

# Phi Seeds Pvt Ltd vs Dy. Commissioner Of Income Tax Circle ... on 7 January, 2019

**Author: Sanjiv Khanna**

**Bench: Sanjiv Khanna, Anup Jairam Bhambhani**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ ITA No.1073/2018  
+ ITA No.1074/2018  
+ ITA No.1084/2018

PHI SEEDS PVT LTD ..... Appellant  
Through: Mr.Ajay Vohra, Sr. Adv. with Ms.  
Kavita Jha and Mr.Aditya Vohra,  
Advs.

versus

DY. COMMISSIONER OF INCOME TAX CIRCLE 14(1)  
..... Respondent  
Through: Mr.Zoheb Hossain, Sr. St. Counsel

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA  
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI  
ORDER

% 07.01.2019

Heard.  
Admit.

The following substantial question of law is framed:-

"Whether the Income Tax Appellate Tribunal was justified and correct in law in holding that the assessee has not been able to discharge onus in terms of Clause (B) of Explanation 1 to Section 271(1)(C) of the Income Tax Act, 1961".

Filing of the appeal paper book is dispensed with. Parties are given liberty to file papers/documents which were filed before the Assessing Officer and in the appellate proceedings. CM APP No. 40108/2018 in ITA No.1073/2018 CM APP No. 40113/2018 in ITA No.1074/2018 CM APP No. 40197/2018 in ITA No. 1084/2018 Learned counsel for the appellant submits that the appeal by the assessee against the quantum assessment has been admitted. It is also stated that there are conflicting judgments of the Bombay High Court and the Karnataka High Court. Judgments of the Bombay High Court being in favour of the appellant. In earlier assessment years, the Assessing Officer had accepted the claim of the appellant that the income from sale of agriculture seeds was agricultural income, which was exempt under Section 10 sub-section (1) of the Act. It is therefore

submitted that the case would be completely covered by Clause (B) to Explanation 1 to Section 271(1)(c) of the Act. The assessee had submitted and furnished complete facts and details in the audit report. The issue involved is purely a legal issue, on which two different interpretations were possible.

Learned counsel for the Revenue has drawn our attention to the decision of the Andhra Pradesh High Court in Writ Petition No.13527/2004 and other connected matters.

Learned senior counsel for the appellant submits that this decision relates to provisions of levy of market fee under the Andhra Pradesh (Agriculture Produce and Livestock) Markets Act, 1966 and interprets term 'agricultural produce' as defined in the said Act.

The Revenue submits that the appellant is a 100 per cent FDI funded company and was not permitted or allowed to indulge in agricultural activities/operations. Counsel for the appellant however submits that the FDI policy on agricultural sector had permitted FDI investment in horticulture, development of seeds and animal husbandry etc. During the course of hearing, it is also pointed out that the legal issue is now pending consideration before the Supreme Court.

Keeping in view the peculiar facts of the present case, we direct that there would be stay of penalty demand subject matter of these appeals, subject to the appellant furnishing security for the penalty amount and interest. We clarify that this order does not grant stay of tax amount which is subject matter of quantum appeals.

Interim applications are disposed of.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

JANUARY 07, 2019 neelam