आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No. 642/PUN/2015
निर्धारण वर्ष / Assessment Year : 2011-12

ITO, Ward-1(2),/Aurangabad .....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Nath Bio Genes (I) Ltd.,
Nath House, Nath Road,
Paithan Road,
Dist. Aurangabad – 431 005
PAN : AABCN7978E .....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 398/PUN/2016 & ITA No. 1505/PUN/2016
निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14

ACIT, Circle-1/ Aurangabad .....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Nath Bio Genes (I) Ltd.,
Nath House, Nath Road,
Paithan Road,
Dist. Aurangabad – 431 005
PAN : AABCN7978E .....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 1548/PUN/2017
निर्धारण वर्ष / Assessment Year : 2014-15

DCIT, Circle-1/ Aurangabad .....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Nath Bio Genes (I) Ltd.,
Nath House, Nath Road,
Paithan Road,
Dist. Aurangabad – 431 005
PAN : AABCN7978E .....प्रत्यर्थी / Respondent

Assessee by : Shri N.R. Agarwal & Shri Vijay Sabu
Revenue by : Shri Rajeev Kumar, CIT-DR

सुनवाई की तारीख / Date of Hearing : 06.08.2018
घोषणा की तारीख / Date of Pronouncement : 02.11.2018

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

There are 4 appeals filed by the Revenue under consideration involving assessment years 2011-12 to 2014-15. In all these appeals, the common issue raised by the Revenue relates to allowability of exemption u/s.10(1) of the Act in respect of the claim of agricultural income. The assessee claims that it is engaged in production of specialized seeds in the leased lands, (1) making of certified seeds; (2) undertaking other processing activities and finally (3) trading of the said certified seeds. Assessee also engaged in the trading activity of the said seeds too. Considering the commonality of the facts, issues, the arguments of the counsels etc., we are of the opinion that all these appeals should be heard together for passing a composite order. For the sake of reference, the grounds for A.Y. 2011-12 are extracted here as under :

> *"(a) Whether on the facts and in the circumstances of this case, assessee's income from its seed production activity is exempt under section 10(1) of the Income Tax Act, 1961.*
>
> *(b) Whether on the facts and in the circumstances of this case, the land utilized for production of seeds can be termed as assessee's "leased land";*
>
> *(c) Whether on the facts and in the circumstances of this case, grower can be termed as representative of assessee company;*
>
> *(d) Whether on the fact and in the circumstances of this case, assessee's seeds procurement from grower is its agricultural activity;*
>
> *(e) Whether on the facts and in the circumstances of this case, converting of seeds into certified seeds is an agriculture activity;*
>
> *(f) The Appellant craves leave to amend, alter, modify, add, submit additional ground;"*

2. Revenue revised grounds during the proceedings before us and the same are extracted as follows :

> *"1. Whether on the facts & in the circumstances of the case, the Ld.CIT(A), Aurangabad was correct in deleting the addition in question treating the seeds production as agriculture income u/s.10(1) of the Act.*
>
> *2. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) was correct in holding that the assessee was absolute owner of the land in absence of valid lease deed agreement, if not, then no right in land vests with the assessee company.*
>
> *3. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) was correct in holding that the seeds growers were producing the seeds for the assessee only whereas as per information received u/s.133(6) of the Act revealed that some of the growers were producing the grains at their own level, i.e. independently and in view of the above, the seeds procured by the assessee from growers is nothing but purchases from the seeds growers in question.*
>
> *4. Whether on the facts and in the circumstances of the case the Ld.CIT(A) was correct in accepting assessee's version of agricultural operation based on invalid documentation making the entire operation sham.*
>
> *5. Whether on facts & circumstances of the case the Ld.CIT(A) was correct in appreciating that converting seeds into certified seeds is an agricultural activity.*
>
> *6. On the facts and in the circumstances of the case, the order of the AO be restored and that of the CIT(A)-1 be vacated.*
>
> *7. The appellant craves leave to add, amend or alter all or any of the Grounds of Appeal."*

On facts, the issues raised in Ground Nos. 4 & 5 has genesis in the outcome of the enquiries/investigation by the AO in the subsequent assessment years.

3. Basic facts relating to the assessee and issues include that the assessee is a company engaged in growing the foundation seeds, the seed production, undertaking other processing activities of seeds, making of certified seeds and trading of the said seeds. As per the assessee, all these activities, constitute agricultural activities. Assessee filed the return of income on 27-09-2011 declaring total income of Rs.35,99,340/- for the A.Y. 2011-12 after claiming exemption of agricultural income at Rs.6.90 crores (rounded off) for this year. During the assessment proceedings, the issue of allowing exemption of agricultural income from tax was scrutinized by the AO.

4. In this regard, the AO issued a show cause notice informing the assessee that the basic operations of agriculture were not carried out by the assessee and, therefore, the seeds procured by the assessee from the growers constitute the trading activity of purchase of seeds. Further, the series of processing activities in order to make certified seeds ready for trading, constitutes a manufacturing/business activity and when the same are sold, the income earned by the assessee become taxable. In this regard, AO also analysed the land lease agreements signed by the assessee and the land owners and found that they are unregistered ones. Further, the AO found that certain expenses to the tune of Rs.30.94 crores (rounded off) unrelated to the agricultural activity were also claimed. AO held that these expenditure constitute manufacturing expenses, research expenses, power and fuel, freight inward, Hamali & Cartage, etc., and not agricultural expenditure incurred for earning exempt agricultural income. AO came to the conclusion that the entire activity is not agricultural activity and the same constitutes "business activity". Therefore, AO show caused the assessee as to why the income of Rs.6.90 crores earned by the assessee for A.Y. 2011-12 on sale of the certified seeds, should not be treated as "income from business" and not exempt as an agricultural income.

In addition, the assessee offered profits/loss on account of seed trading activity about which there is no issue in the assessment. Assessee admittedly purchased said seeds and sold them in market. The profits are offered as taxable income and the AO taxed the same.

5. In reply to the said show cause notice, assessee filed written submissions and explained the facts relating to (a) leasing of lands from the land owners across width and breadth of the country; (b) giving of

agricultural advances to the said landlords or growers of seeds for undertaking the agricultural activity under the control and management of the assessee who has expertise in growing (a) nuclear seeds; (b) the breeder seeds; (c) the foundation seeds and finally (d) the certified seeds. Assessee further submitted that the certified seeds are finally sold for higher rate and therefore, all these procedures involve scientific methods and innovations on one side and the control and management of the assessee's technical staff such as Agricultural graduates . According to the assessee, the landlords are not employees of the assessee. They work on contractual basis.

6. On considering the same, the AO rejected the contention of the assessee. Accordingly, AO held that the lease-land documentation, being an unregistered ones, is not a reliable ones. They are typed ones on the unregistered documents; they are stereo-typed ones and they suffer from credibility. Further, AO held that the assessee failed to demonstrate that the assessee discharged the onus in matters relating to application of scientific knowledge; in matters of the claim of control and management in the agricultural activities etc. Further, AO discussed the various processes involved in making the certified seeds and held that the same do not amount to Agricultural activity. Further, relying on the judgment of Allahabad High Court in the case of M/s. Tarai Development Corporation Vs. CIT 120 ITR 342, AO held that such activities of seeds sampling, processing of seeds, testing and quality control, marketing of seeds constitutes, a "manufacturing business activity of seeds". AO also relied on the decision of Allahabad bench of the Tribunal in the case of M/s. Navbharat Seeds Pvt. Ltd. in ITA No.2814/Ahd/1986 decided on 29-1-1989, the decisions of Pune Bench of the Tribunal in the case of ITO Vs. M/s.Godavari Seeds Pvt. Ltd., M/s.Mahendra Hybrid Seeds Company Ltd., Jalna, and the decision of Delhi

Bench of the Tribunal in the case of M/s.Pro-agro Seeds Company Ltd. reported in 126 Taxmann 37 to support his conclusions against the claims of the assessee. As per the AO, these decisions advocate for treating such activities not as agricultural activities but they constitute the business of manufacturing and production of seeds. AO held that most of the seeds procured are from the lands not owned by the assessee.

Further, AO rejected the arguments of the assessee and considered the following decisions relied upon by the assessee :

i. Raja Binoy Kumar Sahas Roy 32 ITR 460
ii. CIT Vs. Soundarya Nursery (2000) 241 ITR 530
iii. Monsanto India Limited Vs. DCIT – ITA No.6093/Mum/2007

Eventually, AO taxed the entire claim of Agricultural income in all these assessment years under consideration.

7. During the subsequent assessment years, AO proceeded to invoke the provisions of section 133(6) of the Act in few select cases of growers to establish that the assessee involved in growth of the said seeds and the mode of procuring of the seeds, i.e., if they are purchased or otherwise. Barring a solitary case, other growers confirmed that the seeds are grown by them at the instance of the assessee and under their control and management. Further, they affirmed that the seeds grown in their lands are given to the assessee and the nature of transaction is not sale of seeds. However, the solitary case referred above, the grower mentioned that the nature of transaction is a trading activity only.

However, AO did not find them relevant for considering the case of the assessee. Eventually, AO denied the claim of agricultural income and treated the same as income from business activities as per the discussion given in Para Nos. 5.8 and 5.9 of his order and the same are extracted here under :

"5.8……..

However, in the case of Namdhari Seeds Pvt. Ltd., Hon'ble High Court of Karnataka reported in 17 Taxmann 83, (2011) has considered the judgments cited supra and held that where assessee company engaged in production of hybrid seeds, entered into agreement with farmers for production of total hybrid seeds on their land for its own benefit income arises to assessee from sale of such seeds grown by farmers could not be agricultural income for the purpose of exemption u/s.10(1) of the I.T. Act. The court also stated that entire reading of terms of agreement could only indicate that assessee company was interested only to have healthy foundation seeds grown process of converting same as certified seeds and Hon'ble Court held that the entire income amounts to business income of the assessee. Further, as a matter of fact, for previous assessment years the assessee company offered its income as business income. In the said modus operandi when it was having huge business losses. This is the first year in which assessee has claimed agricultural income.

5.9 In view of facts and circumstanced and above judicial pronouncements, the claim of income from agricultural is being disallowed and the same is treated as income from ***business and manufacturing activities*** *and addition of Rs.6,89,99,157/- is made to the total income of the assessee. Penalty proceedings u/s.271(1)(c) of the Act are separately initiated for furnishing of inaccurate particulars of income/concealment of income (Addition : Rs.6,89,99,157/-)"*

8. **Before the CIT(A)** : Aggrieved with such order of the AO, the assessee filed appeal before the CIT(A). The issue relating to the claim of Agricultural income Vs. Business income of the assessee was discussed at length by the CIT(A). CIT(A) enlisted the reasons/points arising out of the assessment order in Para No.5 of his order. CIT(A) also extracted the submissions given by the assessee in Para No.6 of his order and proceeded to give his conclusion from Para No.7 onwards. In his order, CIT(A) examined couple of issues; namely (1) whether the income derived from the use of leasehold land which is cultivated by the farmers under the supervisions of employees of the assessee to give rise to the hybrid seeds constitutes 'an agricultural activity' or not; and (2) subsequent activities of processing of the hybrid seeds to make the seeds to be marketable as certified seeds amounts to business activity or not. The CIT(A) considered the fact that the assessee engaged the landlords and their lands through the written contracts and held that such activity constitutes agricultural activity. Relying on the decision of Bangalore Bench

of the Tribunal in the case of M/s.Advanta India Ltd. Vs. DCIT 5 ITR 57 (Bang. Trib.), the CIT(A) observed that assessee is engaged in seeds related research, production of quality seeds, sale of hybrid seeds following the method of contract farming and basic seeds sown in leasehold land and therefore, the same constitutes agricultural activity. CIT(A) also distinguished the case laws cited by the AO (supra) and, relying heavily on the favourable decision of Pune Bench in the case of ACIT Vs. M/s.Ajeet Seeds Ltd. in ITA Nos. 109 to 115/PN/2012 decided on 22-03-2013, CIT(A) held as under :

> *"7.8 In view of the above facts and discussion and in view of the ratio laid down by the above referred decisions, I am of the considered view that the AO is not justified in making addition of Rs.6,89,99,157/- by treating agricultural income of the appellant company as non-agricultural income. The addition of Rs.6,89,99,157/- is deleted. The AO is directed accordingly."*

From the above, it is evident that the CIT(A) relied heavily on the decision of Pune Bench of the Tribunal in the case of ACIT Vs. M/s.Ajeet Seeds Ltd. (supra) and allowed the appeals of the assessee for these years under consideration. In the subsequent assessment years too, relief was granted to the assessee.

9. Aggrieved with the same, the Revenue filed the present appeals for A.Yrs. 2011-12 to 2014-15.

10. Regarding the appeal for A.Y. 2012-13 by the Revenue, the AO roped in the additional points to deny the claim of exemption to the said agricultural income of Rs.10.22 crores (rounded off). The said additional points include the suspected and self-serving lease agreement of land, which is the sole document in the possession of the assessee demonstrating the agricultural nature of the activities. On these documents, as stated earlier, the AO found the said lease deed is made for 4 years and the agreement is made on 100/- stamp paper. Further, AO noticed that the said lease deed is not registered

as per the provisions of section 17(1)(a) of the Registration Act, 1908. Therefore, AO treated the same as invalid document. For this, AO relied on the judgment of Hon'ble Karnataka High Court in the case of Namdhari Seeds Pvt. Ltd. reported in 341 ITR 342. Further, referring to 7/12 documents and considering the fact that assessee is named as lessee of the land on those land records of Revenue Department, AO held that the growers are the owners of the seeds and consequently, the seeds grown in the said land would belong to the land owner. Therefore, the assessee stands purchased the said hybrid seeds grown by them for further processing and certification. Resultantly, as per AO, the assessee remained to be a trader of the hybrid/certified seeds. Eventually, the AO for the A.Y. 2012-13 gave his conclusion on page 11 of the assessment order and the same is extracted here as under :

> *"Therefore, seed and grain both are different type of produce and seeds production activity is not similar that of production of grain. Seeds are produced by scientific method any by investing huge money and skilled manpower, whereas grain is produced on conventional method and by lower investment and average skilled manpower. Further, agricultural produce such as grain are fit for human consumption, whereas when seeds are processed they are chemically treated and coated with pesticides, fungicides to protect it and if seeds are not sold for germination they are sold for animal foods only, as it is not fit for human consumption. Hence, seed production activity cannot be treated as agriculture activity.*
>
> *In the light of above facts and judicial pronouncement, assessee company has neither performed the basic agricultural operation or subsequent operations ordinarily employed by the farmer or agriculturist, as the assessee company neither has derivative interest in the land nor it has actually cultivate the land. On scrutiny of total activity of assessee company in seeds production, it appears that assessee has only facilitated and provided the market to growers in its own interest. Further, production of seed is made with highly technical method, whereas grain is generally produced by conventional method. Therefore, assessee company does not fulfils even basic condition of agriculture. If the basic operation of agriculture are not carried on by the assessee company, then the harvested foundation seeds purchased by him and converting them to certification seeds cannot be termed as integrated part of the foundation activity of agriculture. In addition to above, the court has also viewed that, income from developing/producing of breeder seed or hybrid germplasm or parent hybrid seeds, cannot be treated as agriculture income at Rs.10,22,21,189/- is hereby treated as its business income and the same is added to the total income of assessee. However, as assessee company has recognition of in house R&D units (s) upto 31/03/2012, on aforesaid business income at Rs.10,22,21,189/-, it is entitled for deduction u/s.35(2AB) of the Income tax Act, 1961. Initiate*

penalty proceedings u/s.271(1)(c) of the Income tax Act, 1961, for furnishing of inaccurate particulars of income."

11. Regarding the appeal for A.Y. 2013-14, assessee made similar claim as in the A.Yrs. 2011-12 and 2012-13 and claimed Rs.12,02,03,945/- as agricultural income exempt from taxation.

In this order, the AO made another addition of Rs.7,71,422/- on account of disallowance u/s.14A rw. Rule 8D(2) of the I.T. Rules, 1962. There is no reference to exempt/dividend income becoming part of the total income.

12. Regarding the appeal for A.Y. 2014-15, assessee claimed exemption of agricultural income at Rs.24,49,88,866/-. The AO in this year followed the same line of assessment and disallowed the said sum of Rs.24,49,88,866/-.

In addition, AO disallowed Rs.13,65,554/- on account of disallowance u/s.14A r.w. Rule 8D(2) of the I.T. Rules, 1962.

13. In all these assessment years, i.e., 2011-12 to 2014-15, the CIT(A) allowed the appeals of the assessee. Gross Agricultural income claimed exempt in all these 4 assessment years works out to Rs.53.64 crores (rounded off). AO did not disturb the claim relating to the claim of trading activities over the years.

14. Aggrieved with the conclusions of the CIT(A), both on account of claim of agricultural income as well as claim of expenditure u/s.14A r.w. Rule 8D for the A.Yrs. 2013-14 and 2014-15), the Revenue filed all the four appeals under consideration before the Tribunal.

BEFORE THE TRIBUNAL

15. **Revenue Contentions :** Shri Rajiv Kumar, Ld. CIT-DR for the Revenue relied heavily on the orders of the AO in all these 4 assessment years. Ld. DR read out the contents of the assessment orders in all these appeals and submitted that conclusions of the AO needs to be confirmed by reversing the decisions of the CIT(A)s. Further, Ld. DR made various submissions and the said submissions are summarized in the following paragraphs :

(a) When the assessee made a claim of exemption u/s.10(1) of the Act, the onus is on the assessee and the assessee failed to demonstrate that there is an agricultural activity or there is any expert supervision in the agricultural activities undertaken by the assessee on the leasehold lands.

(b) Referring to the imperfect land-lease agreement, unregistered ones, the leasehold lands in question are in force for 4 years and the said lease agreements are invalid as they are not in tune with the provisions of section 17(1)(d) of the Registration Act, 1908. Therefore, considering the fact that there are no valid agreements, the activities undertaken by the growers becomes their Agricultural activities. Resultantly, the growers become the sellers of the agricultural produce to the assessee. Thus, the assessee becomes buyer in the capacity of trader of seeds. Thus, considering the processing activities, the whole exercise for the assessee becomes a manufacturing activity or the business activity.

(c) Miscellaneous Arguments : The verification that landlords/growers resulted in gathering of incriminating information where a grower confirmed that he merely sold the agricultural produce to the assessee.

Further, Ld. DR for the Revenue submitted that there is no issue about the income or loss of the trading income. Further, on the apportionment of the indirect expenditure, Ld. DR submitted that the same becomes relevant only if the revenue stand on the claim of exemption u/s.10(1) of the Act is confirmed.

Ld. DR for the Revenue filed the paper book containing the copies of order sheet dated 12-01-2018, copies of show cause notices and other notices, replies from the assessee, copies of the assessment/appellate orders,

copies of the financial statement, details of expenditure claimed by the assessee on account of agricultural activities and other activities, copies of the lease agreements of land etc.

16. **Ld. ARs Contentions :** Per Contra, Shri N.R. Agarwal, Ld. Counsel for the assessee relied heavily on the orders of CIT(A) for all the assessment years and also brought our attention to the various evidences to demonstrate the various agricultural activities and sub-activities undertaken by the assessee. The list starts from (a) entering into the leasehold agreement with the growers/landlords; (2) making the payment of advances to them for agricultural activities; (3) the management and control of agricultural produce involving the assessee's qualified employees; (4) harvesting of the agricultural produce; (5) procurement of the agricultural produce from the landlords; (6) transport of the same to the centres for further processing leading to the generation of "certified seeds"; (7) sale of the said seeds to the final consumers etc., Ld. Counsel for the assessee submitted that the turnover of Rs.92.39 crores was registered during the year by the assessee and the same stand undisturbed by the AO. This performance is not possible but for the whole list of agricultural activities undertaken by the assessee during the years on one hand and on account of direct and indirect expenditure on the other.

Further, Ld. AR for the assessee filed 3 paper books. Paper Book No.1 contains the financial statements, returns of income and the copies of the leasehold agreement for production of the seeds and the copies of the confirmation of the rejected seeds which are used as Fodder to the cattle. Paper Book No.2 contains the correspondence between the AO and the assessee, details of agricultural expenditure, copies of the agreements with the farmers etc. Finally the Paper book No.3 contains the compiles the copies

of the 7/12 extracts of the leasehold lands taken by the assessee for production of seeds. He also furnished the compilation of the said 7/12 extracts showing the extent of land utilized, details of crops grown in the said land, details of the growers, crop price etc. Further, the conveyance and transport details of the employees, incharge of production of variety of crops giving details of the places visited by them for control and management of the growing groups for production of seeds, copies of the log books demonstrating the travel undertaken by such employees are also enclosed in this paper book. Further, Ld. Counsel for the assessee filed written submissions along with compilation of judgments on 27-04-2018 and submitted that the AO did not reject the genuineness of the expenditure on agricultural activities, production of seeds by the growers (assessee's contractors for production of seeds), sales of the certified seeds. The fact that assessee incurred Rs.36.19 crores (rounded off) on account of agricultural activities and the same was not disturbed by the AOs. This amount was incurred directly on agricultural activities such as land preparation expenditure.

Details are given on Page 3 of the assessment order for A.Y. 2011-12 and the same are reproduced below :

Sl.No.	Expenses directly related to the activities	Amount
i.	Land Preparation expenses	25909610
ii.	Fertilizer & Pesticides	47621370
iii.	Labour Wages	71045020
iv.	Incentives to growers	13890456
v.	Lease rent for agricultural land	62135400
vi.	Other Farm Expenses	33146970
vii.	Stores and Processing materials consumed (indigenous)	52604307
viii.	Trading purchases	0
ix.	Change in inventory	55530229
	Total	361883362

Further, it is the claim of the assessee that sum of Rs.33.45 crores (rounded off) was incurred on account of composite activities both for (1)

agricultural activities; and (2) trading activities. Rs.30.94 crores (rounded off) claimed to be pertaining to the agricultural activities. The nature of these expenses include power and fuel, repairs & maintenance, research expenses etc. Details are reproduced below:

Sl.No.	Expenses not directly related to the activities	Amount
i.	Power & Fuel	2580892
ii.	Repairs & Maintenance (Machinery)	748332
iii.	Repairs & Maintenance (Factory Building)	102087
iv.	Other manufacturing expenses	10172658
v.	Research Expenses	56906116
vi.	Freight Inward, Hamali & Cartage	13754678
vii.	Payments & provisions for employee	62473088
viii.	Administrative & selling Expenses, Depreciation/Amortization except amortization of brands and marketing right	47465745
ix.	Interest and other Farm Expenses	18753582
	Total	334548897

Referring to the aforesaid evidence from a grower of seeds, elaborating the same, Ld. Counsel for the assessee submitted that barring a letter from a solitary farmer gathered by the AO during the later assessment years u/s.133(6) of the Act, all the other farmers confirmed the Agricultural activity of the assessee. Otherwise, no adverse information was available with the AO on the genuineness of the claim of agricultural income. Other specific arguments of the Ld. Counsel for the assessee are specifically discussed in the following paragraphs.

Cross Examination : Referring to the said stray and a solitary case of a letter by Shri Bhuma Bala Narasimha Reddy, (the farmer-cum-landlord) and referring to the principles of cross examination, Ld. Counsel for the assessee submitted that AO failed to put the said Shri Bhuma Bala Narasimha Reddy before the assessee for cross examination. Ld. Counsel for the assessee submitted that the AO invoked the provisions of section 133(6) of the Act for the A.Y. 2012-13 in respect of 3 farmers namely mentioned about the fact of

receiving of advances for seed growing and production in respect of their lands. Giving reference to a letter from one of the farmers (Bhuma Bala Narasimha Reddy), Ld. Counsel submitted that the payments are received by him in respect of sale of Jawar Crop cultivated in his farm. Ld. Counsel submitted that the same constitutes mistaken confirmation of Bhuma Bala Narasimha Reddy. Referring to the principles of natural justice, Ld. Counsel submitted that the AO collected these evidences at the back of the assessee and the same are not put to the assessee during the assessment proceedings. No cross examination benefits were offered to the assessee. These aspects are relevant for the A.Y. 2011-12. Relying on various decisions, Ld. Counsel for the assessee submitted that when the assessee was not confronted with the adverse information and the same violates the principles of natural justice. Ld. AR submitted that it is a case of use of evidence against the assessee and making the assessment at the back of the assessee. Therefore, such evidence should be treated as *nonest*. For this proposition, he relied on the judgment of Gujarat High Court in the case of CIT Vs. D.M. Joshi & Others 239 ITR 0315.

DR – Not empowered to improve the case of the Revenue : Referring to other arguments made by the Ld. DR for the Revenue as well the additional grounds raised by the Revenue, Ld. Counsel for the assessee submitted that the same constitutes making a new case by the Revenue which is not permitted in view of the judgment of Hon'ble Jurisdictional High Court in the case of Asbestos Cement Ltd. Vs. CIT reported in 203 ITR 358, the Special Bench Mumbai Bench decision in the case of ACIT Vs. DHL Operations reported in 108 TTJ 151.

DRs request for remanding : Further, referring to the request for remanding the entire issue to the file of AO, Ld. Counsel for the assessee submitted that

in the absence of any factual omissions no second innings can be granted to the AO. For this proposition, he relied on the order of Tribunal in the case of Smt. Sudhadevi Mody Vs. ACIT reported in 81 ITD 604 (Mum.).

Rule of consistency – AO not followed : Referring to the adverse comments of the AO on the issue of agricultural activity and manufacturing activity of seeds, Ld. Counsel for the assessee submitted that the present AO did not appreciate the fact that over the years, the assessee is into both activities of agriculture as well as trading activity of seeds. The earlier AOs accepted the claims of the assessee over the years. Therefore, on this principle of consistency, the claim needs to be accepted in these assessment years too.

Activities of assessee constitutes agricultural activities – a decided issue in favour of the assessee: Further, he submitted that AO failed to appreciate that the certified seeds produced by the grower of the assessee on contractual basis are of superior quality involving high levels of innovation and technological inputs and they are different from the natural seeds available in the market. For getting the certified seeds produced, there is requirement of treating the seeds procured from the growers with insecticides and chemicals by the scientific processes. Referring to the manner of generation of such hybrid/breeder, Ld. Counsel for the assessee submitted that these seeds are generated out of cross pollination and the said seeds being named as foundation seeds and the same are supplied for mass production. According to Ld. Counsel, it is not the case of producing seeds ordinarily for use. Further, explaining the process of growth of the plants, vegetables etc., Ld. Counsel for the assessee submitted that after receiving the harvest from the farmers, the said seeds are dried, weeded, cleaned, graded to remove the unwarranted ones. Eventually, the foundation seeds are certified as certified seeds before they are supplied for sale in the market. This process applied to

various crops involving Mango, Apple, Vax, Banana etc. This issue is already a settled issue by the Coordinate Bench of Pune in the case of M/s.Ajeet Seeds Ltd. (supra) after distinguishing the judgment in the case of Namdhari Seeds Pvt. Ltd. (supra).

Validity of the land lease documents – Acted upon by the assessee and the landlords : Referring the land owners-cum-contractors, Ld. Counsel for the assessee submitted that the land owners are into a contractual arrangement with the assessee by virtue of the aforesaid leasehold agreements. Both the parties acted upon the contents of the same. In that case, the mere non-registration is a procedural deficiency and that does not make the arrangement invalid. Eventually, in view of the said agreement, the assessee obtained the right on the land for growing the crops in those lands. Assessee paid the remuneration undisputedly and directly to the growers/land owners for leasing out the same. AO did not doubt the genuineness of the payments. Referring to the AO's allegation about the unregistered/unstamped lease agreements, Ld. Counsel submitted that the said lease agreements are completely valid as they are acted upon by both the signatories of the agreements. While the assessee paid the rent to the landlord, the landlord has allowed his land for growing the seeds as per the choice of the assessee and handed over the harvest to the assessee as per the terms of the agreement. Ld. Counsel relied on the decision of the Tribunal in the case of D. Venkata Suryanaraana Raju in ITA Nos. 68 & 69/Vizag/2014. Elaborating the same, Ld. Counsel for the assessee submitted that the said decision of Vishakapatnam Bench is inapplicable to the present case on acts and in the absence of registration of the lease deeds, the very lease transaction does not cease to exist. In case of any litigation on the issue of registration, such rental advances are compounded by payment of

interest/penalties in the court of law. Further, he submitted that there can be oral lease agreements which are very much valid and legal. Referring to the Karnataka High Court in the case of Namdhari Seeds Pvt. Ltd. reported in 341 ITR 342 (Kar.), Ld. Counsel submitted that the same is distinguishable in view of the fact that in the present case the payment of rent is undoubted. The distinguishable features are enlisted as under :

Sl. No.	*Nath Bio Genes India Ltd.*	*Namdhari Seeds Pvt. Ltd.*
1.	*Land taken on lease and paid lease Rs.6,21,35,400/-*	*Does not take on lease*
2.	*Engages farmers for cultivation of land & for production/agricultural activity*	*Engages farmers for production of hybrid seeds*
3.	*Takes entire produce from farmers*	*Purchases hybrid seeds, if only as per specification from farmers*
4.	*Reimbursed entire cultivation expenses, Land Preparation-Rs.2,59,09,610 Fertilizer & Pesticide–Rs.4,76,21,370/- Farm Expenses-Rs.3,31,46,970/- Labour Charges – Rs.7,10,45,020/-*	*Not concerned with expenditure*
5.	*Entire risk of crop failure is with assessee*	*Risk of quantity, quality, failure & cost remains with farmers*

Further, heavily relying on the jurisdictional High Court judgment in the case of ACIT Vs. Ajeet Seeds Ltd. (supra), Ld. Counsel submitted that the said judgment is, being favourable to the assessee, was delivered after distinguishing the judgment of Karnataka High Court in the case of Namdhari Seeds Pvt. Ltd.

Referring to the AO's allegation that the seeds were purchased by the assessee from the growers, Ld. Counsel submitted that the same is incorrect. Assessee never purchased the seeds as the said growers/landlords are under contractual obligation to grow the seeds for the assessee. Referring to the huge expenditure incurred by the assessee on land rent/development, fertilizers, other overheads etc., Ld. AR submitted the same is genuine and AO never disturbed the claims in this regard. Assessee paid advances to the growers/landlords for meeting all the agricultural expenses incurred by them.

Therefore, the growers constitute contract labourers/employees of the assessee for this purpose.

AO's Case laws – Distinguishable on facts : Referring to the judgment in the case of Pro-agro Seeds Company Ltd. (supra), Ld. Counsel submitted that AO relied heavily on this judgment for the proposition that production of hybrid seeds do not constitute agricultural activity. Distinguishing the same, Ld. Counsel submitted that the facts of the case are entirely different where the assessee leased the lands, employed the labourers to cultivate the land taken keeping the entire risk with the assessee. Further, referring to another decision relied on by the AO in the case of Pioneer Overseas Corporation reported in 35 SOT 467, Ld. Counsel submitted that the facts are distinguishable. Referring to another decision in the case of Tarai Development Corporation Vs. CIT (supra) as well as decision in the case of Navbharat Seeds Pvt. Ltd., Ld. Counsel submitted that the same are again distinguishable on facts.

Mentioning that the assessee is also engaged in the trading activity, Ld. Counsel submitted that the assessee purchased seeds from the open market to the tune of Rs.8,01,51,000/- and earned the profit of Rs.3,57,78,285/- after netting off the directing expenses. Considering the indirect expenses of Rs.2,51,55,781/- the trade profit resulted the loss of Rs.7.40 crores (rounded off). Further, Ld. Counsel submitted that the AO is not correct in his observation that the subsequent operations were not carried out by the assessee but done by the respective growers. Reiterating the same, Ld. Counsel filed the following arguments :

(i) Growers are contract employees of the assessee for which they are paid wages.

(ii) Appellant simply grows crops which is in itself the seed. Then the seeds are treated and not used as raw material for seed but are sold as it is. It is submitted that treating the seed and then selling is not a separate activity. The appellant ultimately sells the seeds as it is. It is submitted that subsequent processes done by the appellant does not alter the character of seed.

iii. It is like removing mud from wheat and then selling the same; or ripening of Mango, or Banana, or like keeping the product in cold storage and selling at higher price; or selling the crop by packing them and selling through retail chains at higher margins. All are cases of agricultural income.

iv. The appellant has ensured quality of product by just sorting them out and has not done any material subsequent operation on the produce. Details of further operation after seeds are received, performed by company are explained.

v. Decision of Hon'ble SC in the case of State of Madras Vs. Raman & Co. and others 93 STC 185 is important for this issue. In that case, the assessee had purchased unusable railway wagons for scraping and selling and Hon'ble SC had held that unusable wagon was nothing but scrap and sale is also of scrap. Hence there was no new product since both input and output are seeds; Similarly the produce of agriculture is seed and after certification also the produce is seed. Hence there is no new product. Hence entire income is agricultural income.

vi. Then the Ld. AO has argued that subsequent operations have made the income as non-agricultural income in relation to income from subsequent operation. It is submitted that subsequent operations are not material and they do not alter the nature of the produce. It is only sorting quality wise, doing chemical treatment for longer life etc. hence entire income is agricultural income.

vii. Seeds after going through cleaning, preservation process etc. are still fir for human consumption after washing. Hence do not change nature & no new commodity came into existence. For example Mangoes are applied vax before selling. They are to be washed before consumption. Subsequent operations after basis operation should be understood in conjunction with basic operation.

Settled issue legally : Finally, relying on the judgment in the case of M/s. Advanta India Ltd. Vs. DCIT 5 ITR 57 (Bang.) as well as well as M/s. Monsanto India Ltd. Vs. ACIT in ITA No.6093/Mum/2007, Ld. Counsel submitted that growing seeds on leasehold land constitute agricultural activity and the income earned from such activity is exempt u/s.10(1) of the Act. Referring to the jurisdictional decision o the Tribunal in the case of M/s. Ajeet Seeds Ltd. (supra) as well as the judgment of Andhra Pradesh High Court in the case of Vibha Agrotech Limited vs. Income-tax Officer (2009) 120 ITD 182 and Prashant Agro reported in 42 ITR 319 (Hyd.) Ld. Counsel submitted that growing of agricultural seeds and marketing them constitute

agricultural activity and therefore, exempt from taxation. Ld. Counsel also relied on various other decisions to demonstrate that the activity of taking leasehold lands from the landlords and having contractual arrangement with such landlords to grow the seeds supplied by the assessee and hand over the agricultural seeds to the assessee after harvesting constitutes agricultural activity. Narrating the subsequent operations of treating the seeds as narrated above, Ld. Counsel submitted that the income earned on sale of such certified seeds constitute exempt agricultural income. Merely drawing the leasehold agreement and not registering them as per the provisions of section 17(1)(d) of the Registration Act, 1908 does not take away the benefits given by the statute to the assessee. The grounds created by the AO constitute frivolous and unsustainable legally. Referring the orders of the CIT(A) in all these assessment years, Ld. Counsel submitted that the said orders are fair and reasonable and the same should be confirmed without amending the same for all the 4 years.

DECISION OF THE TRIBUNAL

17. There are couple of common issues for adjudication before us in these 4 appeals by the Revenue involving A.Yrs. 2011-12 to 2014-15. They are : (1) issue of granting exemption u/s.10(1) of the Act in respect of the income earned by the assessee out of production of certified seeds and related activities. This is common issue for all the 4 assessment years under consideration and; (2) the issue of making disallowance u/s.14A r.w. Rule 8D(2) of the I.T. Rules, 1962. This issue is relevant for A.Yrs. 2013-14 and 2014-15 only.

18. We heard both the sides and perused the orders of the Revenue. We have also perused the paper book filed by both the sides and the decision relied on by them. The objections of the AOs are :

A. Absence of the registered deeds of leased lands on stamp papers makes the claim of the assessee u/s.10(1) of the Act unviable.

B. a. Letter from Mr.Bhuma Bala Narasimha Reddy conveying the sale of seeds; and

b. AO's failure to put the said letter to the assessee or allowing assessee to cross examine Mr. Reddy.

C. Applicability of judgmental laws in general and the jurisdictional High Court judgment in the case of Ajeet Seeds Ltd.

D DR's request for remanding .

We shall deal with each of these issues as follows :

A. Absence of the registered deeds of leased lands on the stamp paper makes the claim u/s.10(1) of the Act unviable – Acted upon by both parties

Undisputedly, the facts relevant to this issue include that the assessee in the A.Y. 2011-12 entered into contractual agreements with land owners/growers, The list is available on pages 1 to 240 of Paper Book No.3. As part of the agricultural activity, assessee incurred Rs.2.59 crores for preparation of the lands owned by the landlords. Assessee used these lands for growing the seeds and provided basic seeds for use by the landlords-cum-growers. In this context, the assessee incurred Rs.4.76 crores in supply of the fertilizers and pesticides. Rs.7.10 crores was spent on the labour wages. Rs.2.21 crores was incurred by the assessee on account of lease rent paid to the landlords. In addition, Rs.3.32 crores was spent on other farm expenses. Rs.5.26 crores was spent on supply of processing material. Thus, the AO never doubted the genuineness of the expenditure on all the heads of expenditure enlisted in the

schedules extracted in the tables given in the preceding paragraphs of this order (land preparation expenses, fertilizers and pesticides, labour, wages, incentive growers, land rent, other form expenses, stores and material consumed etc). The genuineness of these expenses were undoubted by the AO. Additionally, Rs.33.45 crores was spent on certain direct expenses, the details of which are discussed in the preceding paragraphs of this order. When these expenses are incurred undisputedly by the assessee on all the basic activities of agriculture, mere absence of registered leasehold land agreement does not disentitle the assessee from the benefits of the agricultural income. In the process, the written lease deeds were acted upon by the parties of the agreement in their true spirit. We find it is a case that that assessee supplied all the needs required for agricultural activities, i.e. money, seeds, lease lands and met all the expenditure and collected the seeds grown in the said lands using the services of the landowners-cum-growers. It is not a case of buying of seeds from the landlords. Assessee paid to the landlords for the services as well as the rent of the lands.

18.1 Further, regarding the rule of consistency, we find that other undisputed facts include that the assessee's claim of agricultural income on similar facts were accepted by the Revenue over the years. This is for the first time the Revenue disturbed the claim of the assessee from the A.Y. 20-11-12 onwards. Further also, on the sales undoubted, the various processes in preparation of the certified seeds and sale of the same through retail outlets are also undisputed by the Revenue. The objection of the Revenue is that the said lease documents were not registered in accordance with the provisions of section 17(1A) of the Registration Act, 1908. Considering the above, the objections of the AO are mere procedural ones and when acted upon, they are not adequate enough to treat the lease deeds as bogus or sham etc.

18.2 Further on this, we find that the land owners-cum-growers run into thousands of growers spread across many states in India. The assessee furnished the copies of 7/12 extracts in the form of the paper book. On perusal of the said extracts, we find the ownership of the land by the respective landlords is undisputed fact. The survey numbers mentioned therein were also not found bogus. These extracts are in public domain and are borne out of Govt. records. At the relevant point of time and as per the said documents, the said lands were in use for agricultural activities. The land rents paid by the assessee to the respective landlords-cum-growers is undisputed. Of course, the 7/12 extracts do not bear the name of the assessee as lessor. On this assessee submits that it is a cumbersome process considering the huge lands quantitatively and also large number of the landlords. Regarding the genuineness of the payments, AO accepts the fact that the payments were made substantially through the banking channels. It is also undisputed that the said land lease documents were acted upon in its spirit by both the assessee as well as the land owners-cum-growers. All these facts demonstrate the genuineness of the land lease documents. Therefore, we are of the opinion that it is not appropriate to describe the said land lease documents as not reliable and disallow the claim of the assessee relating to taxability of Agricultural income.

19. Therefore, it is a case that the leased lands are used for agricultural activity of the assessee, huge expenditure was incurred by the assessee for the said activity, sales of the agricultural produce was undoubted, claim of the assessee was allowed upto the A.Y. 2010-11 on similar facts etc. Thus, we are of the opinion that the assessee's failure to get the land lease documents registered u/s.17(1A) of the Act (supra) cannot be a ground for the Revenue to withdraw the claim of agricultural income violating the principle

of consistency. Reliance placed by the Ld. DR for the Revenue in the case of D. Venkata Suryanarayana Raju Vs. ITO in ITA Nos. 68 & 69/Viz/2014, dated 28-04-2017 is of no use as the said decision is delivered in the context of accrual of capital gains qua the dates mentioned in an unregistered agreement dated 24-08-2005 whereas, we deal with a case on hand where the assessee leased the lands for agricultural activity at a larger scale and both the assessee and the landlords-cum-growers acted each of terms of the agreement in bonafide belief. Accordingly, **this part of arguments of Ld. DR is dismissed.**

20.B. **Decision on said confirmation letter from Mr. Bhuma Bala Narasimha Reddy – Failed to provide copy of the same to assessee and allow the benefit of cross examination if desired :** Relevant facts are discussed in the preceding paragraphs of this order. During the assessment proceedings for the A.Y.2012-13, for the first time, AO conducted the enquiries by invoking the provisions of section 133(6) of the Act in respect of the select cases of land owners-cum-growers on sample basis. Barring a solitary case in respect of Mr. Bhuma Bala Narasimha Reddy, all other cases confirmed the genuine claim of agricultural activities and also the contents of the said land-lease Agreements. In the solitary case of Mr. Bhuma Bala Narasimha Reddy, there is no positive confirmation in favour of the assessee. It indicated the sale of seeds grown in his land. The quantity of seeds is very small and negligible vis-à-vis the turnover of the assessee. In any case, when such adverse evidence is fathered by the AO, it is the duty of the AO to put the same to the assessee for comments. It is a settled legal principles of natural justice and allowed the benefit of cross examination if required. AO needs to consider the reply of the assessee before making any addition in the assessment. Admittedly, in the instant case, the AO skipped all the settled

legal procedures and proceeded to make addition at the back of the assessee. AO extrapolated this adverse finding to the entire Agricultural produce and the same is unsustainable. In our view, this manner of making additions is a substantial deviation from the settled legal propositions. Therefore, this line of approach of the AO is not approved.

For the sake of completeness, we proceed to extract the relevant lines from the letter of Mr.Bhuma Bala Narasimha Reddy dated 27-03-2015 (translated in English) and the same reads as under :

> *".....*
> *.....*
> *We have received payment for selling the Jowar Crop, which we have cultivated in our farm, to the above mentioned company.*
>
> *....."*

From the above, it is evident that Mr.Bhuma Bala Narasimha Reddy claimed the transaction between the assessee and him as sales of the seeds. With due respect to the procedural lapses discussed in the preceding paras of this order, we find the above piece of evidence could have been handled by the AO in a different fashion. It is borne on records that the assessee is certainly engaged in trading activity of the seeds also. Harmony with the same, AO could have identified the profits of this transaction and taxed the same as income of the assessee in that A.Y. 2012-13, the year of receipt of sale of seeds instead of using the same for extrapolations to the entire genuine transactions of the four assessment years under consideration. Therefore, AO is directed to take necessary action & tax the relevant profits attributable to the said purchase of seeds from Mr.Bhuma Bala Narasimha Reddy only after granting reasonable opportunity of being heard to the assessee. With these observations and directions, we partly **allow the arguments** raised by the assessee in this regard.

21.C. **Applicability of Judgmental Laws – Judgment of High Court of Bombay in the case of Ajeet Seeds Ltd.** - **Growing of breeder &foundation seeds amounts to agriculture:** We have perused the decisions relied upon by the Ld. Counsel for the assessee on the issue of agriculture nature of the activities of growing breeder/foundation/certified seeds and the exempt nature of the income u/s.10(1) of the Act.

21.1 The Pune Bench of the Tribunal in the case of ACIT Vs. Ajeet Seeds Ltd. in ITA Nos. 90 to 115/PN/2012, dated 22-03-2013 for the A.Yrs. 2002-03 to 2008-09 adjudicated similar issue and held that growing of breeder and foundation seeds and finally making of the certified seeds on the lands owned by the landlords-cum-growers amounts to agricultural activity. Operational Para No.6.2 of the said order of the Tribunal is relevant and the same is extracted here as under :

> *"6.2. The CIT(A) having considered the same, observed that foundation seeds, breeder hybrid seeds produced by the assessee himself results into agricultural income or non-agricultural income has been decided in favour of the assessee by the ITAT Bangalore Bench in the case of Advanta India Ltd. vs. DCIT (2010) 5 ITR 57 (Bang.Trib). In the said case, reasons pointed out by the Assessing Officer to deny the claim of exemption made by the assessee were that assessee was following international technology, marketing expertise, integrated scientific and commercial activity etc. The Tribunal in the case of Advanta India Ltd. (supra) held that all these reasons/matters were strange to the strict code of Income Tax Act. The ITAT, Bangalore Bench has concluded* ***that foundation seeds or hybrid seeds produced in own land or lands taken on lease will be the result of agricultural operations and the profits arising out of such activities shall be treated as agricultural income.*** *In view of above, the CIT(A) was justified in following the decision of ITAT, Bangalore Bench, in favour of the assessee also following the case of Indo American Exports and Namdhari Seeds Pvt. Ltd. (sic) in their common order dated 14.07.2006 bearing ITA No.1040/Bang/2002 and ITA. No.3102 /Bang /2004 wherein similar issue was in favour of assessee. Thus the CIT(A) following the ratio laid down in the case of Advanta India Ltd., Indo American Exports and Namdhari Seeds Pvt. Ltd. (supra) (sic) held that the Assessing Officer was not justified in treating agricultural income in respect of sale of breeder seeds and foundation seeds as non-agricultural income. Nothing contrary was brought to our knowledge on behalf of the Revenue. Under the facts and circumstances, the CIT(A) has rightly deleted the addition of Rs.10,14,138/-, Rs.33,25,158/-, Rs.26,99,190/-, Rs.5,53,670/-, Rs. 5,53,166/-, Rs.4,70,272/-, Rs.7,79,837/- for A.Ys. 2002-03 to 2008-09, respectively. This factual and legal finding needs no interference from our side. We up hold the same."*

21.2 When the matter travelled to the Hon'ble Bombay High Court by the Revenue, the Hon'ble High Court of Judicature at Bombay, Aurangabad Bench passed the judgment dated 18-06-2015 confirming the order of the Tribunal. Para No.7 of the said judgment is relevant and the same is extracted as under :

> *"7. Coming back to the question, as to whether growing breeder and foundation seeds would amount to 'agriculture', the answer has to be affirmative. It is not denied that for growing breeder and foundation seeds, seeds are sown in field and usual agricultural operations, basic and subsequent, are undertaken utilizing human skill. In addition to this, measures are taken for restricting role of nature. Such measures are only taken in enhancing the yield. Such measures, thus, have nothing to do with the biological growth that takes place in the soil or such other substratum where the seeds are sown. An agriculturist while growing his crops, is known to have used conventional as well as scientific method for reducing hostile interplay of natural forces on his crop. When such activity is taken to highest standard, it would still not make the growing operation, a synthetic one. Thus, growing seeds can never be non agricultural. In view of this, we do not see any substantial question of law in these appeals."*

21.3 In the process, the Hon'ble High Court considered the applicability of the judgment of Tribunal in the case of Advanta India Ltd. Vs. Dy.CIT 5 ITR 57 (Bangalore Tribunal). Regarding the reference made by the Ld. Counsels to the Bangalore Bench of the Tribunal in the case of Advanta India Ltd. (supra) and Karnataka High Court judgment in the case of CIT Vs. Namdhari Seeds Pvt. Ltd. 341 ITR 342 (Kar.), the Hon'ble High Court distinguished the said judgment in the case of Namdhari Seeds Pvt. Ltd. (supra). Relevant Para Nos. 5 and 6 of the judgment in the case of Ajeet Seeds Ltd. are extracted here as under :

> *"5. The learned Counsel for the appellant tells us, that the view taken by the authorities below is erroneous and was based on judgment of Income Tax Appellate Tribunal in the case of Advanta India Ltd. Vs. Dy.CIT (2010) 5 ITR 57 (Bangalore Tribunal). According to the learned Counsel for the appellant, this judgment is set aside by Karnataka High Court, in the case of Commissioner of Income-tax, Central Circle, Bangalore Vs. Namdhari Seeds (P) Ltd. (2011) 341 ITR 342 (Karnataka). According to the learned Counsel for the appellant, this case should, therefore, give rise to a substantial question of law.*
>
> *6. We are unable to accept the contention raised by the learned Counsel for the appellant. We find, that the basic premise on which the appellant's case is*

based, is para 12.3(D) of the Assessment Officer's order. The outcome of this case has no relation whatsoever with the judgment of Karnataka High Court, in the case of Commissioner of Income-tax, Central Circle, Bangalore Vs. Namdhari Seeds (P) Ltd. (supra). We have carefully gone through the judgment and found this. Placing reliance on this judgment, is taking the discussion in an incorrect direction."

21.4 Thus, it is a settled legal proposition at the level of the Hon'ble High Court of Judicature at Bombay, Aurangabad Bench that the growing of breeder and foundation seeds would amount to agriculture. The said ratio of the judgment in the case of Ajeet Seeds Ltd. (supra) is binding on us considering the principles relating to the jurisdiction. We have also considered the facts relating to the case of Namdhari Seeds Pvt. Ltd. (NSPL) (supra) and find the said decision is delivered on different facts which is not applicable to the facts of the present case. We proceed to extract the Held portion as under :

"Held, allowing the appeals, that the assessee neither had derivative interest in the land nor did it actually cultivate the land. Even if it cultivated the land, it was not a lessee of the land in view of the terms of the agreement eliminating such relationship. The agreement showed that except supplying the foundation seeds and giving scientific advice from time to time, either at the time of sowing or pollination or harvesting, none of the normal activities of agriculture were undertaken by the assessee. The assessee was not paying any rent per acre to the farmer nor giving anything in kind like produce to the farmer. The assessee only paid a fixed price of Rs.3,200 per quintal or any other price depending upon the terms of the agreement for foundation seeds grown by the farmer. The entire reading of the terms of the agreement would only indicate that the assessee was interested only to have healthy foundation seeds grown for the process of converting them to certified seeds. The entire income amounted to business income of the assessee and the Assessing Officer was justified in treating the entire income as business income."

21.5 From the above, it is evident that, under an agreement, the Namdhari Seeds Pvt. Ltd. (supra) assessee purchases the seeds grown by other landlords at a fixed rate per quintal. In the language of the Hon'ble High Court, the NSPL is considered interested only to have healthy foundation seeds grown for the process of converting them to certified seeds and the assessee cannot be held as an agriculturist as the concerned agricultural

activities are undertaken by the owner of the land. This ratio is entirely inapplicable to the facts of the present case. In the case on hand, the assessee paid rent to the farmers, bore other expenditure relating to the land development/ploughing/tilling/cultivation, fertilizers, pesticides, labour, transportation of seeds etc. In the present case, assessee monitored the process of agricultural activities from the time of employing the qualified Agricultural degree holders/others and monitored from the stage of tilling/land development till the point the produce is transported to the scheduled places bearing the entire expenditure on all events of growth of the seeds to the transportation of the seeds to its godown. It is not at all a case of buying of the seeds from the farmers for a fixed price as in the case of NSPL (supra). Thus, these facts makes all the difference so far as the growing of the foundation and breeder seeds in the lands leased out by the assessee under land-lease agreements. Thus, the facts of the present case are closely akin to the facts in the case of Ajeet Seeds Ltd. (supra). Therefore, we allow the claim of the assessee in the assessment years under consideration and in favour of the assessee.

22.D. **Ld. DR's request for remanding** : Further, the other argument from Ld. DR for the Revenue include the argument of remanding to the file of AO for fresh adjudication of the issue. Ld. DR requests for grant of one more round to the Revenue for making the assessment for these assessment years under consideration. It is settled legal proposition that setting aside the issue to the file of AO is valid provided the facts required for adjudication of the issue are not brought on to the records. DR failed to list out or demonstrate the missing of the said facts. On hearing both the parties, in the instant case, no such case is made out by Ld. DR before us. Further, it is other settled legal proposition that the DR cannot make out a new case which is not

raised from the side of AO and the CIT(A). It is not the case of the AO that the investigation in all the assessments is incomplete from any angle. Therefore, we are of the opinion that, as per the said settled principle the arguments raised by the Ld. DR for the Revenue are unsustainable. Hence, this part of the arguments are dismissed. Accordingly, the relevant grounds raised by the Revenue in all these appeals of the Revenue stands dismissed.

23. To sum up, on the facts of assessee entering into an agreement with the agricultural landlords-cum-growers for growing the foundation and breeder seeds as per the terms and conditions and also the scientific specifications provided by the assessee, when the assessee bears all the expenditure on land development, irrigation, fertilizers, pesticides, transportation etc., when the assessee pays the land rent and also for the labour, when the landlord acts only as a grower and hands over the entire agricultural produce of foundation and breeder seeds to the assessee at the end. Grower never sold the agricultural produce to the assessee etc. Thus, the activity constitutes agricultural activity as the assessee constitutes an agriculturist and the entire activity of production and growing of said seeds becomes an agricultural activity. The solitary evidence gathered by the AO in the solitary case of Shri Bhuma Bala Narasimha Reddy does not hold good considering the fact that the said evidences was not put to the assessee in a settled perspective of legal proceedings. Therefore, procurement of seeds from the landlords-cum-growers is not the transaction of purchase of seeds for trading activity. Further, the judgment of Coordinate Bench of the Tribunal in the case of Ajeet Seeds Ltd. (supra) was confirmed by the Hon'ble Court of judicature Bombay, Aurangabad Bench in the said case. Therefore, we are of the opinion that the claim made by the assessee is proper. The decision of

CIT(A) is fair and reasonable and does not call for any interference. The relevant grounds raised by the Revenue are dismissed.

24. **Disallowance u/s.14A of the Act r.w. Rule 8D(2) of the I.T. Rules :** This issue is relevant for the appeals for A.Ys. 2013-14 and 2014-15 only. Ground No.6 and 7 of the appeals of Revenue are relevant. AO made disallowance u/s.14A of the Act, as per the discussion given in common Para No.5 of the assessment orders for the A.Yrs. 2013-14 and 2014-15 amounting to Rs.7,71,422/- and Rs.13,65,554/- respectively. Reasons given by the AO in their order relates to the extent of investments in subsidiary companies made by the assessee in the exempt income related activities. However, it is not the case of the AOs that assessee earned exempt income by way of dividend during the years and the same formed part of the total income of the assessee for the years under consideration. Further, CIT(A) confirmed the same.

25. Before us, at the outset, Ld. Counsel for the assessee brought our attention to the facts and submitted that the assessee never earned exempt income by way of dividend from the said investments and the same never formed part of the total incomes of the assessee.

Further, Ld. Counsel for the assessee relied on various binding decisions to demonstrate that the provisions of section 14A of the Act has no application, when the dividend income is not earned out of the said investments.

26. Per Contra, Ld. DR for the Revenue relied on the order of the AO.

27. We have heard both the parties on this issue of invoking the provisions of section 14A of the Act r.w. Rule 8D of the I.T. Rules when the exempt

income is not part of the total income in the assessment years under consideration. Further, we perused the orders of the Revenue on this issue. On perusal, we find that it is a settled issue that the said provisions are not applicable when the exempt income is not includes in the total income of the assessee. Accordingly, relevant grounds in the assessment years under consideration are required to be allowed in favour of the assessee. On perusal of the orders of the CIT(A), we find Para No.7 is relevant and self explanatory. For the sake of completeness, the said para is extracted as follows :

> *"7. I have **duly considered the submissions of the appellant company. The** AO observed that investment of Rs.2,52,22,000/- was made by the assessee company in the shares of Paithan Mega Food Park Pvt. Ltd. to derive the exempt income i.e. dividend income. The AO held that the provisions of section 14A r.w.r 8D were applicable to the assessee company as it had incurred substantial interest expenditure of Rs.3,36,30,440/- in the year under reference. The AO had, therefore, worked out the disallowance u/s. 14A r.w.Rule-8D at Rs.7,71,422/-. On careful consideration of facts & circumstances in the present case, it is seen that the appellant **company has not earned any dividend income** from investment made in the shares of Paithan Mega Food Park Pvt. Ltd. It has been held in many judicial pronouncements that the disallowance u/s 14A has to be restricted to the amount of exempt income. The above proposition of law is supported by the following decisions :*
>
> *(1) Daga Global Chemicals Vs. ACIT in ITA No.5592/2012 order dated 01-01-2015.*
>
> *(2) Jeevraj Tea Ltd. Vs. DCIT (2014) (AY 2008-09) 41 CCH 047 (Ahmedabad Tribunal)*
>
> *(3) ACIT Vs. Punjab Cooperative Marketing Federation in ITA No.548/CHD/2011 (Chandigarh Tribunal)*
>
> *In the case where the **assessee has not earned any dividend income on investment made in the shares whose dividend is exempt then no disallowance can be made u/s 14A in respect of expenditure, if any, relating to the investment in respect of which no exempt income has been received/earned.** The above proposition of law is supported by following decisions -*
>
> *(1) CIT Vs. Shivam Motors P. Ltd. [2014] 89 CCH 059 (Allahabad High Court)*
> *(2) CIT Vs. Torrent Power Ltd. [2014] 363 ITR 474 (Gujarat HC)*
> *(3) CIT-I Vs. Corrtech Energy Pvt. Ltd. (223 Taxman 130) (Gujarat HC)*
> *(4) Kalyani Steels Ltd. Vs. ACIT in ITA No.1733/PN/2012*

(5) ACIT Vs. M/s. Magarpatta Township Development & Construction Co. Ltd. in ITA No.2114/PN/2012
(6) Guradas Mann Vs. DCIT (57 SOT 55) (Chandigarh Tribunal)
(7) Shri Goyal Ishwarchand Kishorilal Vs. JCIT, Range-4, Pune in ITA No.422/PN/2013 order dated 26/06/2014 for AY 2009-10
(8) ACIT, Circle-I, Aurangabad Vs. M/s Badve Engineering Ltd. in ITA Nos.1832 & 1833/PN/2013 order dated 22/01/2015 for AYs.2009-10 & 2010-11.

This view is also supported by the decision of the Hon'ble Delhi High Court in the case of Cheminvest Ltd. CIT in ITA No.749/2014 dated 02.09.2015 wherein it was held that no disallowance U'/s 14A can be made in a year in which no exempt income had been earned or received by the assessee. The expression "does not form part of the total income" in Section 14A of the envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. Thus Section 14A will not apply if no exempt income is received or receivable during the relevant previous year. In the present case, the appellant company has not received any dividend income in the year under reference. Moreover Section 14A of Income Tax Act, 1961 does not apply to shares bought for strategic purpose. The Chennai Tribunal in the case of EIH Associated Hotels Ltd. Vs. DCIT has held that investments made by the assessee in the subsidiary company were not on account of investment for earning capital gains or dividend income. Such investments had been made by the assessee to promote subsidiary company into the hotel industry and were on account of business expediency and dividend there from was purely incidental. Therefore, the investment made by the assessee in its subsidiary was not to be reckoned for disallowance u/s I4A r.w. rule 8D. In the case of CIT Vs. RPG Transmissions Ltd (48 taxmann.com 57) , the Madras High Court has held that Interest on borrowed funds utilized for investment in group companies for strategic business purpose was allowable. In the present case, the assessee company had made investment in Paithan Mega Food Park Pvt. Ltd., an associate company which was logical extension of its business. Following the above decisions, I direct the AO to delete the addition of Rs.7,71,422/- made by him. This ground of appeal is allowed."

Considering the above and the settled legal proposition, we are of the view that the order of CIT(A) on this issue is fair and reasonable. We order accordingly. Relevant grounds of the Revenue are dismissed.

28. In the result, all the appeals of the Revenue are dismissed.

Order pronounced on 2nd day of November, 2018.

Sd/-	Sd/-
(विकास अवस्थी /VIKAS AWASTHY)	**(डी. करुणाकरा राव/D. KARUNAKARA RAO)**
न्यायिक सदस्य/JUDICIAL MEMBER	**लेखा सदस्य/ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 02nd November, 2018.
Satish

<u>आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :</u>

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-1, Aurangabad
4. The CIT-1, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**ए**" बेंच, पुणे / DR, ITAT, "**A**" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// **True Copy** //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune