

**आयकर अपीलीय अधिकरण, सी न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI**  
**श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री अमितभ शुक्ल, लेखा सदस्य के समक्ष**  
**BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER**  
**AND SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.Nos.1955 & 1956/Chny/2024**  
(निर्धारण वर्ष / Assessment Years: 2013-14 & 2014-15)

|   |    |   |
|---|----|---|
| <b>Sri Maharaja Refineries,</b><br># 128, Bhavani Road,<br>Erode-638 004. | Vs | <b>The Assistant Commissioner<br/>of Income-tax,</b><br>Circle-1,<br>Erode. |
| <b>PAN : AAFFS-8491-N</b>   |    |   |
| (अपीलार्थी/Appellant)   |    | (प्रत्यर्थी/Respondent)   |

|                                   |   |   |
|-----------------------------------|---|---|
| अपीलार्थी की ओर से/ Appellant by  | : | Mr. S.Sridhar, Advocate (Erode)                             |
| प्रत्यर्थी की ओर से/Respondent by | : | Mr. R.Clement Ramesh Kumar,<br>CIT &<br>Ms.Anitha, Addl.CIT |

|                                       |   |            |
|---------------------------------------|---|------------|
| सुनवाई की तारीख/Date of hearing       | : | 19.02.2025 |
| घोषणा की तारीख /Date of Pronouncement | : | 07.05.2025 |

**आदेश / O R D E R**

**PER MANU KUMAR GIRI, JM:**

The captioned appeals filed by the assessee are directed against separate orders of the Ld. Commissioner of Income Tax (Appeals)(NFAC), Delhi [CIT(A)] both dated 07.06.2024 for Assessment Years 2013-14 & 2014-15. Since the facts and issues are common in these appeals, they are heard together and disposed off by this common order.

**ITA No.1955/Chny/2024 : (A.Y. 2013-14):**

2. For the AY 2013-14, the assessee has raised following grounds of appeal:

- 1.The order passed by the CIT (A) is bad and erroneous under law.
- 2.Without prejudice, the CIT (A) has erred in passing the impugned order, without considering the submissions made by the Appellant.
3. Without prejudice, the CIT (A) erred in not considering that the order u/s 143(3) r.w.s. 254, being passed by ACIT, Circle 1, Erode and not by the Faceless Assessment Unit, is violative of the provisions of Sections 144B and 151A, and as such, is null and void.

4. Without prejudice, the CIT (A) grossly erred in upholding the Assessment Order passed by the Assessing Officer, when it is passed beyond the time limit mentioned in Section 153(5), more particularly when its Second Proviso does not apply to the present case.

5. Without prejudice, the CIT (A) erred in not considering the violation of principles of natural justice, as the Assessing Officer did not provide a copy of the alleged Report of the Department of Economic Affairs under the Ministry of Finance, which was the sole basis for framing the impugned assessment.

6. Without prejudice, the CIT (A) erred in being indifferent towards the fact that the Assessing Officer did not establish or substantiate his opinion as to how and why the Report of the Department of Economic Affairs under the Ministry of Finance is relevant and justified.

7. Without prejudice, the disallowance under Section 40A(2)(b) is totally unwarranted, given that the prices of Palm Oil adopted by the Appellant are well in tandem with the then prevailing **Fair Market Value** as per the Annual Report published by the Ministry of Consumer Affairs, Food & Public Distribution.

8. Without prejudice, the CIT(A) erred in upholding an erroneous order of the Assessing Officer by not following the mandate of the jurisdictional Madras High Court with regard to forming an honest opinion based on well-founded reasons, supported by tangible material before him to invoke Section 40A(2), without considering the scope and effect of Section 40A(2)(a).

3. The assessee has raised similar grounds of appeal for AY 2014-15 in ITA No.1956/Chny/2024. Hence, our findings in AY 2013-14 in ITA No.1955/Chny/2024 will apply mutatis mutandis to AY 2014-15 in ITA No.1956/Chny/2024 also.

4. Brief facts are as under:

Briefly stating the facts of the case are that the assessee is a firm, derives income from Imports & Exports of palm oil. The assessee filed its return of income on 28.09.2013 for AY.2013-14 declaring total loss of Rs.1,00,08,610/-. The case was selected for 'complete scrutiny' for the reasons to verify 'Low Net Profit or Loss shown from Large gross Receipts, Large amount of sundry creditors and Large other expenses claimed in P & L account. Therefore, notice u/s 143(2) of the I.T. Act, 1961 was issued by the AO on 02.09.2014.

During the year under consideration, the assessee has made purchases/sales from/to the various parties. As the assessee had entered into transactions with the Associated Enterprises (domestic), a reference was made on 30.09.2015 to the Transfer Pricing Officer for determining the Arm's Length Price. The TPO (Deputy Commissioner of Income-tax, TPO-2(1), Chennai) has passed order u/s 92(A)(3) of the Income-tax Act, 1961 suggesting downward adjustment of Rs.6,73,54,391/- on account of purchases from Associated Enterprises. Sufficient opportunity was given to the assessee for filing the submissions and documentary evidences. The assessee filed reply on 21.12.2016 in support of its claim. After examination of the submissions, the assessments u/s. 143(3) r.w.s 144C(13) of the IT Act was passed on 26.09.2017 by making addition to the extent of Rs.7,51,83,428/-. Further, the assessee has filed appeal before the Dispute Resolution Panel". The Dispute Panel has passed the order u/s 144(5) of the IT Act on 11.09.2017, Resolution Panel has rejecting the appeals Aggrieved by this order the assessee preferred further appeal before the Hon'ble ITAT D' Bench, Chennai. The Hon'ble ITAT has passed the order on 15.02.2023 restoring back to the file of the AO for examination of allowability of the expenditure in accordance with the provisions of sec.40A(2)(b) of the Act, since these transactions would not fall under section 92BA(i) and reference to TPO is not valid.

5. The co-ordinate Bench of Tribunal in assessee's cases vide order dated 15.02.2023 in ITA No. 2608/Chny/2017 and IT(TP)A No.21/Chny/2018 for AYs AY 2013-14 and 2014-15 respectively has passed the following order as under:

*"It has thus been held by Hon'ble Court that the reference made to Ld. TPO in respect of specified domestic transactions as*

*mentioned in clause (i) of Sec. 92BA would be invalid since the provisions were omitted since inception. At the same time, Hon'ble Court confirmed the action of Tribunal in restoring the matter back to the file of Ld. AO to examine the claim of expenditure in accordance with the provisions of Sec. 40A(2)(b) of the Act. Similar is the decision of Mumbai Tribunal in Mahindra Two Wheelers Ltd. vs. DCIT (ITA No.519/Mum/2018 dated 28.04.2022). No contrary decision is on record. Therefore, respectfully following the same and taking the same view, we would hold that reference to Ld. TPO was not valid and the consequential TP adjustments so made by Ld. AO could not be sustained in the eyes of law. At the same time, respectfully following the cited decisions, the matter stand restored back to the file of Ld. AO for examination of allowability of the expenditure in accordance with the provisions of Sec.40A(2) of the Act since these transactions would fall under those provisions. We order so."*

6. In a set aside proceedings, the assessee has raised the following legal issue:

"Your attention is invited to Section 153(5) of the IT Act and as per which the time limit to pass an order had already expired, If the first proviso to Section 153(5) is resorted to by the Revenue, then conditions contemplated therein have to be strictly followed and certified copies of the conditions contemplated therein have to be supplied for effective rebuttal, if required. Assuming the conditions contemplated in the first proviso to Section 153(5) have been met, even then, the time limit to pass order has already expired/ The above two submissions that time to complete the assessment had already passed have been made since, as per the communication dated 04/10/2023 by the Assistant Registrar, ITAT, on the request of the assessee, with respect to date of dispatch of the order of the ITAT, Chennai dated 15/02/2023 to the office of the CIT(A), the order was dispatched on 21/02/2023 by Speed Post No: ET223378136IN. In the respectful submission of the assessee, resort

to second proviso to Section 153(5) cannot also be made, since, even as per the plain reading of the order dated 15/02/2023 of the ITAT, the above referred second proviso is not applicable. Thus, in so far as in further proceeding, the time limit to pass an order is already over. Your attention is invited to the response by the assessee made on 09/10/2023-vide Ack. No:393597341091023, where certified copies were requested for, which has not been considered till date, besides relying on the decision by the Madras High Court, which jurisdictional decision is binding on the authorities, as you are aware, working in that jurisdiction. Besides the above, the assessee places reliance on the decision, again, by the Madras High Court in TCA No: 20 of 2004 dated 11/12/2006, where the words IS OF OPINION in Section 40A(2)(a) have been clearly explained. The assessee places reliance on, apart from the above, the decisions by Mumbai ITAT, in ITA Nos: 5090 and 5655 of 2005 dated 29/05/2008 and ITA Nos: 35/2016, 7171/2010, 7141/2011, 1576/2013 and 3949/2014 dated 24/10/2018. It is surprising to note that when the reference to TPO has been held to be not valid by the ITAT, how your office notice, in Page No:2, show-causes about the disallowance based on such materials, including the TPO report as such available with the Department. Assuming but not admitting your above reference is valid, then, as mentioned earlier, certified copies, as already asked for, and tangible materials, based on which THE ASSESSING OFFICER IS OF THE OPINION, may be supplied. As, right from the beginning in the present proceedings, the Revenue is reluctant or adamant in not meeting the requests by the assessee, the assessee may not be treated as non-co-operative and in default."

7. The AO, on the plea of assessee that the case is barred by limitation held as under:

" The second proviso to section 153(5) clearly delineates" provided further that where an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 shall be made within the time specified in sub-section (3)."

8. Having not satisfied with order of the AO, assessee challenged the order of AO before the Id. CIT(A) who passed the following order:

"4.3 Ground No.3 pertains to applicability of the second proviso to the section 153(5) of the Act. The appellant has submitted that the assessment was barred by limitation and the second proviso to the sec 153(5) of the Act is not applicable in its case. The appellant has contended that there was no requirement of submissions of any document by the appellant and in the absence of any direction from the ITAT to provide an opportunity of hearing to the appellant. The AO has not accepted the contention of the appellant on the issue by considering that the second proviso to the section would apply to examine the case of the appellant.

4.3.1 The matter has been examined and it is observed that the case of the appellant was restored back to the file of the AO pursuant to the order of the Hon'ble ITAT for examination of allowable expenditure in accordance with the provisions of sec 40A(2) of the Act. Accordingly, the AO issued letters/notices to the appellant on this issue and it is seen that the appellant did not furnish any submission on merit of addition/disallowance but raised objection about applicability of second proviso to section 153(5) of the Act. Since the matter was to be examined in the light of the direction given by the ITAT, It is the duty and the obligation of the AO to provide an opportunity to the appellant before deciding the Issue. It is seen that the same has been carried out by the AO during the set-aside assessment proceedings. The matter definitely required verification, which is very much apparent from the decision of the Hon'ble ITAT. The decision part of the Hon'ble ITAT is reproduced herein under: -

*"Therefore, respectfully following the same and taking the same view, we would hold that reference to Ld. TPO was not valid and the consequential TP adjustments so made by the Ld.AO could not be sustained in the eyes of law. At the same time, respectfully following the cited decisions, the matter stand restored back to the file of the Ld.AO for examination of allowable of the expenditure in accordance with the provisions of sec.40A(2) of the Act since these transactions would fall under those provisions. We order so"*

It is a matter of fact that the issue of applicability of section 40A(2) of the Act was never examined by the AO in the original assessment and this is the reason why the Hon'ble ITAT had set-

aside the issue for examination of related party transaction to the file of AO. Obviously, the examination requires submission by the appellant and then verification by the AO. Before examining the contention of the appellant, I would like to refer the provision of sec 153(5) of the Act, which is reproduced hereunder for ready reference:

*"(5) Where effect to an order under section 250 or section 254 or section 260 or section 262 or section 263, or section 264 is to be given by the Assessing Officer or the Transfer Pricing Officer, as the case may be, wholly or partly, otherwise than by making a fresh assessment or reassessment or fresh order under section 92CA, as the case may be, such effect shall be given within a period of three months from the end of the month in which order under section 250 or section 254 or section 260 or section 262 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, the order under section 263 or section 264 is passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be:*

*Provided that where it is not possible for the Assessing Officer or the Transfer Pricing Officer, as the case may be, to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer 47 for the Transfer Pricing Officer, as the case may be, if satisfied, may allow an additional period of six months to give effect to the order:*

*Provided further that where an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect*

*to the said order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 shall be made within the time specified in sub-section (3)."*

On plain reading of the first proviso reveals that this proviso applies only in case where the Hon'ble ITAT decided the issue of contention and the effect of the decision is to be given without any further verification/examination whereas in the present case, the issue of excessive or unreasonable payment/ expenses claimed by the appellant was never examined by the AO and therefore, the Hon'ble ITAT set-aside the issue to the AO for examination. So far as the second proviso is concerned, it is clear that this proviso applies, if any verification/examination is required on any issue with the submission of the appellant or any field enquiry. Hence, the time limit for giving effect to the order of the Hon'ble ITAT in the present case falls under the second proviso of 153(5) read with sec 153(3) of the Act. On perusal of second proviso of sec 153(3) of the Act, it is clear that the assessment should be completed before expiry of twelve months from the end of the financial year in which order u/s 254 of the Act was received by the Pr. CIT. In this regard, it is seen that the ITAT has passed the order u/s 254 of the Act on 15.02.2023 and the set-aside assessment u/s 143(3) r.w.s. 254 of the Act was passed on 31.03.2024. Therefore, I am of the opinion that the provision of sec 153 are not violated in this case and the contention of the appellant that the assessment is barred by limitation is hereby rejected. Thus, ground no. 3 is hereby dismissed."

9. Aggrieved assessee filed appeal before us.

During the course of hearing before us, both parties filed written submissions as under:

Written submissions filed by the assessee:

*The chart showing chronological events starting from the Common Order of the ITAT dated 15/02/2023 in ITA No.2608/CHNY/2017 & IT (TP) A No.21/CHNY/2018 for the respective Assessment Years: 2013-14 and 2014-15, till the completion of assessment is as below.*

|   |            |            |
|---|------------|------------|
| Assessment Year   | 2013-14    | 2014-15    |
| Date of dispatch of order of the ITAT                       | 21/02/2023 | 21/02/2023 |
| Date of First Hearing Notice                                | 25/09/2023 | 25/09/2023 |
| Time limit to complete the Assessment-<br>as per sec.153(5) | 31/05/2023 | 31/05/2023 |
| Date of Completion of Assessment                            | 31/03/2024 | 31/03/2024 |

*It is appropriate to refer to Para No. 5, Page No. 6 of the Order of the ITAT dated 15/02/2023, in respect of giving effect to its order, which runs as under:*

"At the same time, respectfully following the cited decisions, the matter stand restored back to the file of Ld. AO for examination of the allowability of the expenditure in accordance with the provisions of sec. 404(2) of the Act since these transactions would fall under those provisions. We order so."

*For the sake of convenience Section 153(5), which provides for the limitation period for completion of assessment proceedings in case of giving effect to an order, including that of the ITAT under Section 254, is reproduced as below.*

*(5) Where effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 is to be given by the Assessing Officer, wholly or partly, otherwise than by making a fresh assessment or reassessment, such effect shall be given within a period of three months from the end of the month in which order under section 250 or section 254 or section 260 or section 262 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner:*

*Provided that where it is not possible for the Assessing Officer to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer, if satisfied, may allow an additional period of six months to give effect to the order:*

*Provided further that where an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 shall be made within the time specified in sub-section (3)."*

*The respectful submission of the Appellant is that even as per the Order of this Hon'ble ITAT dated 15/02/2023, there is nothing in respect of any verification of any issue by way of submission of any document by the assessee or any other person.*

*In fact, the Appellant, admittedly, did not file any documents, since not warranted, besides there being no necessity for the Appellant to submit any document, as the Appellant had filed all those documents relating to Section 40A(2) before the Dispute Resolution Panel itself, which is a wing of the Income Tax Department.*

*However, the Assessing Officer obtained the details SOME HOW, OF COURSE NOT FROM THE APPELLANT, BUT FROM THE CASE OF Smt. S. SAROJA (THE NAME IS SARADHA). Thus, in the absence of any direction or finding by the Hon'ble ITAT requiring submission of any document by the Appellant, resort to Second Proviso to Section 153(5) is not legally correct and hence, the respective Assessment Orders are barred by limitation.*

*Further, it is surprising to note that the Learned First Appellate Authority in Para No. 4.3.1 held that the matter definitely required verification and that the examination requires submission by the Appellant and verification by the AO and went on to hold that in so far as the Second Proviso is concerned, it is clear that this proviso applies, if any verification/examination is required on any issue with the submission of the Appellant or any field enquiry.*

*While giving such finding, the First Appellate Authority ignored or omitted the crucial words in the Second Proviso to Sec. 153(5), being "submission of any document by the assessee." Hence, the Appellant is entitled to succeed on this ground.*

*The assessment order by the Assessing Officer dt.31/03/2024 is clearly barred by limitations, as the dates of events followed by orders in the earlier rounds would prove the same, though the reference to TPO and consequential proceedings up to DRP were held to be not valid.*

*The Assessing Officer referred the matter to the TPO on 06/10/2015.*

*TPO passed the order on 28/10/2016, which shows in pages-10 to 12 the rates of Palm oil.*

*The Assessing Officer, while passing a draft assessment order u/s.143(3) r.w.s. 144C(I) dt.23/12/2016 referred the above order of the TPO.*

*Thus, as argued in detail, the Revenue was in possession of THE RA TES AT WHICH PALM OIL WERE TRADED.*

*Copies of the above have already been filed on 06/01/2025.*

*The above manifestly shows that there never existed a situation which required verification/examination of an issue **BY WAY OF SUBMISSION OF ANY DOCUMENT BY THE ASSESSEE** and hence, the Revenue cannot take shelter under second proviso to sec.153(5) and the case of the appellant falls within the main sec.153(5) excluding the provisos.*

Written submissions filed by the revenue:

*During the hearing on 19.02.2025, the appellant had argued the case before the Hon'ble ITAT on the following points :-*

*i) Assessment order passed on 31.03.2024 is time barred.*

*That, no opinion has been recorded by the A.O. to invoke provisions of Sec. 40A(2).*

*That, the relevant report of Department of Economic Affairs relied by the A.O. in the assessment order was not shared with the appellant.*

**2.** *In this regard, the following submissions are made, for the kind consideration of the Hon'ble ITAT :-*

*(i) Earlier, the Hon'ble ITAT, vide its order dated 15.02.2023 had restored the matter back to the file of the A.O. for examination of allowability of expenditures in accordance with the provisions of Sec. 40A(2). In this regard, it is pointed out that the word used in*

*the aforesaid order by the Hon'ble ITAT is "examination". The dictionary meaning of this word "examination" describes the process of examination as a more thorough detailed inspection of something more than the process of verification. In other words, the word "verification" used is much simpler than the word "examination" used in the aforesaid Hon'ble ITAT's order. Thus, it is submitted that to examine the purpose for which the Hon'ble ITAT has remitted this issue back to the file of the AO, calls for deeper verification on the applicability of provisions of Sec. 40A(2) on the relevant transactions undertaken by the appellant and therefore, provisions of Sec. 153(5) r.w.s. 153(3) is applicable in this case and therefore the order passed on 31.03.2024 is valid and not time-barred. In this regard, relevant discussions in assessment order in page No.11 & 12, para 4.3.1 on page-14, 15 & 15 of the impugned CIT(A) order are relied upon.*

*(ii) The next issue raised by the appellant is that no opinion has been recorded by the AO to invoke the provisions of Sec. 40A(2). In this regard, it is submitted that in the relevant aforesaid Hon'ble ITAT's order, the Hon'ble ITAT itself has held that these transactions fall under the provisions of Sec. 40A(2) and accordingly remitted back the matter to the file of the AO for further examination. Thus, while the Hon'ble ITAT itself has recorded that these transactions fall under the provisions of Sec.40A(2), the recording of opinion by the A.O. to invoke these provisions are not warranted. It is further submitted that there is no such requirement in the Act calling for AO to do so. Moreover, it is pointed out that the appellant did not cooperate with the AO by giving further details in spite of various opportunities provided to it. Thus, it is hereby prayed that this ground of the appellant may summarily be dismissed.*

*(iii) The next ground of the assessee is that the relevant report of the Department of Economic Affairs relied by the AO in the assessment order was not shared to the assessee during the assessment proceedings. In this regard, it is submitted that the AO had given various opportunities to the assessee to submit the relevant materials to substantiate these transactions. However, the assessee had not submitted these details although it was in possession of these details. Under these circumstances, the AO was compelled to rely on the aforesaid report of the Department of Economic Affairs. Further, a copy of the same had been provided by this office to the assessee during these appellate proceedings before the Hon 'ble ITAT. After going through this report, the assessee is unable to point out any mistakes or discrepancies in the disallowance made u/s 40A(2) vis-a-vis the aforesaid report of the Department of Economic Affairs. Therefore, it is hereby prayed that these disallowances made are in order and therefore the Hon'ble*

*ITAT may kindly consider to uphold the same disallowances made by the AO and confirmed by the CIT(A) in the impugned CIT(A)'s order."*

10. We have heard the both parties and perused the paper books, written submissions.

11. The relevant portion of section 153 is as under:

**153** (3) *Notwithstanding anything contained in sub-sections (1) [, (1A)] and (2), an order of fresh assessment or fresh order under section 92CA, as the case may be, in pursuance of an order under [section 250 or] section 254 or section 263 or section 264, setting aside or cancelling an assessment, or an order under section 92CA, as the case may be, may be made at any time before the expiry of nine months from the end of the financial year in which the order under <sup>11</sup>[section 250 or] section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be] :*

**Provided** *that where the order under [section 250 or] section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be,] on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.*

*[(3A) Notwithstanding anything contained in sub-sections (1), (1A), (2) and (3), where an assessment or reassessment is pending on the date of initiation of search under section 132 or making of requisition under section 132A, the period available for completion of assessment or reassessment, as the case may be, under the said sub-sections shall,—*

- (a) in a case where such search is initiated under section 132 or such requisition is made under section 132A;*
- (b) in the case of an assessee, to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to;*
- (c) in the case of an assessee, to whom any books of account or documents seized or requisitioned pertains or pertain to, or any information contained therein, relates to,*

*be extended by twelve months.]*

*(4) Notwithstanding anything contained in [sub-sections (1), (1A), (2), (3) and (3A)], where a reference under sub-section (1) of section 92CA is made during the course of the proceeding for the assessment or reassessment, the period available for completion of assessment or reassessment, as the case may be, under the said [sub-sections (1), (1A), (2), (3) and (3A)], shall be extended by twelve months.*

*(5) Where effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 is to be given by the Assessing Officer or the Transfer Pricing Officer, as the case may be, wholly or partly, otherwise than by making a fresh assessment or reassessment or fresh order under section 92CA, as the case may be, such effect shall be given within a period of three months from the end of the month in which order under section 250 or section 254 or section 260 or section 262 is received*

*by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, the order under section 263 or section 264 is passed by the [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be] :*

12. To understand the controversy of limitation issue, we are taking the aforesaid dates chart as find in the written submissions of the Assessee.

13. As we see from the relevant sections 153(3) and section 153(5) of the Act, the time limit for making order by AO u/s 153(3) is "any time before the expiry of nine months from the end of the financial year in the order under section 254 is received by the PCCIT or Chief Commissioner or Principal Commissioner or Commissioner or as the case may be". The first proviso to section 153(3) says after 01.04.2019 if any order u/s 254 is received by the PCCIT or Chief Commissioner or Principal Commissioner or Commissioner or as the case may be, the provisions of this sub-section shall have effect, as if for the words 'nine months', the words 'twelve months' has been substituted. Furthermore, the time limit for making appeal effect to an order u/s 254 by the AO "wholly or partly",.....,"such effect shall be given within a period of three months from the end of the month in which order u/s 254 is received by the PCCIT or Chief Commissioner or Principal Commissioner or Commissioner or as the case may be". Further, second proviso to section 153(5) says that "where an order under section 254 require verification of any issue by way of submission of any documents by the assessee or any person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order under section 254 shall be made within the time specified in sub-section (3)".

14. The Tribunal restored back matter to the file of Id.AO for 'examination of allowability of the expenditure in accordance with the provisions of section 40A(2) of the Act". Word 'examination' is not there in the second proviso to section 153(5). In second proviso to section 153(5), the word used is "verification". Now we have to see that whether words "examination" and "verification" are same or different. We also note that second proviso to section 153(5) is to be read as section 153(3) in the case of "verification". We further observe that the section 153(3) talks of 'fresh assessment'. In this sub-section 153(3) word "examination" is not there. However, we are of considered view that the word 'examination' used by the Tribunal is of same generis with the word 'verification' as find mentioned in the second proviso to sub-section 153(5) of the Act. The judgment of the Hon'ble Supreme Court in the case of Haryana Financial Corporation Vs. Jagdamba Oil Mills 29 wherein it was observed that ..... "Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear". Therefore, in the above factual scenario, the Id. CIT(A) is right in holding that the present case falls under the second proviso of section 153(5) read with section 153(3) of the Act. Hence, the order of AO is not time barred in the light of the first proviso to section 153(3) which says, after 01.04.2019 if any order u/s 254 is received by the PCCIT or Chief Commissioner or Principal Commissioner or Commissioner or as the case may be, the provisions of this sub-section shall have effect, as if for the words 'nine months', the words 'twelve months' has been substituted. We affirm the order of the Id. CIT(A) on this issue.

15. Next ground of appeal of the assessee is that -

“Without prejudice, the CIT (A) erred in not considering the violation of principles of natural justice, as the Assessing Officer did not provide a copy of the alleged Report of the Department of Economic Affairs under the Ministry of Finance, which was the sole basis for framing the impugned assessment.

16. We find that the assessee has taken a specific ground before the Id. CIT(A) also. However, the Id. CIT(A) has disposed of this issue as under:

*"4.4 Ground No. 4 pertains to violation of principles of natural justice. In this regard, the appellant has submitted that the AO has relied on a report of the Department of Economic Affairs under the Ministry of Finance, Government of India, for the fair market value of the Palm oil and this fact was not referred in the show cause notice issued. In this regard, it is observed that the appellant has considered not supplying of the report of the Department of Economic Affairs by the AO as the violation of principles of natural justice. On perusal of the assessment order, it is seen that the AO has collated the data of fair market value of the palm oil based on the report of the Department of Economic Affairs. In this regard, it is pertinent to note that this report was not formally supplied by any authorised agency to the AO. This is the AO who learnt and studied the issue in hand and laboured out to find the official data/report from the official site/public domain. In these circumstances, the appellant cannot argue that this data/report was not provided to it as it was available in the public domain which it would have itself found and present its case. Also, the appellant didn't ask for the same from the AO during the set-aside assessment proceedings. Therefore, I am of the opinion that enough opportunity was provided to the appellant by way of letters and show cause notice comprising the issue in detail. Thus the contention of the appellant that non-providing of the report is violation of principles of natural justice is hereby rejected. Thus ground no. 4 is hereby dismissed."*

17. We are of the considered view that the approach adopted by the both the authorities are not justified. It is the settled position of law that rules of evidence do not apply to assessment proceedings under the Act. As held by the Hon'ble Supreme Court in *C. Vasantlal & Co. v. CIT* [1962] 45 ITR 206, the Income-tax Officer is not bound by any technical rules of the law of evidence. It is open to him to collect materials to facilitate assessment even by private inquiry. If he desires to use the material so collected, the assessee must be informed of the material and must be given an adequate opportunity of explaining it.

18. There is dispute in the instant case that material collected by the AO was never confronted to the assessee. Whatever the evidence collected by the Assessing Officer which was used against the assessee was not confronted to the assessee and he was never given an opportunity to rebut. The revenue has filed the report. This principle is established by the judgment of the Supreme Court in *Dhakeswari Cotton Mills Ltd. v. C.I.T.* (26 I.T.R. 775, 783), and applied by that court in *Kishinchand Chellaram v. C.I.T.* (125 I.T.R. 713), where an assessment based on the result of private inquiries conducted behind the back of the assessee was set aside because the evidence so gathered was not placed before the assessee. In *Gunda Subbayya v. C.I.T.* (7 I.T.R. 21, 28), Leach CJ said: *The information which the Income-Tax Officer has received may not always be accurate and it is only fair when he proposes to act on material which he has obtained from an outside source that he should give the assessee an opportunity of showing, if he can, that the Income-Tax Officer has been misinformed; but the Income-*

*Tax Officer is obviously not bound to disclose the source of his information.*

19. Therefore, in the light of the principle established by the judgment of the Supreme Court in Dhakeswari Cotton Mills Ltd. v. C.I.T. (26 I.T.R. 775, 783), and applied by that court in Kishinchand Chellaram v. C.I.T. (125 I.T.R. 713), we also set aside the assessment order dated 23.02.2024 passed u/s 143(3) r.w.s 254 of the Act and direct the AO proceed afresh on this issue as directed by the Tribunal in first round of the proceedings, after giving proper opportunity to the assessee and supplying all reports, documents or any other materials, if any, which are adverse to the assessee. No other grounds are required to be adjudicated by us.

20. In result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 7<sup>th</sup> May, 2025

Sd/-  
(अमिताभ शुक्ला)  
(Amitabh Shukla)  
लेखासदस्य / Accountant Member

Sd/-  
(मनु कुमार गिरि)  
(Manu Kumar Giri)  
न्यायिकसदस्य/ Judicial Member

चेन्नई/Chennai,  
दिनांक/Date:07.05.2025  
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- 1.Appellant
- 2.Respondent
- 3.आयकर आयुक्त/CIT Chennai/Madurai/Salem/Coimbatore
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.