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/ 14.10.2009

Present: Ms. Sonia Mathur for the appellant.
Mr. R.M. Mehta for the respondent in ITA Nos. 952, 956
976, 981 & 982/2009.

+ ITA No. 951/2009 & CM No. 13298/2009
ITA No. 952/2009 & CM Nos. 13299-300/2009
ITA No. 956/2009 & CM Nos. 13359-360/2009
ITA No. 976/2009 & CM Nos. 13381-382/2009
ITA No. 981/2009 & CM Nos. 13384-385/2009
ITA No. 982/2009 & CM Nos. 13386-387/2009

(Common Order)

The respondent/assessee herein, which was earlier known as M/s. Sudhatha Mercantile Ltd., is having income from production and sale of ornamental plants and other vegetative plants. As per the assessee, its owns 126.6 acres of agricultural land along with its subsidiaries and had also taken on lease vast areas of land from other related companies for undertaking its agricultural operations. It had been filing its return of income regularly, as per which the income from the aforesaid operations is exempted from the tax on the ground that it was an agricultural income. The Assessing Officers (AO), accepting this plea of the assessee, passed assessment orders treating the same as agricultural income.

A search and seizure operation was carried out at the office premises of the assessee on 23.12.2003. On the basis of this search, the assessment orders relating to the assessment years 1998-99, 1999-2000,



2001-02 to 2004-05 were reopened after issuing notices under 153A of the Income Tax Act, 1961 on 21.2.2006. In the return filed by the assessee, it stuck to the income disclosed earlier while filing the original returns in the aforesaid years. The AO, this time, passed the assessment orders dated 30.3.2006 holding that the plantation income generated by the assessee out of same of ornamental plants was business income and not agricultural income and, therefore, tax was payable on this income.

In the appeal filed by the assessee before the Commissioner of Income Tax (Appeal), the aforesaid finding of the AO was reversed and the CIT(A) concluded that income from the aforesaid activity would be treated as agricultural income. However, the CIT(A) assessed 90% of the declared income as agricultural income and held that 10% of the declared income would be treated as non-agricultural income, which related to sale of pots, etc. Both the Revenue as well as the Assessee filed appeals against order of the CIT(A). The Tribunal has dismissed the appeals of the Revenue and allowed those of the assessee holding that the entire income is to be treated as agricultural income. For arriving at this conclusion, the learned Tribunal has been influenced by the following factors :-

- a) It applied the principle of consistency as held by the Supreme Court in the case of *M/s. Radhasoami Satsang Saomi Bagh, Agra v.*



Commissioner of Income Tax, 193 ITR 321, as the income clai

the assessee as agricultural income was accepted by the Revenue in the course of regular assessments not only before the search, but even after the search.

- b) The aforesaid operation/activity would constitute agricultural activity. In this behalf, the Tribunal has discussed the nature of activity in detail and applying the principles laid down by the Supreme Court in the case of *Commissioner of Income Tax, West Bengal v. Raja Benoy Kumar Sahas Roy*, 32 ITR 466.
- c) The Tribunal observed that during the search no fresh material surfaced and, thus, there was no basis for reopening the assessment in question.

Having regard to the aforesaid, we are of the opinion that no question of law arises for consideration in these appeals, which are accordingly dismissed.


A.K. SIKRI, J.


SIDDHARTH MRIDUL, J.

October 14, 2009
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