

3.5 The above seed bill makes an interesting reading. The first entry is about one farmer . named Sapana Pradhan of Gunthuni village. The appellant receives the sugarcane seeds from Nayagarh Sugarcane Complex Ltd. in her planting village Panipoila on 06.12.2012 and supplied it to the farmer who planted it on 18.12.2012 in his planting village at Gunthuni. According to the appellant's own written submission-dated 18<sup>th</sup> November 2016 (which was filed during appeal proceedings of A.Y 2012-13), in which the appellant has explained the agricultural process, it takes 1 to 2 months time for buds and 6 to 12 months time for small plants to develop from the seeds. If this is so, then how could the appellant take supply of the seeds on 06.12.2012 and supply the sugarcane plants on 18.12.2012. All the entries in all the seed bills are of this type. There is hardly any time for the appellant to undertake in agricultural process on the seeds supplied by Nayagarh Sugar Complex Ltd. It is to be further noted that the Nayagarh Sugar Complex Ltd. is located in Balugaon village and the appellant's leasehold land is at Panipoila. The farmers are scattered around Nayagarh Sugar Complex Ltd. Therefore, if the appellant's submission is to be believed then she picks up seeds from Nayagarh Sugar Complex Ltd. in Balugaon, takes them to Paripoila and again brings back the plants to supply to the farmers and also in the meantime, she carries out the agricultural operations to develop plants from seeds. In such a very short time, as it is evident from the seeds bill, this is impossibility.

**3.6** Further, it is seen that the Nayagarh Sugar Complex Ltd deducts the sale price of sugarcane seeds from the proceeds payable to the farmers, when they sell sugarcane to the company. The alleged agricultural produce is not sold in the open market area to any independent person.

3.7 It is further seen that the Shri Trailokya Mishra, husband of the appellant is himself a managing director of Nayagarh Sugar Complex Ltd. from the date of inception of the company on 9<sup>th</sup> August, 2004. He is also the main promoter of Nayagarh Sugar Complex Ltd. Further, he is mariag:r.fc director of Mishra Finance Limited and director of Dharitri Associates Pvt. Ltd. where **the appellant is also a director.**

3.8 Considering the above aspects, it is clear that the appellant has not conducted any agricultural operations. The transactions between Nayagarh Sugar Complex Ltd. and the appellant are

collusive in nature to give colour of agricultural income to the income from other sources.

3.9. The appellant has relied upon the decision of Hon'ble High Court in the case of Prabhat Agri Biotech Limited. On perusal of this judgment, it is seen that in that case, the appellant was actually growing basic stock/foundation seeds and, therefore, Hon'ble High Court has treated the sale of such seeds as agricultural income. These are not the facts of the case of the appellant. As it is seen from the above, the appellant has not performed any agricultural operations.

3.10 This issue also came up in the appellant's case before the Hon'ble ITAT, Cuttack Bench, Cuttack in TIA No.363 & 364/CTK/2015 for A.Y. 2010-11. In ITA No.364/CTK/ one of the issues was whether an amount of Rs.6,49,773/- was an agricultural income of the appellant. Hon'ble Tribunal has held that it is not an agricultural income and dismissed the appeal of the appellant.

3.11 Considering this, the decision of the AO hold that the amount of Rs.17,37,927/- is not an agricultural income, but income from other sources is upheld and the ground of appeals are dismissed."

5. Similarly, for the assessment year 2014-15, for the same reasoning, the CIT(A) upheld the action of the Assessing Officer treating the income as income from other sources as against the agricultural income claimed by the assessee.

6. Before us, Id A.R. reiterated the submissions made before the lower authorities.

7. On the other hand, Id D.R. supported the orders of lower authorities.

8. After hearing the rival submissions and perusing the materials available on record, we find that the CIT(A) has followed the decision of the Tribunal in assessee's own case for the assessment year 2010-2011, wherein, the claim of agricultural income of the assessee was negated and same was treated as income from other sources.

9. Although the Id A.R. has filed two paper books for the assessment year 2013-14 containing 133 pages and for assessment year 2014-15 containing 163 pages but has not referred to any of the pages of the paper book during the course of hearing. Rule 18 of ITAT Rules, 1963 reads as under:

**"18.** (1).....

(2) .....

(3).....

(4).....

(5) .....

[(6) Documents that are referred to and relied upon by the parties during the course of arguments shall alone be treated as part of the record of the Tribunal.]

Since the Id A.R. of the assessee has not referred to any of the documents filed in the paper book, the paper book filed are not treated as part of record as per the above quoted ITAT Rules.

10. Ld A.R. could not bring any relevant and cogent material on record to controvert the findings of the Assessing Officer as well

as the CIT(A) that the appellant received the sugarcane seeds from Nayagarh Sugarcane Complex Ltd. in her planting village Panipoila on 06.12.2012 and supplied it to the farmer who planted it on 18.12.2012 in his planting village at Gunthuni. According to the appellant's own written submission-dated 18<sup>th</sup> November 2016 (which was filed during appeal proceedings of A.Y 2012-13), in which the appellant has explained the agricultural process, it takes 1 to 2 months time for buds and 6 to 12 months time for small plants to develop from the seeds. If this is so, then how could the appellant take supply of the seeds on 06.12.2012 and supply the sugarcane plants on 18.12.2012.

11. In view of above, we find no infirmity in the order of the CIT(A) to interfere and the ground of appeal of the assessee is dismissed for both the assessment years.

12. In the result, both the appeals are dismissed.

Order pronounced on 06/09/2018.

Sd/-

**(Pavan Kumar Gadale)**  
**JUDICIALMEMBER**

Cuttack; Dated 06/09/2018  
B.K.Parida, SPS

sd/-

**(N.S Saini)**  
**ACCOUNTANT MEMBER**



**Copy of the Order forwarded to :**

1. The Appellant : Smt. Asha Manjari Mishra,  
191, Kharvel Nagar, Unit-III, Bhubaneswar
2. The Respondent. DCIT, Circle -4(1),  
Bhubaneswar
3. The CIT(A)—2, Bhubaneswar
4. Pr.CIT-2, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

**Sr. Pvt. Secretary,  
ITAT, Cuttack**