

ITA Nos. 3, 4, 5 & 6/Alld./2022
Assessment Years: 2006-07, 2007-08, 2008-09 & 2009-10
Late Shri Satya Prakash Gupta(through Legal heir Mr. Sudheer Gupta), Allahabad , U.P. v.
ACIT, Circle-I, Allahabad,U.P.

IN THE INCOME TAX APPELLATE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA Nos.3, 4, 5 & 6/Alld./2022
Assessment Years: 2006-07, 2007-08, 2008-09 & 2009-10

Late Mr. SatyaPrakash Gupta(PAN ACTPG9481A) through Legal Heir Mr. Sudheer Gupta(PAN: AQDPG3095Q), 157, UttraKhand, Jawahar Lal Nehru University, New Delhi-110067	v.	Asst. Commissioner of Income Tax, Circle- I, Allahabad-211001, U.P.
(Appellant)		(Respondent)

Appellant by:	Shri S.K. Yogeshwar, Adv.
Respondent by:	Shri A.K. Singh ,Sr. D.R.
Date of hearing:	15.02.2023
Date of pronouncement:	15.03.2023

ORDER

PER BENCH:

These four appeals, filed by assessee, being ITA Nos.3, 4, 5 & 6/Alld./2022 for assessment year(s)(ay's): 2006-07 to 2009-10 respectively , are directed against separate appellate order(s) all dated 18.09.2019 in Appeal Nos. CIT(A),Allahabad/10409/2014-15, CIT(A),Allahabad/10413/2014-15,CIT(A),Allahabad/10411/2014-15,

& CIT(A),Allahabad/10043/2014-15 for ay's: 2006-07 to 2009-10

respectively , passed by learned Commissioner of Income Tax (Appeals), Allahabad(hereinafter called "the CIT(A)"), the appellate proceedings had arisen before learned CIT(A) from separate assessment order's dated 25th March, 2014, 25th March, 2014 , 25th March, 2014 and 24th March, 2014 for assessment year's 2006-07 to 2009-10 respectively passed by learned Assessing Officer (hereinafter called "the AO") under Section 143(3) read with Section 147 of the Income-tax Act,1961(hereinafter called " the Act") .We have heard these four appeals through physical hearing mode in Open Court proceedings .

2. At the outset, it is observed that these four appeals were filed late belatedly beyond the time stipulated under Section 253(3) of the Income-tax Act, 1961. The separate Appellate Order(s) passed by Ld. CIT(A) for all the four assessment years are all dated 18th September, 2019, which are stated to have been received by assessee on 29th October, 2019 , and hence these appeals were ought to have been filed by assessee with Income-Tax Appellate Tribunal, Allahabad Bench, Allahabad(hereinafter called " the tribunal") on or before 28th of December, 2019 as per statutory time provided u/s 253(3), but these appeal were filed by assessee with tribunal on 4th February, 2022 ,

that is belatedly beyond the time prescribed u/s 253(3) of the 1961 Act. All the four appeals were filed by assessee with tribunal with short/deficient appeal fee being deposited with Government Treasury than the appeal fee as prescribed u/s 253(6)(c), and accordingly deficiency memo was issued by Registry to the assessee calling upon assessee to remove the aforesaid defect, and later the assessee came forward and deposited the deficient appeal fee with Government Treasury , thus complying with the deposit of prescribed appeal fee as is stipulated u/s 253(6)(c) of the 1961 Act. The paid challans are placed on record in file.The application for condonation of delay in filing this appeal belatedly with tribunal beyond the statutory time as provided u/s 253(3) was filed by assessee with tribunal, in which it was submitted that the assessee is a Super Senior Citizen aged about 90 years confined to bed now, and he cannot speak or write-paralysed and dependent on servant . His wife has already expired and children are settled outside Allahabad, and the assessee lives in Allahabad and dependent upon servant. It is claimed that he has no earning from anywhere and having no bank balance . It is submitted that his daughter is settled in America(USA) and his son is settled at Delhi . It was submitted that his daughter/son-in-law used to send petty amounts for his medical and livelihood expenses. In evidence, ICICI

Bank statement of his account no. 628201553224 with ICICI Bank, Civil Lines , Allahabad, from 01.04.2020 to 31.03.2022 are filed(placed on record in file). It is admitted by the assessee that all the four appellate orders passed by Id. CIT(A) were served on the assessee, on 29th October, 2019. It is also claimed that the appeal was ready to be filed on 26th December , 2019 with tribunal in Form No. 36 duly signed by the assessee, and application was also prepared to be filed along with Form No. 36 praying tribunal to waive/exempt the entire appeal fee of approximately Rs. 37,000/- (for all the four appeals together) as the assessee was not in a financial position to pay any appeal fee due to financial difficulties. It is claimed that since no appeal fee as provided u/s 253(6)(c) was deposited prior to filing of the appeal, the Registry of the tribunal did not accept the appeal without the requisite appeal fee having been deposited with Government Treasury. It is also submitted that later the assessee paid part appeal fee with the financial help of his son ,and the appeals were filed with tribunal on 04th February, 2022. It is claimed that , later on with the financial help of his daughter , the assessee made up the deficient appeal fee by depositing the requisite fee as stipulated u/s 253(6)(c) with Government Treasury. The assessee himself expired on 18th September, 2022 and death certificate dated 18th October,

2022 issued by Registrar (Birth & Death), Nagar Nigam, Zone-3, Katra, Allahabad (Registration no. D-2022:9-91760-003105 , dated 18.10.2022) has been filed , which is placed on record in file. The revised Form No. 36 is also filed by his son Shri Sudheer Gupta as legal heir of the assessee, wherein it is also stipulated that Mr. Sudheer Gupta and Mrs. Mamta Bhargava are the two Legal Heirs of the assessee, and said revised Form No. 36 is placed on record in file. The ld. Sr. DR fairly submitted that the Bench can take appropriate decision , so far as condonation of delay in filing these four appeals is concerned. We have considered the entire material on record. We have observed that in these four appeals filed by assessee with tribunal on 04.02.2022, the ld. CIT(A) has passed separate appellate orders all dated 18.09.2019, for the four assessment years under consideration . The assessee has admitted to have received these four appellate orders on 29.10.2019, and the appeal's ought to have been filed by the assessee with tribunal on or before 28.12.2019, as per time limit provided u/s 253(3). The appeals were filed on 04.02.2022, which are belated appeals beyond the time prescribed u/s 253(3) of the 1961 Act. The main claim of the assessee in filing these four appeals belatedly is that the assessee's appeals were all ready by 26th December, 2019 to be filed with tribunal duly signed, but the assessee

was not having any money to deposit appeal fee as prescribed u/s 253(6)(c) of the 1961 Act with Government Treasury, and the Registry of the tribunal on its part also refused to accept the appeals without deposit of requisite appeal fee with Government Treasury. The assessee has also claimed that he being very old super senior citizen(DOB 27.07.1932), bed ridden, paralysed having no income of his own and being dependent upon children for financial support, could not file the appeals in time, mainly due to financial difficulties faced by him as he was not in a position to deposit the appeal fee as provided under statute . The claim of the assessee is that he approached Registry of the tribunal to file appeal on 26th December, 2019 i.e. within prescribed time as provided u/s 253(3) , but since prescribed appeal fee as provided under statute was not pre-deposited, his appeals were not accepted by Registry of the tribunal. The assessee later expired on 18.09.22. It is also observed that Hon'ble Supreme Court keeping in view spread of disease Pandemic Corona Virus in India, suspended limitation for filing of appeals , from time to time, ultimately from 15th March , 2020 till 28th February, 2022 , in Re: Cognizance for Extension of Limitation(M A No. 21 of 2022 in MA no. 665 of 2021 in Suo Motu W.P.(C) No. 3 of 2020, order dated 10.01.2022), wherein, Hon'ble Supreme Court excluded the

period from 15th March, 2020 to 20th February, 2022 for computing limitation period for filing of appeals . It is true that the limitation in the instant case expired on 28.12.2019 itself which was prior to coming into force of exclusion of aforesaid period granted by Hon'ble Supreme Court for computing limitation period keeping in view spread of Corona Virus Pandemic, and benefit of aforesaid order of Hon'ble Supreme Court cannot be extended to the assessee. But , if we exclude aforesaid period from 15th March, 2020 to 28.02.2022, the delay in filing this appeal has occurred from 29th December, 2019 to 14th March, 2020 which is delay of 76 days. It is also true that lockdowns announced by Central/State Government's occurred in the entire country with the onset of pandemic corona virus spread in India , and the normal life across India was paralysed due to Corona Virus pandemic and also due to lockdowns announced by Government, causing misery and sufferings to citizen across India. Also keeping in view that the assessee was a super senior citizen (DOB 27.07.1932) bed ridden , paralytic and suffering from old age and disease, dependent upon his children for financial support , we in exercise of our powers u/s 253(5) hold that the assessee has shown sufficient cause in not filing these four appeals in time with tribunal and hence we condone the aforesaid delay. We have also noted while

condoning aforesaid delay in filing of these four appeals beyond the time provided u/s 253(3), the appellant claim that he approached the Registry of tribunal on or around 26th December, 2019 (within prescribed time) to file these four appeals with tribunal, but since the appeal fees as provided u/s 253(6)(c) was not pre-deposited by assessee with Government Treasury by the assessee, the appeals could not be filed at that time owing to refusal by registry to accept these four appeal . If technicalities are pitted against substantial justice, the Courts will lean towards substantial justice, unless malice is at writ large in filing the appeal belatedly. The litigant is not likely to gain anything in delay in filing the appeal , and the Courts will not shut the door of justice unless malice is at writ large. In the instant case, the assessee was a Super Senior Citizen of around 90 years of age , and he was not likely to gain by delay in filing these four appeals. Reference is drawn to the decision of Hon'ble Supreme Court in the case of *Collector, Land Acquisition, Anantnag v. Mst. Katiji & Ors. reported in 1987 AIR 1353(SC)*. Thus, we admit these four appeals by condoning delay in filing of these four appeals beyond the time provided u/s 253(3). We order accordingly. Now, we proceed to adjudicate these four appeals on merit in accordance with law.

ITA No. 3/ALLD/2022-Assessment Year 2006-07

3. The grounds of appeal raised by assessee in his appeal in ITA No. 3/Alld./2022 for assessment year 2006-07, in the memo of appeal filed with Income-Tax Appellate Tribunal, Allahabad Bench, Allahabad (hereinafter called "the tribunal"), reads as under:-

"1. That on the facts and circumstances of the case, the authority below was not justified in not accepting agriculture Income Rs. 5,00,000/- which is covered under the explanation U/S 2(1)(b)(1).

2. That the agriculture Land was used for agriculture purpose only and then are the nexus between Income, Land and agriculture operation.

3. That the enhanced addition of Rs. 36,00,000/- deposited in PNB Bank Account was also from agriculture and loan amount opportunity was not given in this regard.

4. That the order passed by authority below is unjust."

4. The brief facts of the case are that the assessee's assessment was reopened by Revenue by invoking provisions of Section 147/148 of the 1961 Act. The AO issued notice u/s 148. The assessee filed return of income in response to notice issued by the AO u/s 148 of the 1961 Act. On perusal of Return of income filed by the assessee in response to notice issued by AO u/s 148, it was observed by AO that the assessee has declared interest income of Rs. 2,870/-, and an agricultural income to the tune of Rs. 7,00,000/- which was claimed as an exempt income. The AO issued statutory notice u/s 143(2) dated 24.12.2013 to the assessee. The assessee participated in reassessment proceedings. The AO, during the course of reassessment proceedings,

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asked assessee to explain sources of deposits in the bank account, to which assessee submitted that the said bank deposits are from sale proceed of House No. 846, University Road, Allahabad which was sold by the assessee in the capacity of Karta of his HUF, amounts received from son as well agricultural income earned by the assessee, as detailed hereunder:

एच०यू०एफ० द्वारा विक्रय किए गए मकान से प्राप्त राशि को जमा करना	दिनांक	धनराशि (रुमें)
	02.01.2006	5,00,000 / -
	10.10.2005	3,00,000 / -
	12.08.2005	5,00,000 / -
	30.12.2005	5,00,000 / -
		कुल:- 18,00,000 ✓
पुत्र से प्राप्त राशि को जमा करना		12,00,000 ✓
कृषि आय को जमा करना		5,00,000 ✓
निर्धारिती द्वारा दर्शायी गयी कुल जमा राशि		35,00,000 / -

The AO observed from sale deed of the aforesaid property, that Rs. 50 lacs sale proceed was received by assessee by cheque, as under:

Cheque Number	Dated	Amount (Rs.)
399554	12.08.2005	5,00,000/-
399599	30.12.2005	5,00,000/-
399560	06.04.2006	2,00,000/-

187227	10.10.2005	3,00,000/-
714195	29.01.2007	6,00,000/-
710692	29.01.2007	3,50,000/-
243408	27.02.2007	25,00,000/-
755690	09.03.2007	50,000/-
		Total Rs. 50,00,000/-

The AO observed that the claim of the assessee that Rs. 18 lacs was deposited by assessee in his bank account from the sale proceed of the House is not correct, and the AO made additions to the income of the assessee to the tune of Rs. 18 lacs by invoking provisions of Section 68 of the 1961 Act.

The AO asked assessee to explain cash deposits of Rs. 35,00,000/- in his bank account, out of which Rs. 5,00,000/- was claimed by assessee to be agricultural income earned by the assessee. The assessee was asked by AO to substantiate the claim of agricultural income earned and also agricultural operations carried on by the assessee, by submitting details/evidence of agricultural account, sale bills of agricultural produce, purchase bills of seeds and fertilizers,

evidence of harvest of agricultural produce, sowing of agricultural crops, evidences for work done to improve agricultural operations, and other evidences to prove that agricultural operations were in-fact carried on by the assessee, but the assessee only produced Profit and Loss of agricultural activities, and claim was made by assessee before AO that income from agriculture was deposited in the bank account, but the assessee could not produce any evidence/documents before the AO to substantiate/prove that agricultural operations were in-fact carried on by the assessee. So far as agricultural land is concerned, the assessee claimed that the land belonged to 'Raja Jagannath Bakhsh Singh Trust' and lease agreement was executed on plain paper and same was not registered. On being asked by AO, the assessee submitted that the land owner refused to get the said land agreement registered, and this agreement was prepared on plain paper. The AO rejected the contentions of the assessee and observed that no agricultural operations were carried on by the assessee, and an amount of Rs. 5,00,000/- claimed to be deposited by assessee from agricultural income is in-fact income from un-disclosed sources of the assessee, which was added by AO to the income of the assessee under Section 68 of the Act, vide reassessment order dated 25.03.2014 passed by the AO u/s 147 read with Section 143(3) of the 1961 Act.

5a. Aggrieved by the aforesaid re-assessment order passed by AO, the assessee filed first appeal before Ld. CIT(A) . So far as addition to the income of the assessee to the tune of Rs. 18 lacs as was made by the AO, the same stood deleted by ld. CIT(A) with directions to the AO to verify and reconcile the bank deposits with the sale deeds w.r.t. sale of House no. 846, University Road, Allahabad and to delete the additions if the amount stood verified and reconciled otherwise to confirm the additions, and the appellate order passed by ld. CIT(A) on this issue has attained finality as it could not be shown by either of the rival parties before us that assessee or Revenue has filed any appeal before tribunal against the aforesaid decision of ld. CIT(A). On the issue of addition of Rs. 5,00,000/- as was made by AO to the income of the assessee, it was submitted by assessee before ld. CIT(A) that the assessee started agricultural work in 1999 on lease land at village Sirsa, Rae Bareli . The assessee took loan from Punjab & Sindh Bank , and started producing aroma grasses from flowers and grass for its customers and also grew grains and vegetables. The assessee enclosed copy of lease deed of agricultural land which the assessee claimed is for ten years but due to ill health, the assessee closed the work of Aroma Grasses in 2008. The assessee submitted before ld. CIT(A) that the assessee has not done any business of Aroma oil

because it needs marketing and very huge capital. The assessee submitted that he is an aged person unfit for marketing of Aroma Oils. The assessee also explained that for the persons who were interested in aroma oil, the assessee extracted oil from flowers and grass on job work basis. The assessee claimed that production of flowers and grass were all agricultural income, which is exempt from income-tax. The assessee submitted that farmers from nearby area of Rai bareilly used to purchase grains, vegetables and also flowers and grass for Aroma work in cash ranging from Rs. 25,000-65,000/- , and then they used to send it to other places for extraction of oil. It was also submitted that the assessee helped them in extracting oil in case of need of customers who purchased grass and brought their own at a very low cost, and only job work was done on labour basis , and the assessee was not concerned with oil sale of its marketing. It was claimed that assessee was only selling agricultural produce. The assessee submitted before Id. CIT(A) that the assessee in support of his contentions filed copy of lease agreement before AO which was not believed by AO only on the ground that the same was written on the plain paper whereas the same was on the of letter pad . The copy of lease deed was enclosed by assessee before Id. CIT(A). The assessee also submitted details of gross receipt of agriculture income of Aroma

plants etc. and Profits and Loss account of the agriculture income was also submitted by assessee before Id. CIT(A).

5b. The Id. CIT (A) rejected the contentions of the assessee by holding as under:

“Decision:

I have gone through the facts and the written submissions filed along with the details filed enclose therein. The assessee deposited RS. 35,00,000/- cash in his bank account out of which he has claimed cash of Rs. 5,00,000/- earned as agricultural income from sale of flowers and grass and also grains and vegetables. The appellant submitted only copy of lease of agricultural land as evidence in favour of doing agricultural activity. Appellant's only contention is that there is a lease agreement on a letter pad showing the land ownership but there is no other evidence showing any human intervention in the planting of these flowers, grass, vegetables and grains. There is no evidence in possession of appellant to prove that any procedures were adopted to produce and maintain these agricultural produces over a time from 1999 to the year in question. There is no evidence to prove that any basic and subsequent operations were duly performed resulting onto this agricultural income like expenditure on human labour, seeds, manure, pesticide, etc.. AO's contention is that the appellant did not produce any documentary evidence whatsoever regarding expenses on plantations and there maintenance as stated above. No details of buyers or evidence of sale of these of flowers, grass, grains and vegetables were submitted before AO.

The Supreme Court in CIT v Raja Benoy Kumar Sahas Roy (1957) 32 ITR 466 (SC) has held that the land is said to be used for agricultural purposes where the following two types of operations are carried out on such land:

The term 'agriculture' in S. 2(1)(b)(1) of the Indian Income-tax Act connotes the entire and integrated activity of an agriculturist performed on the land in order to raise its produce and consists of such basic and essential operations, requiring

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human skill and labour on the land itself, as the tilling of the soil, sowing of the seeds, planting and similar operations on the land and such other subsequent operations, performed after the produce sprouts from the land, as weeding, digging of the soil around the growth, removal of undesirable under-growths, tending, pruning, cutting, harvesting and marketing. But these subsequent operations, if unconnected with the basic operations, cannot by themselves constitute agriculture. It is only when the land is subjected to such integrated activity, that :It can be said to be used for, agricultural purpose' and its income called agricultural Income within the meaning of the Act.

...Judicial opinion is unanimous that products which grow wild on the land or are of spontaneous growth and do not involve any human skill or labour on the land, and all that the assessee has to perform in respect of them is only to collect them for consumption and marketing, are not products of agriculture and the income derived from them is not agricultural income within the meaning of S. 2(1) of the Act.

Admittedly appellant has not been able to submit any evidence pertaining to both the basic and the subsequent operations that can show that any form of integrated activity of the agriculture actually happened or any evidence of its sales generating the income. All income is supposedly have been received from farmers in cash. The applicant admittedly has never done any business of Aroma oil. Applicant submitted that the he extracted the oil from flowers and grass on job work basis. But no details whatsoever of any kind has been submitted pertaining to job works done. More so, the sale of oil of flowers and grass is not agricultural income, exempt u/s 2(1A) of the Income Tax Act. Applicant has not submitted any details of farmers from Rai Bareilly who purchased grains, vegetables and also flowers and grass for Aroma work in cash. It is surprising that someone who purchases goods from applicant for Rs. 25,000- 65,000/-, their details are no known to him but he knows that after purchasing agricultural produce from applicant these farmers sent it to other places for extraction of oil. Such contradictory facts are nothing but an afterthought of the appellant to explain unsuccessfully explaining the huge cash deposited in bank account as earned form agricultural

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income. The applicant also submitted that he helped them in extracting the oil in case of need of customers who purchased grass and brought their own at a very low cost and only job work was being done on labour basis and the applicant had no concern with oil sale of its marketing. The applicant's sale was limited only to agricultural produces. If we go by this theory then it shows that appellant was doing complete business of extraction and sale of oil but trying to break the operations and claim it as exempt u/s 2 of IT Act. But applicant does not have any evidence to prove this activity also. All the submissions of appellant are not backed by any iota of documentary evidence hence they cannot be relied upon.

An Income to be "agricultural income" should be derived from land and the land should be used for agricultural purposes. In other words, there should be a nexus between income, land and agriculture operations, by which is meant something done to the land by human or mechanical agency to produce out of the land any crop, tree, plantation or other produce or product. The immediate source of the income must be land or the description or character mentioned in the definition [CIT v Imam Saheb (K.S.) (1969) 71 ITR 742 (Mad)].

In the case of *Mustafa Ali Khan v. CIT* [1948 16 ITR 330 (PC)] in which it was held that that income from sale of forest trees, fruits and flowers growing on land naturally and spontaneously without the intervention of human agency is considered as Non Agricultural Income.

Appellant has submitted that the plantation took place from 1999. The plantation that applicant has dealt in, are cash crops and appellant knew that these will fetch considerable amount of income then it was important for appellant to maintain all the records properly till these plantations were sold. There is no evidence of sale of these agricultural produce made during the year under consideration. Now to say that appellant sold all these trees to sundry purchaser without any bills is unbelievable. Appellant could have taken the receipts as evidence of sale especially when taking amount of Rs. 25,000/- to 65,000/-. Aroma oil is sold commercially so persons who are the buyers can be identified easily by applicant. However no details are made available by the appellant.

In the case of *The CIT vs Sri Ramakrishna Deo* (1959) 35 ITR 312, 316, 317 (SC) Held: The law is well settled that it is for a person who claims

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exemption to establish it, and there is no reason why it should be otherwise when the exemption claimed is under the Income-tax Act. Held that the burden is on the appellant to prove that the income sought to be taxed was agricultural income.

Avdhesh Kumar Jain vs. Commissioner of Income-Tax (1989) 178 ITR 443 (All)

HELD:

2. The concurrent findings of the tax authorities including the Income-tax Appellate Tribunal are that the assessee had failed to produce any satisfactory evidence about his being engaged in agricultural activities. The further finding is that the assessee was also not able to state to whom the said agricultural produce was sold. Consequent to the aforesaid finding, the Tribunal has held that the sum of Rs. 28,000 was rightly assessed as income from undisclosed sources in the hands of the assessee. Having heard learned counsel for the parties, we are of the opinion that the findings recorded by the Income-tax Appellate Tribunal are pure findings of fact which are based on appreciation of evidence. The view taken by the Tribunal is a possible view on the evidence that was placed before it in our opinion, the order of the Tribunal does not give rise to any question of law on the findings recorded by it.

In the instant case it is well established that appellant has failed to discharge the initial onus of proving that the income earned was in fact agricultural Income. Appellant also failed to prove that any agricultural operations were in fact ever done on the land premises leased by him and finally failed to substantiate that the sale of these flowers, grass, vegetables and grains actually happened. So it is seen that appellant fails on all the main ingredients that are required to prove the nature and source of this income as agricultural income, in order to claim the statutory exemption.

With these remarks addition made by the AO is upheld.

This ground is dismissed."

5c. The Id. CIT(A) observed that his predecessor have sent a letter dated 28th February, 2017, as under:

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"As per the Lease Deed, you were required to pay annual rent of Rs.74,160/- in two half yearly installments. You are requested to produce proof of such payments and also submit originals of the receipts given by the lessor.

- Please produce the said Lease Deed in original seen.
- Please file the copies of your both the Bank accounts for the entire F.Y. 2005-06.
- Please explain the source of Rs.15 lakhs cash deposited on 13.08.2005, Rs.20 lakhs on 10.10.2005 and Rs.1 lakh on 01.10.2005 in you PNB account."

On March 9, 2017, the assessee submitted following details before Id.

CIT(A):

"With reference to your queries letter the applicant begs to submit as under -

A. Regarding Capital Gain: The applicant has sold his HUF house at 846 University Road, Allahabad and filed details of computation of capital gain, before the A.O. On 10.02.2014 at the time of assessment proceedings for A.Y. 2007-08. Copy of order of A.O. is enclosed.

B. Lease Deed: The applicant is producing the Lease Deed of agriculture land.

C. Cash Deposit: Cash deposit in PNB A/c is as under:

Date	Amount	Source
13.08.2005	15,00,000/-	Agriculture Income
10.10.2005	20,00,000/-	Do-
01.10.2005	1,00,000/-	Do-

The Id. CIT(A) further observed that his predecessor has sent an enhancement notice to the assessee on 17.03.2017, which is reproduced as hereunder:

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"2. You have sold a property belonging to you in F.YS. 2005-06 & 2006-07. It is seen that instead of offering capital gains in your hands, you have offered the capital gain in the hands of HUF. Since the said property belong to you and not HUF, I intend to tax the capital gain on sale of this House property in your hands in A.Y. 2006-07 (for part of the property sold during 2005-06) and in A.Y. 2007- 08. If you have any clarifications to offer, you may do so.

3. You have deposited following cash in your Bank Accounts –

<u>Punjab Nation Bank</u>	
Date	Amount
13.08.2005	15,00,000/-
10.10.2005	20,00,000/-
01.10.2005	1,00,000/-

Standard Chartered Bank

Date	Amount (Rs.)
31.12.2015	Rs. 5,00,000/-

Since you have not given any verifiable explanation in respect of such cash deposits, I intend to treat such cash deposit as unexplained Cash Deposits. If you have any explanation to offer, the same may be offered."

On 23rd March, 2017 , the assessee made submissions before Id. CIT(A) in response to aforesaid enhancement notice, which is as under:

"1. That regarding sale of House for Rs.50,00,000/- in F.Y. 2005-06 & F.Y.2006- 07 was Rs.12,00,000/- and Rs.38,00,000/- respectively. It was the HUF Property and AO has also passed order of S.P. Gupta, HUF u/s 143(3) in A.Y.2007-08 and accepted the sale proceeds and there was no capital gain.

That regarding cash deposit in PNB was the agriculture income receipts and loan from others for agriculture produced work. The appellant had no other income except agriculture income."

The ld. CIT(A) deleted the additions of Rs. 18 lacs as was made by the AO with directions to AO to verify and reconcile bank deposits with the sale proceeds vide sale deeds w.r.t. sale of house no. 846, University Road, Allahabad, but ld. CIT(A) enhanced the income of the assessee by Rs. 36,00,000/- , by holding as under:

Decision:

I have gone through the facts and the written submissions filed along with the details filed enclose therein. Facts in this case are that the applicant sold house no. 846, University Road, Allahabad in two parts Vide Sale deed 10.04.2006 and vide Sale deed 09.03.2007 for which appellant received sale amount in various bank accounts as mentioned above. AO could not locate and correlate the details of cheques mentioned in the sale agreement with the bank statements. AO added Rs. 18,00,000/- accordingly u/s 68 of IT Act.

My predecessor CIT(A), Allahabad send a letter to the assessee on 28.02.2017, requesting to explain the source of Rs.15 lakhs cash deposited on 13.08.2005, Rs.20 lakhs on 10.10.2005 and Rs.1 lakh on 01.10.2005 in appellant's PNB account and Rs.5,00,000/- in Standard Chartered Bank on 31.12.2005. In compliance on 09.03.2017 the appellant submitted that source of Rs. 36,00,000/- cash deposited in PNB A/c is agriculture income. Appellant has not submitted any detail about the deposit of Rs.5,00,000/- made in Standard Chartered Bank. With regards to the taxability of the sale of House in the hands of appellant in the individual capacity it was submitted that this is HUF Property and AO has also passed order of S.P. Gupta, HUF u/s 143(3) in AY 2007-08 and accepted

the sale proceeds in the hands of HUF after proper examination of all facts. In this regard appellant filed the copy of the assessment order passed u/s 143(3) passed by AO for AY 2007-08. In view of the above, once the AO has examined the whole transaction in a regular assessment and accepted it in the hands of HUF and that order has become final, same transaction cannot be again taxed in the hands of appellant in individual capacity on the same set of facts. Hence the submission of the appellant is accepted.

AO has made the addition of Rs. 18,00,000/- as he could not locate and correlate the details of cheques mentioned in the sale agreement with the bank statements u/s 68 of IT Act. No addition can be made u/s 68 of IT Act on the unexplained deposits in the bank account as they are not books of accounts of the appellant but can be added u/s 69A of IT Act as unexplained money. A perusal of the sale deed and the bank statement shows that the details of cheques mentioned in the sale deed are reflected in the bank statement but the dates are different due to difference in the date of issuing and date of final clearing into the bank account. Further difference is also due to the fact that the sale deed happened in two different financial years. AO is therefore directed to reconcile the same and if any cheque deposited into the bank account cannot be correlated with the two sale deeds then only that amount should be taxed u/s 69A of IT Act. In case of any cheque not getting reconciled the AO is to tax it as per law in the respective assessment year to which the cheque pertains to. With these remarks addition of RS. 18,00,000/- made is deleted.

With regard to the cash deposits in PNB no evidence in regard to the agriculture income receipts and loan from others for agriculture work was submitted during the appellate proceedings in response to the enhancement notice sent to appellant. Appellant has failed to discharge the initial onus of proving that the income earned was in fact agricultural income. Appellant also failed to prove that any agricultural operations were in fact ever done on the land premises leased by him and

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finally failed to substantiate that the cash deposited in PNB and Standard Chartered Bank are from the agricultural income earned by appellant during the year. With these remarks and in view of the ruling in the case of Avdhesh Kumar Jain vs Commissioner of Income-Tax (1989) 178 ITR 443 (All) it is held that the appellant has failed to shift the onus to prove that cash deposited in both the bank accounts is from agricultural operations and therefore the income is enhanced by Rs. 36,00,000/- on this account.

With regard the Addition of Rs. 2,00,000/- in MF the applicant has submitted the copy of Chartered Bank, whereas there is withdrawal of Rs. 2,00,000/- 27.01.2006 for investment in MF. Therefore, in view of the same the addition made by the AO on this account if deleted.

This ground is enhanced and partly allowed.”

While enhancing the income of the assessee by Rs. 36,00,000/- as aforesaid being unexplained cash deposits in the bank account, the Ld. CIT(A) deleted the addition of Rs. 18,00,000/- as was made by the AO with directions to verify the bank deposits with the sale deeds w.r.t. sale of house no. 846, University Road, Allahabad, and if reconciled/verified then delete the addition or otherwise confirm the addition, which decision of Ld. CIT(A) has attained finality as it could not be shown that either of the parties have filed an appeal before tribunal against the appellate order passed by Ld. CIT(A) on this issue of addition of Rs. 18 lacs as deleted by Ld. CIT(A).

6. Aggrieved by appellate order passed by ld. CIT(A), the assessee has filed second appeal with tribunal, and the Ld. Counsel for the assessee opened arguments before the Bench. It was submitted by ld. Counsel for the assessee that written submission with respect to the additions sustained by Ld. CIT(A) are filed with tribunal, which are reproduced as under:

"In the above appeal, the appellant wants to bring the following facts before your honour for your kind consideration and favorable order:-

1. Addition Agriculture Income: 5,00,000/-

a) *The appellant started the agriculture work in 1999 by taking lease land at Village Sirsa, Raibareilly from Raja Jagannath Bux Singh Trust for 10 years measuring 12.36 hector, copy of agreement has been filed on Page 1 to 6 of the Paper book filed for A.Y. 2006-07 Lease rent was monthly Rs.6,000/- which has been Paid regularly.*

b) *Then he started growing Palmarosa grass and other herb along with Vegetable and grain.*

Palmarosa grass and other flower and herbs are used to produce aroma oil and perfumes, Regarding Palmarosa grass details has been filed on Page 7 to 11 of the Paper book.

c) *The appellant only sold Palmarosa grass and herbs and not involved in manufacturing the Aroma oil, People for nearby areas used to come to purchase the grass for making Aroma oil and they pay cash ranging to 20,000/- to 50,000/- which was deposited in bank.*

d) *The appellant also filed profit and loss account of Agriculture income, Bank charges, lease rent seeds expenses and the like on*

Page 18 to 31 of the Paper book. The appellant also took loan from Punjab and Sindh bank for starting the agriculture work and shown in profit and loss account.

The appellant produced and cultivated Palmarosa grass and herbs and it was not grown naturally. He sold the Palmarosa grass directly without any change and shape. Thus the Palmarosa grass, herbs, vegetable and grains are all exempt u/s 2(1A) and 10 A of IT Act.

Even the Green Tea leaves sale directly is income from agriculture.

Union of India Vs Belgachi Tea Company.Ltd(2008) 170 Taxman 209/304 ITR (SC).

In ITAT, Delhi in Sudisha form Nursery VS Income Tax Officer 88 ITD 638 Delhi has allowed growing of Flower is agriculture Income after considering many ruling of H.C and S.C. Earnings from growing creeps and flower is agriculture income.

e) The appellant has requested the A.O. at the time of assessment proceeding to verify the fact whether agriculture was going or not? But the A.O never tried to verify from Rai Bareilly IT Department and appellant due to his illness and old age he could not go to Rai Bareilly to collect the evidence. Thus the A.O had added the agriculture income as unexplained income. The appellant has no source of income except agriculture income up to financial year 2004-05. Later he invested in construction of flats with Smt. Shashi Singh and Smt. Anita Kesarwani in Financial year 2005-06 investing Rs.16,00,000/- out of agriculture income. But in that business he Suffered loss due to fraudulent attitude of Partner.

f) The appellant now expired and his legal heir who was at Delhi, had no concern of his father business affair. Now more than 18 years passed. But the above Paper has been filed before the authority below is part of evidence of agriculture income.

2. Enhancement of cash deposit Rs. 36,00,000/- by CIT(A)

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a) *The appellant has deposited cash in his Punjab and Sindh Bank account was as under:*

<i>Date</i>	<i>Amount</i>	<i>Remark</i>
<i>13.08.2005</i>	<i>15,00,000/-</i>	<i>Own saving from agricultural income since 1999</i>
<i>01.10.2005</i>	<i>1,00,000/-</i>	
<i>10.10.2005</i>	<i>20,00,000/-</i>	<i>Deposit by Partner Smt Shashi Singh and Anita Kesarwani</i>
	<i>36,00,000/-</i>	

Copy of bank account filed on Page 49 to 50 of Paper-book.

b) *The appellant has shown his investment Rs. 16,00,000/- in computation of filed for A.Y. 2006-07.*

c) *Copy of agreement with Smt. Shashi Singh and Anita Kesarwani date 15/11/2005 has already been filed on Page 32 to 40 of Paper book.*

d) *In Para 8 of agreement it has been mentioned that total investment will be of Rs. 40,00,000/-*

The expenses incurred in constructing the flats detail has been filed on Page 43 to 48.

e) *This fact has not been enquired at the time of assessment proceeding in A.Y. 2006-07 although the appellant has shown regarding his investment.*

f) *In fact there was no income during the financial year 2005-06 from sale of flats. In financial year 2005-06 and 2006-07 there were only investment by the Partner and in financial year 2007-08, there was loss in the business, the details have been filed in A.Y. 2008-09.*

Considering the above, kindly allow the appeal."

The Learned counsel for the assessee submitted before the Bench that there were two additions which were confirmed by Id. CIT(A). The

first addition concerned itself with the claim of the assessee of earning agricultural income of Rs. 5,00,000/- , which claim of assessee of earning agricultural income was not accepted by Revenue. It was submitted that the assessee was engaged in agricultural activity since 1999 at Rai Bareilly. Copy of agreement for taking on lease agricultural land vide lease deed was enclosed at Page No. 1 to 6 of the Paper Book filed with tribunal. It was submitted that regularly rent was paid towards aforesaid lease of agricultural land. It was submitted that the aforesaid rent for leased agricultural land was paid in cash. The assessee claimed that he started growing Palmorosa grass and other herb along with vegetable and grain , and details are at page No. 12 -31 of the paper-book. Reliance was placed by assessee on the decision in the case of **Union of India v. Belgachi Tea Company Ltd. (supra)**. It was also submitted that the assessee asked AO to verify agricultural income, but the AO did not verify the same. It was submitted that affidavit was filed before AO that the assessee has an agricultural income. With respect to second addition of Rs. 36 lacs as was made by Id. CIT(A) by enhancing income of the assessee, it was submitted that there was an enhancement of income by Id. CIT(A) wherein cash deposit of Rs. 36,00,000/- in PNB was brought to tax by Id. CIT(A) . It was submitted that there were three cash deposits in

PNB of Rs. 15,00,000/- on 13.08.2005 ,Rs. 1,00,000/- on 01.10.2005

and Rs. 20,00,000/-on 10.10.2005 . Our attention was drawn to page

no. 49 and 50 of the paper-book. It was submitted that cash of Rs. 20

lacs deposited in PNB on 10.10.2005 was received from Mrs. Anita

Kesrwani and Mrs. Shashi Singh , on whose land construction of the

flats were done by the assessee, and our attention was drawn to page

no. 32 to 40 of the paper book , where an agreement entered into by

assessee with Mrs. Anita Kesarwani and Mrs. Shashi Singh is placed.

Our attention was also drawn to page nos. 43 to 48 of the paper-book,

wherein details of construction of flats are placed. It was submitted

that cash deposit of Rs. 15,00,000/- on 13.08.2005 and Rs. 1,00,000/-

on 01.10.2005 both in PNB, aggregating to Rs. 16,00,000/- were

receipts from agricultural income. It was submitted that Ld. Sr. DR has

filed all the documents in the paper-book filed by the department.

Both the paper books are placed on record in file. Our attention was

also drawn to Page no. 45 of the paper-book filed by the Department,

wherein affidavit filed by assessee before the AO is placed.

6b. The Ld. Sr. DR on the other hand submitted before the Bench that

there are two issues only in this appeal, one is concerning addition of

Rs. 5,00,000/- made by the AO wherein claim of the assessee that cash

deposits in the bank constitute agricultural income was not accepted

by Revenue , and second addition concerns itself with enhancement of income of the assessee by ld. CIT(A) to the tune of Rs. 36,00,000/- towards unexplained cash deposit in Punjab National Bank. It was submitted that the assessee does not have any agricultural income and the assessee has tried to show that the assessee has done agricultural operations on the land taken on lease from a trust in Rai Barielly, copy of lease deed was purportedly filed by assessee before the AO. The ld. Sr. DR submitted that the assessee did not owned any agricultural land and also that this lease deed is an unregistered lease deed. It was submitted that department has also filed written submissions vide departmental paper book/page A-F. It was submitted that the figure of the alleged agricultural income was differently stated by the assessee, before different authorities . Our attention was drawn by ld. Sr. DR to the page D (written submissions) of the PB filed by department. It was submitted by ld. Sr. DR that agricultural income is not genuine, the AO rightly made the addition to the tune of Rs. 5,00,000/- by not accepting the claim of assessee that income was from agriculture, which was rightly confirmed by learned CIT(A) by not accepting the claim of the assessee that said amount was agricultural income. On the second issue of enhancement of income by ld. CIT(A), the Ld. Sr. DR submitted that there is

enhancement of income by Rs. 36,00,000/- by ld. CIT(A) towards unexplained cash deposits in PNB. Our attention was drawn to assessment order/page 1 /para 3, wherein details of deposits in PNB are stated (also reproduced by us in this order at page 8) . It was submitted that the AO made the addition to the income of the assessee to the tune of Rs. 18 lacs towards unexplained bank deposits as well non acceptance of agricultural income of Rs. 5 lacs . It was submitted that ld. CIT(A) confirmed the addition of Rs. 5 lacs as was made by the AO by rejecting the claim of the assessee that this income was from agriculture , while ld. CIT(A) deleted the additions of Rs. 18 lacs with directions to AO to verify and reconcile the deposits in the bank with the sale deed , however, ld. CIT(A) enhanced the income of the assessee by Rs. 36 lacs towards unexplained cash deposits in PNB. It was submitted that there were also cash deposits in Standard Chartered Bank to the tune of Rs. 5 lacs. Our attention was also drawn to page No. 59 to 60 of paper-book and it was submitted that enhancement of income was rightly done by ld. CIT(A) , as the assessee failed to explain sources of cash deposits in the bank account of the assessee maintained with PNB . Our attention was also drawn to page 59 & 60 of the Departmental paper-book, wherein notice of enhancement issued by ld. CIT(A) is placed. Our attention was also

drawn to page no. 36 & 40 of the departmental paper book, wherein reply of the assessee are placed. Our attention was also drawn to page 61 and 62 of the paper book, wherein written submissions of the assessee before tribunal are placed. The ld. Sr. DR submitted that explanations submitted by the assessee to explain sources of cash deposits are unsubstantiated.

6c. The Learned counsel for the assessee submitted in rebuttal that the assessee has taken agricultural land on lease on which agricultural operations were carried on by the assessee. It was submitted that monthly lease rent was Rs. 6,000/- per month which was paid in cash . It was submitted by ld. Counsel for the assessee that there are no evidences available with the assessee with respect to agricultural income earned by the assessee , apart from lease deed which was duly submitted before the authorities. It is claimed that the said lease deed is unregistered because the land owner did not agreed to getting lease deed registered. Our attention was also drawn to page No. 49 to 50 of the assessee's paper-book, wherein PNB bank statement is placed.

6d. The Ld. Sr. DR drew our attention to Page No. D of the departmental paper book, wherein written submissions are placed. It was submitted that there are variation in the agricultural income

claimed by the assessee, as in the ITR , the assessee claimed that Rs. 7 lacs was earned from agriculture , while before AO, it was claimed that agriculture income earned by assessee was Rs. 5 lacs and later before Id. CIT(A), it was claimed by assessee that even Rs. 36 lacs cash deposited with PNB is also agricultural income apart from and apart from income of Rs. 5 lacs claimed as agricultural income , while now before tribunal claim is made that Rs. 16 lacs cash deposited in PNB is agricultural income apart from and addition to claim of agricultural income of Rs. 5 lacs claimed before the AO, while now it is claimed before tribunal that cash deposit of Rs. 20 lacs in PNB was from Mrs. Shashi Singh and Mrs. Anita Kesarwani , Partners of the assessee for constructing flats . It was submitted by Id. Sr. DR that before AO , the assessee claimed that Rs. 12 lacs was transferred from bank account of son to assessee's bank account in PNB , as the said amount was transferred in Standard Chartered Bank, while additions were made for cash deposits in PNB . Thus, the Id. Sr. DR submitted that the assessee is making wrong contentions as also changing the contentions before different authorities, and prayers were made to dismiss the appeal filed by the assessee.

7. We have considered rival contentions and perused the material on record . We have observed that the assessment of the assessee was

reopened by Revenue for framing re-assessment by invoking provisions of Section 147/148 of the 1961 Act. Reasons for re-opening of the assessment were recorded by AO and approved by JCIT on 26.03.2013, which are placed on record in Departmental PB/page 1-4. The statutory notice dated 28.03.2013 was issued by AO u/s 148 of the 1961 Act (Departmental PB/Page 3) . The same was sent by AO by speed post on 28.03.2013(receipt of speed post placed at Page 4/Departmental PB). The said notice was also delivered by AO to the assessee personally by hand on 30.03.2013. The assessee was required to file return of income in pursuance to aforesaid notice dated 28.03.2013 issued by AO u/s 148 of the 1961 Act. The assessee filed return of income in pursuance to notice issued by AO u/s 148 of the 1961 Act(Departmental PB/Page 5-8). The assessee declared income of 2,870/- as interest income in the return of income filed, while agricultural income of Rs. 7,00,000/- was declared in the aforesaid return of income filed with Revenue, which was claimed as an exempt income. The AO issued notice u/s 143(2) dated 24.12.2013 to the assessee(Page 9/Departmental PB). The assessee duly participated in the reassessment proceedings conducted by AO u/s 147/148 of the 1961 Act. There are effectively two issues for adjudication before us. The first issue pertains to claim of the assessee

of having earned agricultural income to the tune of Rs. 5,00,000/- during the year under consideration, which was claimed as an exempt income u/s 10(1) read with Section 2(1A) which claim of the assessee was rejected by both AO as well ld. CIT(A) , and the said income was held to be earned from undisclosed sources and brought to tax. The second issue concerns itself with the cash deposits of Rs. 36,00,000/- in the bank account maintained by the assessee with PNB, for which no satisfactorily explanation was offered by the assessee and the said addition was made by ld. CIT(A) to the income of the assessee, after issuing enhancement notice. The assessee has undisputedly deposited Rs. 36,00,000/- in cash in his bank account maintained with PNB , while Rs. 5 lacs stood deposited in cash in his bank account maintained with Standard Chartered Bank. The details of cash deposits are as under:

<i>Punjab Nation Bank</i>	
<i>Date</i>	<i>Amount</i>
<i>13.08.2005</i>	<i>15,00,000/-</i>
<i>10.10.2005</i>	<i>20,00,000/-</i>
<i>01.10.2005</i>	<i>1,00,000/-</i>

Standard Chartered Bank

<i>Date</i>	<i>Amount (Rs.)</i>
<i>31.12.2015</i>	<i>Rs. 5,00,000/-</i>

The assessee initially raised a claim of having earned agricultural income of Rs. 7 lacs in the return of income filed with the Revenue, which was claimed to be exempt from income-tax. During reassessment proceedings, the claim of the assessee was that he earned agricultural income of Rs. 5 lacs (Page 10/Departmental PB), which was claimed as an exempt income. To support his claim of having earned agricultural income, an un-registered lease deed on plain paper dated 01.07.1999 is submitted, along with covering letter dated 29.06.1999 executed on letter head of '*Raja Jagannath Baksh Singh Trust*', the alleged owner of said land. The alleged claim of the assessee is that he took agricultural land admeasuring 12.36 hectares on lease situated at Sirsa Farm in Village Sirsa, Block Harchandpur, Tehsil Rae Bareili, District Rae Bareili, U.P., from '*Raja Jagannath Baksh Singh Trust*' on an annual lease rent of Rs. 74,160/-, of which first installment of Rs. 37,080/- being lease rent for a period of six months, was paid vide cheque no. 314116 dated 01.07.1999 drawn on Punjab and Sindh Bank, Allahabad. The said unregistered lease deed on plain paper is placed on record in Paper book filed by the assessee, at page 1-6. On perusal of the said lease deed, it transpired that the said lease is for 3 years and purpose of the lease is for running an agricultural farm and to set up and run an oil extraction

plant on the said land. The lease is for 3 years and the lease is to be renewed for further period of 3 years after expiry of every 3 years with stipulated hike in lease rent, so much so that maximum period of lease shall not exceed 10 years from the date of signing of lease. There is clear mention in the covering letter dated 29.06.1999 forwarded by 'Raja Jagannath Baksh Singh Trust' on their letter head that the lease deed will be registered. There is no evidence produced by the assessee that this lease deed was ever registered, rather the assessee is saying to the contrary that the owners of the land did not want to get the lease deed registered. There is no evidence whatsoever submitted by the assessee that the said lease was in fact ever extended/renewed after alleged completion of three years. There is no evidence of payment of any lease rent to the owners of the land, except first six monthly lease rent paid on 01.07.1999, for which details of cheque are mentioned, but there are no bank statements to prove/evidence that the cheques were ever cleared from the bank account of the assessee. Thereafter, there is no iota of evidence to prove/substantiate that the assessee ever paid any lease rent to the lessors, and the contentions are made that payments towards lease rents were made in cash, but no rent receipts issued by lessors are enclosed. There is no other evidence whatsoever furnished by

assessee to prove/substantiate that he continued to be lessee in the said leased land during the year under consideration. The assessee has claimed that during the year , lease rent was paid in cash, but no evidences such as receipts issued by the owners of the land is filed . The assessee did not file any evidences whatsoever to prove that the said land was under his possession and control during the year under consideration. No evidence whatsoever by way of Revenue records or any other record, evidencing that the assessee is the lessee of said agricultural land holding possession and control during the year under consideration is placed on record. There is absolutely no evidence whatsoever on the record to substantiate that the assessee in fact carried out agricultural operations during the year under consideration, such as tilling of soil , cultivation of soil, sowing of crops, planting, watering, upkeep and maintenance of land, putting fertilizers and manures, harvesting of crop , sale of crop , expenditure of human skill and labour to carry out agricultural operations etc. etc.. The assessee did not file any evidences by way of sale invoices for purchase of seeds, fertilizers, manures, insecticides etc. The assessee has not filed any evidences as to furnishing of details of labour employed such as name, address,ID, details of payments made/receipt etc .There are no evidences whatsoever as to sale of crop, and the

persons who bought the crops. There are no evidences whatsoever by way of land revenue records and other village/government records to substantiate the details of crops sown, harvested, land revenue paid by the assessee, for the year under consideration. There are no village/government records which could evidences that the assessee was lessee in the said land during the year under consideration. The assessee has merely filed Profit and Loss account / ledger account to show that the assessee carried out agricultural operations, wherein all the alleged payments and receipts are shown to have taken place in cash and even details of payer/payee are not mentioned therein. There are absolutely no corroboratory evidences whatsoever filed by the assessee to justify /substantiate that agricultural operations were in-fact carried out by the assessee during the year under consideration. Reference is drawn to the judgment and order of Hon'ble Supreme Court in the case of *CIT v. Raja Benoy Kumar Sahas Roy (1957) 32 ITR 466 (SC)*, wherein Hon'ble Supreme Court held as under :

"The question that arises for consideration in this appeal is whether income derived from the sale of sal and piyasal trees in the forest owned by the assessee which was originally a forest of spontaneous growth "not grown by the aid of human skill and labour" but on which forestry operations described in the statement of case had been carried on by the assessee involving considerable amount of expenditure of human skill and labour is agricultural income within the meaning of section 2(1) and as such exempt from payment of tax under section 4(3)(viii) of the Indian Income-tax Act.

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Section 2(1) of the Act defines agricultural income and states (so far as it is relevant for the purposes of this appeal):

"(1) 'agricultural income' means—

- (a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land revenue in the taxable territories or subject to a local rate assessed and collected by officers of the Government as such ;
- (b) any income derived from such land by—
 - (i) agriculture, or
 - (ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or
 - (iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (ii) ;..".

Section 4(3) of the Act provides :

"(3) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them:

(viii) Agricultural income".

Even though "agricultural income" which is exempted under section 4(3)(viii) of the Act is defined in section 2(1) as above, there is no definition of "agriculture" or "agricultural purpose" to be found in the Act and it, therefore, falls to be determined what is the connotation of these terms.

An argument based on entries 14 and 19 of List II of the Seventh Schedule to the Constitution may be disposed of at once. It was urged that entry No. 14 referred to agriculture including agricultural education and research, protection against pests and prevention of plant diseases while entry No. 19 referred to forests and there was, therefore, a clear line of demarcation between agriculture and forests with the result that forestry could not be comprised within agriculture. If forestry was thus not comprised within agriculture, any income from forestry could not be agricultural income and the income derived by the assessee from the sale of the forest trees could not be agricultural income at all, as it was not derived from land by agriculture within the meaning of the definition of agricultural income given in the Indian Income-tax Act. This argument, however, does not take account of the fact that the entries in the Lists of the Seventh Schedule to the Constitution are heads of legislation which are to be interpreted in a liberal manner comprising within their scope all matters incidental thereto. They are not mutually exclusive. If the assessee plants on a vacant site trees with a view that they should grow into a forest, as, for example, casuarina plantations, and expends labour and skill for that purpose, the income from such trees would clearly be agricultural produce. It has to be remembered that even though this demarcation between agriculture and forestry was available in the Lists contained in the Seventh Schedule to the Government of India Act, 1935, no such demarcation existed in the

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Devolution Rules made under the Government of India Act, 1919, and in any event the definition of agricultural income with which we are concerned was incorporated in the Indian Income-tax Acts as early as 1886, if not earlier ; vide section 5 of the Indian Income-tax Act, 1886 (II of 1886). It has also to be remembered that in spite of this demarcation between agriculture and forests in the Constitution, taxes on agricultural income are a separate head under entry 46 of List II of the Seventh Schedule and would comprise within their scope even income from forestry operations provided it falls within the definition of agricultural income which according to the definition given under article 366(1) means agricultural income as defined for the purposes of the enactments relating to Indian income-tax.

The terms "agriculture" and "agricultural purpose" not having been defined in the Indian Income-tax Act, we must necessarily fall back upon the general sense in which they have been understood in common parlance "Agriculture" in its root sense means ager, a field, and culture, cultivation, cultivation of a field which of course implies expenditure of human skill and labour upon land. The term has, however, acquired a wider significance and that is to be found in the various dictionary meanings ascribed to it. It may be permissible to look to the dictionary meaning of the term in the absence of any definition thereof in the relevant statutes. As was observed by Lord Coleridge in R. v. Peters [1886] 16 QBD 636, 641:

"I am quite aware that dictionaries are not to be taken as authoritative exponents of the meanings of words used in Acts of Parliament, but it is a well-known rule of Courts of law that words should be taken to be used in their ordinary sense, and we are therefore sent for instruction to these books".

Cozens-Hardy, M.R., also said in Camden (Marquis)v. Inland Revenue Commissioners [1914] 1 KB 641, 647:

"It is for the Court to interpret the statute as best they can. In so doing the Court may no doubt assist themselves in the discharge of their duty by any literary help which they can find, including of course the consultation of standard authors and reference to well-known and authoritative dictionaries".

Turning, therefore, to the dictionary meaning of "agriculture" we find Webster's New International Dictionary describing it as "the art or science of cultivating the ground, including rearing and management of live-stock, husbandry, farming, etc. and also including in its broad sense farming, horticulture, forestry, butter and cheese-making etc". Murray's Oxford Dictionary describes it as "the science and art of cultivating the soil; including the allied pursuits of gathering in the crop and rearing live-stock; tillage, husbandry, farming (in the widest sense)". In Bouvier's Law Dictionary quoting the Standard Dictionary "agriculture" is defined as "the cultivation of soil for food products or any other useful or valuable growths of the field or garden tillage, husbandry; also by extension, farming, including any industry practised by cultivator of the soil in connection with such cultivation, as breeding and rearing of stock, dairying, etc. The science that treats of the cultivation of the soil".

In Corpus Juris the term "agriculture" has been understood to mean : "art or science of cultivating the ground, especially in fields or large quantities, including the preparation of the soil, the planting of seeds, the raising and harvesting of crops, and the rearing, feeding and management of live-stock; tillage, husbandry and farming. In its general sense the word also includes gardening of horticulture".

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Bhashyam Ayyangar, J., in *Murugesu Chetti v. Chinnathambi Goundan and Others* [1901] ILR 24 Mad. 421, 423 gave the following dictionary meanings of agriculture as culled out from the *Century Dictionary* and *Anderson's Dictionary of Law*:

"The primary meaning of agriculture is the cultivation of the ground ('The Century Dictionary') and in its general sense, it is the cultivation of the ground for the purpose of procuring vegetables and fruits for the use of man and beast including gardening or horticulture and the raising or feeding of cattle and other stock (Anderson's 'Dictionary of Law'). Its less general and more ordinary signification is the cultivation with the plough and in large areas in order to raise food for man and beast ('The Century Dictionary') or, in other words, 'that species of cultivation which is intended to raise grain and other field crops for man and beast.' (Anderson's 'Dictionary of Law'). Horticulture, which denotes the cultivation of garden or orchards, is a species of agriculture in its primary and more general sense".

Ramesam, J., in Panadai Pathan and Another v. Ramasami Chetti and Others [1922] ILR 45 Mad. 710 referred to the following connotation of "agriculture":

"Wharton's Law Lexicon adopts the definition of 'agriculture' in 8 Edw. VII, c. 36, as including 'horticulture, forestry and the use of land for any purpose of husbandry, etc' In 10 Edw. VII, c. 8, s. 41, it was defined so as to include the use of land as 'meadow or pasture land or orchard or osier or woodland, or for market gardens, nursery grounds or allotments, etc' In 57 and 58 Viet. c. 30, s. 22, the term 'agricultural property' was defined so as to include agricultural land, pasture and woodland, etc".

These are the various meanings ascribed to the term "agriculture" in various dictionaries and it is significant to note that the term has been used both in the narrow sense of the cultivation of the field and the wider sense of comprising all activities in relation to the land including horticulture, forestry, breeding and rearing of live-stock, dairying, butter and cheese-making, husbandry etc.

It was urged on behalf of the assessee that the Court should accept the wider significance of the term and include forestry operations also within its connotation even though they did not involve tilling of the land, sowing of seeds, planting, or similar work on the land. The argument was that tilling of the land, sowing of the seeds, planting or similar work on the land were no doubt agricultural operations and if they were part of the forestry operations carried on by the assessee the subsequent operations would certainly be a continuation of the same and would therefore acquire the characteristic of agricultural operations. But the absence of these basic operations would not necessarily make any difference to the character of the subsequent operations and would not divest them of their character of agricultural operations, so that if in a particular case one found that the forest was of spontaneous growth, even so if forestry operations were carried on in such forests for the purpose of furthering the growth of forest trees, these operations would also enjoy the character of agricultural operations. If breeding and rearing of live-stock, dairying, butter and cheese-making etc., could be comprised within the term "agriculture", it was asked, why should these also be not classed as agricultural operations.

Considerable stress was laid on the fact that section 4(3)(viii) of the Act enacted a provision in regard to the exemption of "agricultural income" from assessment and it was contended that exemptions should be liberally construed. Reliance was placed on

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the observations of Viswanatha Sastri, J., in Commissioner of Income-tax, Madras v. K.E. Sundara Mudaliar and Others [\[1950\] 18 ITR 259, 271](#) :

"Exemption from tax granted by a statute should be given full scope and amplitude and should not be whittled down by importing limitations not inserted by the Legislature".

Mookerjee, J., in Commissioner of Agricultural Income-tax, West Bengal v. Raja Jagadish Chandra Deo Dhabal Deb [\[1949\] 17 ITR 426, 438](#) also expressed himself similarly :

"and the present-day view seems to be that where an exemption is conferred by statute, that clause has to be interpreted liberally and in favour of the assessee but must always be without any violence to the language used. The rule must be construed together with the exempting provisions, which must be regarded as paramount".

He also quoted a passage from Upper India Chamber of Commerce v. Commissioner of Income-tax, C.P. & U.P. [\[1947\] 15 ITR 263](#) :

"It is needless to observe that, as in the present case, we are concerned with the interpretation of an exemption clause in a taxing statute, that clause must be, as far as possible, liberally construed and in favour of the assessee, provided no violence is done to the language used".

It was also pointed out that "Taxes on agricultural income" formed a head of legislation specified in item 46 of List II of the Seventh Schedule to the Constitution and should be liberally construed, with the result that agriculture should be understood in the wider significance of the term and all agricultural income derived from agriculture or so understood should be included within the category. There was authority for the proposition that the expression "agricultural land" mentioned in Entry 21 of List II of the Seventh Schedule to the Government of India Act, 1935, should be interpreted in its wider significance as including lands which are used or are capable of being used for raising any valuable plants or trees or for any other purpose of husbandry. (See Sarojinidevi v. Shri Krishna Anjaneya Subrahmanyam and Others ILR [1945] Mad. 61 and Megh Raj v. Allah Rakhia [1942] FCR 53, 62).

While recognizing the force of the above expressions of opinion we cannot press them into service in favour of the assessee for the simple reason that "agricultural income" has been defined in the Constitution itself in article 366(1) to mean agricultural income as defined for the purposes of enactments relating to Indian Income-tax and there is a definition of "agricultural income" to be found in section 2(1) of the Indian Income-tax Act. We have therefore got to look to the terms of the definition itself and construe the same regardless of any other consideration, though, in so far as the terms "agriculture" and "agricultural purposes" are concerned, we feel free, in view of the same not having been defined in the Act itself, to consider the various meanings which have been ascribed to the same in the legal and other dictionaries.

We may also note here the dictionary meanings of the terms "Forestry" and "Cultivation". The Shorter Oxford Dictionary, Vol. I, page 735, gives the meaning of "forestry" as the "science and art of forming and cultivation forests, management of growing timber".

Webster's New International Dictionary, Vol. I, page 990, gives the following meaning of forestry:

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"Science and art of farming, caring for, or cultivating forests; the management of growing timber".

Webster's New International Dictionary, Vol. I, page 643, while talking of cultivation, says that "to cultivate" means "(1) to prepare, or to prepare and use, for the raising of crops; to till; as, to cultivate the soil; to loosen or break up the soil about (growing crop or plants) for the purpose of killing weeds, etc., especially with a cultivator, as to cultivate the corn;

(2) to raise, or foster the growth of, by tillage or by labour and care; to produce by culture; as to cultivate roses; to cultivate oysters".

Whether the narrower or the wider sense of the term "agriculture" should be adopted in a particular case depends not only upon the provisions of the various statutes in which the same occurs but also upon the facts and circumstances of each case. The definition of the term in one statute does not afford a guide to the construction of the same term in another statute and the sense in which the term has been understood in the several statutes does not necessarily throw any light on the manner in which the term should be understood generally. The decided cases disclose a variety of opinions in regard to the connotation of the terms "agriculture" and "agricultural purposes". At one time "agriculture" was understood in its primary sense of cultivation of field and that too for production of food crops for human beings and beasts. This limited interpretation could not be adhered to even though tilling of the land, sowing of the seeds, planting or similar work on the land were the basic operations, the scope of the crops produced was enlarged and all crops raised on the land, whether they be food crops or not, were included in the produce raised by agriculture. There was, however, another school of thought which extended the term "agriculture" and included within its connotation not only the products raised by the cultivation of the land but also allied activities which had relation to the land and operations which had the effect of fostering the growth, preservation and maintenance as also the regeneration of the products of the land, thus bringing within its compass not only the basic agricultural operations but also the further operations performed on the products of the land even though they were not necessarily accompanied by these preliminary basic operations. As against these cases which dealt with these preliminary basic operations and also the further operations either by themselves or in conjunction with the former, which of course necessarily involved the expenditure of human skill and labour in carrying out those operations, there were instances of products of land which grew wild or were of spontaneous growth without the expenditure of human skill and labour and which it was agreed on all hands could not be comprised within "agriculture" and the income from which could not fall within the definition of "agricultural income". We shall briefly discuss the various cases dealing with these different aspects and try to evolve some principle therefrom which would serve as a guide in the determination of the question before us.

Kunhayen Haji v. Mayan [1893] ILR 17 Mad. 98 was the earliest case in which it was held that a lease of a coffee garden was not an agricultural lease within the meaning of the Transfer of Property Act, section 117. The case, however, concerned itself with the situation where as far as the Court could gather from the karar the lease was of the coffee plants only. There was no further discussion of the legal position and it may be noted that Shephard, J., who was a party to this decision stated in the later case of Murugesu Chetti v. Chinnathambi Gounden [1901] ILR 24 Mad. 421, 423 that he was wrong in the opinion he expressed with regard to a coffee garden in this case.

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Murugesu Chetty v. Chinnalhambi Goundan [1901] ILR 24 Mad. 421, 424 also was concerned with section 117 of the Transfer of Property Act. The lease there was a lease of land for the cultivation of betel and the Court held that such a lease was an agricultural lease falling under section 117. Bhashyam Ayyangar, J., who delivered the main judgment of the Court discussed the dictionary meanings of the term "agriculture" and stated that in section 117 of the Transfer of Property Act it was used in its more general sense as comprehending the raising of vegetables, fruits and other garden products as food for men or beast, though some of them may be regarded in England as products of horticulture as distinguished from agriculture. The learned Judge considered the distinction between "agriculture" and "horticulture" and observed :

"The distinction between agriculture when it is used otherwise than in its primary and more general sense and horticulture is a fine one even in England, and in India, especially, it will be impossible in the case of several products of the land to draw a line between agriculture and horticulture according to English notions. The only practical distinction which I can suggest and one which will give effect to the policy of the Legislature in exempting agricultural leases from the operation of section 107, etc. of the Transfer of Property Act is to regard as agriculture, as distinguished from horticulture, not only all field cultivation by tillage but also all garden cultivation for the purpose chiefly of procuring vegetables or fruits as food for man or beast and other products fit for human consumption by way of luxury, if not as an article of diet".

He then discussed the policy of exemptions setting out the observations of Cave, J., in Ellis & Co. v. Hilse [1889] LR 23 QBD 24 : "The very object of this exemption is the well-known one of favouring agriculture—an old object of English legislation in favour of a very important industry", and stated:

"This observation of Mr. Justice Cave will apply with much greater force in this country where the agricultural industry is more important than in England and is one that is common to wet cultivation as to garden and dry cultivation, the object of all such cultivation being chiefly to procure food for men and cattle and other products of the soil which are usually consumed by the people as gentle stimulants or by way of luxury. Betel leaf is an article of daily consumption with all classes in this country as tobacco leaf is with most classes and betel vine is generally grown side by side with plantains, the products of which are among the chief articles of vegetable food".

The lease in that case being one for the cultivation of betel was therefore held to be agricultural lease and Shephard, J., agreed with this conclusion revising the opinion which he had expressed earlier in Kunhayan Haji v. Mayan [1893] ILR 17 Mad. 98 :

In Raja of Venkatagiri v. Ayyappa Reddy [1913] ILR 38 Mad. 738 the question was whether land usually fit only for pasturing cattle and not for cultivation, i.e., ploughing and raising agricultural crops, was "ryoti" land, though it might have been "old waste" and a tenant of such land was a "ryot" and any amount agreed to be paid for pasturing cattle was "rent" within the definitions of section 3 of the Madras Estates Land Act (Mad. Act I of 1908). The Court held that such land was not "ryoti" land inasmuch as it was not fit for ploughing and raising agricultural crops. The ordinary meaning of "agriculture" was taken to be "the raising of annual or periodical grain crops through the operations of ploughing sowing, etc". (Per Sadasiva Ayyar, J., at p. 741).

Chief Commissioner of Income-tax, Madras v. Zamindar of Singam-patti [1922] ILR 45 Mad. 518 was a reference arising out of the assessment for income-tax under Act VII of

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1918 of the income derived by the Zamindar of Singampatti from forests and fisheries within the ambit of his Zamindari. The assessee objected to the assessment (i) on the ground that the income was agricultural income within the meaning of section 4 of the Act and, therefore, not chargeable to income-tax; (ii) that the assessment was illegal as contravening the terms of his permanent sanad for the Zamindari and the provisions of Regulation XXV of 1802. The Court held that where the peishkush of a permanently settled estate was fixed in commutation not only of the rentals of the cultivated lands but also of all income which might be derived from forests or fisheries, both under the terms of the sanad and section 1 of Regulation XXV of 1802, these incomes were exempt from further taxation by the Government, and section 3 of the Income-tax Act did not abrogate this exemption. In view of this conclusion the Court did not think it necessary to determine whether income from forests or fisheries came under the definition of "agricultural income". The Court, however, pointed out that "a reference to Murray's and Webster's Dictionaries shows that the word 'agriculture', while sometimes used in the narrow sense of the art or science of cultivating the ground, is also used in a much wider sense so as to include even 'forestry,' according to Webster. In which sense it was used by the framers of the Income-tax Act would be a matter for determination and to this end it would not be out of place to consider the probable reason for the exemption of agricultural income from income-tax. No other reason is suggested than the equity of exempting from further burden income which had already paid toll to the State in the shape of land revenue".

The question therefore whether the income from forests would be "agricultural income" within the meaning of section 4 of the Income-tax Act was thus left open, and the decision that income from forests was not liable to income-tax was reached under the terms of the sanad and of section 1 of Regulation XXV of 1802.

Kaju Mal v. Salig Ram [1919] PR No. 19 p. 237 was concerned inter alia with a field in which tea was grown and the question was whether the land fell within the definition of "agricultural income" or "village immovable property" as given in section 3(1) and (ii) of the Punjab Pre-emption Act, 1905. The Court held that fields planted with tea bushes were fields used for agricultural purposes and this decision was affirmed by the Privy Council in *Kaju Mall v. Salig Ram* [1923] ILR 5 Lah. 50. It was held that the words "agricultural purposes" in section 2(iii) of the Punjab Alienation of Land Act, 1900, included the cultivation of tea; consequently land which was not occupied as the site of any building in a town or village, and was occupied or let for the cultivation of tea was "agricultural land" within the meaning of section 3(1) of the Punjab Pre-emption Act, 1905.

Emperor v. Probhat Chandra Barua [1924] ILR 51 Cal. 504 was a case under the Indian Income-tax Act and the classes of income derived from permanently settled estates were "1. Income from fisheries. 2. Income from land used for stacking timber. 3. Income from pasturage". The income from the first two heads was certainly not agricultural income or income derived from "land which is used for agricultural purposes" within the meaning of sections 2 and 4 of the Act. But income derived from pasturage was held to be agricultural income which could not lawfully be charged with income-tax. There was a difference of opinion between Rankin, J., and Page, J., in regard to the liability of income from fisheries and income from land used for stacking timber based on the construction of the Permanent Settlement Regulations of 1793. But that is immaterial for our present purposes. What is material is that both the learned Judges were unanimous in their opinion that income from pasturage was income

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derived from "land which is used for agricultural purposes" and was therefore within the exemption given by section 4(3)(viii) to agricultural income as defined by section 2(i)(a) of the Act.

In *Kesho Prasad Singh v. Sheo Pragash Ojha* [1924] ILR 46 All. 831 the Privy Council held that a grove was not land "held for agricultural purposes" within the meaning of section 70 of the Agra Tenancy Act, 1901, affirming the decision of the High Court of Allahabad that it was impossible to hold that that section had any application whatever to such a property as the grove in fact was.

Commissioner of Income-tax, Madras v. Manavedan Tirumalpad [1930] ILR 54 Mad. 21 was also a decision under the Indian Income-tax Act (XI of 1922) and the assessee there was assessed by the Income-tax Officer for the year 1928-29 on the amount received by the sale of timber trees cut and removed from the forests. The question was whether these amounts were liable as such to income-tax and the Court observed:

".....we are unable to distinguish between the income derived from the sale of paddy which is grown on land and the income derived from the sale of timber cut in a forest ; but the profits earned from the sale of paddy would be assessable to income-tax but for the special exemption given to that income in the Income-tax Act by reason of its being agricultural income. There is no such exemption in the case of income derived from the sale of timber".

There is no further discussion to be found in the judgment which would throw light on the question whether such receipts by the assessee were agricultural income and as such exempt from income-tax.

The later decision of the Madras High Court in *Chandrasekhara Bharathi Swamigal v. Duraisami Naidu* [1931] ILR 54 Mad. 900 however contains an elaborate discussion as to the connotation of the term "agriculture". The case arose under the Madras Estates Land Act (Mad. Act I of 1908) and the question which the Court had to consider was whether growing casuarina trees, i.e., trees for fuel, was an agricultural purpose so as to make the person who held the land for that purpose a "ryot" within the meaning of the Madras Estates Land Act. The Court held that land held for growing casuarina trees was not land held for purposes of agriculture and the person holding the land for that purpose was not a "ryot" within the meaning of the Act. While delivering the judgment of the Court, Reilly, J., embarked upon a consideration of what the term "agriculture" meant and came to the conclusion that agriculture could not be defined by the nature of the product cultivated but should be defined rather by the circumstances in which the cultivation was carried on. He observed at page 902 :

"I agree with the remark of Shephard, J., in *Murugesu Chetti v. Chinnathambi Goundan* [1901] ILR 24 Mad. 421 that a man who plants or maintains trees for firewood is not in ordinary parlance an agriculturist. If we take the strict meaning of 'agriculture' according to its derivation it means the cultivation of a field, the cultivation of an open space, as opposed to horticulture, the cultivation of a comparatively small enclosed space. The cultivation either of the field in agriculture or of the garden in horticulture cannot be confined, I think, to any particular product. With great respect, I do not agree with the opinion of Bhashyam Ayyangar, J., in *Murugesu Chetti v. Chinnathambi Goundan* [1901] ILR 24 Mad. 421 that agriculture implies production of things useful as food for man or beast or other products fit for human consumption by way of luxury. That appears to me to be too narrow an interpretation.

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Still less do I agree with the opinion expressed by Sadasiva Ayyar, J., in Raja of Venkatagiri v. Ayyappa Reddi [1915] ILR 38 Mad. 738 that agriculture is confined to the production of grain crops. I can see no reason why the cultivation in open space of such useful products as cotton, jute, flax and hemp should not be agriculture. Indeed I think agriculture cannot be defined by the nature of the products cultivated, but should be defined rather by the circumstances in which the cultivation is carried on. In some cases it has been suggested that agriculture is confined to tillage. I think it can easily be shown that agriculture was carried on in this world before ploughs were invented. In the present day in many places cultivation is done with spades and not with ploughs. But the planting of timber or firewood trees, which are to stand on the land for a considerable number of years forming plantations or woods or forests, appears to me to be opposed to the idea of agriculture, the cultivation of an open space. It is true that for the purpose of growing trees in a plantation it may be necessary first to prepare the land. Later on it may be necessary to protect and water the young plants. Still later it may be necessary to thin out the plantation. But, when the land is covered with trees which had to stand on it for a number of years, sometimes as long as a century, during most of which period the land itself is untouched, to describe that as agriculture appears to me inappropriate. To my mind it is something very different from the cultivation of a field or of an open space. It may be noticed that in Kesho Prasad Singh v. Sheo Pragash Ojha [1924] ILR 46 All. 831 their Lordships of the Privy Council approved of the opinion expressed by two learned judges of the Allahabad High Court that land let for a grove was not let for an agricultural purpose. It happened that the case then under consideration was one arising under the Agra Tenancy Act. But in that Act there is no definition of 'agriculture'. Therefore both the learned judges of the Allahabad High Court and their Lordships of the Privy Council were, we may take it, considering what is the meaning of the word 'agriculture' in its general sense. I may mention also that in Commissioner of Income-tax v. Manavedan Tirumalpad [1931] ILR 54 Mad. 21 a Full Bench of this Court remarked that income from cutting timber was not agricultural income".

It may be noticed that the learned Judge enlarged the connotation of the term "agriculture" by having regard to the circumstances in which the cultivation was carried on rather than the nature of the products cultivated and embraced within the scope of the term not merely the production of things useful as food for man or beast or other products fit for human consumption by way of luxury but also such useful products as cotton, jute, flax and hemp, though he stopped short at those products and hesitated to include therein growing of trees in plantation where the land was covered with trees which have to stand on it for a number of years.

The last case to be referred in this series is that of Deen Mohammad Mian v. Hulas Narain Singh [1942] 23 Pat. LT 143 where it was held that an orchard is an agricultural land. It was observed:

"The case of an orchard is quite different. Orchard trees ordinarily are, and can be presumed to have been, planted by a man after preparation of the ground which is cultivation and seasonal crops are gathered. Fruit trees also require seasonal attention such as pruning and digging of the soil around the roots, and it cannot be said that this ceases to be cultivation merely because the whole tree is not replanted every year..... In my opinion the land in suit is agricultural land; it is land from which by preparing the soil and planting and cultivating trees the raiyat expects to enjoy periodical returns in the way of produce for food".

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This was a further extension of the idea which had germinated in the opinion expressed by Reilly, J., in Chandrasekhara Bharathi Swamigal v. Duraisami Naidu [1931] ILR 54 Mad. 900 and even plantation of trees in orchards which did not require to be replanted every year was included in the connotation of the term "agriculture".

A still further extension of the term is to be found in the following observations of Viswanatha Sastri, J., in Commissioner of Income-tax, Madras v. Sundara Mudaliar [1950] 18 ITR 259 at page 273 :

"It is a matter of ordinary experience, at least in this part of the country, that mango, coconut, palmyra, orange, jack, arecanut, tamarin and other trees are planted usually in an enclosed land, and that these; trees do not yield any fruit or crop in the yearly years of their growth. They remain on the land for a long number of years yielding fruit only after their maturity. There is no reason why the planting, rearing, watering, fencing and protection of such trees and the gathering of their fruits during the annual seasons should not be held to be 'agriculture.' There is some kind of cultivation or prodding of the soil at the inception when the planting is done and subsequently also at intervals. In the case of coffee grown on hill slopes, there is no ploughing or tillage as in the case of wet and dry fields; but it cannot be maintained that growing coffee is not an agricultural operation. Coffee and tea plants stand on the soil for many years and their produce is gathered periodically. In the padugai lands or lands lying between the sandy bed and the flood bank of rivers, plantains are grown in many places in deltaic tracts. Young plants are often brought and planted in pits dug for the purpose in a row with sufficient interspaces. Trenches are dug by the side of a row of plantain trees in order to catch and retain water. The plantain trees last for about two years, and from each tree off-shoots spring up and grow in place of the parent tree. There is thus a natural replenishment of the plantain garden. It cannot be said that the raising of plantains is not an agricultural purpose. Similarly in the case of sugarcane the plants stand on the land for two years or a little more, and there are usually two cuttings. Castor plants stand for some years on the soil and the seeds are periodically gathered in. Bamboo is often planted in enclosed lands by digging pits, filling them with sand and manure and then planting the young stalks in a bunch at suitable distances. Watering is done for the first 2 or 3 years. Every year, the land surrounding each bamboo cluster is dug with a spade and small earthen ridges are put up so as to catch and retain rain water. Bamboo plants attain maturity in about 3 or 4 years, and the thorny branches which grow on the main stem are then fit to be cut off and used for fencing purposes..... I am unable to see why these operations are not agricultural operations".

The cases above noted all of them interpret the term "agriculture" in its narrower sense, though there is a marked progress from the extremely narrow construction put upon it by Bhashyam Ayyangar, J., in Murugesu Chetti v. Chinnathamhi Goundan [1901] ILR 24 Mad. 421 to the somewhat wider connotation thereof adopted by Reilly, J., in Chandrasekhara Bharathi Swamigal v. Duraisami Naidu [1931] ILR 54 Mad. 900 and by Viswanatha Sastri, J., in Commissioner of Income-tax, Madras v. Sundara Mudaliar [1950] 18 ITR 259, 271. It is interesting to note that all throughout these cases runs the central idea of either tillage of the land or sowing of seeds or planting or similar work on the land which invests the operation with the characteristic of agricultural operations and whenever that central idea is fulfilled there is the user of land for agricultural purposes and the income derived therefrom becomes agricultural income.

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There were, on the other hand, decisions which interpreted the term "agriculture" in the wider sense as including all activities in relation to the land, even though they did not comprise these basic agricultural operations. *King Emperor v. Alexander Allen* [1902] ILR 25 Mad. 627, 629, 630 involved the interpretation of the expression "land used solely for agricultural purposes" in sub-section (3) of section 63 of the Madras District Municipalities Act (Mad. Act IV of 1884) as amended by the Madras District Municipalities Amendment Act (Mad. Act III of 1897) and the Court held that the lands on which potatoes, grains, vegetables, etc., were grown, as well as pasture land, were used "solely for agricultural purposes" within the meaning of the sub-section. The Court adopted the definition of agricultural land given in the Agricultural Rates Act (59 and 60 Vict., c. 16), s. 9 :

"The expression 'agricultural land' means any land used as arable, meadow, or pasture ground only, cottage gardens exceeding one-quarter of an acre, market gardens, nursery grounds, orchards, or allotments, but does not include land occupied together with a house as a park, gardens other than as aforesaid, pleasure grounds or any land kept or preserved mainly or exclusively for purposes of sport or recreation or land used as a race course,"

and also the meaning ascribed to it in Murray's Oxford English Dictionary quoted above and observed :

"We also note that it is there pointed out that the restriction of the word agriculture to tillage, as in the following quotation, is rare. The lands were not fields for agriculture but pastures for cattle. We believe that we cannot do better than follow these definitions in attempting to decide what, for the purposes of sub-section (3) of section 63 of the Municipalities Act, are or are not lands used solely for agricultural purposes..... We do not consider that any distinction can be drawn between large and small plots of lands on which roots or grains are cultivated. All such land must be held to be land used solely for agricultural purposes..... Counsel has urged before us that these so-called waste lands are pasture lands and as such should be held to be lands used solely for agricultural purposes..... If, therefore, it could be shown that these so-called waste lands were in reality pasture grounds or lands used for "rearing livestock", we should certainly decide that they were lands used solely for agricultural purposes".

The learned Judges there were influenced by the dictionary meaning of the term agriculture as given in Murray's New Oxford Dictionary and understood the term agriculture in the wider sense as including user of land for rearing live-stock also.

In *Panadai Pathan v. Ramaswami Chetti* [1922] ILR 45 Mad. 710 a lease of land was given for growing casuarina trees and the question was whether such a lease was a lease for agricultural purposes within the meaning of section 117 of the Transfer of Property Act. The Court held that it was a lease for agricultural purposes and therefore did not require a registered instrument for its creation. Spencer, J., in the course of his judgment differed from the opinion of Bhashyam Ayyangar, J., in *Murugesha Chetti v. Chinnathambi Goundan* [1901] ILR 24 Mad. 421 that the word agriculture in its more general sense comprehends the raising of vegetables, fruits and other garden products as food for man or beast, if the learned Judge intended thereby to limit it to the raising of food products. For to so restrict the word would be to exclude flower, indigo, cotton, jute, flax, tobacco and other such cultivation. He also differed from the opinion expressed by Sadasiva Ayyar, J., in *Seshayya v. Rajah of Pittapur* [1916] 31 MLJ 284;

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1916 MWN 396 and Raja of Venkatagiri v. Ayyappa Reddi [1915] ILR 38 Mad. 738 that agriculture meant the raising of annual or periodical grain crops through the operation of ploughing, sowing, etc., as such definition would exclude sugar cane, indigo, tea, flower, tobacco, and betel cultivation from agriculture. He then referred to the dictionary meaning of the term "agriculture" as given in the Oxford Dictionary and Bouvier's Law Dictionary set out above and observed:

"In my opinion agriculture connotes the raising of useful or valuable products which derive nutriment from the soil with the aid of human skill and labour; and thus it will include horticulture, arboriculture and sylviculture in all cases where growth of trees is effected by the expenditure of human care and attention in such operations as those of ploughing, sowing, planting, pruning, manuring, watering, protecting, etc".

Ramesam, J., who delivered a concurring judgment referred to the definition of agriculture adopted in Wharton's Law Lexicon and was of opinion that it would include the use of land as "meadow or pasture or . orchard or osier or woodland, or for market gardens, nursery grounds or allotments etc". but would exclude all cultivation of fibrous plants such as cotton, jute and linen and all plants used for dyeing purposes, such as indigo etc. and all timber trees and flowering plants etc. According to him, the rearing of a casuarina plantation requires some preparation of the ground and subsequent care by watering the plants and he was, therefore, of opinion that rearing of casuarina trees was agricultural purpose within the meaning of section 117 of the Transfer of Property Act. It may be observed however that according to both the learned Judges some preparation of the ground or some expenditure of human care and attention in such operations as those of ploughing, sowing, planting, etc., was considered essential for constituting these operations agricultural operations.

In Commissioner of Income-tax, Burma v. Kokine Dairy, Rangoon [1938] 6 ITR 502, 509 the question was whether income from a dairy farm and the milk derived from the farm is agricultural income and exempt as such from income-tax. Roberts, C.J., who delivered the opinion of the Court observed:

"Where cattle are wholly stall-fed and not pastured upon the land at all, doubtless it is trade and no agricultural operation is being carried on : where cattle are being exclusively or mainly pastured and are none the less fed with small amounts of oil-cake or the like, it may well be that the income derived from the sale of their milk is agricultural income. But between the two extremes there must be a number of varying degrees, and the task for the Income-tax Officer is to apply his mind to the two distinctions and to decide in any particular case on which side of the fence, if I may use the term, the matter falls".

He then referred to the case of Lean and Dickinson v. Ball [1925] 10 Tax Cas. 341 where Lord Cullen had said that he proceeded on the footing that the case, which was one dealing with poultry-farming, was one in which the poultry derived sustenance to a material extent from the produce of the ground.

This method of approach was on a par with the one adopted by Lord Wright in Lord Glanely v. Wightman [1933] AC 618, 638 where it was observed :

"If authority were needed, the provisions just quoted do at least show that profits of 'occupation' include gains from the animal produce as well as the agricultural, horticultural or arboricultural produce of the soil;.....equally it is obvious that the rearing of animals, regarded as they must be as products of the soil—since it is

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from the soil that they draw their sustenance and on the soil that they live—is a source of profit from the occupation of land, whether these animals are for consumption as food (such as bullocks, pigs or chickens), or for the provision of food (such as cows, goats or fowls), or for recreation (such as hunters or race horses), or for use (such as draught or plough horses). All these animals are appurtenant to the soil, in the relevant sense for this purpose, as much as trees, wheat crops, flowers or roots though no doubt they differ in obvious respects. Nor is it now material towards determining what are products of occupation that farming has developed in its use of mechanical appliances and power, not only in such matters as ploughing, reaping, threshing, and so forth, but in such ancient methods of preparing its products as making cream, butter or cheese. The farmer is still dealing with the products of the soil, and Schedule B covers the income".

The House of Lords were dealing with the profits of occupation of land not with income derived from user of land for agricultural purposes and, therefore, not restricted in their interpretation of the term "occupation" and all these activities which were described therein might as well have been comprised within the scope of the taxing statutes. What we have, however, to see is whether these activities fall within the connotation of the terms "agriculture" and "agricultural purpose" which are the only terms to be considered for bringing the income derived therefrom within the definition of agricultural income in section 2(1)(a) of the Indian Income-tax Act.

In Moolji Sicka & Co., In re [\[1939\] 7 ITR 493](#) Derbyshire, C.J., understood the term "agriculture" in a wider sense as including operations not only on the land itself but on the shrubs which grew on the soil and were according to him a part of the soil. The assessee were manufacturers of biri, a kind of cigarette consisting of tobacco wrapped in tendu leaves. The tendu plant was of entirely wild growth and propagated itself without human agency in jungle and waste lands. The assessees had taken several villages on "lease" for plucking the leaves of such plants and the work done by the assessees consisted in pruning the trees and burning the dead branches and dried leaves lying on the ground. The Court held that the profits accruing to the assessees by the sale of tendu leaves was not exempt as agricultural income but to the extent to which pruning of the tendu shrub occurred, there was in a technical and legal sense a cultivation of the soil in which the shrub grew and, therefore, so much of the income as was shown by the assessee to be profit derived from the collection and preparation, so as to make them fit to be taken to the market, of tendu leaves produced by the pruning of the tendu shrubs was exempt as agricultural income under section 2(1) and section 4(3)(viii) of the Indian Income-tax Act. The learned Chief Justice observed:

"Cutting back or pruning the wild tendu clearly contributes to the growth of the leaves in that shrub and I am prepared to hold that the pruning of the shrub is a cultivation of the shrub and as the shrub grows in the soil and as a part of it, is a cultivation of the soil in a legal and technical sense".

The word "cultivation" was here understood by the learned Chief Justice not only in the sense of cultivation of the soil but in the sense of cultivation of the tendu shrubs which grew on the soil and were therefore a part of it. The operations which were performed on the shrubs were certainly not operations performed on the soil itself and the opinion expressed by the learned Chief Justice has certainly given an extended meaning to the term "cultivation" as used with reference to the soil. It is significant, however, to observe that cultivation of the soil was considered an essential ingredient which

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rendered the income derived from the tendu leaves agricultural income within the meaning of its definition in section 2(1)(a) of the Act.

Commissioner of Income-tax, Madras v. Sundara Mudaliar [1950] 18 ITR 259 contains a further extension of this idea where Viswanatha Sastri, J., observed at page 274:

"Pasture land used for the feeding and rearing of live-stock is land used for agricultural purposes: Emperor v. Alexander Allen [1902] ILR 25 Mad. 627. Rearing of live-stock such as cows, buffaloes, sheep and poultry is included in 'husbandry'. These animals are considered to be the products of the soil, just like crops, roots, flowers and trees, for they live on the land and derive their sustenance from the soil and its produce : Glanely v. Wightman [1933] AC 618, 638; 1 ITR 255 ; Commissioner of Income-tax, Burma v. Kokine Dairy Co. [1938] 6 ITR 502. It is not therefore legitimate, in my opinion, to confine the word 'agriculture' to the cultivation of an open field with annual or periodical crops like wheat, rice, ragi, cotton, tobacco, jute, etc. Casuarina is usually raised on dry lands of poor quality, and it is usual to find the same land used alternatively for the cultivation of ordinary cereal crops like groundnut, gingelly, cholam, kambu, etc. and for the raising of casuarina plantations. The land bears the dry assessment whatever be the nature of the crop raised".

This enlarged connotation of the term "agriculture" has been tinged by the dictionary meanings ascribed to it in Murray's Oxford Dictionary and Webster's Dictionary quoted above which understood the term as including the allied pursuits of rearing, feeding and management of live-stock and also including husbandry, farming, horticulture, etc., in the widest sense, as also butter, cheese-making, etc. We shall have to consider at the appropriate stage as to how far such enlargement is warranted by the definition of "agricultural income" as given in section 2(1)(a) of the Indian Income-tax Act.

The cases above noted all of them involve some expenditure of human skill and labour either on the land or the produce of the land, for without such expenditure there would be no question of the income derived from such land being agricultural income. Where, however, the products of the land are of wild or spontaneous growth involving no expenditure of human labour and skill there is unanimity of opinion that no agricultural operations were at all involved and there is no agricultural income. In such cases, it would be the absence of any such operations rather than the performance thereof which would be the prime cause of growth of such products.

The cases bearing on this aspect of the question may be noted.

Kaju Mal v. Salig Ram [1919] PR No. 19. p. 237 is the earliest case where a stretch of natural forest came in for consideration. It was a forest land and it was held to be agricultural land or land used for purposes subservient to agriculture or for pasture, and, therefore, exempt from pre-emption under section 4 of the Punjab Pre-emption Act, 1905.

There was no discussion of any legal principles in that decision but when we come to the next case of Province of Bihar v. Maharaja Pratap Udai Nath Sahi Deo [1941] 9 ITR 313, 328 which was a case under the Bihar Agricultural Income-tax Act (Bihar Act VII of 1938), we find the ratio of these decisions laid down in clear terms. The assessee there derived their income from "Bankar" and "Phalkar" "Bankar" was income derived from the sale of wood from virgin jungle or jungles not actually cultivated; and "Phalkar" was income derived from the fruits of wild jungle trees and

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bushes. The question was whether this income was agricultural, income within the meaning of the term as defined in the Act. Harries, C.J., who delivered the judgment of the Court observed:

"Bankar.—It appears that this head of income was derived from virgin jungles or jungle land not actually cultivated. A few forest guards appear to have been employed to protect the property, but it cannot be said that the trees have grown as the result of cultivation. They appear to have grown naturally in the jungles without the intervention of the human agency, and in my view the growth of these trees cannot be said to result from the cultivation of the soil. In fact, it was the absence of cultivation that permitted the area to develop into a jungle.....".

"Phalkar.—This is income derived from wild jungle fruits, and it cannot be said that the fruit gathered is the result of the cultivation but, on the contrary, it is the result of the absence of cultivation. Trees and bushes yielding these fruits grow not on cultivated soil but on the land not under cultivation and frequently the more neglected and wild the land is the thicker grow these wild bushes and trees yielding such crop. Practically in all cases the crop is the result of want of cultivation and not the result of cultivation. In my judgment it is not established that the income described as phalkar in these cases is income derived from land used for agriculture or from agriculture and is, therefore, not assessable to agricultural income-tax".

In *Raj Mustafa Ali Khan v. Commissioner of Income-tax, U.P. & C.P.* [1945] 13 ITR 98, which went up to the Privy Council, the Oudh Chief Court held that income from the sale of forest trees growing on land naturally and without the intervention of human agency, even if the land was assessed to land revenue, was not agricultural income within the meaning of section 2(1)(a) of the Income-tax Act. The Court followed an earlier decision given by it in the case of *Maharaja of Kapurthala v. Commissioner Income-tax, C.P. & U.P.* [1945] 13 ITR 74, 93, in which the Court had discussed the meaning to be ascribed to the term "agriculture" and observed at page 93 :

"A fiscal statute should no doubt be construed strictly and, if there be any doubt about its construction, the subject must be given the benefit. But we do not feel any doubt that the expression 'land used for agricultural purposes' in the Income-tax Act does not extend to forests of spontaneous growth, where nothing is done to prepare the soil for trees to be planted therein, and where the growth of the trees is not fostered by tillage. We should not be justified in giving the taxpayer the benefit of the dictionary definition when it is not disputed that the meaning of the term 'agricultural' cannot be extended for the purpose of the Income-tax Act to all the secondary implications therein suggested. We therefore construe the term in its primary sense. We hold accordingly that income from the sale of forest trees of, spontaneous growth growing on land which is assessed to land revenue is not agricultural income within the meaning of section 2(1)(a) of the Income-tax Act".

Yuvarajah of Pithapuram v. Commissioner of Income-tax, Madras [1946] 14 ITR 92, 99, was also a case where the assessee derived income from forests of spontaneous growth by the sale of wood, bark, leaves, other usufruct of trees, minor forest produce and licence fees and from trees that had grown wild in non-forest areas. The Zamindari of Pithapuram was a permanently settled estate under the Permanent Settlement Regulation (Regulation XXV of 1802) and it was contended that the imposition of income-tax in respect of income other than agricultural income derived from a permanently settled estate would not be a breach of Regulation XXV of 1802 relating to

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permanent settlement. Reliance was placed in support of this position on the decision in *Chief Commissioner of Income-tax v. Zamindar of Singampatti* [1922] ILR 45 Mad. 518. It was however held that the case was impliedly overruled by the decision of the Privy Council in *Probhat Chandra Barua v. King Emperor* [1930] LR 57 IA 228 and the Court proceeded to consider whether income derived from forests of spontaneous growth by the sale of wood, bark, leaves, other usufruct of trees, minor forest produce and licence fees and from trees which have grown wild in non-forest areas was agricultural income within the meaning of section 2(1) of the Indian Income-tax Act. The Court observed :

"There is ample authority for holding that income derived from trees which have grown wild is not agricultural income, but, without the aid of authority, we should have no hesitation in saying that to describe it as such would involve a distortion of the meaning of the word 'agriculture'".

and such income was accordingly held to be not agricultural income within the meaning of section 2(1) of the Act. (It may be noted that the appellant preferred an appeal to the Privy Council against this decision but the same was dismissed : vide *Yuvarajah of Pithapuram v. Commissioner of Income-tax, Madras* [1949] 17 ITR 445.)

Benoy Ratan Banerji v. Commissioner of Income-tax, U.P., C.P. & Berar [1947] 15 ITR 98, was another case in which the assessee derived income from the sale of timber from his Zamindari on which there had been for many years a number of forest trees, khar and wild plants. There was no evidence on the record to show that the growth of the trees in question was the result of any actual cultivation by the assessee at all. The various trees which he sold were of spontaneous growth, not having grown as a result of actual cultivation. The Court held that in order to come within the definition of "agricultural income" the income had not only to be derived from land which was used for "agricultural purposes" but such income had also to be derived by the process of "agriculture". The Court observed that being trees of spontaneous growth, to the production of which the assessee had made no contribution by way of cultivation, no question could arise either of the land on which they grew being "used for agricultural purposes" or of the trees themselves and the income they produced being the result of "agriculture". The Court accordingly held that the income from the sale of forest trees of spontaneous growth, growing on land naturally, and without the intervention of human agency, was not agricultural income within the meaning of section 2(1)(a) of the Income-tax Act even if such land was subject to a local rate assessed and collected by officers of the Crown as such and such income was not exempt from income-tax under section 4(3)(viii) of the Act.

A decision of the Nagapur High Court in *Beohar Singh Raghubir Singh v. Commissioner of Income-tax, U.P., C.P. and Berar* [1948] 16 ITR 433 (delivered on September 4, 1946, but reported in 1948), may be noted here. There also the income in question was derived by the assessee from the sale of forest produce such as timber, tendu leaves, mohua flowers, harra nuts etc., derived from a forest which was not a cultivated one but was of spontaneous growth. The question was whether such income was agricultural income and as such exempt from taxation under section 4(3)(viii) of the Indian Income-tax Act. The Court considered the dictionary meanings of the term "agriculture" which included forestry within its compass but observed that the essence of agriculture, even when it was extended to include "forestry", was the application of human skill and labour ; without that it could neither

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be an art nor a science and that was according to them the determining factor in such class of cases. The Court then referred to the various decisions referred to above and cited with approval the following passage from the judgment of the Federal Court in *Meghraj v. Allah Rakhia* [1942] FCR 53, 62 :

"Their Lordships confirmed a decision of the Punjab Chief Court to the effect that land used as a tea garden was used for 'agricultural purposes'. In the judgment of the Chief Court (which was generally approved by their Lordships) it was observed that 'the term "agricultural land" is used in the Act of 1905 in its widest sense to denote all land which is tilled'..... The Chief Court had held that land covered by a natural forest was not agricultural land, and this view also would seem to have been confirmed by the Judicial Committee "

and they further proceeded to observe:

"We have underlined the word 'tilled' because, in our opinion, that brings out the distinction which we have sought to draw between an agricultural and a non-agricultural purpose. The decisions referred to are *Kaju Mal v. Saligram* and *Kaju Mall v. Saligram* [1919] PR No. 19 p. 237 and [1923] ILR 5 Lah. 50".

The Court came to the conclusion that it was essential that the income should be derived from some activity which necessitated the employment of human skill and labour and which was not merely a product of man's neglect or inaction except for the gathering in of the spoils. Not only must the assessee labour to reap the harvest. But he must also labour to produce it, and they accordingly held that the income in question was not agricultural income and was not exempt from taxation under section 4(3)(viii) of the Indian Income-tax Act.

We now come to the decision of the Privy Council in *Raja Mustafa Ali Khan v. Commissioner of Income-tax, U.P., Ajmer and Ajmer Merwara* [1948] 16 ITR 330. It will be recalled that the Oudh Chief Court had in *Raja Mustafa Ali Khan v. Commissioner of Income-tax, U.P. & C.P.* [1945] 13 ITR 98, decided that income from the sale of forest trees growing on land naturally and without the intervention of human agency even if the land was assessed to land revenue was not agricultural income within the meaning of section 2(1)(a) of the Indian Income-tax Act. The appellant took an appeal to the Privy Council against this decision and the main question for consideration before their Lordships was whether the land was used for agricultural purposes and the income derived therefrom was agricultural income. Their Lordships of the Privy Council observed that the income in question

"was derived from the sale of trees described as forest trees growing on land naturally and the case has throughout proceeded upon the footing that there was nothing to show that the assessee was carrying on any regular operations in forestry and that the jungle from which trees had been cut and sold was a spontaneous growth. Upon these facts the question is whether such income is [within section 2(1)(a) of the Act] rent or revenue.....or alternatively.....whether such income was, within section 2(1)(b), income derived from such land by agriculture".

"It appears to their Lordships that, whether exemption is sought under section 2(1)(a) or section 2(1)(b), the primary condition must be satisfied that the land in question is used for agricultural purposes; the expression 'such land' in (b) refers back to the land mentioned in (a) and must have the same quality. It is not then necessary to consider any other difficulty which may stand in the way of the assessee. His case fails if he does

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not prove that the land is "used for agricultural purposes". Upon this point their Lordships concur in the views which have been expressed not only in the Chief Court of Oudh but in the High Court of Madras (see Yuvarajah of Pithapuram v. Commissioner of Income-tax, Madras [1946] 14 ITR 92, 99), and the High Court of Allahabad (see Benoy Ratan Benerji v. Commissioner of Income-tax, U.P., C.P. & Berar [1946] 15 ITR 98) and elsewhere in India. The question seems not yet to have been decided whether land can be said to be used for agricultural purposes within the section, if it has been planted with trees and cultivated in the regular course of arboriculture, and upon this question their Lordships express no opinion. It is sufficient for the purpose of the present appeal to say (1) that in their opinion no assistance is to be got from the meaning ascribed to the word 'agriculture' in other statutes and (2) that, though it must always be difficult to draw the line, yet unless there is some measure of cultivation of the land, some expenditure of skill and labour upon it, it cannot be said to be used for agricultural purposes within the meaning of the Income-tax Act. In the present case their Lordships agree with the High Court in thinking that there is no evidence which would justify the conclusion that this condition is satisfied".

It may be noted that the Privy Council also proceeded upon the footing that there was nothing to show that the assessee was carrying on any regular operations in forestry and these observations are patient of argument that if any regular operations in forestry had been carried on the land they might have made a difference to the result. Their Lordships also did not express any opinion on the question whether land can be said to be used for agricultural purposes within the section if it has been planted with trees and cultivated in the regular course of arboriculture. They were, however, definite in their opinion that unless there is some measure of cultivation of the land, some expenditure of skill and labour upon it, the land cannot be said to be used for agricultural purposes within the meaning of the Act. Agricultural operations are thus defined by them to be operations where there was some measure of cultivation of the land, some expenditure of skill and labour upon it. If these conditions were satisfied in regard to any particular land, then such land can be said to be used for agricultural purposes and the income derived therefrom constitute agricultural income within the meaning of section 2(1)(a) of the Act. The term "agriculture" for the purposes of the Indian Income-tax Act was thus in effect defined by their Lordships to mean some measure of cultivation of the land and some expenditure of skill and labour upon it and unless the operations, whether they be agricultural operations or forestry operations, conformed with those definitions, they could not be styled agricultural operations so as to constitute land on which they were performed land used for agricultural purposes.

One should have thought that this decision of the Privy Council would put an end to all controversies with regard to the connotation of the term "agriculture" and "agricultural purposes". That was, however, not to be. The words used by their Lordships in their judgment were cryptic and the controversy arose immediately thereafter as to whether "some measure of cultivation of the land" and "some expenditure of skill and labour upon it" were used by them as cumulative or in the alternative. Considerable ingenuity was exercised in determining what were regular operations in forestry and whether they could be assimilated to agricultural operations which could have the effect of constituting the land upon which they were performed land used for agricultural purposes within the meaning of the Indian Income-tax Act so that income derived therefrom could fall within the definition of "agricultural income" contained therein.

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The first case which came up for consideration after the above decision of the Privy Council was the case of Commissioner of Agricultural Income-tax, West Bengal v. Raja Jagadish Chandra Deo Dhabal Deb [1949] 17 ITR 426, 438 before the Calcutta High Court. The assessee was the Zamindar of Chilkigarh in the district of Midnapore the western part of which contained jungle mahal. The income in question was derived from the sale of sal trees which grew in the forest. The forest was not an uncared for virgin forest. The assessee maintained a staff of one forester, 6 guards and 24 chaukas to look after the forest and for the proper cultivation of the same. The sal trees were generally sold off in blocks when about 15 years old. Annually blocks of about 1,000 acres were sold up. All the trees in the blocks sold up were cut down by the purchasers for sale as fuel and house posts. During the rainy season from the stumps of the trees cut down, new shoots came out which grew into mature trees in 15 years, to be cut down again. In order to prevent damage to the young shoots in the early stages of their growth the areas cut down were closely guarded for one year at least from the time when the block in question had been completely denuded of trees, in order to keep cattle and men off from the lands so that they may not damage the young growing shoots. In order to promote the growth of shoots, the ground was also kept free from undergrowth jungle. This was not cleared at the assessee's expense but the villagers were allowed to clear the grounds of the undergrowth and take the same away free of cost. The existing sal trees in the forests and the sal trees which had been sold off in 1350 B.S. had been grown in the same manner as described above. From the above facts it was clear that human care and skill had been utilised for promoting the growth of the sal trees from which the income was derived in 1350 B.S.

The Court discussed the dictionary meaning of the term "agriculture" and following the decision of the Privy Council in Raja Mustafa Ali Khan v. Commissioner of Income-tax, U.P., Ajmer & Ajmer-Merwara [1948] 16 ITR 330 came to the conclusion that income from a virgin forest or forests of spontaneous growth was not agricultural income. The view that the tilling of the soil was the sine qua non for bringing a pursuit within the term agriculture was also held to have been exploded and it was observed (at page 440) :

"Whether a particular forest is one of spontaneous growth or-not has to be decided on one important consideration as indicated by the Judicial Committee in that decision, i.e., whether there has been "some expenditure of skill and labour upon it".

Reliance was placed upon the further observations of the Privy Council, that, whether there were "any regular operations in forestry" would be a material fact for consideration and it was observed: "To put it in another form, the introduction of human agency and the application of human efforts would be the criteria for consideration" and after discussing several cases on the subject the Court observed at page 441: "On a careful analysis of the reasons given by the learned Judges in the various decisions referred to above it will be apparent that the facts of each particular case must be considered for determining whether there has or has not been sufficient application of human efforts before it can be determined whether the income from a particular forest is agricultural or otherwise".

On the findings of fact recorded by the Tribunal in the case before them the Court was of opinion that the forest in question was not either a virgin forest or containing trees which grew spontaneously and naturally without any human intervention whatever. The circumstance that there was felling of the trees, the new shoots appearing during the

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rainy season without any human intervention, guarding of the new shoots from either being trampled under foot or being browsed by animals and the removal of undergrowth of fallen leaves were considered regular operations in forestry in the forests in question which required the application of human efforts sufficient to include them under the head "agricultural income". It was further observed :

"If the view of the Judicial Committee were to exclude all kinds of income from the category of agricultural income unless there was actual cultivation of the soil, reference to 'regular operations of forestry, would have been unnecessary. Not that there must always be 'some measure of cultivation of the land' and 'some expenditure of skill and labour upon it' but that the proof of either would be sufficient to bring the case within either clause (a) or (b) of section 2(1)(a) of the Act. 'Regular operations in forestry' do require expenditure of skill and labour upon the land on which the forest grows".

The Court, therefore, came to the conclusion that in the special circumstances as disclosed in the case, there were regular operations in forestry and the income derived from forests in question was agricultural income within the meaning of section 2(1)(a) of the Bengal Agricultural Income-tax Act, 1944.

Jyotirindra Narayan Sinha Choudhury v. State of Assam [1951] 19 ITR 379 arose under the Assam Agricultural Income-tax Act, 1939, and the question for the consideration of the Court was whether the amounts realised by the assessee from the sale of sal trees growing in the forest was agricultural income within the meaning of section 2(1) of the Act. There was no evidence to show that these sal trees were of spontaneous growth. Even though the possibility of the forests originally having been of spontaneous growth was recognised, it was an admitted fact that forest trees were protected and fostered in growth by the application of human labour and skill. In these forests, operations in forestry, such as clearing jungles, creepers and climbers, thinning by removal of less healthy trees from thickly grown areas, removal of unsound, crooked and diseased trees, burning of leaves to fertilise the ground, cutting of trees at special heights, reservation of blocks by turns and their operation in cyclic order, preservation of mother trees for the spread of seed, protection of forests from fire, etc., were regularly carried on and regular operations were thus being undertaken for their growth, preservation and regeneration. The Court held that as extensive operations in forestry were employed in the forest of sal trees, the income from the sale of such trees would-be agricultural income as denned in the Assam Agricultural Income-tax Act. In arriving at this conclusion, the Court, relying on the various dictionary meanings of the term "agriculture", observed at page 390 :

"In spite of the diversity as to the scope and purpose of agriculture as revealed by the different definitions, there is one feature which is essentially common to all of these. This is the application of human skill and labour without which there can be no agriculture".

The Court then referred to the decision of the Privy Council in Raja Mustafa Ali Khan v. Commissioner of Income-tax [1948] 16 ITR 330 and after quoting the passage from the judgment above referred to proceeded to observe :

"Their Lordships have not laid down that some measure of cultivation is absolutely necessary before it can be said that land is used for agricultural purposes. In fact 'some measure of cultivation' is placed on a par with some 'some expenditure of skill and labour.' If either of the two conditions exists, the land could be said as being used for

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agricultural purposes. Tillage or actual cultivation would not in their view be an essential pre-requisite of 'agriculture' in its wider implication".

After referring to a decision of the Calcutta High Court in *Hedayet Alt v. Kamalanand Singh* [1912] 17 CLJ 411 and *Commissioner of Agricultural Income-tax v. Raja Jagadish Chandra Deo Dhabal Deb* [1949] 17 ITR 426 the Court observed :

"The review of the authorities considered above leads to the conclusion that purpose within the meaning of the Assam Act can be agricultural even if its achievement does not involve actual cultivation of the soil. In the words of their Lordships of the Privy Council in the case of receipts from the sale of forest trees, the income would be agricultural if there is some expenditure of skill and labour upon it. Regular operations in forestry necessarily involve expenditure of skill and labour. Where, therefore, such operations take place, the income from the sale of trees in the forest would be within the ambit of agricultural income as defined in the Assam Act".

In *Pratap Singh Balbeer Singh v. Commissioner of Income-tax, U.P., C.P. & Berar* [1952] 22 ITR 1, however, the High Court of Allahabad struck a different note. The assessee there derived the income from the sale of forest trees growing on land naturally and spontaneously without the intervention of any human agency but carried on forestry operations working the forest for at least some time on scientific lines in accordance with a scheme of making profits. There was a regular working plan and the assessee was deriving regular income from the forest and spending money to increase the profit. The Court held that "agriculture" and "agricultural purposes" with reference to land clearly implied that some operations must be carried on the land itself ; human skill and labour should be used for the purpose of ploughing the land, manuring it, planting the trees or some similar process, and that mere weeding, care and preservation of forest trees which grew spontaneously were not operations on the land which were necessary to constitute the process a process of agriculture. In the course of the judgment, the Court interpreted the above passage from the judgment of their Lordships of the Privy Council in *Raja Mustafa AH Khan v. Commissioner of Income-tax* [1948] 16 ITR 330 as under :

"It is quite clear that their Lordships were of the view that, for income to be agricultural income, the essential element that must exist is that there should be 'some measure of cultivation of the land' or 'some expenditure of skill and labour upon it'. The language used by their Lordships of the Privy Council shows that the expenditure of skill and labour must be upon the land and not merely on the trees which are already growing on it as a result of spontaneous growth".

Mere regeneration and preservation of trees could not be said to be expenditure of human skill and labour upon the land itself and the land could not under the circumstances be held to be used for agricultural purposes nor could it be held that any process of agriculture was being carried on. The Court observed that planned and scientific exploitation of a forest of spontaneous growth, though it might yield regular income, would not be income from agriculture as no operations were carried out and no human skill and labour was expended in such a case on the land itself.

Raja Benoy Kumar Sahas Roy v. Commissioner of Income-tax, West Bengal [1953] 24 ITR 70, the judgment under appeal before us here, struck a middle path. The Tribunal had found that except the sowing of seeds, the operations carried out, though equally necessary for the maintenance and upkeep of any forest of spontaneous growth,

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did not involve such expenditure of human labour and skill as to constitute them operations in agriculture. The sowing of seeds were "few and far between" and the normal process by which the forest grew again, after a part of it had been cut down, was by the growing out of off-shoots from the stumps left, the operations were therefore in the main only operations for the "maintenance, preservation, nursing and rearing", of the forest. It was urged before the High Court on behalf of the assessee that the exemption from agricultural income-tax determined in Commissioner of Agricultural Income-tax, West Bengal v. Raja Jagadish Chandra Deo Dhabal Deb [\[1949\] 17 ITR 426](#) covered the case and it was submitted that the facts here were if at all far stronger in favour of the assessee. The decision of the Privy Council in Raja Mustafa Ali Khan v. Commissioner of Income-tax, U.P., Ajmer and Ajmer-Merwara [\[1948\] 16 ITR 330](#), was considered and the Court observed at page 87 :

"I do not think that when the Privy Council said that there must be 'some measure of cultivation on the land, some expenditure of skill and labour upon it', their Lordships intended to say that the expenditure of skill and labour must always be in the form of cultivation. The word 'or' introduced by the Allahabad High Court between the two phrases does not occur in the original, but I think it is implied. The idea, it seems to me, is that if the land has been left to the forces of nature to grow what products such forces could, there is no agriculture and that there can be agriculture only if the labour and skill of man has operated on the land to cause or aid the growth of certain products. All that is necessary is that the land should be actively exploited with a view to procuring growths or better growths from the soil but it does not seem to be also necessary that the exploitation should be by tillage".

The Court accordingly came to the conclusion that even though tillage was thus not essential, human labour and skill must be expended on the land itself and not merely on the growth from the land. When income is derived from the natural growths from the land, it is derived from land but not derived from land by the process of agriculture. It is derived from land by agriculture only when the land is subjected to the labour and skill of man, whether in the form of cultivation or otherwise, in order to produce or the improvement of the produce which yields the income. On the facts before them the learned Judges were of opinion that if forest of natural growth was taken over and then the land was regularly weeded and cleared, if it was supplied with moisture, necessary for the nourishment of the trees, by the cutting of channels across it and by the distribution of rainwater through them and if the land was dug, and sown with seeds whenever bare patches appeared and while all this was done, if elaborate subsidiary arrangements were also maintained for the protection of the trees and the tending of new shoots springing from the stumps of old trees cut down till they themselves grew into new trees, it might well be said that operations in forestry involving agricultural operations were carried on the forest land and that income derived from the land was derived from agriculture.

Sir Kameshwar Singh v. Commissioner of Income-tax, Bihar & Orissa [\[1954\] 26 ITR 121](#), which is the subject matter of C.A. Nos. 112 to 117 of 1956 before us also was a case under the Indian Income-tax Act (XI of 1922). It was found by the Appellate Tribunal that the sal and ebony trees which grew in the forest were conserved by allowing each a circle of 15 feet, that there was cutting down of the trees and jungles which fell within that circle leaving sufficient space for growth and that forest conservancy staff was maintained to look after the forest. The Court construed the observations of the Privy Council in Raja Mustafa AH Khan's case [\[1948\]](#)

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[16 ITR 330](#) to mean that "in order to show that an income is agricultural income within the meaning of the definition, it must be found that the land itself was cultivated and that there was some expenditure of skill and labour upon it". The Court held that even conceding that the two conditions laid down by the Privy Council in Raja Mustafa Ali Khan's case (*supra*) were to be read as alternative conditions, there was no material on which to hold that there was any expenditure of skill and labour upon the land and therefore the income from the sale of forest trees was not agricultural income.

In *Jyotikana Choudhurani v. Commissioner of Income-tax, Assam* [1954] 26 ITR 424, which is also under appeal before us in Civil Appeals Nos. 57 to 62, a Special Bench of the Assam High Court considered whether income derived by the assessee from the sale of trees of spontaneous growth where there was no planting or sowing or employment of any human agency for the purpose of tilling the land but operations in forestry were carried on by the assessee involving considerable expenditure of human skill and labour was agricultural income within the meaning of section 2(1)(a) of the Indian Income-tax Act. The majority of the Court consisting of Sarjoo Prasad, C.J., and Ram Labhaya, J., (Deka, J., dissenting) held that even though there was no tilling of the land or planting of seed or saplings and the trees were of spontaneous germination, the operations carried on by the assessee were conducive to the growth and development of the trees and in essence involved the expenditure of human skill and labour on the land itself. Those operations were "agricultural operations" and the land on which the trees stood was being used for "agricultural purposes" and, therefore, the income from the sale of the trees was "agricultural income" and was exempt from taxation under section 4(3)(viii) of the Income-tax Act.

Sarjoo Prasad, C.J., explained the test laid down in *Raja Mustafa Ali Khan v. Commissioner of Income-tax* [1948] [16 ITR 330](#) in the manner following :

"The contention of Mr. Iyengar is that the expression 'some expenditure of skill and labour upon it' is used merely in further clarification of the expression 'cultivation of the land' and, therefore, all that their Lordships held was that cultivation of the land was necessary. I do not concede that the word 'cultivation' is necessarily synonymous with ploughing or tillage. But even if it were, I am unable to accept the argument for the simple reason that if precision is the hallmark of Privy Council decisions, as I think it is, then their Lordships would have stopped short with the phrase 'some measure of cultivation of the land'. This, in itself, was quite expressive and no further expressions were needed to clarify the matter. Therefore, when they proceeded to add after a comma, the phrase 'some expenditure of skill and labour upon it', they evidently intended to signify something more than mere cultivation. There is, of course, no conjunctive phrase between the two expressions but in the context the meaning seems to be plain".

Ram Labhaya, J., expressed himself in the test laid down by the Privy Council in these words:

"A test however was laid down for finding out when land may be said to be used for agricultural purposes. The test requires that there must be some measure of cultivation of the land ; some expenditure of skill and labour upon it.

It has however to be borne in mind that their Lordships when stating the facts did point out that the case had proceeded on the footing that there was nothing to show that the assessee was carrying on any regular operations in forestry. This statement has an

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important bearing on the interpretation of the test. Such operations in forestry are carried on in forests. They involve the use of human labour and skill on the soil. They aim at stimulating growth and could easily satisfy the requirements of the test evolved by their Lordships. Due importance therefore has to be given to the absence of operations in forestry in Raja Mustafa Ali Khan's case (supra), when interpreting the test laid down therein".

Vikram Deo Varma v. Commissioner of Income-tax, Bihar & Orissa [1956] 29 ITR 76, is the last case of this series. The assessee derived income from extensive forest areas in the impartible estate of which he was proprietor. Over several decades the whole of the forest area had been subjected by hill tribes to a process of "podu" cultivation—setting fire to the trees and cultivating the forest lands and raising crops thereon—so that it was impossible to say that there was any virgin forest left. Through a huge forest establishment considerable amount of human labour and skill was spent (i) in fostering the growth of trees and preserving them from destruction by men and cattle; (ii) in cultivation of the soil by felling and burning trees from time to time; (iii) in planned exploitation of trees by marking out the areas into blocks; (iv) in systematic cutting down of trees of particular girth and at particular heights; (v) in planting new trees where patches occur; and (vi) watering, pruning, dibbling and digging. The Tribunal had held that as there was no forest cultivation or tilling as such the income was not due to agricultural operations and therefore not exempt under section 4(3)(viii) of the Indian Income-tax Act. In the course of the judgment the learned Judges referred to the observations of their Lordships of the Privy Council in Raja Mustafa Ali Khan's case (supra) but observed that their Lordships did not lay down what the measure of that cultivation should be or what the nature of skill and labour expended should be, in order to bring the operations within the meaning of the expression "agricultural purposes" as used in the definition section. The question to be determined in each case should, therefore, be whether the land out of which the rent or revenue was derived was used for "agricultural purposes". Unless the land was subject to some measure of cultivation or there was some expenditure of human skill and labour on it in order to derive the rent or revenue, the purpose would not be agricultural. It was observed that the cultivation was not mere tilling but the science and art of cultivating the soil may depend upon the nature of the soil, the atmosphere, and various other factors. It was therefore idle to regard "tilling" as the sole or indispensable test of agriculture. On the facts before it, the Court held that the operations carried on by the assessee through the forest establishment showed that there had been both cultivation of the soil as well as the application of human skill and labour upon the land as well as on the trees themselves, and that therefore the income derived from the forest was exempt from taxation under section 4(3)(viii) of the Indian Income-tax Act.

Before parting with these cases it may be apposite here to note the following observations of Viswanatha Sastri, J., in *Commissioner of Income-tax, Madras v. Sundara Mudaliar [1950] 18 ITR 259* at page 277 :

"In Commissioner of Agricultural Income-tax v. Raja Jagadisk Chandra Deo [1949] 17 ITR 426 it was held by a Division Bench of the Calcutta High Court that income derived from the sale of sal trees growing spontaneously in forests and not planted by man was 'agricultural' income within the meaning of section 2(1) of the Bengal Agricultural Income-tax Act. There was no digging or ploughing of the land nor planting of trees but there were 'operations in forestry' such as guarding the forest trees to keep away cattle and allowing leaves and undergrowth to be removed by people of

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the locality. There was no breaking up of the soil, no sowing or planting or watering or fencing. Whether the decision is correct or not can only be authoritatively declared by the Supreme Court of India. It seems to rest on an undue extension of the principle laid down by the Judicial Committee in Raja Mustafa Ali Khan's case (supra), and goes much further than our decision in the present case".

It appears from the above survey that there has been a divergence of opinion amongst the various Courts not only in regard to the connotation of the terms "agriculture" and "agricultural purposes" but also in regard to the nature of forestry operations performed in the forest which can be styled agricultural operations so as to constitute the "land used for agricultural purposes" within the definition of agricultural income as given both in the Indian Income-tax Act and in the several Agricultural Income-tax Acts passed by the various States.

It may be noted at the outset that the definition of "agricultural income" given in section 2(1) of the Indian Income-tax Act is in identical terms with the definitions of that term as given in the various Agricultural Income-tax Acts passed by the several States. It will be idle therefore to treat "Taxes on Agricultural Income" which fall within the legislative competence of the State Legislature as having no relation at all to the corresponding provisions of the Indian Income-tax Act. Once it is determined that the income in question is derived from land used for agricultural purposes by agriculture, it would be agricultural income and as such exempt from tax under section 4(3)(viii) of the Indian Income-tax Act and would fall within the purview of the relevant provisions of the several Agricultural Income-tax Acts passed by the various States. The result of this determination would be that the assessee would not be liable to assessment under the Indian Income-tax Act but he would have to pay the agricultural income-tax which would be levied upon him under the relative Agricultural Income-tax Acts. The only enquiry which would therefore be relevant is whether the income in question is agricultural income within the terms of the definition thereof and that would have to be determined in each case by the Court having regard to the facts and circumstances of the particular case before it.

In order that an income derived by the assessee should fall within the definition of agricultural income two conditions are necessary to be satisfied and they are : (i) that the land from which it is derived should be used for agricultural purposes and is either assessed for land revenue in the taxable territories or is subject to local rates assessed and collected by the officers of the Government as such ; and (ii) that the income should be derived from such land by agriculture or by one or the other of the operations described in clauses (ii) and (iii) of section 2(1)(b) of the Indian Income-tax Act.

It was at one time thought that the assessment of the land to land revenue in the taxable territories was intended to exempt the income derived from that land from liability for payment of income-tax altogether and that theory was based on the assumption that an assessee who was subject to payment of land revenue should not further be subjected to the payment of income-tax, because if he was so subjected he would be liable to pay double taxation.

It is interesting to note at this stage the genesis of the provision exempting agricultural income derived from the lands assessed to land revenue as understood by the Courts. Viswanatha Sastri, J., in this context observed in Commissioner of Income-tax, Madras v. Sundara Mudaliar [\[1950\] 18 ITR 259](#) at page 270 :

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"I shall briefly advert to the genesis of the provision exempting agricultural income derived from lands assessed to land revenue, as I consider that the subject-matter with which the legislature was dealing, and the facts existing at the time with respect to which the legislation was made, are legitimate topics for consideration in ascertaining the object and scope of the exemption from income-tax conferred on agricultural income. This exemption, it would be noticed, has been a persistent feature of the income-tax legislation of this country from 1867 onwards, and nothing like it is found in the English Income Tax Acts. Even at a time when there was no provision like section 100 of the Government of India Act, 1935, with Federal and Provincial Lists and there was no incompetency on the part of the Central Legislature to levy a tax on agricultural income, the Income-tax Acts passed from time to time by the Central Legislature including the existing Act of 1922, exempted from income-tax the agricultural income of lands assessed to public revenue. This exemption was granted for no other reason than the justice and equity of exempting from further burden income which had already paid its toll to the State in the shape of land revenue either as a permanently fixed peishkush under Regulation No. XXV of 1802 or as an assessment periodically fixed under the ryotwari settlement. Under what may be called the common law in India, the State had the immemorial prerogative right to collect a share of the produce of the land from its owner, the latter having the full right to the enjoyment of the land and its produce, subject only to the aforesaid contribution to the State. Land revenue is collected annually from the proprietor of the land and is presumably exigible from the income of the land. Cash payment in lieu of a share of the produce due to the State was substituted long ago to facilitate collection of revenue. Income derived from the produce of the land having been subjected to the payment of the annual land revenue, it was thought inequitable to subject the same income again to annual income-tax. Hence the exemption of the agricultural income of assessed lands or lands whose revenue had been remitted either in whole or in part, as in the case of inams. Mines, minerals, and quarries having been reserved by the State, at any rate in respect of lands other than those comprised in a permanently settled estate, income derived from such sources was not exempted from income-tax. The revenue assessment was based on the quality of the soil and the income derived from the produce of the lands, and therefore the exemption from income-tax was limited to agricultural income derived from assessed lands. Such is the reason for exemption from income-tax of agricultural income".

Whatever may have been the genesis of the exemption of agricultural income from income-tax, the liability to pay land revenue or fixed peishkush under Regulation XXV of 1802 was not considered by Rankin, J., as a deterrent against the levy of income-tax in appropriate cases, even on certain classes of income derived from the permanently settled estates, if that was the clear intention of the legislature. The learned Judge observed in Emperor v. Probhat Chandra Barua [1924] ILR 51 Cal. 504:

"Some reference was made at the bar to the practice of the Revenue Authorities since 1886 as regards fisheries in permanently settled estates, but there is no agreement as to what that practice—if there be a practice—has been. Assuming that it would have been open to us to place some degree of reliance upon an interpretation settled by practice as contemporanea expositio we are in fact without any such assistance".

"Some reference was also made to what has been called a 'presumption against double taxation'. In Manindra Chandra Nandi v. Secretary of State [1907] ILR 34 Cal. 257, royalties from a coal mine were held liable both to cess under the Cess Act, 1880, and to income-tax under the Act of 1886, but it was said that, 'it may be conceded that

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Courts always look with disfavour upon double taxation, and statutes will be construed, if possible, to avoid double taxes.' Reference was made to certain dicta of American Courts and to the English case of Carr v. Fowle [1893] 1 QB 251. But the only observation in this case was to the effect that the statute presumably did not intend that a vicar should in effect pay the same tax (land tax) twice on the same hereditament. This is plain enough. Thus the income-tax is one tax, and income assessed under one schedule cannot be assessed all over again under another. That there is any legal presumption of a general character against 'double taxation' in any wider sense is a proposition to which I respectfully demur as a principle for the construction of a modern statute. In Manindra Chandra Nandi's case (supra)it did not avail to cut down clear, though absolutely general, language".

This view of Rankin, J., was upheld by the Privy Council in Probhat Chandra Barua v. King Emperor [1930] LR 57 IA 228 In the later case of Yuvarajah of Pittapuram v. Commissioner of Income-tax, Madras [1949] 17 ITR 445, the Privy Council held that the imposition of income-tax in respect of income derived from the permanently settled estate would not be a breach of the Madras Permanent Settlement Regulation No. XXV of 1802. The assessment of land to land revenue or its being subject to local rates assessed and collected by the officers of the Government as such is merely an indication that the land is an agricultural land as distinguished from land which can be used for agricultural purposes but carries the matter no further.

We have, therefore, to consider when it can be said that the land is used for agricultural purposes or agricultural operations are performed on it. Agriculture is the basic idea underlying the expressions "agricultural purposes" and "agricultural operations" and it is pertinent therefore to enquire what is the connotation of the term "agriculture". As we have noted above, the primary sense in which the term agriculture is understood is agar—field and cultra—cultivation, i.e., the cultivation of the field, and if the term is understood only in that sense agriculture would be restricted only to cultivation of the land in the strict sense of the term meaning thereby, tilling of the land, sowing of the seeds, planting and similar operations on the land. They would be the basic operations and would require the expenditure of human skill and labour upon the land itself. There are however other operations which have got to be resorted to by the agriculturist and which are absolutely necessary for the purpose of effectively raising the produce from the land. They are operations to be performed after the produce sprouts from the land, e.g, weeding, digging the soil around the growth, removal of undesirable undergrowths and all operations which foster the growth and preserve the same not only from insects and pests but also from depredation from outside, tending, pruning, cutting, harvesting, and rendering the produce fit for the market. The latter would all be agricultural operations when taken in conjunction with the basic operations above described, and it would be futile to urge that they are not agricultural operations at all. But even though these subsequent operations may be assimilated to agricultural operations, when they are in conjunction with these basic operations could it be said that even though they are divorced from these basic operations they would nevertheless enjoy the characteristic of agricultural operations ? Can one eliminate these basic operations altogether and say that even if these basic operations are not performed in a given case the mere performance of these subsequent operations would be tantamount to the performance of agricultural operations on the land so as to constitute the income derived by the assessee therefrom agricultural income within the definition of that term ?

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We are of opinion that the mere performance of these subsequent operations on the products of the land, where such products have not been raised on the land by the performance of the basic operations which we have described above would not be enough to characterize them as agricultural operations. In order to invest them with the character of agricultural operations, these subsequent operations must necessarily be in conjunction with and a continuation of the basic operations which are the effective cause of the products being raised from the land. It is only if the products are raised from the land by the performance of these basic operations that the subsequent operations attach themselves to the products of the land and acquire the characteristic of agricultural operations. The cultivation of the land does not comprise merely of raising the products of the land in the narrower sense of the term like tilling of the land, sowing of the seeds, planting, and similar work done on the land but also includes the subsequent operations set out above all of which operations, basic as well as subsequent, form one integrated activity of the agriculturist and the term "agriculture" has got to be understood as connoting this integrated activity of the agriculturist. One cannot dissociate the basic operations from the subsequent operations and say that the subsequent operations, even though they are divorced from the basic operations can constitute agricultural operations by themselves. If this integrated activity which constitutes agriculture is undertaken and performed in regard to any land that land can be said to have been used for "agricultural purposes" and the income derived therefrom can be said to be "agricultural income" derived from the land by agriculture.

*In considering the connotation of the term "agriculture" we have so far thought of cultivation of land in the wider sense as comprising within its scope the basic as well as the subsequent operations described above, regardless of the nature of the products raised on the land. These products may be grain or vegetables or fruits which are necessary for the sustenance of human beings including plantations and groves, or grass or pasture for consumption of beasts or articles of luxury such as betel, coffee, tea, spices, tobacco etc., or commercial crops like cotton, flax, jute, hemp, indigo etc. All these are products raised from the land and the term "agriculture" cannot be confined merely to the production of grain and food products for human beings and beasts as was sought to be done by Bhashyam Ayyangar, J., in *Murugesu Chetti v. Chinnathambi Gounden & Others* [1901] ILR 24 Mad. 421, 423, or *Sadasiva Ayyar, J., in Raja of Venkatagiri v. Ayyappa Reddi* [1915] ILR 38 Mad. 738, but must be understood as comprising all the products of the land which have some utility either for consumption or for trade and commerce and would also include forest products such as timber, sal and piyasal trees, casuarina plantations, tendu leaves, horra nuts etc.*

*The question still remains whether there is any warrant for the further extension of the term "agriculture" to all activities in relation to the land or having connection with the land including breeding and rearing of live-stock, dairy-farming, butter and cheese-making, poultry-farming, etc. This extension is based on the dictionary meanings of the term and the definitions of "agriculture" collated in *Wharton's Law Lexicon*, as also the dicta of Lord Cullen and Lord Wright in *Lean & Dickinson v. Ball* [1925] 10 Tax Cas. 341 and Lord Glanely v. *Wightman* [1933] AC 618 quoted above.*

*Derbyshire, C.J., in *Moolji Sicka & Co., In re* [1939] 7 ITR 493 treated tendu plants growing on the soil as part of the soil and therefore considered the pruning of the shrub as cultivation of the soil in a legal and technical sense and this extension of the term "agricultural" was also approved by Viswanatha Sastri, J., in *Commissioner of Income-**

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tax v. K.E. Sundara Mudaliar & Others [1950] 18 ITR 259. We are however of opinion that the mere fact that an activity has some connection with or is in some way dependent on land is not sufficient to bring it within the scope of the term and such extension of the term "agriculture" is unwarranted. The term "agriculture" cannot be dissociated from the primary significance thereof which is that of cultivation of the land and even though it can be extended in the manner we have stated before both in regard to the process of agriculture and the products which are raised upon the land, there is no warrant at all for extending it to all activities which have relation to the land or are in any way connected with the land. The use of the word agriculture in regard to such activities would certainly be a distortion of the term.

A critical examination of the definition of "agricultural income" as given in section 2(1) of the Indian Income-tax Act and the relevant provisions of the several Agricultural Income-tax Acts of the various States also lends support to this position. In the first instance, it is defined as rent or revenue derived from land which is used for agricultural purposes ; and it is next defined as income derived from such land by agriculture or by the activities described in clauses (ii) and (iii) of section 2(1)(b) of the Act. These activities are postulated to be performed by the cultivator or receiver of rent-in kind of such land in regard to the products raised or received by him which necessarily means the produce raised on the land either by himself or by the actual cultivator of the land who pays such rent-in-kind to him. If produce raised or received by the cultivator or receiver of rent-in-kind is thus made the subject-matter of clauses (ii) and (iii) in section 2(1)(b) of the Act, the term "agriculture" used in clause (i) of section 2(1)(b) must also be similarly restricted to the performance of the basic operations on the land and there is no scope for reading the term "agriculture" in the still wider sense indicated above.

If the term "agriculture" is thus understood as comprising within its scope the basic as well as subsequent operations in the process of agriculture and the raising on the land of products which have some utility either for consumption or for trade and commerce, it will be seen that the term "agriculture" receives a wider interpretation both in regard to its operations as well as the results of the same. Nevertheless there is present all throughout the basic idea that there must be at the bottom of it cultivation of land in the sense of tilling of the land, sowing of the seeds, planting, and similar work done on the land itself. This basic conception is the essential sine qua non of any operation performed on the land constituting agricultural operation. If the basic operations are there, the rest of the operations found themselves upon the same. But if these basic operations are wanting the subsequent operations do not acquire the characteristic of agricultural operations.

All these operations no doubt require the expenditure of human labour and skill but the human labour and skill spent in the performance of the basic operations only can be said to have been spent upon the land. The human labour and skill spent in the performance of subsequent operations cannot be said to have been spent on the land itself, though it may have the effect of preserving, fostering and regenerating the products of the land.

This distinction is not so important in cases where the agriculturist performs these operations as a part of his integrated activity in cultivation of the land. Where, however, the products of the land are of spontaneous growth, unassisted by human skill and labour, and human skill and labour are spent merely in fostering the growth,

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preservation and regeneration of such products of land, the question falls to be considered whether these subsequent operations performed by the agriculturist are agricultural operations and enjoy the characteristic of agricultural operations.

It is agreed on all hands that products which grow wild on the land or are of spontaneous growth not involving any human labour or skill upon the land are not products of agriculture and the income derived therefrom is not agricultural income. There is no process of agriculture involved in the raising of these products from the land. There are no agricultural operations performed by the assessee in respect of the same, and the only work which the assessee performs here is that of collecting the produce and consuming and marketing the same. No agricultural operations have been performed and there is no question at all of the income derived therefrom being agricultural income within the definition given in section 2(1) of the Indian Income-tax Act. Where, however, the assessee performs subsequent operations on these products of land which are of wild or spontaneous growth, the nature of those operations would have to be determined in the light of the principles enunciated above.

Applying these principles to the facts of the present case, we no doubt start with the finding that the forest in question was of spontaneous growth. If there were no other facts found, that would entail the conclusion that the income is not agricultural income. But then, it has also been found by the Tribunal that the forest is more than 150 years old, though portions of the forest have from time to time been denuded, that is to say, trees have completely fallen and the proprietors have planted fresh trees in those areas, and they have performed operations for the purpose of nursing the trees planted by them. It cannot be denied that so far as those trees are concerned, the income derived therefrom would be agricultural income. In view of the fact that the forest is more than 150 years old, the areas which had thus become denuded and replanted cannot be considered to be negligible. The position therefore is that the whole of the income derived from the forest cannot be treated as non-agricultural income. If the enquiry had been directed on proper lines, it would have been possible for the Income-tax authorities to ascertain how much of the income is attributable to forest of spontaneous growth and how much to trees planted by the proprietors. But no such enquiry had been directed, and in view of the long lapse of time, we do not consider it desirable to direct any such enquiry now. The expenditure shown by the assessee for the maintenance of the forest is about Rs. 17,000 as against a total income of about Rs. 51,000. Having regard to the magnitude of this figure, we think that a substantial portion of the income must have been derived from trees planted by the proprietors themselves. As no attempt has been made by the Department to establish which portion of the income is attributable to forest of spontaneous growth, there are no materials on which we could say that the judgment of the Court below is wrong.”

In the instant case before us, neither the availability of agricultural land being under possession and control of the assessee , during the year under consideration is proved/substantiated, nor it could be proved that any agricultural operations both basic as well subsequent

operations, such as tilling of soil, sowing of seeds, pruning, manuring/fertilizers, insecticides, pruning, watering, maintenance of crop, harvesting of crop, plucking, sale of crop etc. is proved. The assessee has not produced any invoices/bills for purchase of seeds, insecticides, fertilizers/manures, details of labour allegedly working for assessee's alleged agricultural activities, nor any evidence of sale of crops are filed. The assessee has claimed that he was doing oil extraction on job work basis, but no evidence whatsoever to substantiate his claim are filed, and even no income towards job charges was booked nor any expenses incurred were claimed, and no evidence whatsoever is on record. Only one Profit and Loss account account of agricultural work allegedly being carried out by the assessee is filed, in which all alleged transactions are claimed to be in cash, with absolutely no corroboratory evidences are filed. This Profit and Loss account is self serving, and is hereby rejected. Except for a lease deed dated 01.07.1999 which was valid for only for three years, no other corroboratory evidences was brought on record to prove that the assessee did actually carry out agricultural operations during the year under consideration. Even, no evidence of renewal of lease deed beyond first three years of its execution was brought on record and even no evidences of payment of lease rent was brought on

record except first initial payment claimed to have been made in July, 1999 towards six monthly lease rent, and even for that evidence of clearance of said cheque from bank account of the assessee is not enclosed. Even, land revenue records as well crop sowing/harvesting records maintained at village level by government authorities, specifying that the assessee is tenant of the said land or the crop sown by him/harvested by him, are not produced. The assessee is claiming exemption of alleged agricultural income under the provisions of Section 2(1A) read with Section 10(1) of the 1961 Act, and the onus is entirely on the assessee to prove that the assessee earned agricultural income as defined u/s 2(1A) of the 1961 Act before any exemption can be granted u/s 10(1) of the 1961 Act. It is well settled that exemption provisions are to be strictly construed and the onus is strictly on the assessee to prove that his case falls within four corners of the exemption provision. Reference is drawn to the judgment and order of the Constitution Bench of Hon'ble Supreme Court in the case of *Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company*, reported in (2018) 95 taxmann.com 327(SC). The assessee having miserably failed to prove that he earned agricultural income allegedly claim to have been earned by him during the year, and hence claim of earning alleged agriculture income and consequent claim of

exemption stand rejected . Thus, We donot find any infirmity in the well reasoned decision of ld. CIT(A), and we concur with the decision of ld. CIT(A) which we uphold. The assessee fails on this issue. We order accordingly.

Coming to the next addition of Rs. 36 lacs as was made by ld. CIT(A) on account of cash deposited in PNB by enhancing income of the assessee , the assessee claimed before ld. CIT(A) that the said cash deposits were income earned from agriculture , and ld. CIT(A) rejected the contentions of the assessee vide his appellate order dated 18.09.2019. Now, the assessee has changed his stance before tribunal, and now claim is made that Rs. 36 lacs cash deposit in PNB was from following sources:

<i>Date</i>	<i>Amount</i>	<i>Remark</i>
<i>13.08.2005</i>	<i>15,00,000/-</i>	<i>Own saving from agricultural income since 1999</i>
<i>01.10.2005</i>	<i>1,00,000/-</i>	
<i>10.10.2005</i>	<i>20,00,000/-</i>	<i>Deposit by Partner Smt Shashi Singh and Anita Kesarwani</i>
	<i>36,00,000/-</i>	

So, far as claim of cash deposit of Rs. 16 lacs as now claimed by the assessee to be from own saving from agricultural income since 1999, firstly there are no evidences on record of carrying out any

agricultural operations by the assessee since 1999 , except for the lease deed dated 01.07.1999 filed by the assessee. We have elaborately discussed in preceding para's of the claim of the assessee of carrying out any agricultural operations and rejected the said claim set up by the assessee. Further, the assessee did not file any evidence before any of the authorities of any agricultural operations carried out by him since the so called lease deed dated 01.07.1999 was allegedly executed by the assessee. Further, the assessee did not filed any evidence to prove that such a huge cash of Rs. 16 lacs was held by him since earlier years and its declaration to department for the earlier years as ' cash in hand' in the return of income for the earlier years or even for this year filed by the assessee, is not demonstrated. Further , the assessee could not explain that why he did not deposit the so called alleged agricultural income to the tune of Rs. 16 lacs earned in preceding years , in his bank accounts during the earlier years while the assessee was having the facility of holding multiple bank accounts, and further the assessee has claimed to have availed loan from PSB, on which the assessee is paying interest on loans availed from PSB, and on the other hand the rationale of holding such a huge cash of Rs. 16 lacs allegedly earned in earlier years could not be explained by the assessee . Thus, we reject this contention of the assessee. So far as

remaining cash deposit of Rs. 20 lacs in PNB, an altogether fresh claim is raised for the first time before tribunal that the said amount is deposited by Partners Mrs. Shashi Singh and Smt. Anita Kesarwani. No evidence to substantiate the same is filed that in-fact the said amount were deposited by Mrs. Shashi Singh and/or Mrs. Smt. Anita Kesarwani. The assessee has claimed that he undertook construction of flats on the plot of land contributed by the said Mrs. Shashi Singh and Mrs. Anita Kesarwani, who are the owners of this plot of land. The assessee has claimed himself to be the Partner in this venture along with Mrs. Shashi Singh and Mrs. Anita Kesarwani. The assessee has filed agreement(Ikrarnama) dated 15.11.2005 , which is placed in PB filed by the assessee at page 32-40. As per the aforesaid Ikrarnama, the assessee has to invest Rs. 40 lacs for construction of flats on the plot of land owned by Mrs. Shashi Singh and Mrs. Amita Kesarwani who are to contribute plot of land (House Arazi No. 141 /House No. 230/3 Old, New 207, Mauja Ahiyapur, Lohia Pandey Hata Bahadurganj, Allahabad , U.P. admeasuring 389 square yards (325.25 square meters) Pargana and Tehsil Sadar, Allahabad, U.P.), which was valued at Rs. 60 lacs(inclusive of construction already done by Mrs. Shashi Singh and Mrs. Anita Kesarwani). The proceeds from sale of flats so constructed were to be shared equally by the assessee on the

one hand and Mrs. Shashi Singh/Mrs. Anita Kesarwani on the other hand. There is no stipulation in the aforesaid agreement(Ikrarnama) that said Mrs. Shashi Singh and Mrs. Anita Kesarwani will invest any amount apart from contributing plot of land, in this venture for construction of flats. The assessee has himself admitted that during the year, no sale of flats purported to be constructed by him on the aforesaid plot of land, has taken place, nor there is any evidence on record that Mrs. Shashi Singh and/or Mrs. Anita Kesarwani gave any amount in cash to the assessee, and moreover, as per Ikrarnama, both Mrs. Shashi Singh and Mrs. Anita Kesarwani were not required to contribute any amount towards this venture , apart from contributing plot of land on which construction was to be carried out , of which both of them namely Mrs. Shashi Singh and Mrs. Anita Kesarwani were the owners. This claim is raised by the assessee of having received Rs. 20 lacs in cash which stood deposited in PNB , from Mrs. Shashi Singh and Mrs. Anita Kesarwani, for the first time before tribunal, and that too without filing any evidence on record to substantiate the aforesaid claim, and this claim is merely a balled claim without any evidence. Thus, we have no hesitation in rejecting this claim of the assessee. Thus, we hold that Id. CIT(A) has rightly made the addition of Rs . 20 lacs , which we affirm , as the said cash

deposits are income of the assessee from the undisclosed sources.

Thus, we hold that Id. CIT(A) has rightly made the addition of Rs .

36lacs , which we affirm , as the said cash deposits are income of the

assessee from the undisclosed sources, and not income from

agriculture (Rs 16 lacs) nor it is an amount given by Mrs. Shashi Singh

and Mrs. Anita Kesarwani(Rs. 20 lacs). The assessee fails on this issue.

We order accordingly.

8. In the result , appeal filed by the assessee in ITA no. 3/Alld/2022

for ay: 2006-07 , stands dismissed. We order accordingly.

ITA NO. 4/Alld/2022-Assessment Year 2007-08

9. The grounds of appeal raised by assessee in ITA No. 4/Alld./2022

for assessment year 2007-08, in memo of appeal filed with tribunal ,

reads as under:-

“1. That on the facts and circumstances produced on record the authority below was not justified in not accepting agriculture Income Rs. 22,00,000/- and Aroma oil sale Rs. 1,83,000/- Total Rs. 23,83,000/-

2. That all the relevant proof has been submitted for cash deposit of Rs. 60,83,000/- in standard chartered bank but the authority below has added extra deposit Rs. 27,27,388/- without any basis.

3. That the order passed by the authority below is unjust.”

10. The brief facts of the case are that the assessment of the assessee was reopened by Revenue by invoking provision of Section 147/148 of the Act. The AO issued notice dated 08.03.2013 u/s 148 of the 1961 Act, requiring assessee to file return of income. The assessee in response to aforesaid notice, filed return of income on 08.05.2013, declaring income of Rs. 85,000/- from business, Rs. 3,500/- as income from other sources, while the assessee also claimed that he earned income of Rs. 22,00,000/- from agriculture which was claimed as an exempt income. The AO observed that the assessee has filed return of income showing gross total income of Rs. 88,500/- while income from agriculture is shown Rs. 22,00,000/- . The AO issued notice dated 16.12.2013 under Section 143(2) and 142(1) to the assessee. The AO observed that the assessee has deposited Rs. 88,10,338/- in his bank account number 62510015697 maintained with Standard chartered Bank. The AO asked assessee to explain sources of deposits in his standard chartered bank. The assessee submitted before the AO that deposits in Standard Chartered Bank represents sale proceeds with respect to sale made by the assessee in the capacity of Karta of House No. 846, University Road, Allahabad belonging to his HUF, and also deposits in Standard Chartered Bank were from income from agriculture, as under:

1. एच0यू0एफ0 द्वारा विक्रय किए गए मकान से प्राप्त राशि को जमा करना	दिनांक	धनराशि (रुमें)
	17.04.2006	2,00,000 / -
	09.03.2007	25,00,000 / -
	29.01.2007	6,00,000 / -
	29.01.2007	3,50,000 / -
	09.03.2007	50,000 / -
	कुल:-	37,00,000 / -
2. कृषि आय को जमा करना	05.04.2006	1,06,000 / -
	15.05.2006	4,87,000 / -
	07.10.2006	8,00,000 / -
	29.01.2007	3,40,000 / -
	02.02.2007	1,50,000 / -
	कुल:-	18,83,000 / -
निर्धारिती द्वारा दर्शायी गयी कुल जमा राशि		55,83,000 / -

The AO observed that the assessee has submitted that he has deposited Rs. 37 lacs from the proceeds of sale of House No. 846, University Road, Allahabad in Standard Chartered Bank, while 22 lacs deposits were from income from claimed to be allegedly earned from agricultural, and 1,83,000/- was claimed by the assessee from sale of Aroma oil which was deposited in the Standard Chartered Bank. The AO observed that the aforesaid Rs. 37 lacs was cash deposits in the Standard Chartered Bank and are not the sale proceeds from sale of House No. 846, University Road, Allahabad, which led AO to make additions to the tune of Rs. 37 lacs in the hands of the assessee by invoking provisions of Section 68. The AO further observed that the assessee has sold his house no. 846, University Road, Allahabad, for a total consideration of Rs. 50 lacs and the receipts as per sale deeds are

reconciled, and this claim of Rs. 37 lacs being received from sale of house is not correct.

10b. The AO further observed that the assessee has claimed that he deposited Rs. 22,00,000/- in the Standard Chartered Bank account allegedly from agricultural income and Rs. 1,83,000/- was claimed by the assessee allegedly from sale of Aroma Oils. The assessee was asked by AO to substantiate the claim of agricultural income earned and also agricultural operations carried on by the assessee, by submitting details/evidence of agricultural account, sale bills of agricultural produce, purchase bills of seeds and fertilizers, evidence of harvest of agricultural produce, sowing of agricultural crops, evidences for work done to improve agricultural operations, and other evidences to prove that agricultural operations were in-fact carried on by the assessee, but the assessee only produced Profit and Loss Account of agricultural activities and claim was made by assessee before AO that income from agriculture was deposited in the bank account, but the assessee could not produce any evidence/documents before the AO to substantiate/prove that agricultural operations were in-fact carried on by the assessee. So far as agricultural land is concerned, the assessee claimed that the land belonged to 'Raja Jagannath Bakhsh Singh Trust' and lease agreement

was executed on plain paper and same was not registered. On being asked by AO, the assessee submitted that the land owner refused to get the said land agreement registered, and this agreement was prepared on the plain paper. The AO rejected the contentions of the assessee and observed that no agricultural operations were carried on by the assessee , and an amount of Rs. 22,00,000/- claimed to be deposited by assessee from agricultural income and Rs. 1,83,000/- from sale of Aroma Oil , are in-fact income from un-disclosed sources of the assessee, which were added by AO to the income of the assessee under Section 68 of the Act, vide reassessment order dated 25.03.2014 passed by the AO u/s 147 read with Section 143(3) of the 1961 Act.

10c. Further, the AO observed that the assessee has deposited Rs. 88,10,338/- in his Standard Chartered Bank account bearing No. 62510052697 . The AO observed that the assessee has submitted explanation only with respect to deposits of Rs. 60,83,000/- , while no explanation whatsoever was given by the assessee with respect to deposit of balance amount of Rs. 27,27,338/- . The AO invoked provision of Section 68 of the Act , and added income of Rs. 27,27,388/- in the hands of the assessee as income from undisclosed

sources, vide reassessment order dated 25.03.2014 passed by AO u/s 143(3) read with Section 147 of the 1961 Act.

11a. Aggrieved by reassessment framed by the AO, the assessee filed first appeal before ld. CIT(A), and the assessee submitted that the cash deposited of Rs. 23,83,000/- represents cash deposit out of agricultural income . The assessee enclosed Profit and Loss Account and ledger book of alleged agriculture carried on by the assessee. The assessee raised similar contentions before ld. CIT(A) as was raised by the assessee before ld. CIT(A) for ay: 2006-07(refer contentions of the assessee at para 5a of this order, for ay: 2006-07 , reproduced in this order).

11b. The ld. CIT(A) dismissed the appeal of the assessee by holding as under:

“Decision :

I have gone through the facts and the written submissions filed along with the details filed enclose therein. The assessee deposited Rs. 23,83,000/- (Rs. 22,00,000+ 1,83,000) in cash on account of agricultural income and sale of aroma oils. The appellant submitted only copy of lease of agricultural land as evidence in favour of doing agricultural activity. Appellant's only contention is that there is a lease agreement on a letter pad showing the land ownership but there is no other evidence showing any human intervention in the planting of these flowers, grass, vegetables and grains. There is no evidence in possession of appellant to prove that any procedures were adopted to produce

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and maintain these agricultural produces over a time from 1999 to the year in question. There is no evidence to prove that any basic and subsequent operations were duly performed resulting onto this agricultural income like expenditure on human labour, seeds, manure, pesticide, etc.. AO's contention is that the appellant did not produce any documentary evidence whatsoever regarding expenses on plantations and their maintenance as stated above. No details of buyers or evidence of sale of these of flowers, grass, grains and vegetables were submitted before AO.

The Supreme Court in CIT v Raja Benoy Kumar Sahas Roy (1957) 32 ITR 466 (SC) has held that the land is said to be used for agricultural purposes where the following two types of operations are carried out on such land:

The term 'agriculture in S. 2(1)(b)(i) of the Indian Income-tax Act connotes the entire and integrated activity of an agriculturist performed on the land in order to raise its produce and consists of such basic and essential operations, requiring human skill and labour on the land itself, as the tilling of the soil, sowing of the seeds, planting and similar operations on the land and such other subsequent operations, performed after the produce sprouts from the land, as weeding, digging of the soil around the growth, removal of undesirable under-growths, tending, pruning, cutting, harvesting and marketing. But these subsequent operations, if unconnected with the basic operations, cannot by themselves constitute agriculture. It is only when the land is subjected to such integrated activity, that :It can be said to be used for, agricultural purpose' and its income called agricultural income within the meaning of the Act.

.....Judicial opinion is unanimous that products which grow wild on the land or are of spontaneous growth and do not involve any human skill or labour on the land, and all that the assessee has to perform in respect of them is only to collect them for consumption and marketing, are

not products of agriculture and the income derived from them is not agricultural income within the meaning of S. 2(1) of the Act.

Admittedly appellant has not been able to submit any evidence pertaining to both the basic and the subsequent operations that can show that any form of integrated activity of the agriculture actually happened or any evidence of its sales generating the income. All income is supposedly have been received from farmers in cash. The applicant claimed to have done business of Aroma oil. Applicant submitted that the he extracted the oil from flowers and grass on job work basis. But no details whatsoever of any kind has been submitted pertaining to job works done. More so, the sale of oil of flowers and grass is not agricultural income, exempt u/s 2(1A) of the Income Tax Act. Applicant has not submitted any details of farmers from Rai Bareilly who purchased grains, vegetables and also flowers and grass for Aroma work in cash. It is surprising that someone who purchases goods from applicant for Rs. 25,000 - 65,000/-, their details are no known to him but he knows that after purchasing agricultural produce from applicant these farmers sent it to other places for extraction of oil. Such contradictory facts are nothing but an afterthought of the appellant to explain unsuccessfully explaining the huge cash deposited in bank account as earned form agricultural income. The applicant also submitted that he helped them in extracting the oil in case of need of customers who purchased grass and brought their own at a very low cost and only job work was being done on labour basis and the applicant had no concern with oil sale of its marketing. The applicant's sale was limited only to agricultural produces. If we go by this theory then it shows that appellant was doing complete business of extraction and sale of oil but trying to break the operations and claim it as exempt u/s 2 of IT Act. But applicant does not have any evidence to prove this activity also. All the submissions of appellant are not backed by any iota of documentary evidence hence they cannot be relied upon.

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An income to be "agricultural income" should be derived from land and the land should be used for agricultural purposes. In other words, there should be a nexus between income, land and agriculture operations, by which is meant something done to the land by human or mechanical agency to produce out of the land any crop, tree, plantation or other produce or product. The immediate source of the income must be land or the description or character mentioned in the definition [CIT v Imam Saheb (K.S.) (1969) 71 ITR 742 (Mad)].

In the case of Mustafa Ali Khan v. CIT [1948 16 ITR 330 (PC) in which it was held that that income from sale of forest trees, fruits and flowers growing on land naturally and spontaneously without the intervention of human agency is considered as Non Agricultural Income.

Appellant has submitted that the plantation took place from 1999. The plantation that applicant has dealt in, are cash crops and appellant knew that these will fetch considerable amount of income then it was important for appellant to maintain all the records properly till these plantations were sold. There is no evidence of sale of these agricultural produce made during the year under consideration. Now to say that appellant sold all these trees to sundry purchaser without any bills is unbelievable. Appellant could have taken the receipts as evidence of sale especially when taking amount of Rs. 25,000/- to 65,000/-. Aroma oil is sold commercially so persons who are the buyers can be identified easily by applicant. However no details are made available by the appellant.

In the case of The CIT vs Sri Ramakrishna Deo (1959) 35 ITR 312, 316, 317(SC)

Held: The law is well settled that it is for a person who claims exemption to establish it, and there is no reason why it should be otherwise when the exemption claimed is under the Income-tax Act. Held that the burden is on the appellant to prove that the income sought to be taxed was agricultural income.

Avdhesh Kumar Jain vs Commissioner of Income-Tax (1989)

178 ITR 443 (All)

HELD:

2. The concurrent findings of the tax authorities including the Income-tax Appellate Tribunal are that the assessee had failed to produce any satisfactory evidence about his being engaged in agricultural activities. The further finding is that the assessee was also not able to state to whom the said agricultural produce was sold. Consequent to the aforesaid finding, the Tribunal has held that the sum of Rs. 28,000 was rightly assessed as income from undisclosed sources in the hands of the assessee. Having heard learned counsel for the parties, we are of the opinion that the findings recorded by the Income-tax Appellate Tribunal are pure findings of fact which are based on appreciation of evidence. The view taken by the Tribunal is a possible view on the evidence that was placed before it in our opinion, the order of the Tribunal does not give rise to any question of law on the findings recorded by it.

In the instant case it is well established that appellant has failed to discharge the Initial onus of proving that the income earned was in fact agricultural income. Appellant also failed to prove that any agricultural operations were in fact ever done on the land premises leased by him and finally failed to substantiate that the sale of these flowers, grass, vegetables and grains actually happened. So it is seen that appellant fails on all the main ingredients that are required to prove the nature and source of this income as agricultural income, in order to claim the statutory exemption. Facts in this case are same as for AY 2006-07 where on similar grounds the appeal of the appellant is dismissed on this ground.

With these remarks addition made by the AO is upheld.

This ground is dismissed."

11c. The ld. CIT(A) deleted the addition of Rs. 37,00,000/- with direction to co-relate the said deposits in the bank account with the receipts with respect to sale of House No. 846, University Road , Allahabad, made by the HUF of the assessee. The ld. CIT(A) observed that the AO has accepted the sale of the aforesaid house in the hands of the assessee HUF for ay: 2007-08 , in an assessment framed u/s 143(3) , then the same cannot be brought to tax in assessee's hand merely because the AO is not able to co-relate the amounts received on sale of aforesaid house with the deposits of cheques in bank accounts. The ld. CIT(A) directed AO to delete the addition of Rs. 37 lacs to the extent the assessee is able to reconcile and correlate said receipts with the receipt from sale of aforesaid House as reflected in sale deed , having been offered to tax in the hands of assessee's HUF, and only the unreconciled amount is to be brought to tax u/s 69A of the 1961 Act. This decision of ld. CIT(A) has attained finality as it could not be shown by both the rival parties, that any appeal is filed with tribunal against the aforesaid decision of ld. CIT(A).

11d. Further, with respect to the addition of Rs. 27,27,338/ made by the AO under Section 68 of the Act with respect to cash deposits in Standard Chartered Bank, the assessee explained before ld. CIT(A) that the assessee only deposited an amount of Rs. 60,83,000/- in

Bank, and not Rs. 88,10,338/- in the bank. The assessee submitted

details of deposits as under:

	<u>Amount</u>
Sale of House	37,00,000/-
Agriculture Income	22,00,000/-
Aroma Oil Gross Receipts	1,83,000/-

Total	60,83,000/-

The assessee submitted that the AO erred in taking deposits at Rs. 88,10,338/-, while correct deposits in Standard Chartered Bank were Rs. 60,83,000/-.

11e. The Id. CIT(A) dismissed the appeal of the assessee on the issue of cash deposit of Rs. 27,27,338/-, by holding as under

"Decision:

I have gone through the facts and the written submissions filed along with the details filed enclose therein. With regard to the cash deposits in Standard Chartered Bank no evidence explaining the nature of receipts was submitted during the assessment or appellate proceedings by the appellant. Appellant has failed to discharge the initial onus of proving that the cash deposited is not his income earned. No addition can be made u/s 68 of IT Act on the unexplained deposits in the bank account as they are not books of accounts of the appellant but can be added u/s 69A of IT Act as unexplained money. Therefore I am left with no alternative but to confirm the addition made by AO. AO is directed to tax this amount u/s 69A OF IT Act.

The ground is dismissed."

12a. Aggrieved by the appellate order passed by ld. CIT(A), the assessee filed an appeal with tribunal. The assessee has filed written submissions before tribunal , which are reproduced as under:

Before The Income Tax Appellate Tribunal
Allahabad

23/1/2023
B.C.
Filed on 02/02/2023
DB

Reference - ITA no.4

आपीलव
उत्तराखण्ड प्रमुख न्यायालय (मिन्बो)
आयकर विभाग, इलाहाबाद
प्राप्ति दिनांक: 23-01-23
क्रमांक: _____
प्राप्ति तिथि: _____

Late Satya Prakash Gupta
157 Uttra Khand
Jawahar Lal Nehru, University
Delhi 110007
A.Y. 2007-08

Subject - Written Submission

Sir,

02 ✓ In the above appeal, the appellant wants to bring the following facts before your honour for your kind consideration and favorable order:-

- Addition Agriculture Income: 22,00,000/-
And from Aroma Oil on labour work 1,83,000/-
23,83,000/-
- 1) Regarding Agriculture Income, detail argument has been submitted in A.Y. 2006-07 and evidences profit and loss account has been filed along with paper book for A.Y. 2007-08 on page 1 to 18.
2. Addition of Rs.27,27,330/- Cash deposit
 - The authority below has added the above amount as under:-
Deposit is standard chartered bank account no. 625100015697

Total deposit	88,10,338/-
Less deposit accepted	<u>60,83,000/-</u>
Addition	<u>27,27,338/-</u>

 - The A.O. in Para 3 of the order has mentioned Rs.60,83,000/- Bank deposit and in Para 4 has mentioned Rs.88,10,338/- which is itself is contradictory.
 - The total deposit is standard chartered Bank was as under:-

By cash	27,61,500/-
By cheque	<u>60,42,103/-</u>
Total	<u>88,03,603/-</u>

 Bank statement of standard chartered bank is enclosed.

4. That sources of deposit was from agriculture Rs.23.83,000/- and deposit by partner Shashi Singh and Smt Anita Kesarwani and by the appellant jointly for construction of Flat at Bahadur Ganj, Allahabad as per agreement dated 15/11/2005 copies of which has been filed in A.Y. 2006-07 showing detail of total expenses year wise i.e. A.Y. 2006-07 Rs.16,00,072/- 2007-08 - Rs.38,60,900/- A.Y. 2008-09 Rs.6,68,350/- and in A.Y. 2009-10 Rs.46,935/- mentioned on page 32 to 48 filed in A.Y. 2006-07 Paper book. The amount and cash deposit were made by the appellant, Smt Shashi Singh and Smt Anita Kesarwani.

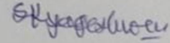
The appellant was also expired and the legal heir has no knowledge of his business activity.

Kindly consider the above facts and allow the appeal.

Thanking you sir

Allahabad
23/1/2023

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your faithfully


[S.K.YOGESHWAR]
Advocate

The learned counsel for the assessee submitted before the Bench that there are three additions which were made by the AO, the first addition was with respect to deposits in the Standard Chartered Bank on account of agricultural income of Rs. 23.83 lacs (including sale of

aroma oil of Rs. 1.83 lacs on labour work)which claim of the assessee of having earned income from agriculture was not accepted by the AO. The Id. Counsel for the assessee submitted that the same explanations which were given while arguing for the immediately preceding year before the Bench, will apply to this year also so far as agricultural income is concerned. Regarding second addition of Rs. 37 lacs with respect to the deposits in the Standard Chartered Bank as was made by the AO , it was submitted that Id. CIT(A) deleted the said additions by directing the AO to verify the claim of the assessee that said Rs. 37 lacs were received from the sale of House No. 846, University Road , Allahabad , which income stood assessed in the hands of assessee's HUF for ay: 2007-08 in scrutiny assessment framed u/s 143(3), and if the amount of Rs. 37 lacs credited stood reconciled and correlated with the amounts stated in sale deed, then the same be deleted by AO otherwise for unreconciled amounts, the AO was directed by Id. CIT(A) to make addition u/s 69A. The assessee's counsel submitted that this issue has attained finality as no appeal is filed before tribunal against the appellate order passed by Id. CIT(A) on this issue, either by assessee or by Revenue. With respect to addition of in 27,27,338/- made by the AO and confirmed by Id. CIT(A), it was submitted by Id. Counsel for the assessee that the said amount was deposited by Mrs.

Shashi Singh and Mrs. Anita Kesarwani. Our attention was drawn to page 22 of the PB. However, it was submitted that total deposits in Standard Chartered Bank was Rs. 88,03,603/- and not Rs. 88,10,338/- as held by the AO. The copy of bank statement of Standard Chartered Bank was enclosed by the assessee.

12b. The Id. Sr. DR on the other hand submitted that there are deposits of Rs. 88,00,603/- in Standard Chartered Bank (exclusive of interest income earned of Rs. 2500+ Rs.2815 +Rs. 4106 credited on 30.06.2006, 31.12.2006 and on 31.03.2007) , out of which cash deposits were to the tune of Rs. 27,61,500/- while cheque deposits were to the tune of Rs. 60,39,103/- . It was submitted that the assessee has claimed agricultural income of Rs. 22,00,000/- and sale of Aroma Oil of Rs. 1,83,000/- , but no evidence were filed to prove agricultural activities were carried out by the assessee. It was submitted that the assessee is not able to prove that any agricultural activities were in-fact carried on by the assessee. It was also submitted that the assessee is changing stand as to the agricultural income earned by him. It was submitted that the assessee in ITR filed with Revenue claimed that gross receipt from sale of Aroma oil were Rs. 2.50 lacs , while now it is claimed that income from sale of Aroma oil is Rs. 3.50 lacs. It was submitted that there is again a variation in

the alleged gross agricultural income claimed to be earned by the assessee , as before authorities below it was claimed to the tune of Rs. 23,78,980/- (PB/Page 39 Departmental PB) , but now the alleged gross receipts from agriculture is shown by the assessee to the tune of Rs.26,00,000/- . Similarly, different amount of alleged expenses were claimed before authorities below, and also before tribunal. It was submitted that the assessee is changing his stand, before different authorities. The ld. Sr. DR prayed that additions as were confirmed by ld. CIT(A) by rejecting the claim of the assessee of undertaking alleged agricultural activities be confirmed. The ld. Sr. DR also submitted that there were credits in the Standard Chartered Bank to the tune of Rs. 27,27,388/- for which no explanation were given by the assessee and the same were rightly confirmed by ld. CIT(A). It was submitted that there are total credits of Rs. 88,00,603/- (exclusive of credit of interest income) in Standard Chartered Bank as against credits of Rs. 88,10,338/- as were considered by the authorities below. The relevant extract of written submissions filed by ld. Sr. DR are as under:

submissions are different and at variance with each other, as indicated below:-

As per details dated 12.03.2014 (pp 39)	P&L a/c filed before the Bench vide paper book dated 07.06.2022(pp 49)
Receipts : 23,78,980/-	Receipts: 26,00,000/-
Expenses:	Expenses:
Seeds : 36,350/-	Seeds : 27,000/-
Electricity: 5,720/-	Electricity : 34,750/-
Salary : 60,000/-	Salary : 32,000/-
Misc. : 2,910/-	Misc. : 50,686/-
Lease rent : 74,000/-	Lease rent : 72,000/-
No other expenses	Bank Charges : 2,379/-
	Diesel : 40,500/-
	Labour & Wages : 92,400/-
	Mobile exp. : 17,885/-
	Repair & maintenance : 30,400/-
Net income : 22,00,000/-	Net income : 22,00,000/-

- Gross receipts from agriculture are shown exorbitantly high whereas related expenses, as stated by the assessee, are very nominal; which is very unlikely and unrealistic. Moreover, there are no evidences in support of any of the above figures of receipts & expenses.
- The Id. AR's contention (as per reply dated 10.02.2014/ pp 36 for A.Y. 2006-07) that the lease of the agricultural land was for 10 years is apparently incorrect, as the initial lease (even if it was made) was for a period of 03 years only subject to further renewal but there is no evidence that the same was ever renewed.
- There is no past history or subsequent history of the assessee's such huge agricultural income in the past or subsequent years (except for the years under appeal i.e. A.Y. 2006-07 to 2009-10).
- No returns have been filed by the assessee for the past and subsequent years. Even for the years under appeal i.e. A.Y. 2006-07 to 2009-10, returns were filed only u/s 148 (and not u/s 139).
- The quantum of **agricultural income** claimed to have been derived from the said Sirsa Farm (12.36 Hectares) in the years under appeal is **inconsistent year to year**, which is clear from the year wise figures below:

Agricultural income claimed	A.Y. 2006-07	A.Y. 2007-08	A.Y. 2008-09	A.Y. 2009-10
	Rs. 5,00,000/- or 7,00,000/-	Rs. 22,00,000/-	Rs. 34,00,000/-	Rs. 5,00,000/-

- Such a huge variation in the agricultural income in different years from one and the same measurement/area of land is very unlikely and unrealistic.

About Aroma Oil Business:

- Similarly, the figures of gross receipts and expenses relating to Aroma Oil Business stated as per various submissions are different and at variance with each other, as indicated below:-

As per-
computation of TI (pp 9)
& reply dated 10.02.2014 (pp 24)

Gross receipts :	2,50,000/-
Less: Expenses :	(-) 1,65,000/-
Net profit :	85,000/-

P&I. a/c filed before the Bench vide
paper book dated 07.06.2022 (pp 49)

Gross receipts :	3,50,000/-
Less: Expenses :	(-) 1,17,000/-
Net profit :	2,33,000/-

About source of deposits in the A's Standard Chartered Bank a/c no. 62510015697 (pp 52-68)**as stated before the AO :**

Vide replies dated 05.02.2014, 6.03.2014 & 11.03.2014 (pp 22/26-27/34), the assessee stated that the overall deposits in the said bank a/c aggregated to Rs. 60,83,000/- and source thereof was stated as under (reproduced/pp 22):-

1,06,000/- (05.04.2006) by cash receipt from agriculture
2,00,000/- (17.04.2006) by cheque out of sale proceeds of HUF's house no. 846
4,87,000/- (15.05.2006) by cash receipt from agriculture
8,00,000/- (07.10.2006) by cash receipt from agriculture
3,40,000/- (29.01.2007) by cash receipt from agriculture
1,50,000/- (02.02.2007) by cash receipt from agriculture
25,00,000/- (09.03.2007) by cheque out of sale proceeds of HUF's house no. 846
6,00,000/- (29.01.2007) by cheque out of sale proceeds of HUF's house no. 846
3,50,000/- (29.01.2007) by cheque out of sale proceeds of HUF's house no. 846
50,000/- (09.03.2007) by cheque out of sale proceeds of HUF's house no. 846
60,83,000/- Total,

Out of which Rs. 37,00,000/-* was stated to be out of sale proceeds of HUF's house; Rs. 22,00,000/-# was stated to be out of agricultural income and Rs. 1,83,000/-# out of receipt from Aroma Oil Business, vide reply dated 06.03.2014 (pp 26).

* this Rs. 37,00,000/- was added as unexplained income of the assessee (rejecting his explanation), which stands deleted by the Ld.CIT(A) and is therefore no issue in the present appeal.

Issues in the present appeal

this Rs. 22,00,000 + 1,83,000 = **23,83,000/-** was added as unexplained income of the assessee (in the absence of any evidence of the alleged income from agriculture and Aroma Oil Business), which has been confirmed by the Ld.CIT(A) and **impugned** in the present appeal.

- The AO had been saying that the total amount deposited in the said bank a/c was

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Rs. 88,10,338/- (as per order sheets dated 08.03.2013 & 12.03.2014-pp 40/46), to which the assessee kept on stating that the total of deposits made in the said bank a/c was only Rs. 60,83,000/- (vide replies dated 05.02.2014, 06.03.2014 & 11.03.2014 and order sheet dated 12.03.2014-pp 22/26-27/34/46). Thus, the difference of the two, being Rs. 27,27,338/- (Rs. 88,10,338 - 60,83,000) treated as un-admitted deposit was added to the income of the assessee, which has been confirmed by the Ld.CIT(A) and impugned in the present appeal.

Correct amount of overall deposits in the said bank a/c

It works out to Rs. 88,00,603/- (exclusive of interest Rs. 2500/-; 2815/- & 4106/- credited on 30.06.2006, 31.12.2006 & 31.03.2007 respectively), out of which total of cash deposits comes to Rs. 27,61,500/- & cheque deposits Rs. 60,39,103/- as per summary given below:-

<u>Cash deposits (Rs.)</u>		<u>Cheque/ Trf. deposits (Rs.)</u>	
04.04.2006	Rs. 73,500/-	17.04.2006	2,00,000/-
05.04.2006	1,06,000/-	09.05.2006	9,603/-
12.05.2006	4,87,000/-	18.05.2006	50,000/-
06.06.2006	31,000/-	20.05.2006	50,000/-
17.08.2006	50,000/-	17.08.2006	5,000/-
09.09.2006	53,000/-	17.08.2006	9,500/-
07.10.2006	8,00,000/-	25.08.2006	1,00,000/-
09.11.2006	45,000/-	18.09.2006	25,000/-
10.11.2006	29,500/-	25.09.2006	20,000/-
27.11.2006	40,000/-	27.09.2006	2,25,000/-
16.12.2006	28,000/-	30.10.2006	2,00,000/-
29.01.2007	3,40,000/-	02.11.2006	2,00,000/-
02.02.2007	1,50,000/-	04.11.2006	2,00,000/-
02.02.2007	5,00,000/-	21.12.2006	3,00,000/-
14.02.2007	28,500/-	22.12.2006	30,000/-
Total	<u>27,61,500/-</u>	23.01.2007	15,000/-
		31.01.2007	2,50,000/-
		31.01.2007	5,00,000/-
		31.01.2007	9,50,000/-
		21.02.2007	1,50,000/-
		05.03.2007	25,00,000/-
		13.03.2007	50,000/-
		Total	<u>60,39,103/-</u>

Correct amount of overall deposits (27,61,500 + 60,39,103) = Rs. 88,00,603/-

Brief synopsis of arguments for revenue:

- **Delay in appeal:** The Ld.CIT(A)'s order dated 18.09.2019 is stated to have been received by the assessee on 29.10.2019 but the present appeal has been filed by him after a long delay on **04.02.2022**. If the period from 15.03.2020 to 04.02.2022 is excluded by virtue of the Hon'ble Supreme Court's order in "Cognizance for Extension of limitation" (2022) 441 ITR 722(SC), even then also there is quite delay in filing this appeal and it's delay condonation is objected to.

Thus, it was submitted that accordingly, the AO can work out the additions to bring correct income to tax. So far as addition of Rs. 37

lacs as was made by the AO, it was submitted that ld. CIT(A) deleted the same with directions to AO to make necessary verifications and reconciliations with the amounts stipulated in sale deed, with certain directions , which decision of ld. CIT(A) has attained finality. The ld. Sr. DR drew our attention to written submissions filed by him and he relied upon the same, and prayers were made to confirm the appellate order passed by ld. CIT(A).

13a. We have considered rival contentions and perused the material on record. We have observed that the assessment of the assessee was reopened by invoking provisions of Section 147/148 of the 1961 Act. Reasons for reopening of concluded assessment was recorded. Notice u/s 148 was issued by AO to the assessee requiring assessee to file return of income. The assessee filed return of income in pursuance to notice issued by AO u/s 148 of the 1961 Act. The assessee participated in reassessment proceedings. The assessee declared business income of Rs. 85,000/- and interest income of Rs. 3,500/- , thus, gross total income declared being Rs. 88,500/- . Additionally, the assessee declared agricultural income of Rs. 22,00,000/-, which was claimed as an exempt income. The AO issued statutory notices u/s 143(2) and 142(1) of the 1961 Act. The assessee participated in reassessment proceedings. During reassessment proceedings, the

assessee claimed agricultural income of Rs. 22,00,000/- and income from aroma business to the tune of Rs. 1,83,000/-. The authorities below rejected the claim of the assessee as to earning of agricultural income, in the absence of any evidence to support his contentions. The factual matrix being the same as was prevailing in ay: 2006-07 and our decision for ay: 2006-07 shall apply mutatis mutandis to the ay: 2007-08 as factual matrix being similar in ay: 2007-08 to that prevailing in ay: 2006-07. Thus, the additions of Rs. 23,83,000/- as sustained by Id. CIT(A) stood upheld by us. The assessee fails on this issue and his appeal on this issue stood dismissed. We order accordingly.

13b. So far as addition of Rs. 37,00,000/- with respect to deposits in Standard Chartered Bank, the Id. CIT(A) has set aside the matter to AO with certain directions for necessary verification and reconciliation with amount mentioned in the sale deed with respect to sale of House no. 846, University Road, Allahabad made by assessee's HUF which income stood assessed in the hands of HUF for ay: 2007-08 vide scrutiny assessment framed by the AO u/s 143(3), and the decision of Id. CIT(A) has attained finality as it could not be shown that an appeal is filed by either of the party against the decision of Id. CIT(A).

13c. So far as remaining addition of Rs. 27,27,338/- made by the AO and sustained by Id. CIT(A), the assessee has claimed that the same was deposited by Mrs. Shashi Singh and Mrs. Anita Kesarwani with whom the assessee has claimed to be partner for construction of flats on the plot of land owned by them. We have already discussed this issue in ay: 2006-07 and decided the issue against the assessee in the absence of evidence. Same factual matrix prevails in this year as no evidence of having received said sums of money from Mrs. Shashi Singh and Mrs. Anita Kesarwani are produced. Thus, our decision for ay: 2006-07 shall apply mutatis mutandis to ay: 2007-08, and the issue is decided against the assessee . The Id. Sr. DR has highlighted that total receipts in Standard Chartered Bank were to the tune of Rs. 88,00,603/- (exclusive of credit of interest income of Rs. 2500+ Rs.2815 +Rs. 4106 credited on 30.06.2006, 31.12.2006 and on 31.03.2007) as against total receipts taken by AO of Rs. 88,10,338/-. First of all , it is observed that total interest income offered by the assessee in ITR is only Rs. 3,500/- while higher interest income is earned. The assessee has other bank accounts apart from Standard Chartered Bank, and aggregation of interest income is required. The AO is directed to bring to tax, correct interest income chargeable to tax. Further, it is observed that one credit entry of Rs. 1,50,000/-

credited in Standard Chartered Bank on 21.02.2007 which is included by Id. Sr. DR while computing total credits in Standard Chartered Bank, but this entry of Rs. 1,50,000/- is merely on account of bouncing of issued cheque (inward clearing cheque returned), which is by way of contra entry on 21.02.2007 itself. In any case, the purpose of assessment is to bring to tax , correct income in the hands of the correct person for the correct assessment , and, thus, for limited verification purposes for bringing to tax correct income, we are directing AO to verify and bring to tax correct income chargeable to tax. We order accordingly.

14. In the result, appeal filed by the assessee in ITA no. 4/Alld/2022 stand dismissed in the manner indicated above. We order accordingly

ITA NO. 5/ALLD/2022-Assessment Year 2008-09

15. The grounds of appeal raised by assessee in ITA No. 5/Alld./2022 for assessment year 2008-09, in memo of appeal filed with tribunal reads as under:-

“1. That on the facts and circumstances of the case the authority below should have accepted the agriculture Income at Rs.37,43,000/-.

2. That the addition of Rs.28,13,159/- the difference in Bank deposit is only due to information of AIR.

3. That similar the addition of Rs. 1,01,90,683/- is also based on the difference of cash deposit and AIR information which should have been verified by the Authority below.

3. That the order passed by authority below is unjust.”

16. The brief facts of the case are that the assessee's assessment was reopened by AO by invoking provisions of Section 147/148 of the Act. Reasons for reopening of concluded assessment were recorded. Notice u/s 148 was issued by the AO to the assessee asking assessee to file return of income. The assessee filed return of income on 8th May, 2013 declaring interest income of Rs. 3250/- . The assessee claimed loss of Rs. 47,15,200/- under the head 'Profits and Gains from Business or Profession', in the return of income filed with Revenue. The assessee also declared agriculture income of Rs. 34,00,000/- in the return of income filed with Revenue, which was claimed as an exempt income. The AO issued statutory notices under Section 143(2) and 142(1) of the Act. The assessee participated in re-assessment proceedings. The AO observed that the assessee has deposited Rs. 77,86,514/- in his bank account no. 62510015697 maintained with Standard Chartered Bank. The assessee was asked by AO to explain the said deposits in his bank account. The assessee submitted details of deposits in the aforesaid bank account as under:

कृषि आय को जमा करना		
	25.09.2007	5,16,000 /-
	06.11.2007	5,22,000 /-
	27.11.2007	7,50,000 /-
	19.12.2007	3,50,000 /-
	27.12.2007	2,00,000 /-
	18.02.2008	4,15,000 /-
	29.02.2008	1,90,000 /-
	01.03.2008	3,50,000 /-
	09.03.2008	4,50,000 /-
	कुल	37,43,000 /-

The AO observed that the assessee has claimed to have deposited an amount of Rs. 49,73,355/- in his bank account, out of which the assessee claimed to have deposited Rs. 37,43,000/- as agricultural income which was claimed as an exempt income. The assessee was asked by AO to substantiate the claim of agricultural income earned by him, and also to substantiate the agricultural operations carried on by the assessee, by submitting details/evidence of agricultural account, sale bills of agricultural produce, purchase bills of seeds and fertilizers, evidence of harvest of agricultural produce, sowing of agricultural crops, evidences for work done to improve agricultural operations, and other evidences to prove that agricultural operations were in-fact carried on by the assessee, but the assessee only produced Profit and Loss Account of agricultural activities and claim was made by assessee before AO that income from agriculture was

deposited in the bank account, but the assessee could not produce any evidence/documents before the AO to substantiate/prove that agricultural operations were in-fact carried on by the assessee. So far as agricultural land is concerned, the assessee claimed that the land belonged to 'Raja Jagannath Bakhsh Singh Trust' and lease agreement was executed on plain paper and same was not registered. On being asked by AO, the assessee submitted that the land owner refused to get the said land agreement registered, and this agreement was prepared on the plain paper. The AO rejected the contentions of the assessee and observed that no agricultural operations were carried on by the assessee, and an amount of Rs. 37,43,000/- claimed to be deposited by assessee from agricultural income is in-fact income from un-disclosed sources of the assessee, which was added by AO to the income of the assessee by invoking provisions of Section 68 of the 1961 Act, vide reassessment order dated 25.03.2014 passed by the AO u/s 147 read with Section 143(3) of the 1961 Act.

16b. The AO further observed that the assessee has deposited total amount of Rs.77,86,514/- in his bank account maintained with Standard Chartered Bank bearing Account No. 62510015697. The AO asked assessee to explain the same. The assessee submitted that he deposited Rs. 49,73,355/- in his bank account, but the assessee did

not explain details of deposit of Rs. 28,13,159/- , which led AO to made additions to the tune of Rs. 28,13,159/- as income from undisclosed sources in the hands of the assessee by invoking provisions of Section 68 of the 1961 Act, vide reassessment order dated 25.03.2014 passed by the AO u/s 147 read with Section 143(3) of the 1961 Act.

16c. The AO further observed that as per AIR Information , during the year under consideration, there was deposit of Rs. 1,29,09,797/- and Rs. 50,67,400/-, aggregating to Rs. 1,79,77,197/- as cash deposits in assessee's bank account, but the assessee has submitted to have deposited Rs. 77,86,514/- in cash in his bank account, during the year under consideration, and no explanation is provided so far as balance amount of cash deposited of Rs. 1,01,90,683/- in assessee's bank account, which led AO to make additions to the income of the assessee to the tune of Rs. 1,01,90,683/- under the provisions of Section 68 of the Act , vide reassessment order dated 25.03.2014 passed by the AO u/s 147 read with Section 143(3) of the 1961 Act.

17. The assessee being aggrieved by reassessment order filed first appeal with Ld. CIT(A) . The assessee submitted before ld. CIT(A) with respect to addition of Rs. 37,43,000/-, as under:

"Appellant's submission:

During the appellate proceedings, the A.R. of the appellant has submitted as under –

"1. Agriculture Income Rs.37,43,000/-: (1) The Appellant had submitted the P & L A/C and agriculture income details viz. Lease agreement, which has not been considered."

The applicant started agriculture work in 1999 on lease land at Village Sirsa, Rae Bareilly and also took loan from Punjab & Sindh Bank and started producing aroma grasses from flowers and grass for its customers and also grown grains and vegetable. Copy of lease of agricultural land is enclosed, which is for 10 years but due to ill health, the applicant has closed the work of Aroma Grasses in 2008. The applicant has never done any business of Aroma oil because it needs marketing and very huge capital. Applicant is an aged person unfit for marketing of Aroma Oils. Therefore the persons who were interested in aroma oil, the applicant would extract the oil from flowers and grass on job work basis. The production of flowers and grass are all agricultural income, exempt u/s 2(1A) of the Income Tax Act. The farmers form hereby area of Raibareilly used to purchase grains, vegetables and also flowers and grass for Aroma work in cash ranging from Rs. 25,000 - 65,000. Then they sent it to other places for extraction of oil. The applicant also helped them in extracting the oil in case of need of customers who purchased grass and brought their own at a very low cost and only job work was being done on labour basis and the applicant had no concern with oil sale of its marketing. The applicant's sale was limited only to agricultural produces.

In support lease agreement was filed before the A.O. signed by both the parties which was not believed by the A.O. only on the ground that it was written on plain paper where has it has been written on the trust letter pad copy of lease deed enclosed herewith. That the applicant is enclosing the detail of gross receipt of agriculture income rule of Aroma plants etc. Applicant

enclosed the profit and loss account of agriculture income in details”.

17b. With respect to the Addition of Rs. 37,43,000/- as was made by the AO, the Ld. CIT(A) rejected the contention of the assessee of having carried out any agricultural activities, by holding as under :

“Decision:

I have gone through the facts and the written submissions filed along with the details filed enclose therein. The assessee deposited Rs. 37,43,000/- in cash on account of agricultural income in Standard Chartered Bank Account no. 62510015697. The appellant submitted only copy of lease of agricultural land as evidence in favour of doing agricultural activity. Appellant's only contention is that there is a lease agreement on a letter pad showing the land ownership but there is no other evidence showing any human intervention in the planting of these flowers, grass, vegetables and grains. There is no evidence in possession of appellant to prove that any procedures were adopted to produce and maintain these agricultural produces over a time from 1999 to the year in question. There is no evidence to prove that any basic and subsequent operations were duly performed resulting onto this agricultural income like expenditure on human labour, seeds, manure, pesticide, etc.. AO's contention is that the appellant did not produce any documentary evidence whatsoever regarding expenses on plantations and their maintenance as stated above. No details of buyers or evidence of sale of these flowers, grass, grains and vegetables were submitted before AO.

The Supreme Court in CIT v Raja Benoy Kumar Sahas Roy (1957) 32 ITR 466 (SC) has held that the land is said to be used for agricultural purposes where the following two types of operations are carried out on such land:

The term 'agriculture' in S. 2(1)(b)(1) of the Indian Income-tax Act connotes the entire and integrated activity

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of an agriculturist performed on the land in order to raise its produce and consists of such basic and essential operations, requiring human skill and labour on the land itself, as the tilling of the soil, sowing of the seeds, planting and similar operations on the land and such other subsequent operations, performed after the produce sprouts from the land, as weeding, digging of the soil around the growth, removal of undesirable under-growths, tending, pruning, cutting, harvesting and marketing. But these subsequent operations, if unconnected with the basic operations, cannot by themselves constitute agriculture. It is only when the land is subjected to such Integrated activity, that :It can be said to be used for, agricultural purpose' and its income called agricultural income within the meaning of the Act.

....Judicial opinion is unanimous that products which grow wild on the land or are of spontaneous growth and do not involve any human skill or labour on the land, and all that the assessee has to perform in respect of them is only to collect them for consumption and marketing, are not products of agriculture and the income derived from them is not agricultural income within the meaning of S. 2(1) of the Act.

Admittedly appellant has not been able to submit any evidence pertaining to both the basic and the subsequent operations that can show that any form of integrated activity of the agriculture actually happened or any evidence of its sales generating the income. All income is supposedly have been received from farmers in cash. The applicant claimed to have done business of Aroma oil. Applicant submitted that the he extracted the oil from flowers and grass on job work basis. But no details whatsoever of any kind has been submitted pertaining to job works done. More so, the sale of oil of flowers and grass is not agricultural income, exempt u/s 2(1A) of the Income Tax Act. Applicant has not submitted any details of farmers from Rai Bareilly who

purchased grains, vegetables and also flowers and grass for Aroma work in cash. It is surprising that someone who purchases goods from applicant for Rs. 25,000 65,000/-, their details are not known to him but he knows that after purchasing agricultural produce from applicant these farmers sent it to other places for extraction of oil. Such contradictory facts are nothing but an afterthought of the appellant to explain unsuccessfully explaining the huge cash deposited in bank account as earned from agricultural income. The applicant also submitted that he helped them in extracting the oil in case of need of customers who purchased grass and brought their own at a very low cost and only job work was being done on labour basis and the applicant had no concern with oil sale or its marketing. The applicant's sale was limited only to agricultural produces. If we go by this theory then it shows that appellant was doing complete business of extraction and sale of oil but trying to break the operations and claim it as exempt u/s 2 of IT Act. But applicant does not have any evidence to prove this activity also. All the submissions of appellant are not backed by any lot of documentary evidence hence they cannot be relied upon.

An income to be "agricultural income" should be derived from land and the land should be used for agricultural purposes. In other words, there should be a nexus between income, land and agriculture operations, by which is meant something done to the land by human or mechanical agency to produce out of the land any crop, tree, plantation or other produce or product. The immediate source of the income must be land or the description or character mentioned in the definition [CIT v Imam Saheb (K.S.) (1969) 71 ITR 742 (Mad)].

In the case of Mustafa Ali Khan v CIT [1948 16 ITR 330 (PC) in which it was held that that income from sale of forest trees, fruits and flowers growing on land naturally and spontaneously without the intervention of human agency is considered as Non Agricultural Income.

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Appellant has submitted that the plantation took place from 1999. The plantation that applicant has dealt in, are cash crops and appellant knew that these will fetch considerable amount of income then it was important for appellant to maintain all the records properly till these plantations were sold. There is no evidence of sale of these agricultural produce made during the year under consideration. Now to say that appellant sold all these trees to sundry purchaser without any bills is unbelievable. Appellant could have taken the receipts as evidence of sale especially when taking amount of Rs. 25,000/- to 65,000/-. Aroma oil is sold commercially so persons who are the buyers can be identified easily by applicant. However no details are made available by the appellant.

In the case of The CIT vs. Sri Ramakrishna Deo (1959) 35 ITR 312, 316, 317(SC).Held: The law is well settled that it is for a person who claims exemption to establish it, and there is no reason why it should be otherwise when the exemption claimed is under the Income-tax Act.Held that the burden is on the appellant to prove that the income sought to be taxed was agricultural income.

Avdhesh Kumar Jain vs Commissioner of Income-Tax (1989) 178 ITR 443 (All).

Held:

2. The concurrent findings of the tax authorities including the Income-tax Appellate Tribunal are that the assessee had failed to produce any satisfactory evidence about his being engaged in agricultural activities. The further finding is that the assessee was also not able to state to whom the said agricultural produce was sold. Consequent to the aforesaid finding, the Tribunal has held that the sum of Rs. 28,000 was rightly assessed as income from undisclosed sources in the hands of the assessee. Having heard learned counsel for the parties, we are of the opinion that the findings recorded by the Income-tax

Appellate Tribunal are pure findings of fact which are based on appreciation of evidence. The view taken by the Tribunal is a possible view on the evidence that was placed before it in our opinion, the order of the Tribunal does not give rise to any question of law on the findings recorded by it.

In the instant case it is well established that appellant has failed to discharge the initial onus of proving that the income earned was in fact agricultural income. Appellant also failed to prove that any agricultural operations were in fact ever done on the land premises leased by him and finally failed to substantiate that the sale of these flowers, grass, vegetables and grains actually happened. So it is seen that appellant fails on all the main ingredients that are required to prove the nature and source of this income as agricultural income, in order to claim the statutory exemption. Facts in this case are same as for AY 2006-07 & AY 2007-08 where on similar grounds the appeal of the appellant is dismissed on this ground.

With these remarks addition made by the AO is upheld.

This ground is dismissed.”

17c. With respect to addition of Rs. 28,13,159/- made by the AO with respect to cash deposits in Standard Chartered Bank, the assessee submitted before Id. CIT(A), as under:

“2 Cash Deposit Rs. 28,13,159/-

- (i) The Appellant has deposited Rs. 49,73,355/- in Standard Chartered Bank but the A.O. has taken the cash deposit of Rs. 77,86,514/- and added the difference of Rs. 28,13,159/-.

Copy of bank account is enclosed.”

17d. The Ld. CIT(A) dismissed the appeal of the assessee with respect to addition of Rs. 28,13,159/- as was made by the AO under Section 68 of the Act, by holding as under:

“Decision:

I have gone through the facts and the written submissions filed along with the details filed enclose therein. With regard to the cash deposits in Standard Chartered Bank Account no. 62510015697, no evidence explaining the nature of receipts was submitted during the assessment or appellate proceedings by the appellant. Appellant has failed to discharge the initial onus of proving that the cash deposited is not his income earned. No addition can be made u/s 68 of IT Act on the unexplained deposits in the bank account as they are not books of accounts of the appellant but can be added u/s 69A of IT Act as unexplained money. Therefore I am left with no alternative but to confirm the addition made by AO. AO is directed to tax this amount u/s 69A OF IT Act.

This ground is dismissed.”

17e. With respect to additions being made by the AO to the tune of Rs. 1,01,90,683/- u/s 68 of the 1961 Act, the assessee submitted before Ld. CIT(A) as under:

“Appellant’s submission:

During the appellate proceedings, the A.R. of the appellant has submitted as under-

“3. Cash Deposit Rs.1,01,90,683/-:

Late Shri Satya Prakash Gupta (through Legal heir Mr. Sudheer Gupta), Allahabad, U.P. v.
ACIT, Circle-I, Allahabad, U.P.

The appellant has deposited Rs.77,86,514/- in bank and not Rs.1,79,77,197/-. The appellant had also sold flat for Rs.48,51,000/- the details has been submitted at the time of assessment proceedings before the A.O. The appellant had to suffer loss in construction work due to dispute in partnership.

The affidavit is also filed."

17f. The Ld. CIT(A) dismissed the appeal of the assessee by holding as under:

“Decision:

I have gone through the facts and the written submissions filed along with the details filed enclose therein. With regard to the cash deposits in Standard Chartered Bank Account no. 62510015697, no evidence explaining the nature of receipts was submitted during the assessment or appellate proceedings by the appellant. Appellant has failed to discharge the initial onus of proving that the cash deposited is not his income earned. No addition can be made u/s 68 of IT Act on the unexplained deposits in the bank account as they are not books of accounts of the appellant but can be added u/s 69A of IT Act as unexplained money. Therefore I am left with no alternative but to confirm the addition made by AO. AO is directed to tax this amount u/s 69A of IT Act.

This ground is dismissed."

18a. Aggrieved by the appellate order passed by ld. CIT(A), the assessee filed second appeal before tribunal and Ld. Counsel for the assessee has filed written submissions, as under:

Before The Income Tax Appellate Tribunal

Allahabad

Fixed on 0
Fix 2-2-202

Reference - ITA no.5

Late Satya Prakash Gupta

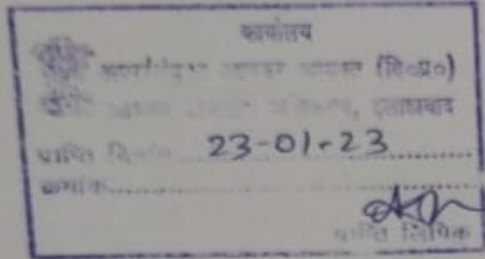
157 Uttra Khand

Jawahar Lal Nehru, University

Delhi 110007

A.Y. 2008-09

Subject - Written Submission



Sir,

In the above appeal, the appellant wants to bring the following facts before your honour for your kind consideration and favorable order:-

1. Addition Agriculture Income: 37,43,000/-
 Regarding Agriculture Income, detail argument has been submitted in A.Y. 2006-07 and evidences profit and loss account has been filed along with paper book for A.Y. 2008-09 on page 1 to 29.

2. Addition of Rs.28,23,159/- Cash deposit
 The Athourity below has added the cash deposit as under:-

Total deposit	77,86,514/-
Less deposit accepted by A.O.	<u>(-)49,73,355/-</u>
Addition	<u>28,13,159/-</u>

3. Addition of Rs.1019,0683/-cash deposit
 The details of addition are as under:-

Total deposit	1,29,09,749/-
	+ <u>50,67,400/-</u>
	1,79,77,197/-
Less deposit	- <u>77,86,514/-</u>
Addition	<u>1019,0683/-</u>

a) The appellant has deposited in his standard chartered bank account no. 625100015697 as under:-

By cash	46,54,400/-
By cheque	<u>26,96,355/-</u>
	73,50,755/-
Less agriculture income	(-) <u>37,43,000/-</u>
	36,07,755/-
Less out of flat sale	(-) <u>38,00,000/-</u>
48,51,000/-	<u>74,50,755/-</u>

Copy of bank statement is enclosed.

b) The total deposit including cash and cheque were only 73,50,755/- as per bank statement attached of standard chartered bank account no.62510015697 and not Rs.1,77,77,197/- mentioned by A.O. Bank statement is enclosed from 1/4/2007 to 31/3/2008.

c) Similarly bank deposit Rs.77,86,514/- has been added twice adding Rs.28,23,159/- and again Rs.10,190,683/- total addition was 10,190,683+28,13,159/- =13,003,842/- without considering the full fact.

d) Appellant had Bank account in Standard chartered bank and the A.O. has not mentioned the bank detail and added Rs.10,190,683/- on the basis of AIR and without any opportunity as to which bank Rs.1,79,77,197/- has been deposited.

e) In this connection written reply has been filed at the time of assessment proceeding on 10/2/2014 and filed details of sale of 10 Flats sold for Rs.48,51,000/- the appellant also requested to the A.O. to send notices to Partner Smt Shashi Singh and Smt Anita Kesarwani as they had also invested Rs.60,00,000/- in construction of flat copy of reply filed on 30 to 32 and details of flat sale on Page 33 of the Paper book filed in A.Y. 2007-08.

f) Again reply filed at 6/3/2014, the applicant submitted that he had invested in construction of flat in A.Y. 2006-07 Rs.16,00,072/- in A.Y. 2007-08 Rs.38,60,972/- and in A.Y. 2008-09 Rs.7,15,285/- total Rs.61,76,279/- and received only Rs.48,51,000/- and there was loss of Rs.(-) 13,25,279/- sale deeds were also executed by Smt Shashi Singh and Smt Anita Kesarwani. Copy of reply attached,

Due to heavy loss, the appellant was shocked, confined to bed and expired on 18/9/2022.

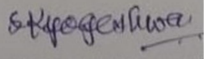
g) The above fact has not been examined by the authority below.

Considering the above facts, kindly allow the appeal.

Thanking you sir

your faithfully

Allahabad
23/1/2023


[S.K.YOGESHWAR]
Advocate

The Learned counsel for the assessee submitted that there is an addition to the tune of Rs. 37,43,000/- as the claim of the assessee for earning of an agriculture income was not accepted by authorities below. It was further submitted that an addition of Rs. 28,13,159/- was made on account of unexplained cash deposits , and a further addition of Rs. 1,01,90,683/- was made by the AO on account of allegation of deposit in bank accounts being unexplained deposits. It was submitted that additions were made based on AIR information that Rs. 1,29,09,797/- and Rs. 50,67,400/- aggregating to Rs. 1,79,77,197/- were deposited in cash in bank accounts of the assessee, while only explanation was submitted with respect to Rs. 77,86,514/- . It was submitted that total deposits in Standard Chartered Bank during the year were to the tune of Rs. 73,50,755/-. It

was submitted that the additions were made twice and same amount has been added twice., causing serious prejudice to the assessee. It was submitted that there were sale of 10 flats constructed by the assessee in partnership with Mrs. Shashi Singh and Mrs. Anita Kesarwani, and the receipts on account of flat sales were credited in the Bank account, which was not considered by the authorities below. Our attention was drawn to Pb/Department/Page 43-61, wherein specimen sale agreements filed by the assessee with department are placed. It was submitted that the land on which construction was carried out by the assessee , belonged to and owned by Mrs. Shashi Singh and Mrs. Anita Kesarwani. It was submitted that the assessee constructed the flats in partnership with Mrs. Shashi Singh and Mrs. Anita Kesarwani. It was submitted that cash of Rs. 46.54 lacs was deposited in Standard Chartered Bank during the year under consideration and further cheques of Rs. 26,96,355/- were deposited in the said bank account. It was submitted that AIR information that Rs. 1.79 crores in cash were deposited in the bank accounts of the assessee is an erroneous information. It was submitted that no opportunity was granted to the assessee before making such a huge addition to the income of the assessee. Our attention was drawn to Page 89A and 89B of Departmental PB , wherein AIR information is

placed , and it was submitted that first AIR information –RRR dated 30.08.2008 and posted dated in ITS was 19.06.2009 which is an original return and amount of cash deposited in bank is allegedly stated to be Rs. 1,29,09,797/- , while at PB/Page 89B is a supplementary AIR return RRR filed on 12.08.2009 and posting date is 17.03.2010 , wherein cash deposits in the bank account were to the tune of Rs. 50,67,400/- . It was submitted that the authorities below erroneously added both the amounts reflected in original return and supplementary return, while only supplementary return ought to have been considered by the authorities below which was merely corrected AIR return filed by the Bank, which has led to double additions which are not permissible.

18b. The ld. Sr. DR has submitted written submissions, the relevant extracts are as under:

D

- No evidences have ever been produced/filed to show that any agricultural activities were actually carried out by the assessee and even there are no evidences with regard to the yield, sales & expenses. Not only that, the figures of agricultural gross receipts and relevant expenses stated as per various submissions are different and at variance with each other, as indicated below:-

As per
details dated 12.03.2014 (pp 83)

Receipts : 35,93,570/-

Expenses:

Seeds : 37,780/-
Electricity: 6,880/-
Salary : 72,000/-
Misc. : 2,910/-
Lease rent : 74,000/-

No other expenses

Net income : 34,00,000/-

P&L a/c filed before the Bench vide
paper book dated 07.06.2022 (pp 90)

Receipts: 45,00,000/-

Expenses:

Seeds xxx
Electricity : 24,000/-
Salary : 1,20,000/-
Misc. : 21,156/-
Lease rent : 72,000/-
Bank Charges : 224/-
Diesel : 47,300/-
Labour & Wages : 7,65,000/-
Mobile exp. : 19,485/-
Repair & maintenance : 18,835/-
Travelling & conveyance : 12,000/-

Net income : 34,00,000/-

However, vide written submission dated 23.01.2023 filed before this Hon'ble Bench, the agricultural income is stated to be **Rs. 37,43,000/-** (pp 93-95).

The same figure of Rs. 37,43,000/- has been considered by the AO in the assessment order while making addition.

- Gross receipts from agriculture are shown exorbitantly high whereas related expenses, as stated by the assessee, are very nominal; which is very unlikely and unrealistic. Moreover, there are no evidences in support of any of the above figures of receipts & expenses.
- The Id. AR's contention (as per reply dated 10.02.2014/ pp 31-33) that the lease of the agricultural land was for 10 years is apparently incorrect, as the initial lease (even if it was made) was for a period of 03 years only subject to further renewal but there is no evidence that the same was ever renewed.
- There is no past history or subsequent history of the assessee's such huge agricultural income in the past or subsequent years (except for the years under appeal i.e. A.Y. 2006-07 to 2009-10).

- No returns have been filed by the assessee for the past and subsequent years. Even for the years under appeal i.e. A.Y. 2006-07 to 2009-10, returns were filed only u/s 148 (and not u/s 139).
- The quantum of **agricultural income** claimed to have been derived from the said Sirsa Farm (12.36 Hectares) in the years under appeal is **inconsistent year to year**, which is clear from the year wise figures below:

Agricultural income claimed	A.Y. 2006-07	A.Y. 2007-08	A.Y. 2008-09	A.Y. 2009-10
	Rs. 5,00,000/- or 7,00,000/-	Rs. 22,00,000/-	Rs. 34,00,000/- or 37,43,000/-	Rs. 5,00,000/-

- Such a huge variation in the agricultural income in different years from one and the same measurement/area of land is very unlikely and unrealistic.

About source of deposits in the A's Standard Chartered Bank a/c no. 62510015697
(pp 96-108)

as stated before the AO :

Vide reply dated 10.02.2014 (pp 31-33),

the assessee stated that the overall deposits in the said bank a/c aggregated to Rs. 49,73,355/- and source thereof was stated as under (*reproduced/pp 31*):-

5,16,000/- (25.09.2007) by cash receipt from agriculture*
 5,22,000/- (06.11.2007) by cash receipt from agriculture*
 7,50,000/- (27.11.2007) by cash receipt from agriculture*
 10,23,355/- (06.12.2007) by cheque out of flat sales
 3,50,000/- (19.12.2007) by cash receipt from agriculture*
 2,00,000/- (27.12.2007) by cash receipt from agriculture*
 2,07,000/- (18.01.2008) by cheque for advance sale of flat
 4,15,000/- (18.02.2008) by cash receipt from agriculture*
 1,90,000/- (29.02.2008) by cash receipt from agriculture*
 3,50,000/- (01.03.2008) by cash receipt from agriculture*
 4,50,000/- (09.03.2008) by cash receipt from agriculture*
49,73,355/- Total,

Out of which (* **Rs. 37,43,000/-**) stated to be by **agricultural income** has been **added** as unexplained income of the assessee (in the absence of any evidence of the alleged income from agriculture), which has been confirmed by the Ld.CIT(A) and **impugned** in the present appeal.

- The AO had been saying that the total amount deposited in the said (Standard Chartered) bank a/c was Rs. 77,86,514/- (as per order sheets dated 08.03.2013 & 10.02.2014-pp 84/85), which the assessee kept on denying and stating that the total of deposits made in the said bank a/c was only Rs. 49,73,355/- (vide replies dated 10.02.2014, 11.03.2014 & order sheet dated 10.02.2014-pp 31-33/79-80/85). Thus, the difference of the two, being Rs. **28,13,159/-** (Rs. 77,86,514 – 49,73,355) treated as un-admitted deposit **was added** to the income of the assessee, which has been confirmed by the Ld.CIT(A) and **impugned** in the present appeal.

F

Correct amount of overall deposits in the said bank a/c

It works out to Rs. 77,13,755/- (exclusive of interest Rs. 9,175; 5513; 3647 & 4425 credited on 30.06.2007, 30.09.2007, 31.12.2007 & 31.03.2008 respectively), out of which total of cash deposits comes to Rs. 50,17,400/- & cheque deposits Rs. 26,96,355/- as per summary given below:-

<u>Cash deposits (Rs.)</u>		<u>Cheque/ Trf. deposits (Rs.)</u>		(pp 96-108)
04.05.2007	2,23,000/-	04.04.2007	8,00,000/-	
08.05.2007	1,03,600/-	17.05.2007	50,000/-	
14.05.2007	1,60,000/-	22.05.2007	50,000/-	
15.05.2007	2,00,000/-	24.05.2007	50,000/-	
23.05.2007	40,000/-	30.05.2007	50,000/-	
11.09.2007	17,000/-	24.09.2007	25,000/-	
21.09.2007	24,000/-	20.11.2007	50,000/-	
25.09.2007	5,16,000/-	06.12.2007	10,23,355/-	
06.11.2007	5,22,000/-	08.01.2008	2,07,000/-	
27.11.2007	7,50,000/-	29.01.2008	71,000/-	
14.12.2007	95,000/-	29.02.2008	3,00,000/-	
19.12.2007	3,50,000/-	10.03.2008	20,000/-	
27.12.2007	2,00,000/-	Total	<u>26,96,353/-</u>	
01.01.2008	2,18,000/-			
03.01.2008	72,300/-			
14.01.2008	31,500/-			
01.02.2008	90,000/-			
18.02.2008	4,15,000/-			
29.02.2008	1,90,000/-			
01.03.2008	3,50,000/-			
19.03.2008	4,50,000/-			
Total	<u>50,17,400/-</u>			

Correct amount of overall deposits (50,17,400 + 26,96,353) = Rs. 77,13,755/-

About source of remaining (Rs. 1,01,90,683/-) deposits in the bank a/cs as per AIR
(pp 89A-89B)

- Vide order sheet dated 24.03.2014 (pp 89), the assessee was confronted by the AO with the figures reported by MUMS25234G (i.e. Standard Chartered Bank/pp-89C) in the AIR that the total deposits by the assessee in the said bank aggregated to Rs. [(Rs. 1,29,09,797 + 50,67,400 = 1,79,77,197/-)/pp 89A-89B]. The assessee, however, failed to offer any explanation in this regard, as evident from the order sheet dated 24.03.2014 (pp 89).
- The AO, therefore, made an addition of Rs. 1,01,90,683/- on the basis of AIR information [AIR reported total deposits in bank Rs. 1,79,77,197 - 77,86,514 considered as per ADIT(Inv.)'s information led to two separate additions of Rs. 37,43,000 & 28,13,159] impugned in the present appeal.

Regarding claim of agricultural income of Rs. 37,43,000/- allegedly earned by the assessee, the ld. Sr. DR relied upon his pleadings for the earlier years and it was submitted that the AO has rightly brought to

tax the said income by rejecting the claim of the assessee that he earned said income from agriculture. It was also submitted that the assessee is changing its stand regarding quantum of alleged agricultural income earned before different authorities. Our attention was drawn to written submissions filed by Id. Sr. DR and it was submitted that before AO , the assessee submitted that alleged gross agricultural income allegedly earned was Rs. 35,93,570/- , while before tribunal now it is claimed that alleged gross agricultural income earned was Rs. 45,00,000/-. It was submitted that same is the case with various expenses allegedly stated to be incurred for carrying out alleged agricultural operations, wherein the assessee is shifting his stand as to quantum of these expenses. It was submitted that there are absolutely no evidence to substantiate that the assessee in-fact carried out any agricultural operations. Regarding the addition of Rs. 28,13,159/- made by the authorities below , the Id. Sr. DR submitted that total deposits in the Standard Chartered bank account were to the tune of Rs.77,13,755/- (detailed in his written submissions) , out of which Rs. 50,17,400/- (correct figure Rs. 50,67,400/- as reported in supplementary AIR return ,as Id. Sr. DR inadvertently left the cash deposit of Rs. 50,000/- on 03.03.2008 in the chart prepared aforesaid vide his written submissions) were cash

deposits while balance amount of Rs. 26,96,353/- were cheque deposits in Standard Chartered Bank.

19. We have considered rival contentions and perused the material on record. We have observed that the assessment of the assessee was reopened by invoking provisions of Section 147/148 of the 1961 Act. Reasons for reopening of concluded assessment was recorded. Notice u/s 148 was issued by AO to the assessee requiring assessee to file return of income. The assessee filed return of income in pursuance to notice issued u/s 148 of the 1961 Act. The assessee participated in reassessment proceedings. The assessee declared interest income of Rs. 3,250/- . The assessee claimed loss of Rs. 47,15,200/- under the head 'Profits and Gains from Business or Profession'. The assessee also declared agriculture income of Rs. 34,00,000/- in the return of income filed with Revenue, which was claimed as an exempt income. The AO issued statutory notice u/s 143(2) and 142(1) of the 1961 Act. The assessee participated in reassessment proceedings. During reassessment proceedings, the assessee claimed agricultural income of Rs. 34,00,000/- , which was claimed as an exempt income u/s 10(1) read with Section 2(1A). The authorities below rejected the claim of the assessee as to earning of agricultural income, in the absence of any evidence to support his contentions. The factual matrix being the

same as was prevailing in ay: 2006-07 and ay: 2007-08 and our decision for ay: 2006-07 and ay: 2007-08 shall apply mutatis mutandis to the ay: 2008-09 as factual matrix being similar in ay: 2008-09 to that prevailing in ay: 2006-07 and ay: 2007-08. Thus, the additions of Rs. 34,00,000/- as sustained by ld. CIT(A) stood upheld by us. The appeal of the assessee on this issue stand dismissed. We order accordingly.

19b. So far as addition of Rs.28,13,159/- is concerned , the total deposits in the Standard Chartered bank account of the assessee were to the tune of Rs. 77,63,755/- (exclusive of interest income of Rs. 9175 + Rs. 5513/- + Rs. 3647/- + Rs. 4425/- aggregating to Rs.22,760/- , credited on 30.06.2007 , 30.09.2007 , 31.12.2007 and 31.03.2008) , out of which cash deposits were to the tune of Rs.50,67,400/- (correct figure which matches with supplementary AIR return) and cheque deposits were to the tune of Rs. 26,96,353/- . The assessee has only declared interest income of Rs. 3,250/- in the return of income filed with Revenue. The interest income from Standard Chartered Bank account is Rs. 22,760/- , thus there is short declaration of interest income. The assessee has other bank accounts also . The AO is directed to bring to tax, correct interest income earned by the assessee from all his bank accounts, to income-tax.

Proceeding further, the assessee has claimed that there were sale of flats constructed by him on the plot of land owned by Mrs. Shashi Singh and Mrs. Anita Kesarwani. The said construction was claimed to be undertaken in partnership with Mrs. Shashi Singh and Mrs. Anita Kesarwani. The flats are claimed to be sold during the year. It is claimed that expenses were also incurred by the assessee for construction of these flats and loss was claimed from construction activities , but the same was not considered by authorities below. Thus , in the aforesaid circumstances, we are inclined to set aside this issue to the file of the AO for denovo assessment , after giving opportunity of being heard to the assessee . We order accordingly.

19c. Further , it is observed that addition of Rs. 1,01,90,683/- was made based on AIR reports regarding cash deposits. It is observed that there are two AIR return filed by the Bank, firstly original return wherein cash deposit in the bank account is stated to be Rs. 1,29,09,797/- (page 89A/departmental PB). Then, there is an supplementary AIR return filed wherein cash deposits in the bank account is stated to be Rs. 50,67,400/-. Both the returns are filed under same TAN MUMS25234G, and pertain to the year under consideration, with respect to the cash deposits made by the assessee. The authorities below made additions by aggregating both the AIR

returns, in complete disregard that second return is merely an supplementary return which is in-fact a revised return filed by the bank after correcting errors while filing original return. The amount of cash deposits in the supplementary return of Rs. 50,67,400/- also matches with the cash deposits actually made by the assessee in his Standard Chartered Bank account, during the year under consideration. This error need to be corrected, so that correct income be brought to tax, and the AO is directed to bring to tax correct income, after giving opportunity of being heard to the assessee. Proceeding further, there are other additions made by the authorities below, relatable to the cash deposits by the assessee in his Standard Chartered Bank , which has also led to double additions causing serious prejudice to the assessee. Thus, in the fitness of the matter, this issue is also restored to the file of the AO for denovo assessment after giving proper opportunity to the assessee, and the AO to ensure that multiple additions on account of same cash deposit do not occur , as the same is not permissible. The assessee to explain sources of deposits in the bank account, to the satisfaction of the AO, otherwise the AO will be justified to make the addition. If Required and deem fit, the AO may examine Mrs. Shashi Singh and Mrs. Anita Kesarwani , with whom the assessee has claimed to have entered into partnership

to construct the flats on the plot of land owned by them, to unravel truth with an objective to bring to tax correct income chargeable to tax in the hands of the assessee, but the primary onus is on the assessee to satisfactorily explain the credits in his bank accounts. With these remarks and directions, we are restoring the matter to the file of the AO. We order accordingly.

20. In the result, appeal of the assessee in ITA no. 5/Alld/2022 for ay: 2008-09 is partly allowed for statistical purposes. We order accordingly.

ITA NO. 6/ALLD/2022-Assessment Year 2009-10

21. The grounds of appeal raised by assessee in ITA No. 6/Alld./2022 for assessment year 2009-10, in memo of appeal filed with tribunal, reads as under:-

“1. That on the facts and circumstances of the case the authority below is not justified to accept agriculture Income of Rs. 5,00,000/-.

2. That the deposit of Rs. 1,67,277/- was also from agriculture Income Total deposit in Bank was only 6,67,277/-.

3. That the order passed by the authority below is unjust.”

22. The brief facts of the case are that the assessee's assessment was reopened by Revenue by invoking provisions of Section 147 and 148 of the Act . The AO issued notice u/s 148. In compliance thereof, the assessee filed return of income on 20th April, 2013 declaring income of Rs. 3,750/- , and also income from agricultural income of Rs. 5,00,000/- which was claimed as an exempt income. The AO issued notice under Section 143(2) and 142(1) . The assessee participated in reassessment proceedings. The AO observed that the assessee has deposited cash of Rs. 6,67,227/- in his Standard Chartered Bank Account No. 62510015697. The AO asked assessee to explain aforesaid cash deposits of Rs. 6,67,277/-. The assessee was asked by AO to substantiate the claim of agricultural income earned by him, and also to substantiate the agricultural operations carried on by the assessee , by submitting details/evidence of agricultural account, sale bills of agricultural produce , purchase bills of seeds and fertilizers , evidence of harvest of agricultural produce, sowing of agricultural crops , evidences for work done to improve agricultural operations, and other evidences to prove that agricultural operations were in-fact carried on by the assessee, but the assessee only produced Profit and Loss account of agricultural activities, and claim was made by assessee before AO that income from agriculture was deposited in the

bank account, but the assessee could not produce any evidence/documents before the AO to substantiate/prove that agricultural operations were in-fact carried on by the assessee. So far as agricultural land is concerned, the assessee claimed that the land belonged to 'Raja Jagannath Bakhsh Singh Trust' and lease agreement was executed on plain paper and same was not registered. On being asked by AO, the assessee submitted that the land owner refused to get the said land agreement registered, and this agreement was prepared on the plain paper. The AO rejected the contentions of the assessee and observed that no agricultural operations were carried on by the assessee, and an amount of Rs. 5,00,000/- claimed to be deposited by assessee from agricultural income is in-fact income from un-disclosed sources of the assessee, which was added by AO to the income of the assessee by invoking provisions of Section 68 of the 1961 Act. Regarding balance cash deposits of Rs. 1,67,277/- in his standard chartered bank account, the assessee did not furnish any explanation, which led AO to make addition of Rs. 1,67,277/- by invoking provisions of Section 68 of the 1961 Act. The AO passed reassessment order dated 24.03.2014 u/s 143(3) read with Section 147 of the 1961 Act, computing taxable income of Rs. 6,71,030/- as against returned income of Rs. 3,750/-.

23. Being aggrieved by reassessment framed by the AO, the assessee

filed first appeal before the CIT(A), and submitted before Id. CIT(A) as

under:

"Appellant's submission

During the appellate proceedings, the A.R. of the appellant has submitted as under-

"1. Addition of Rs.5,00,000/- :Agriculture Income.

(a) The appellant has filed the detail of agriculture Profit & Loss a/c. Copy of lease deed of agriculture land, which has not been considered."

The applicant started agriculture work in 1999 on lease land at Village Sirsa, Rae Bareli and also took loan from Punjab & Sindh Bank and started producing aroma grasses from flowers and grass for its customers and also grown grains and vegetable. Copy of lease of agricultural land is enclosed, which is for 10 years but due to ill health, the applicant has closed the work of Aroma Grasses in 2008. The applicant has never done any business of Aroma oil because it needs marketing and very huge capital. Applicant is an aged person unfit for marketing of Aroma Oils. Therefore the persons who were interested in aroma oil, the applicant would extract the oil from flowers and grass on job work basis. The production of flowers and grass are all agricultural income, exempt u/s 2(1A) of the Income Tax Act. The farmers form hereby area of Raibareilly used to purchase grains, vegetables and also flowers and grass for Aroma work in cash ranging from Rs. 25,000 - 65,000. Then they sent it to other places for extraction of oil. The applicant also helped them in extracting the oil in case of need of customers who purchased grass and brought their own at a very low cost and only job work was being done on labour basis and the applicant had no concern with oil sale of its marketing. The applicant's sale was limited only to agricultural produces.

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In support lease agreement was filed before the A.O. signed by both the parties which was not believed by the A.O. only on the ground that it was written on plain paper where as it has been written on the trust letter pad copy of lease deed enclosed herewith. That the applicant is enclosing the detail of gross receipt of agriculture income rule of Aroma plants etc. Applicant enclosed the profits and loss account of agriculture income in details."

23b. The Ld. CIT(A) dismissed the appeal of the assessee by holding as under:

"Decision:

I have gone through the facts and the written submissions filed along with the details filed enclose therein. The assessee deposited Rs. 5,00,000/- in cash on account of agricultural income in Standard Chartered Bank Account no. 62510015697. The appellant submitted only copy of lease of agricultural land as evidence in favour of doing agricultural activity. Appellant's only contention is that there is a lease agreement on a letter pad showing the land ownership but there is no other evidence showing any human intervention in the planting of these flowers, grass, vegetables and grains. There is no evidence in possession of appellant to prove that any procedures were adopted to produce and maintain these agricultural produces over a time from 1999 to the year in question. There is no evidence to prove that any basic and subsequent operations were duly performed resulting onto this agricultural income like expenditure on human labour, seeds, manure, pesticide, etc.. AO's contention is that the appellant did not produce any documentary evidence whatsoever regarding expenses on plantations and their maintenance as stated above. No details of buyers or evidence of sale of these flowers, grass, grains and vegetables were submitted before AO.

The Supreme Court in CIT v Raja Benoy Kumar Sahas Roy (1957) 32 ITR 466 (SC) has held that the land is said to be used for

agricultural purposes where the following two types of operations are carried out on such land:-

The term 'agriculture' in S. 2(1)(b)(1) of the Indian Income-tax Act connotes the entire and integrated activity of an agriculturist performed on the land in order to raise its produce and consists of such basic and essential operations, requiring human skill and labour on the land itself, as the tilling of the soil, sowing of the seeds, planting and similar operations on the land and such other subsequent operations, performed after the produce sprouts from the land, as weeding, digging of the soil around the growth, removal of undesirable under-growths, tending, pruning, cutting, harvesting and marketing. But these subsequent operations, if unconnected with the basic operations, cannot by themselves constitute agriculture. It is only when the land is subjected to such integrated activity, that it can be said to be used for, agricultural purpose' and its income called agricultural Income within the meaning of the Act.

...Judicial opinion is unanimous that products which grow wild on the land or are of spontaneous growth and do not involve any human skill or labour on the land, and all that the assessee has to perform in respect of them is only to collect them for consumption and marketing, are not products of agriculture and the income derived from them is not agricultural income within the meaning of S. 2(1) of the Act.

Admittedly appellant has not been able to submit any evidence pertaining to both the basic and the subsequent operations that can show that any form of integrated activity of the agriculture actually happened or any evidence of its sales generating the income. All income is supposedly have been received from farmers in cash. The applicant claimed to have done business of Aroma oil. Applicant submitted that the he extracted the oil from flowers and grass on job work basis. But no details

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whatsoever of any kind has been submitted pertaining to job works done. More so, the sale of oil of flowers and grass is not agricultural income, exempt u/s 2(1A) of the Income Tax Act. Applicant has not submitted any details of farmers from Rai Bareilly who purchased grains, vegetables and also flowers and grass for Aroma work in cash. It is surprising that someone who purchases goods from applicant for Rs. 25,000 - 65,000/-, their details are not known to him but he knows that after purchasing agricultural produce from applicant these farmers sent it to other places for extraction of oil. Such contradictory facts are nothing but an afterthought of the appellant to explain unsuccessfully explaining the huge cash deposited in bank account as earned from agricultural income. The applicant also submitted that he helped them in extracting the oil in case of need of customers who purchased grass and brought their own at a very low cost and only job work was being done on labour basis and the applicant had no concern with oil sale of its marketing. The applicant's sale was limited only to agricultural produces. If we go by this theory then it shows that appellant was doing complete business of extraction and sale of oil but trying to break the operations and claim it as exempt u/s 2 of IT Act. But applicant does not have any evidence to prove this activity also. All the submissions of appellant are not backed by any iota of documentary evidence hence they cannot be relied upon.

An income to be "agricultural income" should be derived from land and the land could be used for agricultural purposes. In other words, there should be a nexus between income, land and agriculture operations, by which is meant something done to the land by human or mechanical agency to produce out of the land any crop, tree, plantation or other produce or product. The immediate source of the income must be land or the description or character mentioned in the definition [CIT v Imam Saheb (K.S.) (1969) 71 ITR 742 (Mad)].

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In the case of Mustafa Ali Khan v. CIT [1948 16 ITR 330 (PC) in which it was held that that income from sale of forest trees, fruits and flowers growing on land naturally and spontaneously without the intervention of human agency is considered as Non Agricultural Income.

Appellant has submitted that the plantation took place from 1999. The plantation that applicant has dealt in, are cash crops and appellant knew that these will fetch considerable amount of income then it was important for appellant to maintain all the records properly till these plantations were sold. There is no evidence of sale of these agricultural produce made during the year under consideration. Now to say that appellant sold all these trees to sundry purchaser without any bills is unbelievable. Appellant could have taken the receipts as evidence of sale especially when taking amount of Rs. 25,000/- to 65,000/- Aroma oil is sold commercially so persons who are the buyers can be identified easily by applicant. However no details are made available by the appellant.

In the case of The CIT vs Sri Ramakrishna Deo (1959) 35 ITR 312, 316, 317 (SC) - Held: The law is well settled that it is for a person who claims exemption to establish it, and there is no reason why it should be otherwise when the exemption claimed is under the Income-tax Act. Held that the burden is on the appellant to prove that the income sought to be taxed was agricultural income.

Avdhesh Kumar Jain vs Commissioner of Income Tax (1989) 178 ITR 443 (All) HELD:

2. The concurrent findings of the tax authorities including the Income-tax- Appellate Tribunal are that the assessee had failed to produce any satisfactory evidence about his being engaged in agricultural activities. The further finding is that the assessee was also not able to state to whom the said agricultural produce was sold. Consequent to the aforesaid finding, the Tribunal has held that the sum

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of Rs. 28,000 was rightly assessed as income from undisclosed sources in the hands of the assessee. Having heard learned counsel for the parties, we are of the opinion that the findings recorded by the Income-tax Appellate Tribunal are pure findings of fact which are based on appreciation of evidence. The view taken by the Tribunal is a possible view on the evidence that was placed before it in our opinion, the order of the Tribunal does not give rise to any question of law on the findings recorded by it.

In the instant case it is well established that appellant has failed to discharge the initial onus of proving that the income earned was in fact agricultural income. Appellant also failed to prove that any agricultural operations were in fact ever done on the land premises leased by him and finally failed to substantiate that the sale of these flowers, grass, vegetables and grains actually happened. So it is seen that appellant fails on all the main ingredients that are required to prove the nature and source of this income as agricultural income, in order to claim the statutory exemption. Facts in this case are same as for AY 2006-07, AY 2007-08) & AY 2008-09 where on similar grounds the appeal of the appellant is dismissed on this ground.

With these remarks addition made by the AO is upheld.

This ground is dismissed.

23c. With regard to the addition of Rs. 1,67,277/- as was made by the AO on account of unexplained cash deposits in Standard Chartered Bank account, the assessee submitted before Id. CIT(A) as under:

“Appellant’s submission:

During the appellate proceedings, the A.R. of the appellant has submitted as under:

"2. Addition cash deposit Rs. 1,67,277/-

(i)The appellant has deposited Rs. 1,67,277/- out of agriculture income.

(ii) This is the last year of income from agriculture and thereafter the business has been closed permanently and the appellant has returned to Allahabad as there was no one to look after the agriculture transaction."

23d. The Ld. CIT(A) dismissed the contentions of the assessee , by holding as under:

"Decision:

I have gone through the facts and the written submissions filed along with the details filed enclose therein. With regard to the cash deposits in Standard Chartered Bank Account no. 62510015697, no evidence explaining the nature of receipts was submitted during the assessment or appellate proceedings by the appellant. Appellant has failed to discharge the initial onus of proving that the income earned was in fact agricultural income. Appellant also failed to prove that any agricultural operations were in fact ever done on the land premises leased by him and finally failed to substantiate that the cash deposited in Standard Chartered Bank are from the agricultural income earned by appellant during the year. With these remarks and in view of the ruling in the case of Avdhes Kumar Jain vs Commissioner of Income-Tax (1989) 178 ITR 443 (All)it is held that the appellant has failed to shift the onus to prove that cash deposited in both the bank accounts is from agricultural operations and therefore I am left with no alternative but to confirm the addition made by AO. No addition can be made u/s 68 of IT Act on the unexplained deposits in the bank account as they are not books of accounts of the appellant but can be added u/s 69A of IT Act as unexplained money. AO is directed to tax this amount u/s 69A of the IT Act.

This ground is dismissed."

24. Aggrieved by the dismissal of the appeal by ld. CIT(A), the assessee has now filed an appeal before the Tribunal, the Ld. Counsel for the assessee filed written submissions before tribunal, which are reproduced as under:

ITA Nos. 3, 4, 5 & 6/Alld./2022
Assessment Years: 2006-07, 2007-08, 2008-09 & 2009-10
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File 2-2-2023

Before The Income Tax Appellate Tribunal
Allahabad

Reference - ITA no.6

Late Satya Prakash Gupta
157 Uttra Khand
Jawahar Lal Nehru, University
Delhi 110007
A.Y. 2009-10

कार्यालय
आयकर विभाग (डि०२०)
इलाहाबाद

दिनांक: 23-01-23

AM
प्रति लिपिक

Subject - Written Submission

Sir,

In the above appeal, the appellant wants to bring the following facts before your honour for your kind consideration and favorable order:-

1. Addition Agriculture Income: 5,00,000/-
Regarding Agriculture Income, detail argument has been submitted in A.Y. 2006-07 and evidences profit and loss account has been filed along with paper book for A.Y. 2009-10 on page 1 to 14.
2. Addition of Rs.1,67,277/-
This Cash has been deposited out of left over of agriculture implements and savings, this is petty amount.

The appellant was also expired and the legal heir has no knowledge of his business activity.

Kindly consider the above facts and allow the appeal.

Thanking you sir

your faithfully

S.K. Yogeshwar
[S.K.YOGESHWAR]
Advocate

Allahabad
23/1/2023

The Learned Counsel for the assessee submitted that similar contentions as were made by him for explaining agricultural income ,

while arguing his case for ay: 2006-07 before the Bench, shall apply. It was submitted that the assessee earned agricultural income of Rs. 5,00,000/- during the year under consideration, while Rs. 1,67,277/- was earned from sale of agricultural implements. It was submitted that the assessee has stopped agricultural activities during the year under consideration. It was submitted that lease of land expired, and also the assessee's health is not good which led assessee to stop agricultural activities, and the agricultural implements were sold during the year as the agricultural activities stood stopped. It was submitted that the assessee shifted to Allahabad , during the year under consideration. Our attention was drawn to the bank statement of Standard Chartered Bank for the financial year 2008-09, which is placed in Departmental Paper Book.

24b. The Ld. Sr. DR on the other hand submitted that there is no evidence on record to substantiate that the assessee infact carried out any agricultural activities during the year under consideration. It was submitted that there is no evidence on record to substantiate that the assessee sold any agricultural implements during the year under consideration. The ld. Sr. DR reiterated his contentions as were made for the earlier years before the Bench, and prayers were made to uphold the additions as were confirmed by ld. CIT(A).

25. We have considered rival contentions and perused the material on record. We have observed that the assessment of the assessee was reopened by Revenue by invoking provisions of Section 147/148 of the 1961 Act. Notice u/s 148 was issued by AO to the assessee requiring assessee to file return of income. The assessee filed return of income in pursuance to notice issued u/s 148 of the 1961 Act. The assessee participated in reassessment proceedings. The assessee declared interest income of Rs. 3,750/- . The assessee also declared agriculture income of Rs. 5,00,000/- in the return of income filed with Revenue, which was claimed as an exempt income u/s 10(1) read with Section 2(1A). The AO issued statutory notice u/s 143(2) and 142(1) of the 1961 Act. The assessee participated in reassessment proceedings. During reassessment proceedings, the assessee claimed agricultural income of Rs. 5,00,000/- , which was claimed as an exempt income. The authorities below rejected the claim of the assessee as to earning of agricultural income, in the absence of any evidence to support his contentions. The assessee claimed to have earned agricultural income to the tune of Rs. 5,00,000/- and further claimed to have received Rs. 1,67,277/- from sale of agricultural implements. We have observed that although the entire amount of Rs. 6,67,277/- is not deposited in the SCB, but it is the claim of the

assessee that Rs. 5,00,000/- was earned from agricultural income for which exemption is sought u/s 10(1) read with Section 2(1A) , the onus is on the assessee to substantiate that he is entitled for exemption as he meets all the conditions for exemption , as exemption provisions are to be strictly construed. The assessee has filed in his return of income , claim of earning alleged agricultural income of Rs. 5,00,000/- which was claimed as an exempt income. The onus is on the assessee to substantiate the earnings of agricultural income, and exemption provisions are to be strictly construed . The assessee has not produced any evidence to justify and substantiate the carrying out of agricultural operations , during the year under consideration. So far as alleged sale proceed of agricultural implements of Rs. 1,67,277/- , again there is no evidence on record to substantiate the same . The factual matrix being the same as was prevailing in ay: 2006-07 , ay: 2007-08 and ay: 2008-09 and our decision for ay: 2006-07 , ay: 2007-08 and ay: 2008-09 shall apply mutatis mutandis to the ay: 2009-10 as factual matrix being similar in ay: 2009-10 to that prevailing in ay: 2006-07 , ay: 2007-08 and ay: 2008-09. Thus, the additions of Rs. 6,67,277/- as sustained by Id. CIT(A) stood upheld by us. The appeal filed by the assessee stands dismissed. We order accordingly.

26. In the result, appeal filed by assessee in ITA nos. 6/Alld/2022 for ay: 2009-10 stand dismissed.

27. In the result, appeal filed by assessee in ITA nos. 3, 4 and 6/Alld/2022 for ay: 2006-07, 2007-08 and 2009-10 respectively, stand dismissed, while appeal in ITA No. 5/Alld/2022 for ay: 2008-09 stands partly allowed for statistical purposes.

Order pronounced in Open Court on 15/03/2023 at Allahabad, U.P.

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

Sd/-
[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 15/03/2023

K.D. Azmi

Copy forwarded to:

1. Appellant – Mr. Sudheer Gupta L/H of Mr. Satya Prakash Gupta 157, Uttrakhand, Jawahar Lal Nehru University, New Delhi-110067
2. Respondent – The Asst. Commissioner of Income Tax, Aayakar Bhawan, 38, M G Road, Civil Lines, Allahabad-211001, U.P.
3. The CIT, Allahabad, U.P.
4. The Id. Sr. DR. ITAT, Allahabad, U.P.
5. The CIT(A), Allahabad, U.P.
6. The Guard File

ITA Nos. 3, 4, 5 & 6/Alld./2022

Assessment Years: 2006-07, 2007-08, 2008-09 & 2009-10

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By Order

P.S.