IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3763/Mum./2015
(Assessment Year : 2009–10)

Bayer Crop Science Ltd.
(Successor to Monsanto India Ltd.)
Ahura Centre, 5th Floor
96, Mahakali Caves Road
Andheri (East), Mumbai 400 093
PAN – AAACM2875L ……. Appellant

v/s

Dy. Commissioner of Income Tax
Range–10(2)(2), Mumbai ..... Respondent

ITA no.2124/Mum./2018
(Assessment Year : 2012–13)

Dy. Commissioner of Income Tax
Range–10(2)(2), Mumbai ……. Appellant

v/s

M/s. Monsanto India Ltd.
Ahura Centre, 5th Floor
96, Mahakali Caves Road
Andheri (East), Mumbai 400 093
PAN – AAACM2875L ..... Respondent

ITA no.2302/Mum./2018
(Assessment Year : 2012–13)

Bayer Crop Science Ltd.
(Successor to Monsanto India Ltd.)
Ahura Centre, 5th Floor
96, Mahakali Caves Road
Andheri (East), Mumbai 400 093
PAN – AAACM2875L ……. Appellant

v/s

Dy. Commissioner of Income Tax
Range–10(2)(2), Mumbai ..... Respondent

Assessee by : Shri Nitesh Joshi
Revenue by : Ms. Riddhi Mishra

Date of Hearing – 18/08/2023	Date of Order – 10/11/2023

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

In the present batch of appeals, the assessee has challenged the impugned order dated 31/03/2015 for the assessment year 2009-10, while for the assessment year 2012-13, both the assessee and the Revenue are in appeal before us challenging the impugned order dated 31/01/2018, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)–17, Mumbai, [*"learned CIT(A)"*].

ITA no.3763/Mum./2015
Assessee's Appeal – A.Y. 2009–10

2. In its appeal, the assessee has raised the following grounds:–

"a) On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer in denying the claim of agricultural exemption under section 10(1) of the Act.

b) On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in not following the order passed by the Bombay High Court in the Appellant's own case for earlier years which has binding effect as there was no change in facts or in the manner in which the agricultural activity has been carried out by the Appellant in the current year as compared to the earlier years.

c) On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) further erred in denying the claim of exemption by relying upon the decision of the Karnataka High Court in the case of Namdhari Seeds Private Limited (341 ITR 342).

D) On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in making various observations which are factually incorrect and contrary to the facts available on record which the Appellant craves leave to elucidate at the time of hearing, leading to perverse finding that Appellant is not involved in carrying out agricultural activities and thus not eligible for deduction under section 10(1) of the Act.

The Appellant craves leave to add, alter, amend, delete or withdraw any or all of the grounds of appeal at or before the hearing of the appeal so as to enable the Income tax Appellate Tribunal to decide the appeal according to law.

3. The only dispute raised by the assessee, in the present appeal, is against the denial of exemption under section 10(1) of the Act on the income earned from the sale of hybrid seeds.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is engaged in the business of manufacturing and trading in agrochemicals, and growing and selling seeds. For the year under consideration, the assessee e-filed its return of income on 30/09/2009, declaring a total income of Rs.25,75,07,699, under normal provisions of the Act and book profit of Rs.20,34,90,548, under section 115JB of the Act. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, it was observed that the assessee has claimed income of Rs.54,77,17,169, arising from the seeds division as exempt under section 10(1) of the Act. The assessee was asked to explain and substantiate its claim with regard to the exemption of income under section 10(1) of the Act. In response thereto, the assessee submitted that it is involved, inter-alia, in the growing and selling of hybrid seeds, and the same is carried on by the seeds division of the assessee. The assessee further submitted that the agricultural operations of the assessee are carried out with the help of farmers and spread over the states of Karnataka and Andhra Pradesh. The assessee also produced a copy of the agreement entered into with the farmers for growing the seeds. The assessee

further submitted that the farmers are required to carry out various activities under the guidance and supervision of the assessee. Further, the landowners remain the landowners of the agricultural land and they allow the usage of land exclusively for growing hybrid seeds by the assessee. It was also submitted that the agricultural operations are carried out with the help of the farmers and it has total control in respect of agricultural operations carried out by it jointly with the farmers. Further, it was submitted that the agricultural activities were carried out under the control and supervision of the assessee. The assessee also explained the sequence of operations undertaken by it for the growing of hybrid seeds, as noted in the assessment order from pages 12-14. In support of its submission, the assessee placed reliance upon the decisions of the Hon'ble jurisdictional High Court and the coordinate bench of the Tribunal, whereby the assessee's claim of exemption in respect of agricultural income was allowed in the earlier years.

5. The Assessing Officer ("*AO*") vide order dated 28/03/2013, passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that the assessee could not produce any document to support its claim in the form of record of rights that either the assessee was an agriculturist or tenant or occupant of the land. The AO further held that the agricultural equipments are owned and used by the farmers and not by the assessee, thus the assessee could not prove with the documentary evidence that it was cultivating the land and not the farmers. The AO further held that there is nothing to suggest or prove that the assessee was in lawful possession of the land to undertake the agriculture process ordinarily

undertaken by the cultivator. By referring to the statements of farmers, recorded during the assessment proceedings under section 131 of the Act, the AO held that the assessee has not undertaken the basic agricultural operations, hence the agriculture income if any accrued is to the farmer and not to the assessee. By referring to the Seed Production Agreement entered with the farmers, the AO held that the role of the assessee is to provide guidance and supervision, to ensure that the farmer shall produce the desired quality of the hybrid seeds and the assessee has never carried out the agriculture operation ordinarily carried out by a cultivator. The AO further held that the activities carried out by the assessee are not akin to the activities carried out by ordinary cultivators. It was held that the assessee is processing the raw material through the farmers and manufacturing a different material which is used for sale in the open market as hybrid seeds, which cannot be said as agricultural process ordinarily deployed by the farmers. The AO placed reliance upon the decision of the Hon'ble Karnataka High Court in CIT v/s Namdhari Seeds Pvt. Ltd., [2011] 16 taxmann.com 83 (Karn.) and came to the conclusion that the assessee has not carried out any basic agricultural operation. The AO further held that the primary motto of the assessee is trading of the seeds and for that, the assessee has obtained the parent seeds and multiplied the same by taking the help of the farmers. Thus, the assessee has entered into an agreement with the farmers in order to commercially exploit the IPR, which it has received from the US. The AO held that the ownership or lawful possession of land is a basic prerequisite for claiming exemption under section 10(1) of the Act and thus the assessee should have derivative interest in land, either as an owner or as a tenant or

mortgagee with possession and not merely as a license holder to enter upon the land. Regarding the judicial precedents in the case of the assessee, the AO held that the issue relating to the filing of SLP before the Hon'ble Supreme Court against the order passed by the Hon'ble jurisdictional High Court is under consideration and not yet decided. Accordingly, the AO held that the assessee has not carried out agriculture operations ordinarily undertaken by the cultivator within the meaning of section 2(1A) of the Act and thus is not entitled to claim exemption under section 10(1) of the Act.

6. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and held that the year under consideration is different from the earlier years, wherein the similar claim made by the assessee was allowed, as in the year under consideration the AO has brought on record material to prove that the assessee had not carried out any agriculture operations. The learned CIT(A) further held that the AO has brought new facts on record that were not there before the Tribunal while adjudicating the case of the assessee, as the AO has recorded the statements of the farmers and the representative of the assessee and brought new facts on record. The learned CIT(A) also placed reliance upon the decision of the Hon'ble Karnataka High Court in Namdhari Seeds Pvt. Ltd. (supra) and held that the decision which forms the very basis of deciding the issue in favour of the assessee has been overruled by the Hon'ble Karnataka High Court. The learned CIT(A) upheld the findings of the AO that the ownership and possession of land is a precondition for carrying out agricultural operations and in the absence of such lawful possession the claim of the assessee under section 10(1) of the

Act cannot be sustained. The learned CIT(A) further held that the claim of the assessee that the farmer was carrying out the agriculture operations on behalf of the assessee is not tenable due to the fact that no farmer would labour on his own land for others. It was also held that there is nothing on record to suggest that the agriculture operations were carried out jointly. Further, it was held that the business of the assessee involves manufacturing of hybrid seeds and the same does not involve the ordinary process of cultivation of seeds. The assessee is only an intermediary manufacturing seed for the consumption of the farmers, who are agriculturists in the real sense. Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the assessee is involved, inter-alia, in growing and selling hybrid corn seeds jointly with the help of the farmers in the States of Andhra Pradesh and Karnataka. The learned AR explained the sequence of operations undertaken by the assessee for growing hybrid seeds which involves the role of the production supervisor (who is an employee of the assessee), coordinator (who is a third party), farmers who are willing to work jointly with the assessee to carry out agriculture operations for production of hybrid seeds. The learned AR explained that once the farmer is selected, the assessee enters into a Seed Production Agreement for joint agriculture operations being carried out over the agricultural land. The learned AR further submitted that the foundation seeds are handed over to the farmers by the production supervisors and the assessee also provides necessary inputs, namely pesticides, insecticides, etc. to facilitate the cultivation of hybrid

seeds. It was further submitted that the production supervisors personally and closely supervise and monitor the tilling of land and sowing processes to ensure that the activities are carried out as per the instructions of the assessee. It was further submitted that the cultivation of crops is also done under the active and close supervision of the production supervisors and through coordinators. The learned AR further submitted that the process of detasseling is performed by the assessee through the coordinator who engages casual labour for this purpose. Further, the cost of pesticides, insecticides, and other chemicals is borne by the assessee and supplied to the farmers free of cost. The learned AR submitted that the Seed Production Agreement clearly provides that the entire produce belongs to the assessee and not to the farmers. It was further submitted that the statements of the farmer, CFO, and production supervisor of the assessee, recorded during the assessment proceedings, also support the claim of the assessee, as they have accepted cultivation of hybrid seeds with continuous involvement of the assessee in the entire process. The learned AR further submitted that the manner in which the agricultural process was undertaken by the assessee is the same since the assessment year 1990-91 when exemption under section 10(1) of the Act was allowed in favour of the assessee by the learned CIT(A), which order was not challenged further by the Department. The learned AR submitted that in the assessment years 1991-92 and 1992-93, the claim of exemption was accepted by the AO at the assessment stage. Subsequently, for the assessment years 1993-94 to 2008-09 the Hon'ble jurisdictional High Court has upheld the claim of the assessee for exemption under section 10(1) of the Act, except in the assessment year 2002-03 which was settled under

the VSV Act. Thus it was submitted that this issue has been consistently decided in favour of the assessee for the earlier assessment years and there is no change in the facts and the manner in which the activities were undertaken by the assessee vis-à-vis the earlier years.

8. On the other hand, the learned Departmental Representative ("*learned DR*") by referring to the Seed Production Agreement submitted that the agricultural operations are to be performed by only the farmer and there is no involvement of the assessee, unlike previous years. The learned DR further submitted that the compensation paid by the assessee is a rate fixed per Kg of the produce and the same is neither against the labour nor against the land, which clearly establishes that the payment made to the farmer is for the purchase of the agricultural produce. It was further emphasised that the compensation also depends upon the quality standards specified. Accordingly, the learned DR submitted that the terms of the agreement proved beyond doubt that it is only an agricultural produce buying agreement executed by the assessee to purchase the desired hybrid seeds. Further, except for supplying foundation seeds and scientific advice, none of the normal agriculture operations/activities are undertaken by the assessee. The learned DR by vehemently relying upon the assessment order submitted that the AO has clearly established that the assessee is not a farmer or agriculturist or tenant or occupant, and the land was not owned by it and there is no material to prove that the assessee has taken the land on lease from the farmer. Accordingly, the learned DR submitted that there is nothing on record to suggest that the basic agricultural operations were actually performed jointly

on the land owned by the farmers and the role of the assessee is limited to providing foundation seeds, technical and scientific advice only. Further, the land, labour, equipment, irrigation, etc. were all of the farmers. The learned DR further submitted that the decisions of the coordinate bench of the Tribunal, which were upheld by the Hon'ble jurisdictional High Court, are based on the order of the Bangalore bench of the Tribunal in M/s Namdhari Seeds Pvt. Ltd. (ITA No.3102/Bang./2004) which has been reversed by the Hon'ble Karnataka High Court. It was also submitted that the detailed investigation undertaken by the AO and facts highlighted in the assessment order and the impugned order clearly shows that the assessee is not undertaking the agricultural operations in the year under consideration and therefore the decisions rendered in preceding years are not applicable because of change in facts. In the alternative, the learned DR submitted that even for a moment it is presumed that the assessee was engaged in joint agricultural operation with farmers, the said jointness of the agricultural operation was limited till the assessee procured the "*wet ears*" from the farmers under the Seed Production Agreement. Accordingly, the learned DR submitted that the exemption under section 10(1) of the Act has rightly been disallowed in the present case.

9. We have considered the submissions of both sides and perused the material available on record. We have also considered the detailed written submissions filed by the learned representatives along with various case laws and other documents, forming part of the record, relied upon by both sides. Monsanto India Ltd. has merged with Bayer CropScience Ltd with effect from

01/04/2019, pursuant to the order dated 13/09/2019, passed by the Hon'ble National Company Law Tribunal. Pursuant to the merger, the assessee has filed a revised Form no. 36 along with grounds of appeal, which was taken on record. The assessee was incorporated on 08/12/1949, in India and is engaged in the business of manufacturing and selling agrochemicals. As per the assessee it is, inter-alia, involved in growing and selling of hybrid corn seeds jointly with the help of the farmers in the States of Andhra Pradesh and Karnataka. As per the assessee, a substantial majority (approximately 95%) of the lands on which agricultural activities are carried out by the assessee are situated in the State of Andhra Pradesh, while only 5% of such land is situated in the State of Karnataka. During the year under consideration, the assessee earned income of Rs.54,77,17,169, from growing and selling of hybrid seeds, which was claimed as exempt under section 10(1) of the Act. The AO as well as the learned CIT(A) denied the claim of the assessee under section 10(1) of the Act primarily on the basis that the assessee has not carried out the agriculture process ordinarily undertaken by the cultivator and the assessee was not in the lawful possession of the land. On the other hand, as per the assessee, it exercises continuous supervision and total control in respect of the entire gamut of the agricultural operations which are carried out by it jointly with the farmers right from the inception till the harvesting of the seeds. As per the assessee, the sequence of operations undertaken by it for growing hybrid seeds is as under:-

(a) The assessee identifies its employee to undertake the role of '*production supervisor*' and deputes them to visit and actually supervise the agricultural operations to be undertaken on the agricultural land.

(b) The assessee entered into contracts with coordinators (who are third parties).

(c) The assessee with the assistance of the coordinators identifies the farmers who possess the desired quality of land and are willing to work jointly with the assessee to carry out agricultural operations for the production of hybrid seeds.

(d) The assessee's employee/production supervisor conducts meetings with the farmers and evaluates parameters like quality of land, quality of soil, location of the village, climatic conditions, undertakes soil testing, etc.

(e) Once the farmer is selected, the assessee enters into a Seed Production Agreement with the farmer for joint agricultural operations being carried out over the agricultural land.

(f) The foundation seeds are handed over to the farmers through the production supervisors for the purpose of sowing and the assessee provides necessary inputs, such as pesticides and insecticides, etc. to facilitate the cultivation of hybrid seeds.

(g) The assessee carries out various detailed tests on the farm soil and provides necessary guidance to the farmers for soil bed preparation and planting/sewing of foundation seeds to ensure that there is no loss of yield and quality.

10. Thus, as per the assessee, it is in complete control of all aspects of the sowing activities, namely determining the area under cultivation, the quantum of seed to be sown, sowing pattern, reconciliation of seed stocks, etc. and on a continuous basis the agricultural activity is monitored by the production supervisors and coordinators. Further, the process of detasseling (i.e. process of removing the male part (tassel) from the female parent) is performed by the assessee through a coordinator who engages a casual labour for this purpose.

11. From the perusal of the record, we find that the issue of claim of exemption under section 10(1) of the Act by the assessee is not novel and has been coming up for consideration in the case of the assessee since the assessment year 1990-91. From the perusal of the assessment order dated 24/12/1992, passed under section 143(3) of the Act, for the assessment year 1990-91, forming part of the paper book from pages 916-924, we find that the AO denied the exemption claimed under section 10(1) of the Act on the basis that the assessee is not the owner of the land and it has not taken the land on lease to perform basic and subsequent operations. It was further held that these operations are carried on by the farmers only and the assessee has not done any basic or subsequent operation on the land to produce hybrid seeds, but what the assessee has done is only entering into contracts with the farmer to purchase the produce. The AO further held that what the assessee had engaged in here was only the purchase of hybrid seeds from the farmer which had been grown according to its requirements under its own supervision. It was further held that the income from the sale of hybrid seeds

is not directly referable to the produce from agricultural operations as the assessee has not conducted any agricultural operations. The AO further held that the income from the sale of hybrid seeds may consist of an element of agricultural income, but such element is applicable only to the farmer who has conducted the agricultural operations to obtain the produce on its own. Further, it was held that what the assessee has been doing is only a systematic agriculture business not the production of any agricultural thing on its own that can be considered under the agricultural income. Accordingly, the AO held that the assessee cannot claim the income as agricultural income as it had only entered into a contract with the farmer to purchase the produce.

12. We find that in the appeal against the aforesaid assessment order, the learned CIT(A) vide order dated 28/04/1993, for the assessment year 1990-91, forming part of the paper book from pages 900-915, allowed the appeal filed by the assessee and held that on going through the Seed Production Agreement it is clear that the assessee had some interest in the agricultural land which has been utilised by it for production of hybrid seeds. The learned CIT(A) further held that all the produce from the land resulting from the production shall exclusively belong to the assessee and the agricultural operations on the land are carried out by the assessee with the assistance of the farmers. The learned CIT(A) further held that the variation in the price at which the assessee sells the seeds is due to the superior quality of the hybrid seeds and not because of any value addition resulting from the processing of the seeds after being harvested. Accordingly, the learned CIT(A) came to the conclusion that the assessee has used the agricultural land and has carried

out various agricultural operations starting from cultivation onwards, which satisfies the conditions of having carried out the basic agricultural operations as laid down by the Hon'ble Supreme Court in CIT v/s Binoy Kumar Sahas Roy, (1957) 32 ITR 466 (SC). The learned CIT(A) also held that from the Seed Production Agreement, it is also evident that there is no contract to purchase seeds from the farmers and the ownership of the crop itself lies with the assessee. It is undisputed that the aforesaid order passed by the learned CIT(A) was not challenged further by the Revenue.

13. We further find that in the assessment year 1991-92 and 1992-93 the AO accepted the claim of loss from producing the hybrid seeds as agricultural loss. In the assessment years 1993-94 to 1995-96, the learned CIT(A) after noting the following salient features of the Seed Production Agreement, as is evident from page 933 of the paper book, allowed the claim of loss from the sale of hybrid seeds as an agricultural loss:-

> *"a) The farmer is the sole and absolute owner of the agricultural land.*
>
> *b) The company having the technical know-how necessary for the production of hybrid seeds, enters into an agreement with the fanner for utilising the agricultural land belonging to the farmer.*
>
> *c) The farmer agrees that the land-would be allowed to be used exclusively for the production of the company's hybrid seeds. In other words, the agreement gives beneficial ownership of lands to the company to carry out its agricultural activities.*
>
> *d) The farmer shall provide manpower in carrying out its agricultural operations such as land preparation, planting, imigation, fungicide, pesticide and harvesting on the land under the supervision of the company.*
>
> *e) The company shall be entitled to carry out or direct the farmer to carry out activities, such as use of fertiliser, pesticides, etc., which are re considered necessary by it for the better production of the produce.*
>
> *f) Further, the farmer shall at all times be ready and willing to carry out specify lasts assigned by the company from time to time should he be called*

to do so. The failure of the farmer to carry out the tasks assigned by the company will entitle the company to carry at the same at the cost of the farmer which also includes the contribution of labour necessary for the purpose of threshing the produce at nominated threshing yards.

g) The agreement categorically states that all produce from the land during the production period shall exclusively belong only to the company. The landowner cum farmer shall have no right and shall have no lien over the produce.

h) The company shall have total access to the land at any time to supervise the agricultural activities, inspection and testing of the activities. the farmer shall not obstruct the servants, agents and the officers of the company to have access to the land.

i) The land owner cum farmer shall at all time be liable to pay all taxes, cesses and such other impositions including the land revenue that may arise from time to time on the land."

14. We find that the aforesaid order passed by the learned CIT(A) was affirmed by the coordinate bench of the Tribunal vide common order dated 26/11/2007 passed in ITO v/s M/s Monsanto India Ltd., ITA No.307-309/Bang./2002, etc., for the assessment years 1993-94 to 2000-01. The relevant findings of the Tribunal, in the aforesaid order, are reproduced as under:-

"10 We have heard rival submissions and considered them carefully. After examining the orders of the Assessing Officer and CIT(A), we do not find any infirmity in the findings of the ld CIT(A). These are undisputed facts that the assessee has shown agricultural income on the same activity for AY 90-91 onwards. During the assessment proceedings for AY 90-91, the claim of the assessee was negated by the Assessing Officer. The assessee filed appeal before the CIT(A), who after discussing the issue in detail allowed the claim of the assessee of doing agricultural activity and the Assessing Officer was directed to accept the agricultural income shown by the assessee. The assessments for AY 91-92 and 92-93 were passed u/s143(3) and the Assessing Officer has accepted the agricultural income as shown by the assessee himself. However, thereafter the Assessing Officer negated the claim of the assessee by assessing the receipts as business receipts against agricultural receipts shown by the assessee. The assessments for AY 96-97 and 97-98 were reopened u/s 147/148. The assessee filed a letter dated 24.12.2000 requesting the AO to treat the return as return filed in response to notice u/s 148. As discussed above that the Assessing Officer was not satisfied with the explanation that the activity done by the assessee are of agricultural activity as in his view, these are commercial activities, therefore, the

Assessing Officer passed assessment by holding that the receipts are of business receipts against agricultural receipts shown by the assessee.

11. Similarly for other years i.e. AY 93-94 to 2000-01, the Assessing Officer treated all the receipts as business receipts against the claim of agricultural income. The CIT(A) allowed the claim of the assessee by holding that the facts in both the AYS i.c. AY 96-97 and 97-98 are identical to the facts of earlier year when the Assessing Officer allowed the claim of the assessee himself. Further reliance was placed on the decision of Allahabad High Court in 197 ITR 428 (Supra) whercin identical facts were involved as involved in the case of the assessee. The CIT(A) has also observed that the appeals of the assessee have been allowed by his predecessor for AY 93-94 to 95-96. Accordingly, the claim of the assessee was allowed by the CIT(A) for these two years also.

12. We further noted that Bangalore 'B' Bench in the case of Indo American Exports in ITA No. 1040/Bang/2002 for AY 98-99 and in the case of Namdhari Seeds Pvt Ltd in ITA No.3102/Bang/2004 for AY 2001-02 has decided identical issues in favour of the assessee. In these cases also the assessee have entered into identical contract with agriculturists and provide them with hybrid vegetable seeds. The land holdings of the agriculturist extend from 0.75 acres to a maximum of 2 acres. The agriculturists are required to undertake cultivation of the seeds in their land in order to multiply them. The contract period was also mentioned. The assessee company supplies the parents of the hybrid viz the male and female seeds or seedling to the contract grower. The receipts shown by the assessee were shown as agricultural receipts. The Assessing Officer negated the claim of these assessee by observing that the land belonging to the farmer in their own right as owner/term lessee and was in the possession and cultivation. By further observing that the contract entered contrary to the provisions of Karnataka Land Reforms Act, 1961(KLRA) and such conditions prevailed under KLRA prescribed in the contract will not prevail over the provisions of the Act. The Assessing Officer while negating the claim of the assessee also observed certain further objections. The assessee preferred appeal before the CIT(A), who allowed the claim of these assesses by observing that the receipts shown by these assesses are agricultural receipts. On appeal before the Tribunal, the Tribunal held that the receipts shown by the assessee are agricultural receipts. The Tribunal has discussed the issue in detail. The meaning of agricultural income has also been discussed and by placing reliance on the decision of Madras High Court in the case of Maddi Venkatasubbayya in 20 ITR 151 and in the case of Associated Metal Co in 177 ITR 428(Alld) where the facts were identical decided the issue in favour of the assessee. The decision of the Supreme Court in the case of Raja Benoy Kumar Sahas Roy in 32 ITR 466 was also taken into consideration by the Tribunal. While discussing the ratio of these decisions in detail, the Tribunal came to the conclusion that on entering into an agreement with farmers the receipts shown by the assessee are agricultural receipts. We further noted that the CIT(A), who allowed the appeal in the case of Indo American Exports and Namdhari Seeds Pvt Ltd (supra) has also taken into consideration the decision of the CIT(A) in the case of the assessee. It was noted by the CIT(A) that the facts in the case in hand and the facts in the case of Monsanto India Ltd (the assessee) are identical. These facts have been noted by the Tribunal while deciding the appeal in the case of Indo American Exports and Namdhari Seeds Pvt Ltd (supra) at page 7 of its order. This order was passed on 14.7.2006 at Bangalore.

12.1 The Id DR has raised a contention that by entering into an agreement with the farmers, the assessee has created value based additions in its capital, therefore, should not be treated as agricultural income in the hands of the assessee, in our view, these contention of the Id DR cannot be accepted because there is no dispute that the assessee entered into agreement with various farmers, who cultivated the land as per the terms and conditions of agreement. The seeds supplied by the assessee company were used for cultivating the land and whatever the product produced, the same was shown as sold in the market by the assessee as per terms and conditions of agreement. Whatever the share of the farmer was there that was given to them as per the clauses of agreement. Therefore, we hold that whatever the receipts were there they were on account of agricultural activities and have to be treated as agricultural receipts.

13. The Allahabad High Court in the case of Associated Metal (supra) has decided identical issue in favour of the assessee. In that case also the land was cultivated by the farmers as per agreement clauses and whatever the produces were there that were treated in the hands of the lessor.

14. All other cases relied upon by the Id AR have already taken into consideration by the Tribunal while deciding the appeal in case of M/s Namdhari Seeds (supra), therefore, without going into detail further, we hold that the receipts shown by the assessee are agricultural receipts and the Id CIT(A) was justified in allowing the claim of the assessee.

15. In view of rule of consistency also the assessee deserves to succeed as for AY 1990-91 to 92-93 the department has accepted the claim of the assessee itself. There is no change in facts or in circumstances; therefore, rule of consistency will be applicable on the facts of the present case.

16. The Hon'ble Supreme Court in the case of Radhaswamy in 193 ITR 325 has held that if there is no change in facts then rule of consistency will prevail upon. Many High Courts have also held so.

17. Respectfully following the decision of the Supreme Court and other High Courts, we hold that even in view of consistency there is no infirmity in the findings of the ld CIT(A), who has also taken into consideration the past history of the case. Accordingly, we confirm the order of the ld CIT(A) for these two years.

18. The facts in the remaining years are identical, therefore, in view of the reasoning discussed above, we confirm the orders of the Id CIT(A) for the remaining years also.

19. The department fails in all their appeals."

15. We find that vide common order dated 05/08/2011, the Hon'ble jurisdictional High Court dismissed the appeal filed by the Revenue in CIT v/s M/s Monsanto India Ltd., ITA No.633 of 2010, etc., for the assessment years

1993-94 to 2001-02, 2003-04 and 2004-05. We find that in the aforesaid order the Hon'ble jurisdictional High Court held that for earning agricultural income, it is not necessary that the assessee must own the land and it is enough if it is established that the agriculture operations have been actually carried on by the assessee. The relevant findings of the Hon'ble jurisdictional High Court, in the aforesaid order, are reproduced as under:-

> *"3. Perusal of the order of the ITAT shows that the Tribunal has confirmed the order of CIT(A) by recording finding of fact that the assessee in fact carried on agricultural operations and that the orders passed to that effect in assessment years 1990-91 to 1992-93 have been accepted by the revenue. For earning agricultural income, it is not necessary that the assessee must own the land and it is enough if it is established that the agricultural operations have been actually carried on by the assessee In view of the finding of fact recorded by the ITAT that even in the past the assessee has been carrying agricultural operations in the absence of any material to the contrary, the decision of the ITAT cannot be faulted."*

16. We further find that consistent with the above approach, the Tribunal decided the issue in favour of the assessee till the assessment years 2008-09 and upheld the assessee's claim for exemption under section 10(1) of the Act. Further, the Hon'ble jurisdictional High Court also dismissed the appeals filed by the Revenue and affirmed the orders passed by the coordinate bench of the Tribunal. Thus, from the assessment years 1993-94 to 2008-09, except the assessment year 2002-03 wherein it is submitted that the appeal was settled under the VSV Act, the Hon'ble jurisdictional High Court has affirmed the findings of the coordinate bench of the Tribunal that the assessee is entitled to claim exemption under section 10(1) of the Act. Further, it is an accepted position that the Revenue's appeals against the aforesaid decisions of the Hon'ble jurisdictional High Court are currently pending before the Hon'ble Supreme Court.

17. The discussion on the litigation history, in the case of the assessee, on this issue is relevant as it is the claim of the Revenue that in the year under consideration, the AO has brought new facts on record that had not been there before the Tribunal while adjudicating the case of the assessee. In this regard, much emphasis has been laid on the statements of the farmers and representatives of the assessee recorded during the assessment proceedings. We find that on page no. 26-27 of the assessment order, in the present case, the AO placed reliance upon the statement of Shri D. Satyanarayana Reddy, who is a farmer, to come to the conclusion that the assessee has not undertaken any basic agricultural operation as the assessee has no role in the pre-germination and germination stages. However, from the reproduction of the aforesaid statement recorded during the assessment proceedings, it is also evident that the said farmer in his reply to question no. 16 accepted the involvement of the company at various stages. The aforesaid reply by the farmer is reproduced for ready reference:

> *"Q.16 What are the activities undertaken by the company?*
>
> *A.16 The company officials visit the fields, checks the suitability, advise them to do ploughing, they observe the ploughing, they advise to ridges and furrows, they advise about the gap between the rows, after the land is ready, they bring parent seeds to the field, they guide us to sowing of seeds, after watering, weedicides will be supplied and guide us how to use those inputs on timely basis. After post germination, they visit and supervise about the course of activity to be done. According to the health of the crop, they supply fungicides and guide us how to use. At the time of age to 20-25 days of the crop, they guide us earthening up process and after that irrigation activity is done. Under their guidance, we grow the crop till harvest. At the time of age of 50-55 days of crop, detaseling activity is carried out at the cost of the company under their supervision."*

18. We find from the annexure to the assessment order on page 182 of the appeal set that during the cross-examination of Shri D. Satyanarayana Reddy, he accepted that the assessee's employees/representative make their presence during all the activities, particularly sowing, germination, detasseling, and harvesting. It was also accepted that the assessee's presence is required to achieve quality and quantity of seeds. It was also accepted that the assessee gives compensation for low yield and the compensation was also received for low yield due to rains.

19. From the perusal of the statement by the production supervisor, who is an employee of the assessee, as noted on page no. 28-31 of the assessment order, we find that the assessee's involvement at various stages of cultivation of hybrid seeds was in detail submitted before the AO during the assessment proceedings. The relevant portion of the aforesaid statement is reproduced as under, for the sake of ready reference:-

> *"Q4 Please explain how do you organize seed production?*
>
> *A.4 Once I know the targeted volumes, then we decide how many acres we need, which location is suitable for seed production and crop agronomic data, water source, weather data and location background etc. Once I am satisfied with that information, then we get back to those villages by tying up with the farmers, take up seed production as per our instructions. From the land preparation to crop harvesting, we monitor, supervise the crop and take up the activities of crop agronomy, irrigation, weed management, pollinations, harvest with the support from respective farmer. Once the crop is harvested, the produce will be moved to our seed conditioning facilities for drying, cleaning, treating, packing and delivering to the distribution channel."*
>
> *.....*
>
> *Q18 Please give the details of pre-germination, germination, post germination, maturity of the crop, post maturity and harvesting activities undertaken by the company?*

A.18 We take seed to the farmer field, attend plantings with the farmer by making sure that we follow planting ratios, populations per acre, irrigation channels, adequate isolation distance, confirming water source, and by applying basic fertilizers and pesticides. Then, we monitor seed germination and take care of crop agronomy by following inter cultivation weeding, nutritional spray, etc. So, when the crop is ready for flowering, we also take up roughing out all the unwanted plants. We monitor male and female nicks, then make adjustments if there are any differences by managing agronomy and nutrition. Then, we go for detaseling of female lines. Once pollination is through we destroy male rows to maintain purity and agronomy. Once the crop is at matured stage where we attain 30% to 35% moisture of seed, we harvest the crop, collect wet ears and more to driers for drying and Shelling. After shelling, check the moisture and fill the seed into bags and move them to warehouses or cold storage for further processes.

Q19 Please explain the role and responsibility of the employees of the company in pre-germination, post germination, harvesting and post harvesting activities?

A.19 At pre-germination, selection of fields, preparation of fields and determining populations, row ratios, attending plantings, confirming isolation and previous crops. Also, ensuring proper application of basal fertilizers.

Post Germination: Population counts, confirmation of male and female rows, isolations, monitoring crop health and agronomic aspects like inter cultivation, weeding, fertilizer applications and sprayings. Also, roughing unwanted plants.

Harvesting: Destruction of male rows, checking seed moistures, harvesting sections, harvesting and moving wet ears to driers.

Post Harvesting: Drying operation to ensure moisture percentage to 12% before shelling, after shelling, filling seeds into bags and despatch to the warehouse.

Q.20 Please explain the role and responsibility of the farmers in pre-germination, post germination, harvesting and post harvesting activities?

A.20 The farmer follows the instructions of company supervisors and executes the activities collectively to deliver the required quality seed by following the same protocols as said in answer to Q.No.19 upto harvest stage. At post harvest stage, farmer has no role to play."

20. Thus, from the above, it is evident that the AO selectively relied upon the statements of the farmers and production supervisor to come to the conclusion that the assessee was not involved in an activity which is ordinarily undertaken by the farmer. From the aforesaid statements recorded during the

assessment proceedings, it is also evident that the manner in which the agricultural process was undertaken by the assessee in the year under consideration is similar to the preceding years, wherein this issue was decided in favour of the assessee and exemption under section 10(1) of the Act was allowed. Further, as noted above, the Hon'ble jurisdictional High Court in assessee's own case held that it is not necessary that the assessee must own the land. Therefore, we find no merits in the findings of the AO, as upheld by the learned CIT(A) vide impugned order, that ownership or possession of the land is a pre-condition for claiming the agricultural operations to be carried out and in the absence of same the claim of the assessee under section 10(1) of the Act is not sustainable.

21. We find that the assessee entered into a similar Seed Production Agreement with Shri Y. Reddi Ramu on 29/10/2004, as was entered in the year under consideration with Shri D. Satyanarayana Reddy on 08/11/2008. From the perusal of the copy of the aforesaid agreement dated 29/10/2004, with Shri Y. Reddi Ramu, furnished during the hearing, we find that the assessee and the farmer agreed to perform agricultural operations such as sowing foundation seeds for the purpose of production of hybrid seeds from the foundation seeds jointly on the land belonging to the farmer. We further find that even in the agreement dated 29/10/2004, the assessee vide clause 4 read with the schedule 1 of the agreement, agreed to compensate the farmer on the basis of the weight of the hybrid seeds, i.e. Rs.6 per Kg of the estimated "*wet ears*". Therefore, it is evident that in the preceding years also

compensation model was based on the quantity of the product, as in the year under consideration.

22. During the hearing, much emphasis was laid by the learned DR on clause 2(f) of the agreement dated 08/11/2008, with Shri D. Satyanarayana Reddy to submit that in the year under consideration the farmer was solely responsible for performing the agricultural operations and unlike the earlier years wherein the assessee and the farmer jointly agreed to perform the agricultural activities, in the year under consideration, the agricultural operations was solely conducted by the farmer. For ready reference, clause 2(f) of the agreement dated 08/11/2008, with Shri D. Satyanarayana Reddy is reproduced as under:-

> *"2f. WHEREAS the SECOND PARTY has agreed to perform agricultural operations such as sowing Foundation Seeds for the purpose of production of Hybrid Seeds from the said Foundation Seeds, jointly with the SECOND PARTY on the lands here in before described as the sole property of the SECOND PARTY."*

23. It was submitted that while in the agreement dated 29/10/2004, clause 2(f) read as under:-

> *"2f. WHEREAS the FIRST PARTY has agreed to perform agricultural operations such as sowing Foundation Seeds for the purpose of production of Hybrid Seeds from the said Foundation Seeds, jointly with the SECOND PARTY on the lands here in before described as the sole property of the SECOND PARTY."*

24. Therefore, it was submitted by the learned DR that in the year under consideration the entire responsibility of performing agricultural operations of sowing foundation seeds for the purpose of production of hybrid seeds was of the second party, i.e. the farmer, only. We find from the perusal of the

agreement dated 08/11/2008, with Shri D. Satyanarayana Reddy that in all other clauses, the farmer i.e. the second party, agreed to permit the first party, i.e. the assessee to produce hybrid seeds as per the terms and conditions specified therein and also agrees to restrict its operations of the land exclusively for the purpose of production of hybrid seeds. It was further agreed that the assessee shall in collaboration with the farmer carry out such operations on the land as the farmer deems necessary. Further, it was also agreed that all the produce from the land resulting from production during the production period exclusively belongs to the assessee. The relevant clauses of the agreement dated 08/11/2008, in this regard, are reproduced as under:-

> *"2e WHEREAS the SECOND PARTY has offered to permit the FIRST PARTY to produce Hybrid Seeds as per the terms and conditions specified herein.*
>
> *.....*
>
> *3a The FIRST PARTY agrees to restrict its operations on the land exclusively for the purpose of production of MONSANTO Hybrid Seeds during the production period commencing on the date of execution of this Agreement.*
>
> *3b. The FIRST PARTY shall in collaboration with the SECOND PARTY carry out such operations on the land as the FIRST PARTY deems necessary.*
>
> *.....*
>
> *3g. It is agreed and made clear between the parties to these presents that all the produce from the land resulting from the production during the production period shall exclusively belong to the PARTY of the FIRST PARTY. The SECOND PARTY shall have no right and shall have no lien over the produce. If Second party, other than the instructions of the First Party, sell, transfer or uses, in whatsoever manner, the hybrid seeds grown on his land, shall be treated as breach of this contract and First party shall be free to take such criminal or civil action in the court of law as they deem fit.*
>
> *The SECOND PARTY agrees unequivocally not to disclose to any person any information that may be passed on to him by the FIRST PARTY during the subsistence of this contract, in respect of the production technology, cultivation methods of farming adopted by the parties to these presents during the process of cultivation of the produce, and that the SECOND PARTY shall not alienate the land.*

The SECOND PARTY shall not obstruct the servants, agents and officers of the FIRST PARTY at any time from inspecting, working, testing and/or doing such other acts, deeds or things as they think fit and necessary at their discretion for the purpose of better production of the produce."

25. It is pertinent to note that in Arosan Enterprises Ltd. v. UOI: (1999) 9 SCC 449, the Hon'ble Supreme Court held that the Agreement must be read as a whole with corresponding obligations of the parties so as to ascertain the true intent of the parties. Therefore, upon careful perusal of all the clauses of the agreement dated 08/11/2008, we are of the considered view that both the assessee as well as the farmer jointly agreed to perform agricultural operations for the purpose of production of hybrid seeds. In any case, it is further pertinent to note that clause 2(f) of the agreement dated 08/11/2008, as relied upon by the learned DR, uses the term "*SECOND PARTY*" along with the word "*jointly*", without any mention of the term "*FIRST PARTY*", which appears to be more of a typographical error without conveying the meaning that only the "*SECOND PARTY*", i.e. the farmer, is responsible for performing agricultural operations for the production of hybrid seeds, as "*SECOND PARTY*" agreeing to perform the agricultural operations jointly with "*SECOND PARTY*" does not convey any meaning. Therefore, in view of the above, we find no merits in the submission of the learned DR by placing reliance upon clause 2(f) of the agreement dated 08/11/2008, with Shri D. Satyanarayana Reddy.

26. Further, during the hearing, learned DR submitted that the entire transaction was of manufacturing of hybrid seeds in India using the patented hybrid seeds imported by the assessee from its parent company located

overseas, but the agreement made with farmers for the stated joint agricultural operation is only to mislead the Income Tax Authority/Appellate Authorities for availing the benefit of tax exemption provided under the Act, with respect to income from agricultural operation. The learned DR, in the alternatively, submitted that even for a moment it is presumed that the assessee was engaged in joint agricultural operation with farmers, the said jointness of the agricultural operation was limited upto the period till the assessee procured the "*wet ears*" from the farmers under the Seed Production Agreement against the price paid per Kg. Therefore, it is the assessee who has solely carried out further value addition to the agricultural produce procured from the farmers, using its factory and other premises and machinery, without any involvement of the farmers, which is not part of agricultural operation. Therefore, it was submitted that the agricultural income of the assessee should only be restricted till the purchase of "*wet ears*" and subsequent activity being manufacturing activity, should be subjected to Income Tax. The learned DR referred to identical division of income from agricultural and manufacture activity in case of the "*tea gardens*" provided under the Income Tax Rules, 1962. We find that these arguments have been made for the first time before the Tribunal, however, in the absence of any change in the facts and circumstances of the case and manner of assessee's operation as compared to the earlier years, we are inclined to follow the binding decision of the Hon'ble jurisdictional High Court rendered in assessee's own case.

27. It is evident from the record that the AO as well as the learned CIT(A) placed reliance upon the decision of the Hon'ble Karnataka High Court in Namdhari Seeds Pvt. Ltd. (supra), wherein it was held that where the taxpayer entered into an agreement with farmers for production of open hybrid seeds on the land for its own benefit, income arising to the taxpayer from sale of hybrid seeds grown by farmers would not be agricultural income. During the hearing, the learned DR apart from placing reliance upon the aforesaid decision relied on various other decisions of the coordinate bench of the Tribunal wherein, inter-alia, following the aforesaid decision of the Hon'ble Karnataka High Court, the issue was decided in favour of the Revenue. On the contrary, the learned AR apart from relying on the decisions rendered in assessee's own case, inter-alia placed reliance on the subsequent decision dated 18/07/2014, of the Hon'ble Karnataka High Court in Namdhari Seeds Pvt. Ltd. v/s ACIT, in ITA No. 346 of 2012, etc., wherein the Hon'ble High Court after taking note of the aforesaid decision set aside the matter to the file of the assessing authority to take into consideration the agrarian reforms passed in each state and reformulated proper points for consideration. Having considered the decisions passed by various Hon'ble Courts/Tribunal, we are of the considered view that each case has been decided on its own facts and accordingly the Hon'ble Court/Tribunal came to the conclusion regarding the eligibility of exemption under section 10(1) of the Act. As noted above, in the assessee's own case, the Hon'ble jurisdictional High Court affirmed the findings of the coordinate bench of the Tribunal granting benefit of section 10(1) of the Act to the assessee in respect of income earned from growing and selling of hybrid seeds jointly with the farmers. Therefore, reliance on

any other decision is not of much importance in the present case, as the issue has been consistently considered in assessee's own case for the past 18 years, i.e. from the assessment year 1990-91. As noted above, in the present case, the lower authorities came to the conclusion that the AO has brought on record material to prove that the assessee has not carried out any agricultural operations, therefore this year is different from the preceding years. However, as we have found above, the new material as sought to be relied upon by the AO does not support the case of the Revenue and therefore we are of the considered view that the said material cannot be the basis to deviate from the previous decisions rendered in assessee's own case, wherein similar allegations of the Revenue were rejected. Further, it is pertinent to note that the coordinate bench of the Tribunal vide its order dated 26/11/2007, for the assessment year 1993-94, etc., apart from placing reliance upon the decision of another coordinate bench in Namdhari Seeds Pvt. Ltd. also considered the factual aspect involved in the appeal including the rule of consistency as in the assessment years 1990-91 to 1992-93, a similar issue was decided in favour of the assessee. Therefore, we are of the considered view that even if subsequently the Hon'ble Karnataka High Court overruled the decision of the coordinate bench in Namdhari Seeds Pvt. Ltd., the same cannot lead to the conclusion that the very basis on which the Tribunal decided the issue in favour of the assessee in earlier years has been overturned. It is further pertinent to note that the said decision of the coordinate bench in assessee's own case was subsequently affirmed by the Hon'ble jurisdictional High Court and therefore the same is binding on us. Further, the basis on which the Revenue denied the exemption claimed under

section 10(1) of the Act, in the present case, are only the different facets of the same argument that the assessee has not carried out agricultural operations as are normally undertaken by the cultivator. Since the manner in which the agricultural process as undertaken by the assessee in the year under consideration is similar to the preceding years, respectfully following the judicial precedents in assessee's own case we are of the considered view that the assessee is entitled to claim exemption under section 10(1) of the Act in respect of income earned from growing and selling of hybrid seeds. Accordingly, the only issue arising in the present appeal is decided in favour of the assessee.

28. In the result, the appeal by the assessee is allowed.

ITA no.2124/Mum./2018
Revenue's Appeal – A.Y. 2012–13

29. In its appeal, the Revenue has raised the following grounds:–

"1) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing the expenses on ESOP of Rs. 2,58,53,254/- as an allowable revenue expenditure despite the fact that this expense is contingent in nature for which the liability to pay may arise in future only after the employees of the assessee company actually exercise the option to avail shares of the foreign holding company as per the ESOP Scheme in this case.

2) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in treating proportionate ESOP valuation done by the assessee as an expense when in fact as per the ESOP Scheme the actual liability in this regard as well as the quantification thereof would only arise in future as and when and if the employee exercises option for purchasing shares of foreign holding company of the assessee.

3) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in treating payment on account of ESOP made by the assessee to its holding company as business expense for the current year when in fact it can best be treated as an Advance paid proportionately for the contingent liability that may arise in future as per the ESOP Scheme in this case.

4) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in treating payment on account of ESOP made by the assessee to its holding company as business expense for the current year despite the fact that the underlying shares of the foreign holding company which is the subject matter of ESOP has not been transferred or allotted by the foreign holding company to the employee of the assessee company in respect of which such proportionate payment on account of ESOP is made by the assessee to its foreign holding company, thereby making such payment ineligible for such claim as a business expense in the year under consideration.

5) Without prejudice to the above following ground–

"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing the expenses on ESOP as revenue expenditure without considering the fact that it has enduring benefit to the assessee company for a long period and should be treated as capital expenditure.

6) The appellant prays that the order of the CIT(Appeals) on the above grounds be set aside and that of the Assessing Officer be restored.

7) The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

30. The only dispute raised by the Revenue, in the present appeal, is against the deletion of disallowance made on account of Employee Stock Option Plan ("*ESOP*") expenses.

31. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, on the perusal of the profit and loss account, it was observed that the assessee has debited Rs. 2,58,53,254 towards ESOP expenses. Accordingly, the assessee was asked to explain the nature of the expenses and allowability of these expenses. In response thereto, the assessee submitted that Monsanto Company USA ("*MC*") has established the Monsanto Company Long Term Incentive Plan. As part of the plan, the employees of the assessee were provided with the opportunity to acquire the shares of MC via stock options/equity-based awards. The eligible employees were granted the options which shall vest

with the employees over a period of 3 years from the date of the grant and they can exercise the stock options after the vesting period through any of the following three methods, viz. (i) cashless sell, (ii) cashless hold, and (iii) cash purchases. Further, the employee can exercise the options within the stipulated period mentioned in the plan. It was further submitted that the MC raises a debit note on the differential price between the fair market value of the shares and the original grant price (after the employee exercises the options) and the same is reimbursed by the assessee. Accordingly, an amount of Rs. 2,58,53,254 was debited by the assessee to the profit and loss account. It was further submitted that as the cost borne by the assessee is in connection with providing incentive through stock options-related benefits to the employees, expenses incurred by it were claimed as a deduction under section 37(1) of the Act.

32. The AO vide order dated 29/01/2016 passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that the loss towards the cost of ESOP although reimbursed to its parent company is notional in nature and thus not allowable as deduction under the provisions of the Act. Accordingly, the AO disallowed the amount of Rs. 2,58,53,254 and added the same to the total income of the assessee. The learned CIT(A), vide impugned order, following the decision of the Special Bench of the Tribunal in Biocon Ltd v/s DCIT, 35 taxmann.com 335 (Bangalore Trib.) decided the issue in favour of the assessee. Being aggrieved, the Revenue is in appeal before us.

33. We have considered the submissions of both sides and perused the material available on record. As evident from the record, the AO disallowed the deduction primarily on the basis that the expenditure incurred is not real expenditure and is notional in nature so as to claim deduction under section 37(1) of the Act. We find that similar contentions of the Revenue were rejected by the Hon'ble Karnataka High Court in CIT v/s Biocon Ltd [2020] 121 taxmann.com 351 (Karn.), wherein the Hon'ble High Court dismissed the appeal filed by the Revenue and upheld the decision of the Special Bench of the Tribunal in Biocon Ltd (supra). The relevant findings of the Hon'ble High Court, in the aforesaid decision, are reproduced as under:-

> *"6. We have considered the submissions made by learned counsel for the parties and have perused the record. The singular issue, which arises for consideration in this appeal is whether the tribunal is correct in holding that discount on the issue of ESOPs i.e., difference between the grant price and the market price on the shares as on the date of grant of options is allowable as a deduction under section 37 of the Act. Before proceeding further, it is apposite to take note of section 37(1) of the Act, which reads as under:*
>
> > *Section 37(1) says that any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head, "Profits and Gains of Business or Profession".*
>
> *7. Thus, from perusal of section 37(1) of the Act, it is evident that the aforesaid provision permits deduction for the expenditure laid out or expended and does not contain a requirement that there has to be a pay out. If an expenditure has been incurred, provision of section 37(1) of the Act would be attracted. It is also pertinent to note that section 37 does not envisage incurrence of expenditure in cash.*
>
> *8. Section 2(15A) of the Companies Act, 1956 defines 'employees stock option' to mean option given to the whole time directors, officers or the employees of the company, which gives such directors, officers or employees, the benefit or right to purchase or subscribe at a future rate the securities offered by a company at a free determined price. In an ESOP a company undertakes to issue shares to its employees at a future date at a price lower than the current market price. The employees are given stock options at discount and the same amount of discount represents the difference between market price of shares at the time of grant of option and the offer price. In*

order to be eligible for acquiring shares under the scheme, the employees are under an obligation to render their services to the company during the vesting period as provided in the scheme. On completion of the vesting period in the service of the company, the option vest with the employees.

9. In the instant case, the ESOPs vest in an employee over a period of four years i.e., at the rate of 25%, which means at the end of first year, the employee has a definite right to 25% of the shares and the assessee is bound to allow the vesting of 25% of the options. It is well settled in law that if a business liability has arisen in the accounting year, the same is permissible as deduction, even though, liability may have to quantify and discharged at a future date. On exercise of option by an employee, the actual amount of benefit has to be determined is only a quantification of liability, which takes place at a future date. The tribunal has therefore, rightly placed reliance on decisions of the Supreme Court in Bharat Movers supra and Rotork Controls India P. Ltd., supra and has recorded a finding that discount on issue of ESOPs is not a contingent liability but is an ascertained liability.

10. From perusal of section 37(1), which has been referred to supra, it is evident that an assessee is entitled to claim deduction under the aforesaid provision if the expenditure has been incurred. The expression 'expenditure' will also include a loss and therefore, issuance of shares at a discount where the assessee absorbs the difference between the price at which it is issued and the market value of the shares would also be expenditure incurred for the purposes of section 37(1) of the Act. The primary object of the aforesaid exercise is not to waste capital but to earn profits by securing consistent services of the employees and therefore, the same cannot be construed as short receipt of capital. The tribunal therefore, in paragraphs 9.2.7 and 9.2.8 has rightly held that incurring of the expenditure by the assessee entitles him for deduction under section 37(1) of the Act subject to fulfilment of the condition.

11. The deduction of discount on ESOP over the vesting period is in accordance with the accounting in the books of account, which has been prepared in accordance with Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999.

12. So far as reliance place by the revenue in the case of Infosys Technologies Ltd.(supra) is concerned, it is noteworthy that in the aforesaid decision, the Supreme Court was dealing with a proceeding under section 201 of the Act for non-deduction of tax at source and it was held that there was no cash inflow to the employees. The aforesaid decision is of no assistance to decide the issue of allowability of expenses in the hands of the employer. It is also pertinent to mention here that in the decision rendered by the Supreme Court in the aforesaid case, the Assessment Years in question was 1997-98 to 1999-2000 and at that time, the Act did not contain any specific provisions to tax the benefits on ESOPs. Section 17(2)(iiia) was inserted by Finance Act, 1999 with effect from 1-4-2000. Therefore, it is evident that law recognizes a real benefit in the hands of the employees. For the aforementioned reasons, the decision rendered in the case of Infosys Technologies is of no assistance to the revenue. The decisions relied upon by the revenue in A. Gajapathy Naidu,Morvi Industries Ltd. and Keshav Mills Ltd.(supra) support the case of

assessee as the assessee has incurred a definite legal liability and on following the mercantile system of accounting, the discount on ESOPs has rightly been debited as expenditure in the books of account. We are in respectful agreement with the view taken in PVP Ventures Ltd. And Lemon Tree Hotels Ltd.'case (supra).

13. It is also pertinent to mention here that for Assessment Year 2009-10 onwards the Assessing Officer has permitted the deduction of ESOP expenses and in view of law laid down by Supreme Court in Radhasoami Satsang v. CIT, [1992] 60 Taxman 248/193 ITR 321, the revenue cannot be permitted to take a different stand with regard to the Assessment Year in question.

In view of preceding analysis, the substantial questions of law framed by a bench of this court are answered against the revenue and in favour of the assessee. In the result, we do not find any merit in this appeal, the same fails and is hereby dismissed."

34. Therefore, in view of the aforesaid findings of the Hon'ble Karnataka High Court, we find no infirmity in the impugned order passed by the learned CIT(A) in allowing the claim of deduction of ESOP expenses under section 37(1) of the Act. Accordingly, grounds no. 1 to 6 raised in Revenue's appeal are dismissed.

35. In the result, the appeal by the Revenue is dismissed.

ITA no.2302/Mum./2018
Assessee's Appeal – A.Y. 2012–13

36. In its appeal, the assessee has raised the following grounds:–

"a) On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer in denying the claim of agricultural exemption under section 10(1) of the Act.

b) On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in not following the order passed by the Bombay High Court in the Appellant's own case for earlier years which has binding effect as there was no change in facts or in the manner in which the agricultural activity has been carried out by the Appellant in the current year as compared to the earlier years.

c) On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) further erred in denying the claim of exemption by relying upon various decisions which are distinguishable on facts.

d) On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in making various observations which are factually incorrect and contrary to the facts available on record which the Appellant craves leave to elucidate at the time of hearing, leading to perverse finding that the Appellant is not involved in carrying out agricultural activities and thus not eligible for deduction under section 10(1) of the Act.

e) On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in not appreciating the fact that as per section 14A(2) of the Act, Rule 8D of the Income-tax Rules, 1962 can be invoked only if the Assessing Officer is not satisfied with the correctness of the claim of the Appellant and no such non-satisfaction has been recorded in the case of the Appellant.

f) On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) further erred in holding that there is no necessity of recording explicit satisfaction by the Assessing Officer before invoking Rule 8D read with section 14A of the Act."

37. The issue arising in grounds no. (a) – (d), raised in assessee's appeal, is pertaining to the denial of exemption claimed under section 10(1) of the Act. The learned representatives of both sides placed reliance upon their submissions made in assessee's appeal for the assessment year 2009-10, as the facts are similar. Since a similar issue has already been decided in assessee's appeal for the assessment year 2009-10, therefore our findings/conclusions rendered therein shall apply *mutatis mutandis*. Accordingly, the assessee is entitled to claim exemption under section 10(1) of the Act in respect of income earned from growing and selling hybrid seeds. As a result, the issue raised in grounds no. (a) – (d) is decided in favour of the assessee.

38. The issue arising in ground no. (e) - (g), raised in assessee's appeal, is pertaining to disallowance made under section 14A read with Rule 8D of the Income Tax Rules, 1962.

39. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, upon perusal of the profit and loss account, it was observed that the assessee has credited dividend on current investments of Rs. 10,56,38,344. Further on perusal of the computation of total income, it was observed that this amount was claimed as exempt under section 10(35) of the Act. In the return of income for the year under consideration, the assessee made the suo moto disallowance of Rs. 86,76,612 under section 14A of the Act towards administration expenses. Accordingly, the assessee was asked to provide further information/working on the said disallowance made in the return of income filed. In response thereto, the assessee submitted that all the investments were made out of their own funds and the assessee does not have any borrowings at the beginning and at the end of the year. It was further submitted that the assessee has sufficient own funds for the purpose of making investments and all the investments are made in the units of mutual funds. Accordingly, it was submitted that no financial expenditure was incurred by the assessee directly related to earning the exempt income during the year under consideration. As regards the disallowance of Administration related expenditure, the assessee submitted that the income on current investments represents dividends from mutual funds, wherein the investment is mainly confined to daily dividend schemes, and the dividends declared

under the said schemes are directly deposited into the bank account of the assessee through ECS route. Therefore, except for any minimal and initiative cost which may be incurred initially for making the investment in the schemes, no other expenditure was incurred subsequently for earning such income. Accordingly, the assessee submitted that the disallowance under section 14A, if any, should be restricted to Rs. 12,84,603, computed on a reasonable basis being 25% of the cost of the Treasury Department of the assessee as expenses incurred in relation to earning exempt income, instead of Rs. 86,78,612 disallowed as per Rule 8D in the return of income.

40. The AO vide assessment order dated 29/01/2016 passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that it is difficult to accept that a company can earn substantial dividend income without incurring any expenses whatsoever including management or an administrative expenses. The AO further held that the investment decisions are generally taken in the meetings of the Board of Directors for which administrative expenses are incurred. The AO further held that the assessee could not establish that the expenses debited to the profit and loss account have been wholly and exclusively incurred for the purpose of business and no portion of the said expenditure was related to investment activity. Accordingly, the AO came to the conclusion that the provisions of section 14A of the Act are to be invoked for working out the disallowance relatable to the exempt income. It was further held that the disallowance under section 14A of the Act is required to be mandatorily worked out as per the method prescribed in Rule 8D. Accordingly, the AO computed the

disallowance of Rs. 97,22,355 being total of Rs. 10,43,743 under Rule 8D(2)(ii) and Rs. 86,78,612 under Rule 8D(2)(iii). Since the assessee has already disallowed an amount of Rs. 86,78,612 under section 14A of the Act, the AO added the balance amount of Rs. 10,43,743.

41. The learned CIT(A), vide impugned order, accepted the submission of the assessee that it has sufficient own funds for the purpose of investment and accordingly deleted the disallowance of Rs. 10,43,743 made under Rule 8D(2)(ii). However, the learned CIT(A) affirmed the findings of the AO regarding the disallowance computed as per section 14A read with Rule 8D(2)(iii), i.e. 0.5% of the average investment. Being aggrieved, the assessee is in appeal before us.

42. During the hearing, the learned AR submitted that in the present case, the AO has not given any reason for non-satisfaction with the claim of the assessee vis-à-vis the suo moto disallowance of Rs. 12,84,603 offered under section 14A of the Act during the assessment proceedings. The learned AR further submitted that the investments made by the assessee were mainly in debt mutual funds and dividend option schemes. It was further submitted that the dividend option aims at paying periodic dividends to the investor provided the fund has earned returns. The dividend payment may be either ad hoc or at regular intervals like daily, quarterly, half-yearly, or annual. Thus, these schemes would require minimal administration by the assessee. It was further submitted that considering the fact that some time is spent by the employees of the Treasury Department of the assessee for monitoring investment activities, the disallowance under section 14A was restricted to

Rs. 12,84,603 being 25% of the cost of the Treasury Department of the assessee.

43. On the contrary, the learned DR by vehemently relying upon the orders passed by the lower authorities submitted that the findings recorded by the AO are sufficient and a clear indication of his compliance with the procedure under section 14A(2) of the Act.

44. We have considered the submissions of both sides and perused the material available on record. It is evident from the record that the assessee, in its return of income, suo moto disallowed an amount of Rs. 86,78,612 towards the administrative expenses under section 14A of the Act for the purpose of earning income exempt under the provisions of the Act. However, during the assessment proceedings, in response to the show cause notice issued by the AO, the assessee revised the disallowance under section 14A of the Act and restricted the disallowance to Rs. 12,84,603. As per the assessee, some time has been spent by the employees of the Treasury Department for monitoring the investment activities and accordingly, 25% of the cost of the Treasury Department was considered for disallowance under section 14A of the Act. In this regard, the assessee submitted the suo moto working of expenditure disallowable under section 14A vide its submission dated 15/10/2015 before the AO, which forms part of the paper book on page 103.

45. It is the plea of the assessee that the AO without recording its satisfaction as to the correctness of the claim of the assessee rejected the suo moto disallowance offered by the assessee and made an addition of Rs.

86,78,612 under section 14A read with Rule 8(2)(iii). However, from the perusal of the assessment order, particularly pages 54-58, we find that the AO specifically considered the submission of the assessee in para 9.4. Further, after rejecting the submissions of the assessee that substantial dividend income was earned without incurring any expenditure whatsoever including management or administrative expenses, the AO held that the investment decisions are generally taken in the meetings of the Board of Directors for which administrative expenses are incurred. The AO further held that the assessee could not establish that the expenses debited to the profit and loss account do not relate to the investment activity. Accordingly, by applying the computation mechanism as provided under Rule 8D(2)(iii), the AO, inter-alia, computed the disallowance of Rs. 86,78,612 under section 14A of the Act, i.e. 0.5% of the average value of the investment. It is further pertinent to note that even the disallowances as computed by the assessee during the assessment proceedings are on an ad hoc basis by considering 25% of the cost of the Treasury Department without taking into consideration the involvement of the Board of Directors for which administrative expenses are also incurred. In view of the above, we find no merits in the submission of the learned AR. Accordingly, we are of the considered view that the action of the AO in computing the disallowance under section 14A read with Rule 8D(2)(iii) is in conformity with the provisions of the Act and is therefore upheld. As a result, grounds no. (e) - (g) raised in assessee's appeal are dismissed.

46. Ground no. (h) raised in assessee's appeal is pertaining to the levy of interest under section 234B of the Act, which is consequential in nature and therefore, needs no separate adjudication.

47. In the result, the appeal by the assessee is partly allowed.

48. To sum up, the assessee's appeal for the assessment year 2009-10 is allowed, while the assessee's appeal for the assessment year 2012-13 is partly allowed. The Revenue's appeal for the assessment year 2012-13 is dismissed.

Order pronounced in the open Court on 10/11/2023

Sd/-	**Sd/-**
OM PRAKASH KANT	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 10/11/2023

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai