hyd/2017 rising the instant twin issues are accepted for statistical purposes.

5. We now advert to Revenue's appeals ITA 591 and 592/Hyd/2017 for AYs 2009-10 and 2012-13 raising its sole identical substantive ground that the CIT(A) has erred in law and on facts in treating the assessee eligible for sec.10(1) exemption qua its income derived from basic/foundation seeds involving varying sums of money. We find no substance in learned DR's arguments before us since the CIT(A)'s order(s) take note of tribunal's adjudication in assessee's case itself in AY 2004-05, 2005-06 declining the very arguments. This tribunal's yet another order in Revenue's appeal ITA

279/Hyd/2015 for AY 2010-11 (supra) has also adopted judicial consistency to uphold CIT(A)'s conclusion to this effect. We thus adopt the very course of action herein as well to decline Revenue's instant sole substantive grievance as well as its twin cross appeals ITA 591 & 592/Hyd/2017.

6. This leaves us with assessee's remaining ground in AY 2009-10 in ITA 317/Hyd/17.

Its 7th to 10th substantive ground challenge correctness of both lower authorities' action invoking sec.40(a)(ia) disallowance of Rs.1,47,52,389/- and Rs. 53,087/- which had been restored back to the Assessing officer in first round (supra). Both the learned representatives are ad idem that the same may also follow suit as it was done in foregoing first round. We thus accept the assessee's arguments qua sec.40(a)(ia) for statistical purposes and leave it open to Assessing officer to adjudicate afresh on all legal as well as factual aspects.

6.1. Learned counsel next stated very clearly that assessee no more wishes to press its ESI/PF disallowance of Rs.1,029/- keeping in view the smallness of amount involved. Ordered accordingly. This main appeal ITA 317/Hyd/2017 is partly accepted for statistical purposes.

To sum up, assessee's three appeals ITA 317/Hyd/17, 1900/Hyd/19 and 318/Hyd/17 for AY 2009-10, 2010-11 and 2012-13 are partly accepted for statistical purposes in first and accepted for statistical purposes in latter twin instances in above terms. The Revenue's cross appeals ITA 591 & 592/Hyd/2017 stand dismissed. Ordered accordingly. A copy of this common order be placed in the respective case files.

Pronounced in Open Court on 12th July, 2021.

Sd/-

(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-

(S.S. GODARA)
JUDICIAL MEMBER

Dated: the 12th July, 2021.

* gmV

Copy of the Order forwarded to:

1. M/s Vibha Agrotech Limited, C/o P Murali & Co., Chartered Accountants, 6-3-655/2/3, 1st floor, Somajiguda, Hyderabad 500 096, Telangana.
2. DCIT, Circle 17(2), Hyderabad
3. ACIT, Range 17, Hyderabad.
4. CIT(A)-5, Hyderabad
5. Pr.CIT-5, Hyderabad
6. DR, ITAT, Hyderabad.
7. Guard File.