IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A-SMC", HYDERABAD

BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER

ITA No.2081/H/2018		
Assessment Year: 2015-16		
K. Vinuthna Reddy, Hyderabad. PAN: BMZPK 6915 Q	Vs.	Income Tax Officer, Ward-6(4), Hyderabad.
(Appellant)		(Respondent)

ITA No.2082/H/2018		
Assessment Year: 2015-16		
K. Sri Varshitha, Hyderabad. PAN: BNGPK 5701 A	Vs.	Income Tax Officer, Ward-6(4), Hyderabad.
(Appellant)		(Respondent)

Assessee by:	Smt. S. Sandhya
Revenue by:	Sri Sunil Kumar Pandey, DR
Date of hearing:	17/02/2020
Date of pronouncement:	08/07/2020

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ORDER

PER A. MOHAN ALANKAMONY, AM.:

These appeals are filed by the assessee Ms. Sri Varshitha Kondamadugula and Smt. Vinuthna Reddy against the order of the Ld. CIT (A)-6, Hyderabad in appeal No. 10279 & 10278/2017-18/B2/CIT(A)-6, both dated 20/07/2018 passed U/s. 143(3) r.w.s 250(6) of the Act for the AY 2015-16. Since the issues in both the

appeals are identical and related to the same issue, they are taken up for hearing together and disposed off by this common order.

2. Both the assessees have raised three identical grounds in their appeals however, the crux of the issue is that Ld. CIT (A) has erred in treating the lease income derived from the agricultural land of the assessees as 'income from other source' as against the claim of "agricultural income" which is exempt from tax U/s. 10(1) of the Act.

3. The brief facts of the case are that both the assessees are individuals filed their return of income for the relevant AY electronically on 31/3/2017 admitting income of Rs. 7,800/- and Rs. 40,000/- respectively besides agricultural income of Rs. 24 lakhs each. Subsequently, both the assessees cases were taken up for scrutiny and assessments were completed U/s. 143(3) of the Act on 29/12/2017 wherein the Ld. AO held that the income earned by the assessees to the extent of Rs. 19,20,000/- each has to be taxed under the head "income from other sources". On appeal, the Ld. CIT (A) vide his order dated 20/07/2018 enhanced the addition under the head "Income from other source" to Rs.24,00,000/- in each of the assessees case based on the decisions of various higher Judiciaries and partly agreeing with the finding of the Ld.AO. Aggrieved by the orders of the Ld. CIT (A), both the assessees are now on appeal before the Tribunal.

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4. During the course of assessment proceedings, it was revealed that both the assessees had claimed agricultural income of Rs. 24 lakhs each. On query it was explained that each of the assessee own 20 Acres of agricultural land in Tanguturu village of Nalgonda District and the same was given on lease to M/s. Biotech Laboratories India Limited on a yearly lease rent of Rs. 24,000/- per acre in the year 2009. It was further stated that till 2014 the company has not paid lease rent to the assessees. It was further submitted that during the relevant assessment year the company paid the entire lease rent for the five-year period amounting to Rs. 24 lakhs [20 X Rs. 24,000 X 5] to each of the assessees. On perusing the unregistered lease agreement, the Ld. AO observed that both the assessees had received the first instalment of the license rent of Rs. 4,80,000/- for the period 25/5/2009 to 30/4/2010 earlier. Therefore, the Ld. AO opined that the explanation tendered by both the assessees that the entire lease rent of Rs. 24 lakhs were received during the relevant assessment year is a make belief statement. The Ld. AO further observed that the father/spouse of the assessees is the Managing Director of M/s. Sri Biotech Laboratories India Limited and both the assessees are also Directors in the company. It was also revealed that both the assessees had filed their return of income for the first time. The Ld.AO also observed that M/s. Sri Biotech Laboratories India Limited had wrongly deducted tax at source on the payment made

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to the assessees U/s. 194IB of the Act because section 194IB of the Act came into effect from 1/6/2017 and therefore it is irrelevant for the AY 2015-16. The Ld. AO further opined that even if the lease agreements are to be treated as genuine then the lease income accrued and received by the assessees for the relevant assessment year alone should be treated as the agricultural income. Accordingly, the Ld. AO allowed the amount of Rs. 4,80,000 [20 X 24,000] as agricultural income in the case of each of the assessees for the relevant AY and treated the balance amount of Rs. 19,20,000/- as "income from other source" in their hands and brought the same to tax.

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5. On appeal, the Ld. CIT (A) was of the view that the entire amount of Rs. 24 lakhs received by each of the assessees from M/s. Sri Biotech Laboratories India Limited in the form of lease rent during the relevant assessment year shall not fall under the definition of "agricultural income" as envisaged under the provisions of Section 2(1A) of the Act because of the following reasons:-

1. Para 9 of the lease agreement stipulates that the land is leased out to the company only for the purpose of conducting research and development / seed development. Therefore, it was evident that in the land leased to the assessee company no agricultural activity was performed.

2. It is also evident from the lease agreement that if the Company utilizes the land for any other purpose other than for what is specified in the lease agreement then the lease agreement shall stand terminated. Since the lease agreement is in operation it is evident that the land is not used for agricultural purposes by the lessee and is used only for the purpose mentioned in the agreement i.e. for research and development purposes.
3. It is also an admitted fact that the land leased to the company is only used for conducting research and development and seed development activity and that cannot be construed to be agricultural activity.
4. It is also apparent that the company to whom the assessee has leased out the land has not earned any agricultural income
5. For arriving at the conclusion that agricultural activities were not carried out on the land leased to the company, reliance was placed in the following decisions: -

    a. *Proagro seeds vs. JCIT [2003] reported in 126 Taxman 37 (Delhi Trib)*
    b. *ITO vs. Namdhari seeds Pvt. Ltd. [2012] reported in 341 ITR 342 (Kar HC)*
    c. *K.Lakshmanan and Co vs. CIT [1999] reported in 239 ITR 597 (SC)*
    d. *CIT vs. Stanes amalgamated estates Ltd. [1998] reported in 232 ITR 443 (MAD HC)*

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6. With the above observation, the Ld. CIT (A) concluded that the amount received by both the assessee from the company in the form of lease rent will not fall under the definition of agricultural income as

envisaged U/s. 2(1A) of the Act. Accordingly, the Ld. CIT (A) held that both the assessee are not eligible to claim exemption U/s. 10(1) of the Act., and therefore dismissed the appeal of the assessees. Further the benefit granted by the Ld. AO for treating the amount of Rs.4,80,000/- as agricultural income out of the total lease rent received of Rs.24,00,000/- during the relevant assessment year was withdrawn in the case of both the assessees by the Ld. CIT (A).

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7. Before us, the Ld. AR vehemently argue by stating that the lease rent received by both the assessees during the relevant assessment year with respect to their 20 acres of agricultural land each will fall under the nomenclature of agricultural income as per the provisions of the Act and therefore prayed that the relief may be granted. The Ld.DR on the other hand relied on the orders of the CIT (A) and requested for upholding the same.

8. I have heard the rival submissions and carefully perused the materials before me. From the facts of the case it is apparent that both the assessees has proximity with the company to whom they have leased the land. Further, the apprehension of the Ld. AO appears to be quite reasonable because both the assessee has received the lease rent for the entire period of 5 years during the relevant assessment year, i.e., in the fag end of the expiry of the lease. In normal circumstances, such

transactions do not occur. Further, I am unable to understand as to why such an extent of 40 acres of land is required for the Company to conduct research and development/ sea development activity. It is therefore possible that no activity was carried out on the land and the transaction is a modus-operandi to syphon cash out of the Company without attracting tax. Keeping in view of these facts of the case, the Ld. AO's observation cannot be simply brushed aside. Further, as pointed out by the Ld. CIT (A) it is quite apparent that the company which had obtained land from the assessee on lease has not performed any agricultural operation on the land. Section 2(1A) (a) of the Act stipulates that agricultural income means "rent or revenue derived from land which is situated in India and is used for agricultural purposes". From the provisions of the Act, it is crystal clear that the land from which rent is received should be used for agricultural purposes. In the case of assessee, it is evident that the land was either used for research and development or kept vacant but not used for agricultural purposes. The Honourable apex court in the case CAT vs. Raja Benoy Kumar Sahas Roy [1957] reported in 32 ITR 466 (SC) has held that unless there is some measure of cultivation of land and some skilled labour is performed on the land for cultivation, the land cannot be said to have been used for agricultural purposes. It is essential that basic primary operation, prior to germination of the produce, involving expenditure of human skill and labour on the land and subsequent post-germination

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operations such as weeding, digging of the soil around the growth, etc., should be performed in order to constitute agricultural activity. In the case of assessee, the company which had obtained the land on lease from the assessees has apparently not indulged in any such activities. Therefore, I do not find it necessary to interfere with the Order of the Ld. CIT (A) as well as with the apprehensions of the Ld. AO in the case of both the assesses. Hence, I hereby sustain the order of the Ld. CIT(A) with respect to both the appeals.

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9. Before parting, it is worthwhile to mention that this order is pronounced after 90 days of hearing the appeal, which is though against the usual norms, I find it appropriate, taking into consideration of the extra-ordinary situation in the light of the lock-down due to Covid-19 pandemic. While doing so, I have relied in the decision of Mumbai Bench of the Tribunal in the case of DCIT vs. JSW Ltd. In ITA No.6264/M/2018 and 6103/M/2018 for AY 2013-14 order dated 14th May 2020.

10. In the result, both the appeals of the assessees are dismissed.

Pronounced in the open Court on 08th July, 2020.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 08th July, 2020.

OKK

Copy to:-

1) K. Sri Varshitha, Villa No.8, Ekta Prime Highland, Nanakramguda, Hyderabad – 500 008. (ii) K. Vinuthna Reddy, Villa No.8, Ekta Prime Highland, Nanakramguda, Hyderabad-500 008.
2) Income Tax Officer, Ward-6(4), Income Tax Towers, Hyderabad.
3) The CIT (A)-6, Hyderabad.
4) The Pr. CIT-6, Hyderabad.
5) The DR, ITAT, Hyderabad
6) Guard File

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