

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"F" BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.4291/MUM/2024**  
(Assessment Year : 2014-15)

**ITA No.4292/MUM/2024**  
(Assessment Year : 2017-18)

**Asst. CIT – 6(1)(2)**

Mumbai 400020  
Maharashtra

..... Appellant

v/s

**Jayant Agro Organics Ltd.,**

71 Tower A Peninsula Business Park,  
Delisle Road,  
Mumbai – 400013  
Maharashtra  
PAN – AAACJ7581Q

..... Respondent

Assessee by : Shri Atul Suraiya

Revenue by : Shri Dinesh A Chourasia, Sr.DR

Date of Hearing – 05/12/2024

Date of Order – 10/12/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The Revenue has filed the present appeals against the separate impugned orders of even date 28.06.2024 passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*learned CIT(A)*], under section 154 r.w.s. 250 of the Income Tax Act, 1961 (*the Act*), for the assessment years 2014-15 and 2017-18.

2. Since both the appeals pertain to the same assessee involving similar issues arising out of a similar factual matrix, these appeals were heard

together and are being decided by way of this consolidated order. With the consent of the parties, the appeal for assessment year 2014-15 is taken up as a lead case and the decision rendered therein shall apply *mutatis mutandis* to the appeal for the assessment year 2017-18.

3. In the present appeals, the Revenue has raised similar grounds, therefore the grounds raised in ITA No.4291/MUM/2024 are reproduced hereunder for the sake of brevity: -

*"01. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is erred in holding that the reassessment proceedings initiated by the Ld. AO u/s 147 by issuing notice u/s 148 of the IT Act, 1961 is bad in law as the proceedings are initiated without jurisdiction and the reassessment Initiated was mere change of opinion?"*

*"02. The Appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."*

4. The solitary grievance of the Revenue is that the learned CIT(A) without considering the facts of the present case set aside the re-assessment proceedings, following the decision of the Hon'ble Supreme Court in ITO vs. Techspan India Pvt. Ltd., reported in (2018) 404 ITR 10 (SC).

5. We have considered the submissions of both parties and perused the material available on record. The brief facts of the case giving rise to the present appeals are that the assessee is engaged in the business of manufacturing and exporting castor oil and its derivatives and also in power generation. For the assessment year 2014-15, the assessee filed its original return of income on 29.11.2014 declaring a total income of Rs. 19,31,46,410. The return filed by the assessee was selected for scrutiny and vide assessment order dated 29.12.2017 passed under section 143(3) r.w.s. 144C(3) of the

Act, the total income of the assessee was assessed at Rs.19,74,14,990 after making the additions on account of transfer pricing issues and mismatch of income as per the AIR details. Subsequently, notice under section 148 of the Act was issued on 31.03.2021 on the basis that the assessee has earned dividend income amounting to Rs.18,39,02,500. However, the assessee has not worked out the disallowance as per the procedure laid down in Rule 8D of the Income Tax Rules, 1962. It was further alleged that the assessee has claimed a deduction of Rs.2,61,86,290 under section 35(2AB) of the Act, however, the assessee has not furnished the copy of the certificate in Form 3CL from the competent authority, i.e., the Secretary of Department of Scientific and Industrial Research in respect of R & D expenses, which is the mandatory requirement to claim the weighted deduction under section 35(2AB) of the Act. Accordingly, on the basis of the aforesaid reasons, proceedings under section 147 of the Act were initiated. The assessee raised detailed objections against the initiation of re-assessment proceedings, which were disposed of by the Assessing Officer vide order dated 08.03.2022. In response to the notice issued under section 148 of the Act, the assessee filed its return of income declaring a total income of Rs.19,31,46,410. After considering the submissions of the assessee filed in response to the statutory notices issued under section 143(2) and section 142(1) of the Act, the AO vide order dated 30.03.2022 passed under section 147 r.w.s. 144B of the Act computed the total income of the assessee at Rs.21,72,76,010 after making the disallowance of Rs.57,58,075 under section 14A r.w. Rule 8D of the Rules and disallowance of Rs.1,41,02,948/- under section 35(2AB) of the Act. In further appeal before the learned CIT(A), against the aforesaid order passed

under section 147 r.w. section 144B of the Act, the assessee raised the ground challenging the reopening of assessment under section 147 of the Act and also raised the grounds challenging the addition/disallowance made by the AO on merits. The learned CIT(A), vide order dated 16.02.2024 passed under section 250 of the Act, *inter alia*, upheld the reopening of assessment under section 147 of the Act and dismissed the ground raised by the assessee, by observing as under:

*"5.2 The re-opening of the assessment u/s. 147 of the Act by the Assessing Officer and the submissions of the appellant has been perused. It is seen that the appellant raised the issue of re-opening of assessment u/s.147 of the Act before the AO and accordingly, communicated the reasons for re-opening of the assessment u/s. 147 of the Act during the course of assessment proceedings. The During the course of video conference, the Authorized Representative of the appellant vehemently argued that the AO invoked provisions of section u/s.147 of the Act which prohibits him from any action after the expiry of 4 years from the end of the relevant assessment year. It is to note that the re-opening of assessment was made by the AO as per Explanation 2 clause-(c)(i) of Section 147, wherein "income chargeable to tax has been under assessed"<sup>TM</sup> and the question of expiry of four years as contended by the appellant does not arise and is well within the time limit as per provisions of Section 149 of the Act. It is also seen that the AO issued notice u/s.148 of the Act dated 31.03.2021 with the prior approval of PCIT Mumbai-6. In the approval, the PCIT has given the satisfaction for re-opening of the assessment u/s.147 of the Act, after verifying the reasons recorded by the AO.*

*5.2.1 Further, the Hon'ble High Court of Delhi in the case of Techspan India Pvt Ltd vs Income Tax Officer 283 ITR 212 Delhi held that \*..... The other aspect regarding which / wish to strike a note of caution is that before interfering with the proposed reopening of the assessment on the ground that the same is based only on a change in opinion, the Court ought to verify whether the assessment earlier concluded has either expressly or by necessary implication expressed an opinion on a matter which is the basis of the alleged escapement of income that was taxable. Of the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the assessing officer any opinion on the questions that are raised in the proposed reassessment proceedings. Every attempt to bring to tax, income that has escaped assessment cannot be aborted by judicial intervention on an assumed change of opinion even in cases where the order of assessment does not address itself to a given aspect sought to be examined in the reassessment proceedings. There may be cases where the material is available with the assessing officer but the same is either ignored or escapes his attention while making the assessment. There can be no legal impediment in the reopening*

*of assessment in such cases, nor can it be said that the reassessment is based only on a change of opinion.*

*5.2.2 Considering the facts and circumstances of the case and following decisions cited above, the action of the AO in re-opening of assessment u/s. 147 of the Act is upheld and Ground No.1 is dismissed."*

6. Being aggrieved, the assessee filed a rectification petition before the learned CIT(A) under section 154 of the Act on the basis that the learned CIT(A) while upholding the reopening of assessment under section 147 of the Act followed the findings of the Hon'ble Delhi High Court in Techspan India Pvt. Ltd. vs. ITO, reported in 283 ITR 121 (Del) and did not consider the entire decision which is in favour of the assessee and has subsequently also been affirmed by the Hon'ble Supreme Court in the petition filed by the Revenue. Agreeing with the submission of the assessee, the learned CIT(A), vide impugned order, passed under section 154 r.w. section 250 of the Act allowed the rectification petition filed by the assessee by observing as under:

*"The request of the appellant has been perused. The Appellant Order for A.Y. 2014-15 has been disposed off on merits by this office on 16.02.2024. The appellant order was uploaded online in ITBA portal. Thereafter a rectification request vide reference no 126195460270224 was submitted. The appellant has relied on the judgment of Hon'ble Supreme Court vide citation 92.taxmann.com 361. After verifying the details and the appellate order, the request of the appellant is allowed for statistical purpose."*

7. During the hearing, the learned Authorized Representative ("learned AR") by referring to paragraph 24 of the decision of the Hon'ble Delhi High Court in Techspan (supra) submitted that the learned CIT(A) vide order passed under section 250 of the Act only considered partial findings of the Hon'ble Delhi High Court and did not consider the entire decision, which is in favour of the assessee. For ready reference, paragraph 24 of the decision of the Hon'ble Delhi High Court in Techspan (supra) is reproduced as follows: -

"24. The other aspect regarding which I wish to strike a note of caution is that before interfering with the proposed reopening of the assessment on the ground that the same is based only on a change in opinion, the court ought to verify whether the assessment earlier concluded has either expressly or by necessary implication expressed an opinion on a matter which is the basis of the alleged escapement of income that was taxable. If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the Assessing Officer any opinion on the questions that are raised in the proposed reassessment proceedings. Every attempt to bring to tax income that has escaped assessment cannot be aborted by judicial intervention on an assumed change of opinion even in cases where the order of assessment does not address itself to a given aspect sought to be examined in the reassessment proceedings. There may be cases where the material is available with the Assessing Officer but the same is either ignored or escapes his attention while making the assessment. There can be no legal impediment in the reopening of assessment in such cases, nor can it be said that the reassessment is based only on a change of opinion. A Division Bench of this Court of which I was a Member had in *Consolidated Photo and Finvest Ltd. v. Asstt. CIT* disposed of on 17-1-2006 [2006] 281 ITR 3941 an occasion to deal with a somewhat similar situation. Relying upon the decisions of the Supreme Court in *Calcutta Discount Co. Ltd.'s case (supra)*, *Kantamani Venkata Narayana and Sons v. First Addl. ITO* [1967] 63 ITR 638, *Malegaon Electricity Co. (P.) Ltd. v. CIT* [1970] 78 ITR 466 and *ITO v. Lakhmani Mewal Das* [1976] 103 ITR 437 and the decision of the High Court of Gujarat in *Praful Chunilal Patel v. M.J. Makwana, Asstt. CIT* [1999] 236 ITR 832 and *Gruh Finance Ltd. v. Jt. CIT* [2000] 243 ITR 4822, this Court observed:

"...The Assessing Officer has in the reasoned order passed by him indicated the basis on which income exigible to tax had in his opinion escaped assessment. The argument that the proposed reopening of assessment was based only upon a change of opinion has not impressed us. The assessment order did not admittedly address itself to the question which the Assessing Officer proposes to examine in the course of reassessment proceedings. The submission of Mr. Vohra that even when the order of assessment did not record any explicit opinion on the aspects now sought to be examined, it must be presumed that those aspects were present to the mind of the Assessing Officer and had been held in favour of the assessee is too far-fetched a proposition to merit acceptance. There may indeed be a presumption that the assessment proceedings have been regularly conducted, but there can be no presumption that even when the order of assessment is silent, all possible angles and aspects of a controversy had been examined and determined by the Assessing Officer. It is trite that a matter in issue can be validly determined only upon application of mind by the authority determining the same. Application of mind is, in turn, best demonstrated by disclosure of mind, which is best done by giving reasons for the view which the authority is taking. In cases where the order passed by a statutory authority is silent as to the reasons for the conclusion it has drawn, it can well be said that the authority has not applied its mind to the issue before it nor formed any opinion. The principle that a mere change of opinion cannot be a basis for reopening completed assessments would be applicable only to situations where the Assessing Officer has applied his mind and taken a conscious decision on a particular matter in issue. It will have no application where the order of assessment does not address itself

*to the aspect which is the basis for reopening of the assessment, as is the position in the present case. ..." (p. 406)"*

8. The learned AR further submitted that the aforesaid decision of the Hon'ble High Court has been affirmed by the Hon'ble Supreme Court and the appeal filed by the Revenue was dismissed vide judgment dated 24.04.2018. From the perusal of the aforesaid judgment of the Hon'ble Supreme Court in Techspan (supra), we find that the Hon'ble Supreme Court held that if the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the AO any opinion on the questions that are raised in the proposed re-assessment proceedings, and therefore, it needs to be verified whether the assessment earlier made has either expressly or by necessary implication has expressed an opinion on a matter which is the basis of the alleged escapement of income that was taxable. Accordingly, the Hon'ble Supreme Court, after considering the facts of the case under consideration in Techspan (supra), concluded that the re-assessment proceedings were based on a change of opinion on the very same facts and circumstances which were already in the knowledge of the AO during the assessment proceedings. The relevant findings of the Hon'ble Supreme Court, in the aforesaid decision, are reproduced as follows: -

*"12. Before interfering with the proposed re-opening of the assessment on the ground that the same is based only on a change in opinion, the court ought to verify whether the assessment earlier made has either expressly or by necessary implication expressed an opinion on a matter which is the basis of the alleged escapement of income that was taxable. If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the assessing officer any opinion on the questions that are raised in the proposed re-assessment proceedings. Every attempt to bring to tax, income that has escaped assessment, cannot be absorbed by judicial intervention on an assumed change of opinion even in cases where the order of assessment*

does not address itself to a given aspect sought to be examined in the re-assessment proceedings.

*13. The fact in controversy in this case is with regard to the deduction under Section 10A of the IT Act which was allegedly allowed in excess. The show cause notice dated 10.02.2005 reflects the ground for reassessment in the present case, that is, the deduction allowed in excess under Section 10A and, therefore, the income has escaped assessment to the tune of Rs. 57,36,811. In the order in question dated 17.08.2005, the reason purportedly given for rejecting the objections was that the assessee was not maintaining any separate books of accounts for the two categories, i.e., software development and human resource development, on which it has declared income separately. However, a bare perusal of notice dated 09.03.2004 which was issued in the original assessment proceedings under Section 143 makes it clear that the point on which the reassessment proceedings were initiated, was well considered in the original proceedings. In fact, the very basis of issuing the show cause notice dated 09.03.2004 was that the assessee was not maintaining any separate books of account for the said two categories and the details filed do not reveal proportional allocation of common expenses be made to these categories. Even the said show cause notice suggested how proportional allocation should be done. All these things leads to an unavoidable conclusion that the question as to how and to what extent deduction should be allowed under Section 10A of the IT Act was well considered in the original assessment proceedings itself. Hence, initiation of the re-assessment proceedings under Section 147 by issuing a notice under Section 148 merely because of the fact that now the Assessing Officer is of the view that the deduction under Section 10A was allowed in excess, was based on nothing but a change of opinion on the same facts and circumstances which were already in his knowledge even during the original assessment proceedings."*

9. From the perusal of the impugned order in the present case, it is evident that though the learned CIT(A) has followed the decision of the Hon'ble Supreme Court in Techspan (supra), however, did not conduct the factual analysis of the case as was required to be made in the light of the decision of the Hon'ble Supreme Court. Since the impugned order lacks the factual analysis and also does not contain any reasoning for allowing the petition filed by the assessee under section 154 of the Act, we deem it appropriate to set aside the impugned order passed under section 154 r.w.s. 250 of the Act and restore the rectification petition filed by the assessee to the file of the learned CIT(A) for *de novo* adjudication after analysing the facts of the case, in the

light of the law laid down by the Hon'ble Supreme Court in Techspan (supra). We further direct that no order shall be passed without affording reasonable opportunity of hearing to both parties. With the above directions, the grounds raised by the Revenue are allowed for statistical purposes.

10. Since in the assessment year 2017-18, the Revenue has raised similar grounds arising from similar factual matrix, our findings/conclusion as rendered in Revenue's appeal for the assessment year 2014-15 shall apply *mutatis mutandis* to the appeal for the assessment year 2017-18. As a result, the impugned order for assessment year 2017-18 is set aside and grounds raised by the Revenue are allowed for statistical purposes.

11. In the result, both appeals by the Revenue are allowed for statistical purposes.

Order pronounced in the open Court on 10/12/2024

**Sd/-**  
**AMARJIT SINGH**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 10/12/2024**

*Prabhat*

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.*

By Order

Assistant Registrar  
ITAT, Mumbai