Growing of plants in nursery is an agricultural activity, says Madras HC

Summary – The High Court of Madras in a recent case of K. N. Pannirselvam, (the Assessee) held that Growing of plants in pots of nursery involves all activities of agricultural farming

Facts

- The assessee was carrying on agricultural operation in the agricultural land owned by him and derived income from sale of replanted trees, flowers and creepers, rent for agricultural land, share of profit and interest on capital from a firm engaged in agricultural operations. In return of income he declared his taxable income Rs. 3,47,238 from plantscape business and agricultural income of Rs. 51,89,480.
- The assessment was completed under section 143(3). Later, the case was reopened and the Assessing Officer raised a demand of Rs. 26,23,900 by treating the agricultural income as business income.
- On appeal, the Commissioner (Appeals) allowed the income derived from agricultural land.
- On further appeal, the Tribunal upheld the decision of the Commissioner (Appeals).
- On appeal before the High Court:

Held

- The Assessing Officer reopened the assessment order and issued notice under section 148. As per section 2(1A), agricultural income should be derived from the land and the said land should have been used for agricultural operation. Then, there should be something done on the land by human and technical agency to produce out of land any crop, tree plantation and other agricultural produce in order to determine whether a certain income is agricultural income, the immediate and effective source of income must be land. If it is not land, the income cannot be considered as agricultural income. He referred to the decision of the Supreme Court in the case of *CIT* v. *Raja Benoy Kumar Sahas Roy* [1957] 32 ITR 466 wherein it has been held that without the performance of the basic operations such as tilling of land, sowing of seeds, planting and similar operations on the land, mere performance of subsequent operations such as weeding, digging the soil around the growth, tendering, pruning, cutting *etc,* would not be enough to characterise them as agricultural operations and found that the assessee had not submitted any document with regard to the expenditure incurred by him towards agricultural operations such as tilling of land, sowing of seeds, plating and similar operation of land. He has also relied on the decision of the Allahabad High Court in the case of *H.H. Maharaja Vibhuti Narain Singh* v. *State of Uttar Pradesh* [1967] 65 ITR 364 wherein it has been held that income from nursery is not an agricultural income unless maintained by the farmers as an additional or necessary adjunct to the primary process of agriculture for example paddy,

nursery, nursery of tomato plants. He has also referred to the decision of the Punjab High Court in the case of *CIT* v. *Raja Bahadur Kamakhaya Narayan Singh* [1948] 161 ITR 325 wherein it has been held that there must be nexus between the income, land and agricultural operation. Eventually, based on the aforesaid decision, the Assessing Officer disallowed the agricultural income of Rs.51,89,480 by order dated 22-3-2013.

- Against that order, the assessee filed an appeal before the Commissioner (Appeals), Chennai, challenging the validity of reopening the assessment under section 147 and disallowance of agricultural income, treating the same as business income - Rs.51,89,480/-. The appellate authority dismissed the appeal insofar as the first ground is concerned, *viz.,* reopening of the assessment, holding that it is valid in law. However, with regard to the issue of disallowance of agricultural income of Rs.51,89,480, the claim of the assessee was allowed holding that the income from nursery is an agriculture income.
- In reaching his conclusion, the appellate authority has relied on the decision of *CIT* v. *Green Gold Tree Farmers (P.) Ltd.* [2008] 299 ITR 262/167 Taxman 151 (Uttarakhand), wherein it has been held that sale proceeds of plants raised in nursery on land belonging to the assessee constitute agriculture income. The appellate authority has also referred to the decision of a Division Bench of the Court in *CIT* v. *Soundarya Nursery* [2000] 241 ITR 530/[2002] 123 Taxman 372 (Mad.) and held that even the plants grown in pots is an agricultural activity as they involve all the activities of agriculture farming like seeding, weeding, watering, manuring *etc.*
- In the light of the aforesaid decisions, subsequently, the Ministry of Finance has amended section 2(1A) and thereby, *Explanation 3* to section 2(1A) was inserted by the Finance Act, 2008, to treat the income from nursery as agricultural income. This amendment came to force with effect from 1-4-2009 and the same is applicable from the assessment year 2009-10 onwards.
- Following the aforesaid decision of *Soundarya Nursery's* case (*supra*), the Appellate Tribunal upheld the order of the appellate authority and dismissed the appeal of the revenue.
- In the explanation offered to the Assistant Commissioner, Business Circle - II, Chennai, the assessee herein has submitted that he has been doing Landscaping Architect from 1981 and running two business concerns *viz.,* plantscape and Flower and Petals. He is growing plants in his lands and for that purpose, he has incurred expenses for tilling of land, sowing of seeds, and purchase of clay sand and fertilizers. As such, agricultural operations are carried on the land.
- From the materials on record, it could be seen that, it is not the case of the Assessing Officer, at the first instance that the assessee has not produced any details of the expenditure incurred in raising flowers and petals in pots. As rightly pointed out by the assessee, had the issue of expenditure been pointed out at the time of assessment, the assessee was bound to explain. Assessment order does not disclose that because of the fact that the assessee did not prove expenditure, income from flowers and petals was added. He has only said without performing basic operations, income generated cannot be termed as agricultural income. Even during the appeal, the revenue has not raised such issue. Such contentions are made for the first time, before this Court. The assessment

order has to fall or succeed on the contents of the order. A fact which was never raised in the assessment proceedings cannot be introduced for the first time, in an appeal under section 260A, for an answer. Needless to state that questions of law arise on the facts considered by the authorities with reference to the provisions and for the above reasons, the revenue cannot raise the said issue at this stage.

- In the light of the concurrent findings of the appellate authority and the appellate Tribunal and in the light of the above decisions, the impugned order of the appellate Tribunal can not be interfered. The substantial questions of law are answered against the revenue. The impugned order of the Tribunal is confirmed and the Tax Case Appeal is dismissed.