

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH, 'A', CHANDIGARH

BEFORE SHRI A.D. JAIN, VICE PRESIDENT &  
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA Nos. 64 to 66/CHD/2023

निर्धारण वर्ष / Assessment Years : 2013-14, 2014-15 & 2015-16

|   |             |   |
|---|-------------|---|
| Josan Industries,<br>Jalalabad,<br>H.O., Guruharshai,<br>Punjab | Vs.<br>बनाम | The DCIT Circle-1,<br>International Taxation,<br>Chandigarh |
| स्थायी लेखा सं./PAN No. AAAFJ7294F                              |             |   |
| अपीलार्थी/Appellant   |             | प्रत्यर्थी/Respondent                                       |

निर्धारित की ओर से/Assessee by : Shri Tej Mohan Singh, Advocate

राजस्व की ओर से/ Revenue by : Shri J.S. Kahlon, CIT DR

सुनवाई की तारीख/Date of Hearing : 07.02.2024

उद्घोषणा की तारीख/Date of Pronouncement : 19.03.2024

**आदेश/Order**

**Per A.D. Jain, Vice President:**

ITA No. 64/Chd/2023 is assessee's appeal against the order of the Id. Dispute Resolution Panel-1, New Delhi [herein referred to as 'the DRP'] dated 13.12.2022, for the Assessment Year 2013-14, taking the following effective grounds of appeal:

1. That the Ld. Assessing Officer Circle 1, International Tax, Chandigarh passing the assessment order u/s 147 rws 144C(13) has exceeded the jurisdiction in as much

*the residential status of assessee firm is admittedly "Resident" as per the impugned order passed and not "NRI" as mentioned in the body of the impugned order and as such the order passed is illegal, arbitrary and unjustified.*

*2. That since the Assessing Officer Circle 1, International Tax, Chandigarh passing the Assessment Order was not vested with any valid jurisdiction to assess the income of the instant assessee, the assessment order passed is illegal, arbitrary and unjustified.*

*3. That the assessee firm has been receiving notices from the Jurisdictional Assessing Officer i.e. Ward 2(3), Abohar who had sent the proposal for re-opening of the case which was approved by PCIT, Amritsar-1 vide approval dated 31/03/2021 and as such, the assessment order passed by Assessing Officer, International taxation, Circle 1, Chandigarh and not by JAO, Ward-2(3), Abohar is illegal, arbitrary and unjustified.*

*4. That the Ld. Assessing Officer has erred in law in reopening the assessment by issuance of notice u/s 148 of the Act in as much as there has been no escapement of income and as such the order passed is illegal, arbitrary and unjustified.*

*5. That the Ld. Assessing Officer has erred in law as well as on facts in as much as there has been no reason to believe that there was an escapement of income in as much as the reasons recorded are based only on suspicion, conjectures and estimation and as such the assessment order passed is illegal, arbitrary and unjustified.*

*6. That the Ld. Assessing Officer has erred in law as well as on facts in re-opening the already completed assessment as there was no failure on part of the*

*assessee to truly and fully disclose all material facts in respect of all the issues under scrutiny and as such the draft assessment order passed is arbitrary and unjustified.*

*7. Without prejudice to the above, the Ld. Assessing officer has erred in making an addition of Rs.34,71,143/- treating the same to be income from other sources as undisclosed income u/s 68 of the Act only on estimates without considering the fact that the assessee had disclosed the receipts from by products in its audited accounts and as such the order passed is arbitrary and unjustified.*

*8. That the Ld. Assessing Officer has further erred in charging interest u/s 234 A and B which is not chargeable.*

2. The facts are that a draft assessment order us 144C of the Income Tax Act, 1961 (in short 'the Act') was passed by the DCIT (Int.Tax.), Chandigarh on 14.3.2022.

3. The Assessee filed the following objections before the DRP against the Draft Assessment Order:-

1. That the Ld. Assessing Officer passing the Draft Order u/s 144C has exceeded the jurisdiction in as much the residential status of assessee firm is "Resident" and not "NRI" as mentioned in the draft order and as such the order passed is illegal, arbitrary and unjustified.
2. That since the Assessing Officer passing the Draft Assessment Order was not vested with any jurisdiction to

assess the income of the instant assessee, the draft order passed is illegal and as such merits to be quashed.

3. That the assessee firm has been receiving notices from the Jurisdictional Assessing Officer, i.e., Ward 2(3), Abohar who had sent the proposal for re-opening of the case and the same were approved by PCIT, Amritsar-1 vide approval dated 31/03/2021. As such, the draft assessment order had to be passed by the ITO, Ward-2(3), Abohar.
4. That the Ld. Assessing Officer has erred in law in reopening the assessment by issuance of notice u/s 148 of the Act in as much as there has been no escapement of income and as such the order passed is illegal, arbitrary and unjustified.
5. That the Ld. Assessing Officer has erred in law as well as on facts in as much as there has been no reason to believe that there was an escapement of income in as much as the reasons recorded are based only on suspicion, conjectures and estimation and as such the draft assessment order passed is illegal, arbitrary and unjustified.
6. That the Ld. Assessing Officer has erred in law as well as on facts in re-opening the already completed assessment as there was no failure on part of the assessee to truly and fully disclose all material facts in respect of all the issues under scrutiny and as such the draft assessment order passed is arbitrary and unjustified.

7. Without prejudice to the above, the Ld. Assessing officer has erred in proposing an addition of Rs.34,71,143/- treating the same to be undisclosed income u/s 68 of the Act only on estimates without considering the fact that the assessee had disclosed the receipts from by products in its audited accounts and as such the draft order passed is arbitrary and unjustified.
  8. That the proposed addition in the draft assessment order is based on suspicion, surmises and conjectures which is not permissible under the Act.
  9. That the appellant craves leave to add or amend the grounds of objection before the objections are finally heard or disposed off.
  10. That the draft order of the Ld. Assessing Officer passed under section 144C of the Act is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable.
4. The first three objections raised by the Assessee were against the jurisdiction of the Assessing Officer. The Assessee had contended that the residential status of the Assessee firm was “Resident” and not “NRI”, as mentioned in the draft assessment order; that the Assessing Officer who had passed the draft assessment order was not having jurisdiction over the Assessee; that the Assessee firm had been receiving notices from its jurisdictional Assessing Officer, the ITO, Ward -2(3), Abohar who had sent the proposal for reopening; that so,

the proposal for draft assessment order ought to have been passed by the ITO, Ward-2(3), Abohar; and that the draft assessment order passed by the ITO, Circle-1, Int. Tax, Chandigarh, was illegal.

5. Dealing with these objections, the DRP held that it had noticed that the Assessee had itself mentioned a wrong status in its return and had never, thereafter, challenged the jurisdiction before the Assessing Officer and had duly participated in the proceedings; and that the Assessee was precluded from raising the issue of jurisdiction before the DRP after the assessment had been made and the action of the Assessing Officer was upheld.

6. The final order u/s 144C (3) of the Act has since been passed by the Assessing Officer on 26.12.2022, which is the subject matter of the present appeal.

7. Before us, this issue has been again raised by the Assessee, by way of Ground Nos. 1 to 3. The Id. Counsel for the Assessee has contended that the residential status of the Assessee firm has always been "Resident" and not "NRI". Attention, in this regard, has been drawn to APB 43-46, which is a copy of the assessment order dated 29.2.2016, passed u/s 143(3) of the Act, in the status of "Resident". It has been stated by the Id. Counsel that in the proceedings before the DRP, a remand report dated 18.11.2022 (APB 48-53) was filed by the

DCIT, Circle-1 (International Tax), Chandigarh. It has been pointed out that at APB 49, i.e., on the second page of this remand report, it has been stated by the DCIT (International Tax), Circle-Chandigarh, that the case was transferred to his office from the office of the ITO, Ward-2(3), Abohar after passing of order u/s 127 of the Act, i.e., Order No.1909, dated 5.3.2022, to the office of the Commissioner of Income Tax-1, Amritsar, as it was a non-resident case, it was transferred to the JAO on the direction of the NeFAC, for transfer to the jurisdictional international Taxation charge. The ld. Counsel has contended that therefore, the DCIT, Circle-1 (International Tax), Chandigarh, who had passed the draft assessment order as well as the final assessment order, was not vested with any jurisdiction to assess the income of the Assessee. It has been contended that the Assessee firm had been receiving notices from its jurisdictional Assessing Officer, i.e., the ITO, Ward-2(3), Abohar who had sent the proposal for reopening of the case and the same was granted by the PCIT, Amritsar-1, vide order dated 31.3.2021. Our attention has been drawn to APB 12-20, which are the copies of the notices along with the approval granted. It has been contended that therefore, the draft assessment order and the final assessment order had to be passed by the ITO, Ward-2(3), Abohar, which has not been done.

8. The Bench had directed the ld. DR to produce the order u/s 127 of the Act, if any passed, transferring the jurisdiction of the case, which direction has been complied with by producing the section 127 order dated 5.3.2002.

9. The ld. DR has placed reliance on the order of the DRP in this regard, contending that as correctly taken note of by the ld. DRP, the Assessee had itself mentioned its status as “Non-Resident” in its return of income; that it had never challenged the jurisdiction before the Assessing Officer and had duly voluntarily participated in the assessment proceedings; that therefore, the ld. DRP correctly precluded the Assessee from raising this objection before it, upholding the action of the Assessing Officer.

10. We have been through the notices dated 28.6.2021, 7.2.2022 and 15.2.2022 placed at APB 15-20. All these notices have been issued by the ITO, Ward-2(3), Abohar. Further, the assessment order dated 29.2.2016, passed u/s 143(3) of the Act (copy at APB 43-46) for the year under consideration in the Assessee’s case, has been passed in the status of “Resident” and not “NRI”. It is, therefore, undisputed that the status of the Assessee is that of a “Resident” and not that of an “NRI”. It is only that such status was inadvertently wrongly mentioned as “NRI in the original return filed, the acknowledgment whereof is at APB 53. It is pertinent that in response to the notice

dated 8.3.2022, issued u/s 148 of the Act, by the A.O., Circle-1 (International Tax), Chandigarh (APB 21-22), the Assessee filed return of income (APB 25-28), wherein, the mistake was rectified and the correct status was mentioned, i.e., as “Resident”, the acknowledgment whereof is at APB 58.

11. It, therefore, remains undisputed that the jurisdictional Assessing Officer qua the Assessee was the ITO, Ward-2(3), Abohar and not the Assessing Officer, Circle-1 (International Tax), Chandigarh. It was the Assessing Officer at Abohar who had sent the proposal for the reopening of the case and which was approved by the ld. PCIT, Amritsar-1, vide order dated 31.3.2021.

12. The ld. DRP has gone wrong in upholding the action of the Assessing Officer, Circle-1 (International Tax), Chandigarh in passing the draft assessment order and leading the said officer to pass the final assessment order. While doing so, the ld. DRP has merely gone by the Assessee having mentioned its status in its return of income inadvertently wrongly as “Resident”, which the DRP itself accepts to be a wrong status when it observes that the Assessee had itself mentioned a wrong status in its return. The DRP has precluded the Assessee from raising the issue of jurisdiction before it since the Assessee had never challenged the jurisdiction before the Assessing Officer and had participated in the assessment proceedings.

13. In view of the above, finding force in the grievance raised by the Assessee by way of Ground Nos. 1 to 3, these grounds are accepted. We hold that the residential status of the Assessee firm is that of a 'Resident' and not of an 'NRI'. There is a dichotomy in the body of the impugned order in this regard, in as much as admittedly the Assessee is a resident as per the said order, however, in the body of the order, he has been mentioned to be an NRI. This being so, the Assessing Officer, Circle-1 (International Tax), Chandigarh, who passed the impugned order, did not have jurisdiction to pass the same. The impugned order is, as such, non-est in the eye of law. It was the JAO, Ward-2(3), Abohar, who had sent a proposal for reopening of the case. Therefore, it was the JAO, Ward-2(3), who had valid jurisdiction over the Assessee and not the Assessing Officer (International Tax), Circle-1, Chandigarh. Hence, on this score alone, the order under appeal is an invalid order and we hold so.

14. Ground Nos. 4 to 6 are against the reopening of the assessment already completed u/s 143(3) of the Act. The Assessee contends that the reopening is bad in law since there was no escapement of income, there was no reason to believe any escapement of income, and there was no failure on the Assessee's part to disclose fully and truly all material facts regarding all the issues under scrutiny.

15. These grounds correspond to Ground Nos 4 to 6 taken by the Assessee before the Id. DRP. The Id. DRP observed, in para 3.2.1 of its order, that the Assessing Officer, in the draft order, has recorded a categorical finding that from the perusal of the replies filed by the Assessee, it emerged that the Assessee firm had not been assessed on the Grounds of the reopening of this very case for the A.Y. 2013-14; that in its reply before the A.O., the A.O. had enclosed a yield chart and trading account along with comparative details of other traders; that thus the assessee submitted a similar yield 63.5, as recorded in the reasons for reopening (63%-65%); that the Assessing Officer had noticed that the submission of the assessee was silent on the income earned from the production of these by-products and the value was not reflected in the trading account submitted by the assessee for 2013-14; that thus, it was clear that the assessee did not offer its income arising from the production of by-products; that this issue had not been covered during the assessment u/s 143(3) of the Act; that the Assessing Officer observed that it was a time limitation matter, she was left with no other alternative but to complete the assessment on the basis of information and details available on records; that as per information available with the Department, the assessee had not offered the income of Rs. 34,74,143/- arising on account of production of the by-products, i.e., Rice Bran and Phak (Husk) for taxation purpose during the F.Y. 2012-13 relevant to A.Y. 2013-14; that the assessee filed its

return of income on 21.09.2013, at the income of Rs. 12,31,900/-, which was processed u/s 143(1) of the Act as such and the case was also assessed u/s 143(3) of the Income Tax Act on 29.02.2016, at the income of Rs. 14,13,830/-; that during the year under consideration, the Assessee had income under the head business and profession from the Rice Sheller; that later on, it was noticed that the assessee had not accounted for the value of the by-product of Paddy Milling in its income and the same had not been offered for taxation; that the information was verified and was found to be in order, as the assessee had only shown 1034.20 quintals of Rice Bran and Zero quintal on account of the Phak/Husk; that therefore, the quantities shown by the assessee on account these two by-products were found to be short of 594.58 quintals (1629 quintals-1034.20 quintals) and 9448.20 quintals of Phak/Husk; that the value of undisclosed Rice Bran was Rs. 4,47,719/-(594.58 quintals @ 753/- per quintal) and that of Phak/Husk is Rs. 30,23,424 (944820 quintals @ 320/- per quintal); that thus, the Assessing Officer calculated the total value of these products at Rs. 34,71,143/-, on the basis of the sale prices as indicated by the assessee in its return of income. The assessee could not offer any explanation regarding the undisclosed Rice Bran of Rs. 4,47,719/- and undisclosed Phat / Husk of Rs. 30,23,424/-; that thus, the assessee had clearly failed to explain the products amounting to Rs. 34,71,143/-, despite providing multiple opportunities to do so; that no proper explanation had been offered before

the Panel and, therefore, the DRP did not find any reason to interfere with the order of the Assessing Officer in reopening of the completed assessment.

16. Before us, as per the ld. DRP, it has been contended on behalf of the Assessee that the Assessing Officer erred in law in reopening the assessment already completed u/s 143(3) of the Act, since there had been no escapement of income; that it had been mentioned in the reasons recorded that the Assessee had not accounted for the value of by- products of paddy milling in its income; that as per the reasons recorded, the income in the original assessment had been under assessed to the extent of Rs. 34,71,143/-; that the quantum of addition had been arrived at purely on estimated basis, that there being any evidence to show that the Assessee had made any sale of the by-products over and above the sales already appearing in the trading account; that there had been no reason to believe any escapement of income, since the reasons for such belief of escapement of income had been based only on suspicion, conjectures and estimation; that it is a trite law that reason to suspect cannot be equated with reason to believe; that it is formation for reasons to believe and not reasons to suspect; which is mandatory to exit; that the reasons for formation of belief must have a rational connection with, or a relevant bearing on, the formation of belief; that 'Rational Connection' postulates that there must be a direct nexus or live link between the material coming to the notice of the Assessing Officer and the formation of his belief that there has been escapement of

the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts; that in the present case, the return of the assessee has already been scrutinized and the complete details in respect of yield and milling chart were provided in response to the notices issued during original assessment; that it is not any and every material howsoever vague and indefinite or distant, remote and far-fetched which would warrant formation of the belief relating to escapement of income; that moreover, powers of the Income Tax Officer to reopen the assessment though wide are not plenary; that in para 3 of the reasons, the Assessing Officer has mentioned that 'information' was examined; that there was general information that the main products extracted during the course of paddy milling is Rice (approx. 63% - 65% of Paddy milled) and certain other by-products are also produced which includes Rice Bran (Approx 5% of the paddy milled), Phak and Chhilka (Husk) [approximately 29% - 30% of the Paddy milled] that thus, the Assessing Officer has on this generalised information worked out the alleged quantities and value of by-products; that reopening of a complete assessment after lapse of many years, is a serious matter; that the return of the Assessee had already been scrutinized and complete details were furnished, after scrutinizing which, the Assessing Officer had accepted the sales of rice and by-products; as declared by the Assessee. Attention in this regard has been drawn to APB 41 – 46, which are copies of the notices and

the assessment order passed u/s 143(3) of the Act. It has been contended that as such, there has just been a change of opinion, which cannot be a basis of reopening of an already completed assessment. Reliance has been placed on 'CIT vs. Kelvinator of India Ltd.', (2002) 256 ITR 1 (FB) (Delhi) (HC), which it has been stated stands approved by the Hon'ble Supreme Court in 'ITO v. Techspan India (P) Ltd.', (2018) 404 ITR 10 (SC). It has been contended that further, there has not been failure on the part of the Assessee to disclose fully and truly all material facts in respect of all the issues under scrutiny and that as such, the re-assessment is arbitrary and unjustified. Reliance has been placed on 'PCIT v. L & T Ltd.', (2020) 268 Taxman 391 (Bom) (HC) and that 'PCIT v. L & T Ltd.', (2020) 268 Taxman 390 (SC), wherein according to ld. counsel, the SLP of the Department had been dismissed by the Hon'ble supreme Court.

17. The ld. DR, on the other hand, has placed strong reliance on the impugned order. It has been contended that as correctly observed by the ld. DRP, the Assessing Officer had recorded a categorical finding that from the replies filed by the Assessee, it was evident that the Assessee firm which had not been assessed on the ground of the reopening of this very case for A.Y. 2013-14; that in the reasons recorded, the yield of rice was stated to be approximately 63% - 65% of the paddy milled; that the Assessee submitted a similar yield, i.e.,

of 63.5%; that Assessee had not stated anything before the Assessing Officer with regard to the production of the by-products of paddy milling and value had not been reflected in the trading account submitted by the Assessee for the year under consideration; that it was from this, that the Assessing Officer had arrived at the findings that the Assessee had not offered its income arising from the production of bye-product's and that this issue had not been examined under scrutiny in the original assessment proceedings; that it was so that the Assessing Officer, in view of the matter being a time barring matter, was left with no alternative but to complete the assessment on the basis of information and details available on record, which was that the Assessee had not offered the income of Rs. 34,74,143/- on account of production of Rice Bran and Phak for taxation for the year under consideration; that the total value of the said by-products of paddy milling at Rs. 3,47,143/- had been calculated by the Assessing Officer on the basis of the sale price shown by the Assessee itself in its return of income; for which, the Assessee had failed to offer any explanation.

18. Having heard the rival contentions in the light of the material on record with regard to the Ground Nos. 4 to 6, we find that the Assessing Officer, for initiating reopening proceedings recorded the following reasons to believe for escapement of income of the Assessee:

1. The Assessee filed his return of income electronically on 21.09.2013 at income of Rs. 12,31,900/- which was processed u/s 143(1) of the Act as such and the case was also assessed u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act') on 29.02.2016 at the income of Rs. 14,13,830/-. During the year under consideration, the Assessee was enjoying income under the head business and profession from rice sheller.
  
2. Later on it came to notice that the Assessee has not accounted for the value of by-products of paddy milling in its income and the same has not been offered for taxation.
  
3. The information was examined vis-à-vis the data available on record and it has been found that the Assessee during the year under consideration was engaged in rice milling or say manufacturing of Rice from paddy. The main products extracted during the course of paddy milling is Rice (approx.. 63-65% of the paddy milled) and certain other by-products are also produced which includes Rice Bran (Approx. 5% of the paddy milled), Phak and Chhilka (Husk) [approx. 29-30% of the paddy milled]. During the year under consideration, the Assessee milled 32580 quintals of paddy. Out of this paddy, the approximate quantity of the Rice Bran (5%) comes to 1629 quintals and Chhilka /Husk (29%) comes to 9448.20 quintals. Whereas the quantity of one of the by-products i.e. Rice Bran shown

by the assessee in its trading and profit and loss account is 1034.20 quintals whereas nothing on account of Phak/Husk has been shown by the assessee in its books of accounts.

4. The above mentioned information was verified and was found to be in order as the assessee has only shown 1034.20 quintals of Rice Bran and nothing has been shown on account of the Phak/Husk. Therefore, the quantities shown by the assessee on account of these two by products are short in as much as 594.58 quintal of Rice Bran is (1629 – 1034.20) and 9448.20 quintals of Phak/Husk. The value of these products comes to Rs. 34,71,143/-. The value of these two by-products has been calculated on the basis of the sale price as indicated by the Assessee in its return of income.
5. Therefore, on examination of the material available on record it is found that the Assessee has not offered the income of Rs. 34,71,143/- arising on account of production of the by-products Rice Bran and Phak (Husk) for taxation purpose and the same is required to be treated as undisclosed income of the assessee.
6. In view of the independent examination of the information available and the foregoing discussions running from Para 2 to above in this regard, I have reasons to believe that the amount of Rs. 34,71,143/- (as per para 5 above) has escaped assessment within the meaning of section

147 of the Income Tax Act, 1961 on account of failure of the assessee to disclose material facts fully and truly. It is pertinent to mention here that although in this case regular assessment u/s 143(3) was made in this case but the income in the original assessment has been under-assessed to the extent of Rs. 34,71,143/-on account of failure of the assessee to disclose material facts fully and truly for making his assessment. In view of the above, provisions of clause (c) of Explanation 2 to Section 147 are applicable to facts of this case and the assessment year under consideration is deemed to a case where income-chargeable to tax has escaped assessment.

7. Therefore, income of Rs. 34,71,143/-as per Para 6 above, chargeable to tax in the hands of the assessee for the assessment year 2013-14, has escaped assessment within the meaning Explanation 2 (c) to the Section 147 of the Income Tax Act, 1961 as the returned income of the assessee has been under-assessed to this extent. Therefore, to assess such income and also any other income which comes to the notice subsequently during the course of proceedings u/s 147 of the Act for the assessment year 2013-14, a notice u/s 148 of the Act is being issued.

19. As per the notice (APB 41)-42) dated 16.2.2016, issued u/s 143(2) of the Act, the Assessing Officer required the Assessee to furnish a Comparative Yield Chart and copy of account of Paddy & Rice Exp. With detailed narration. Yield Chart (APB 34) as on

31.3.2013 filed before the Assessing Officer and the DRP, shows Paddy Milled at 32,580.00 quintals, rice manufactured, at 63.60% of the Paddy Milled at 20,688.30 quintals, Rice Bran at 5% of the Paddy Milled at 1034.42 quintals, Khudi Phak at 2.50% of the Paddy Milled at 814.40 % and Chilka, of 21% of the Paddy Milled, at 6841.80 quintals. It was stated vide reply (APB 31) by the Assessee before the Assessing Officer, that Phak / Husk (Chilka) is a by-product, which is around 21%, is consumed in the manufacturing process of Paddy Basmati and that the other by-products are Rice Bran which is around 5% of Khudi Phak, which is around 2.50%. The Assessee also filed comparative Yield Chart and Trading accounts of other rice shellers of the vicinity (APB 35-40). The Assessee further filed a copy of the trading account (duly audited, ABP 32-33) wherein, sale of Rice Bran and Khudi Phak was duly shown. These details alongwith a copy of the reply was also filed before the DRP. It remain undisputed that the Assessing Officer in the original assessment proceedings, considered all these details furnished by the Assessee and it was only thereon that the sales of rice and by-products, as declared by the Assessee were accepted by the Assessing Officer, therefore, we find that it has been rightly contended that there was a mere change of opinion on the part of the Assessing Officer while recording the alleged reasons for belief of escapement of income. In fact, there was no

escapement of income and there was no reasons to believe of any such escapement of income. The Assessing Officer did not point out any failure on the part of the Assessee to disclose fully and truly all material facts with regard to the issue, which was a subject matter of scrutiny in the original assessment proceedings. In the original assessment order dated 29.2.2016, passed u/s 143(3) of the Act, the Assessing Officer has clearly mentioned that the Assessee had filed written submissions and details and had also produced books of account consisting of cash book, ledger, bills and vouchers which were examined on a test check basis; and that the information and details as called for were furnished and the same were also test checked. As noted, as also patent on record and as also not rebutted by the Department, complete details, as above, were filed by the Assessee before the Assessing Officer alongwith its reply in original assessment proceedings, which were duly examined by the Assessing Officer and it was only thereafter that, being satisfied therewith, the Assessing Officer accepted the sales of the rice and the by-products as declared by the Assessee.

20. In view of the above, we hold that the reopening of the completed assessment was on the basis of a mere change of opinion of the Assessing Officer which cannot be a ground of re-assessment, as held in 'Kelvinator of India Ltd.', (supra). Further, since there was no failure

on the part of the Assessee to disclose fully and truly all material facts at the time of the original assessment, the re-assessment proceedings are bad in law, as held in 'L&T Ltd.', (supra).

21. For the above, finding force therein, Ground Nos. 4 to 6 are accepted. The reopening of the completed assessment and all proceedings pursuant to culminating in the passing of the assessment order dated 26.12.2012, is reversed and cancelled.

22. Since Ground Nos 4 to 6 have been decided in favour of the Assessee, as above, and the re-assessment, has been held to be bad in law, nothing further survives for adjudication nor was anything else argued. Held accordingly.

23. In the result, the appeal is partly allowed as indicated.

**ITA No. 65 & 66/Chd/2303:**

24. Since similar issues are involved in these appeals and the plea of the Assessee too is identical to that have been raised in ITA No. 64/Chd/2023, for assessment year 2013-14, while applying our findings recorded with regard to these similar issues as in ITA no. 64/Chd/2023 are equally applicable, therefore, ITA Nos. 65 & 66/Chd/2023 are allowed.

25. In the result, all the appeals of the Assessee are partly allowed.

Order pronounced on 19.03.2024.

Sd/-  
**(VIKRAM SINGH YADAV)**  
**Accountant Member**

Sd/-  
**( A.D. JAIN )**  
**Vice President**

Dated : 19.03.2024

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,  
CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar