

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

श्री जार्ज माथन, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।

(THROUGH VIRTUAL HEARING)

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

AND

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.143 & 144/CTK/2025

(निर्धारण वर्ष / Assessment Years : 2012-2013 & 2014-2015)

Rajeswar Thakur Pardeshpada, Near Balaji Temple Bhawanipatna, Kalahandi-766001	Vs	ACIT, Circle-1(1), Sambalpur
PAN No. : AASPT 7155 M		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Shri S.K.Agrawalla, CA
राजस्व की ओर से / Revenue by	:	Shri Nishant Rao B, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	21/07/2025
घोषणा की तारीख / Date of Pronouncement	:	21/07/2025

आदेश / O R D E R

Per Bench :

These two appeals filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, both dated 27.12.2024 for assessment years 2012-2013 & 2014-2015.

ITA No.143/CTK/2025 (AY : 2012-2013)

2. In this appeal, it was the submission of the Id. AR that the original return of the assessee was filed on 27.09.2012, the same was processed and the assessment came to be completed u/s.143(3) of the Act on 26.02.2015 wherein certain additions have been made. In the assessment order under the headnote "Not for the Assessee", the Assessing Officer has mentioned as follows :-

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TAX CALCULATION.

Tax on total income:	Rs. 7,52,076/-
Add: EC & HSEC @ 3%	Rs. <u>22,562/-</u>
Total Tax	Rs. 7,74,638/-
Add: Interest u/s 234B	Rs. 43088/-
Add: Interest u/s 234C	Rs. <u>9453/-</u>
Total tax and interest payable	Rs. 8,27,179/-
Less: Prepaid Taxes	Rs. <u>6,85,835/- - 726307</u>
Balance tax and interest payable	Rs. 1,41,344/-
 Rounded u/s 288A:	 Rs. 1,41,340/-

Assessed u/s.143 (3) of the I.T. Act, 1961 on a total income of Rs. 61,60,620/-.
Issued copy of the assessment order along with demand notice to the assessee.

b-f
(Aron Kachhap)
Dy. Commissioner of Income Tax
Circle-2(1), Sambalpur.


Not for assessee

The assessee has shown agriculture income amounting to Rs. 3473700/-. The explanation was sought from the assessee. The assessee has shown agriculture income from sale of eucalyptus tree (in cash as well as cheque). The agriculture income for the preceding two A/Ys has been shown as follows, which were accepted by the A.O.

Rs. 4799098/- for (A/Y 2010-11),
Rs. 4074000/- for (A/Y 2011-12) and
Rs. 3473700/- for (A/Y 2012-13) ✓

Therefore as discussed above, no adverse inference is drawn in this regard.

b-f
(Aron Kachhap)
Dy. Commissioner of Income Tax
Circle-2(1), Sambalpur.
(Aron Kachhap)
Dy. Commissioner of Income Tax
Circle-2(1), Sambalpur



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3. It was the submission that subsequently on 05.12.2019, the assessment was proposed to be reopened with the following reasons :-



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
ACIT/DCIT,CIR2(1)SAMBALPUR

To, RAJESWAR THAKUR Balaji Temple Road, Bhawanipatna Bhawanipatna Bhawanipatna, Kalahandi 766001, Orissa India	
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PAN: AASPT7155M	Assessment Year: 2012-13	Dated: 05/12/2019	Letter No : ITBA/AST/F/17/2019-20/1021722604(1)
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Sir/ Madam/ M/s,

Subject: Providing reason for re-opening of the case for the A.Y. 2012-13 and issuing notice u/s. 148 of the I.T. Act, 1961 – matter regarding.

Kindly refer to the above.

On perusal of your computation of income for the A.Y. 2012-13, it is seen that you have shown Gross Receipt from agricultural income of Rs. 35,69,220/- and shown net agricultural Income at Rs. 34,73,700/- for taxation purpose after deducting expenses of Rs. 95,520/-. However, during the scrutiny proceedings, you failed to furnish any evidence in support of your agricultural income like the quantity of crop produced and sold, to whom sold, sale/purchase ledger, related bills and vouchers of agricultural product sold amount of sale proceed etc.

Since, you failed to produce the above details to corroborate the genuineness of agricultural income shown by you, it remained unverified. Therefore the amount of Rs. 35,69,220/- is nothing but an escaped income chargeable to tax. This happened due to your failure to make full and true disclosure of all material facts relevant for your assessment, as envisaged under first proviso to section 147 of the Act. The said proviso reads as under:

"Income escaping assessment.

147. If the [Assessing] Officer [has reason to believe] that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess

Note: If digitally signed, the date of digital signature may be taken as date of document.
AAYAKAR BHAWAN, AINTHAPALI, SAMBALPUR, Orissa, 768004
Email: SAMBALPUR.DCIT2.1@INCOMETAX.GOV.IN,

* The Notice/Letter/Order No. mentioned above may be treated as DIN for the purpose of procedure for issuance of Income Tax Notice prescribed by Circular No.19/2019 dt. 14 August 2019.

such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year

Four years from the end of the relevant assessment year has expired in this case and you had failed on your part to disclose fully and truly all material facts necessary for your assessment for the assessment year under consideration.

On the issue of reopening of the case after 4 years from the end of the assessment year on account of failure of the assessee to make full and true disclosure, the decision of Delhi High Court in the case of **Honda Siel Powers Products Ltc. Vs. CIT (2013) 340 ITR 53 (Del.)** is relevant. In that case, the Hon'ble Delhi High Court has discussed in detail what constitutes failure of the assessee to make full and true disclosure in the first round of assessment. The relevant portion from its order is reproduced hereunder:

"Reassessment proceedings can be taken after four years if there is a failure on the part of the assessee to disclose material facts necessary for assessment. The law postulates a duty on every assessee to disclose fully and truly all material facts for its assessment. The disclosure must be full and true. Material facts are those facts which if taken into account they would have an adverse effect on the assessee by the higher assessment of income than the one actually made. They should be proximate and not have any remote bearing on the assessment. Omission to disclose may be deliberate or inadvertent. This is not relevant.

Whether or not there was a failure or omission to disclose fully and truly material facts, is essentially a question of fact. The term "failure" on the part of

AASPT7155M- RAJESWAR THAKUR
A.Y. 2012-13
ITBA/AST/F/17/2019-20/1021722604(1)

the assessee is not restricted only to the Income-tax return and the columns of the Income-tax return or the tax audit report. This is the first stage. The expression "failure to fully and truly disclose material facts" also relates to the stage of the assessment proceedings, the second stage. There can be omission and failure on the part of the assessee to disclose fully and truly material facts during the course of the assessment proceedings. This can happen when the assessee does not disclose or furnish to the Assessing Officer complete and correct information and details it is required and under an obligation to disclose. The burden is on the assessee to make full and true disclosure. The Explanation to section 147 stipulates that mere production of books of account or other evidence is not sufficient. Merely because material lies imbedded in material or evidence, which the Assessing Officer could have uncovered but did not uncover it is not a good ground to deny or strike down a notice for reassessment."

The above decision of the Delhi High Court reported as **Honda Siel Powers Products Ltd. Vs. CIT (2013) 340 ITR 53 (Del.)** had been challenged by the assessee before the Hon'ble Supreme Court. However, the High Court's view on the issue has been upheld by the Hon'ble Supreme Court reported as **Honda Siel Powers Products Ltd. v. CIT [2012] 340 ITR 64 (SC)**.

In **Raymond Woollen Mills Ltd. vs. ITO (1999) 236 ITR 34(S.C.)**, the Supreme Court has held that the sufficiency or correctness of the material is not a thing to be considered at the reopening stage. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of assessment proceedings. The questions of facts and law are open to be investigated and decided by the assessing authority. The assessee will be entitled to take all the points before the assessing authority.

Considering the facts of the case and the decisions of the Hon'ble Supreme Court as stated above, it is conclusive that your income to the extent of **Rs. 35,69,220/-** for the assessment year 2012-13 has escaped assessment within the meaning of section 147 of the Act and thus it is a fit case for issuance of notice under section 148 of the Act.

JOHN BOSCO MINZ
ACIT/DCIT, CIR2(1)SAMBALPUR

4. It was the submission that the reopening was in fact challenge to the agriculture income declared by the assessee. It was the submission that the reopening was based on change of opinion. The Assessing Officer in the original proceedings had considered the agricultural income of the assessee. The explanation of the assessee had been called for and the same have been accepted. The reopening consequently was clearly based on a change of opinion and no fresh evidence had come to the attention of the AO or in the possession of the Assessing Officer which could lead the Assessing Officer to have any reason to reopen the assessment.

5. In reply, Id.Sr. DR submitted that the area of land owned by the assessee has not been examined by the AO and there was no discussion of what was examined in respect of agricultural income in respect of original assessment. It was the submission that the reopening is liable to be upheld.

6. We have considered the rival submissions. A perusal of the facts of the present case clearly shows that in the course of original assessment the AO has categorically given a finding in regard to agricultural income disclosed by the assessee. He has also recognized the source of agricultural income. The note also talks of the explanation having been sought from the assessee. In the earlier years also, the agricultural income disclosed by the assessee has been accepted. In fact, the agricultural income offered by the assessee is much higher than the agricultural income shown during the impugned assessment year. Those assessments have not been reopened but have been accepted. Now, the reopening in respect of agricultural income mentioning that the assessee has not shown the

quantity of the crops produced, and to whom sold, sale purchase registers, bills and vouchers, ledger account, are nothing but afterthought, especially when in the course of original assessment the AO has categorically admitted that the agricultural income is from the sale of eucalyptus trees, the amount has been received by cash as well as cheque. Thus, clearly the reopening of the assessment as proposed is nothing but a change of opinion. There is no failure on the part of the assessee to disclose fully and truly all material facts when the original assessment was completed. This being so, we are of the view that the reopening as done by the AO and upheld by the Id. CIT(A) is unsustainable and consequently we quash the same and the consequential assessment order stands quashed. Thus, the appeal of the assessee in ITA No.143/CTK/2025 is allowed.

ITA No.144/CTK/2025(AY: 2014-2015)

7. In this appeal, Id.AR submitted that original assessment in the case of the assessee came to be completed u/s.143(3) of the Act on 22.04.2016. The assessment was completed disallowing 1/6th of the agricultural income. An order u/s.263 of the Act came to be passed for making a thorough enquiry in regard to the assessee's claim of agriculture income and low drawings. Consequently, assessment came to be passed wherein agricultural income disclosed by the assessee came to be disallowed in its entirety. It was the submission of the Id. AR that during the assessment year 2009-2010 a remand report had been called for by the then Id. CIT(A) and in the order of the Id. CIT(A) for A.Y.2009-2010 in para 6.2.1, the remand report has been extracted which reads as follows :-

ASST. YR. CLERK-10

b. That, for the immediate preceding assessment year (i.e. the Asst. Year 2008-09), the Ld. Assessing Officer completed the assessment u/s 143(3) and did not disturb the figure appearing in the Balance Sheet. But it is not known while doing the assessment for the Asst. Year 2009-10, how the Ld. Assessing Officer disbelieve the expenditure incurred in the earlier year and disallowed the impugned expenditures while computing the total income of the appellant.

c. Further it is submitted that, while doing the assessment the Ld. Assessing Officer is permitted to disallow the expenses related to that particular year for which the assessment is done, not the expenditure incurred in the earlier years. Therefore the disallowance of expenditure by the Ld. Assessing Officer is not in accordance with the provisions of the Law and liable to be deleted.

d. That, during the course of assessment proceeding, on 15.12.2011, the appellant submitted the details of expenditure which was also reproduced by the Ld. Assessing Officer in his assessment order vide page no.8. Further with regard to the current year's expenditure the appellant submitted the copies of the bills which was also duly appraised by him in his assessment order vide page no.-9 and the said submission was not rejected by him. However while passing the assessment order he simply made the additions without giving his findings or reasons for making of additions. Therefore the disallowance of expenditure without giving of any reasons is not sustainable and we pray your honour to allow the relief of 5,38,133

On the above ground it is submitted before your honour the disallowance of expenditure of 5,38,133 is illegal and pray to allow the relief of 5,38,133.

6.2.1 The matter was referred to the AO vide this office letter dtd.27-02-2013. In response, the AO vide his letter No.625, dtd.01-05-2013 stated as under.

2. In the remand report it has been asked to offer comments on non-acceptance of agricultural income and the status of acceptance/non-acceptance of agricultural income in the earlier years.

The assessee had disclosed agricultural income to the tune of Rs.76,97,462/- which comprises of sale proceeds of Eucalyptus trees amounting to Rs.65,97,462/- and sale proceeds of paddy amounting to Rs.11lacs. During the course of remand proceedings, the assessee furnished a written submission explaining the process of Eucalyptus cultivation, area of land used for cultivation and relevant documents in support of agricultural activities.

During the year under consideration, the assessee sold 2443.56mt. of eucalyptus trees for a sale proceeds of Rs.65,97,462/- and sold 1349quints of paddy for a sale proceeds of Rs.11lacs. The receipt of sale proceeds of eucalyptus trees are routed through banking channel and sale proceeds of paddy are received by mode of cash.

In order to verify the genuineness of transaction through banking channel, notice U/s.133(6) was issued to the concerned bank who in turn confirmed the transaction. Further, Inspector of this Circle, Shri Subhadeep Sahu was deputed to make spot enquiry regarding the cultivation of eucalyptus trees. On perusal of enquiry report submitted by the Inspector, it is revealed that a vast stretch of land, measuring about 40 to 50 acres of land is under the cultivation of eucalyptus trees. On local inquiry, he learnt that cultivation of eucalyptus trees is made by the assessee i.e. Shri Rajeswar Thakur.


Further, the assessee submitted that he had 88.62 acres of land, out of which 80.47 acres is leasehold and 8.15 acres is owned by the assessee. Out of the available land, the assessee used 45 acres of land for the cultivation of eucalyptus trees and 38.72 acres is utilized for paddy cultivation. The assessee furnished the documents of lease hold land and bills for purchase of saplings of eucalyptus tree. It takes almost 4 years for a eucalyptus tree to grow and ready for felling. Once a tree is cut, it again generates a off-shoot for reuse and the benefit can be reaped up to 12 years from the year of plantation in a cyclic order.

Receipt of sale proceeds of agricultural produce through banking channel, Inspector's field enquiry report and documents regarding land under cultivation and certificate from local Tahasildar suggests that the assessee had agricultural activities during the year under consideration.

Regarding acceptance/non-acceptance of agricultural income in the earlier years, the following details are furnished from the records available.

Asst.Yr.	Amount of agri. Income disclosed in the return	Status
2007-08	Rs.12,86,520/-	Accepted in the scrutiny assessment
2008-09	Rs.29,48,630/-	Accepted in the scrutiny assessment.

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8. It was the submission that the remand report clearly showed that the 88.62 acres of land was under cultivation and out of the same approximately 45 acres of land was used for cultivation of eucalyptus trees. The Inspector had visited the land and given the report. It was the submission that now again the ownership of land of the agricultural operation have been re-examined. It was the submission that in the earlier

years also the assessee has been showing agriculture income and the same has also been accepted. It was the prayer that the addition as made by the AO and as confirmed by the Id. CIT(A) is liable to be deleted.

9. In reply, Id. Sr. DR submitted that the assessee has not been able to prove the ownership of the land. It was the submission that the order of the Id. CIT(A) is liable to be upheld.

10. We have considered the rival submissions. A perusal of the remand report, which is extracted in the order of the Id. CIT(A) for the assessment year 2009-2010, as extracted above, clearly shows that 88.62 acres of land is under cultivation by the assessee and 45 acres of land is used for cultivation of eucalyptus trees. The documents on the leasehold land has also been examined. The bills for the purchase of saplings of eucalyptus trees are also examined there. The proceeds of the agricultural produce have been received through banking channel. There is field enquiry report by the Inspector. A certificate from the local Tahasildar is also available. This being so, we are of the view the addition made on the agricultural income by the AO and confirmed by the Id. CIT(A) is liable to be deleted and we do so.

11. Here, it must specifically be mentioned that the disallowance of Rs.7,82,416/- as made in the original assessment order is not in dispute before us, insofar as the same has not been challenged in the appeal, therefore, that disallowance of the agricultural income shall remain and only the disallowance as made in the assessment order passed u/s.143(3)/263 of the Act to the extent of additional disallowance of the agricultural income

shall stand deleted. Thus, the appeal of the assessee in ITA No.144/CTK/2025 is allowed.

12. In the result, both appeals of the assessee are allowed.

Order dictated and pronounced in the open court on 21/07/2025.

Sd/-

(राजेश कुमार)

(RAJESH KUMAR)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / **JUDICIAL MEMBER**

दिनांक Dated 21/07/2025

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack