आयकर अपीलीय अधिकरण, विशाखापटणम पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
Visakhapatnam Bench

श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री एस. बालकृष्णन, माननीय लेखा सदस्य
SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER
AND
SHRI BALAKRISHNAN. S, HON'BLE ACCOUNTANT MEMBER,

आयकरअपीलसं./**I.T.A.No.2000/Hyd/2017**
(निर्धारण वर्ष/ **Assessment Year: 2007-08)**

Agri Gold Foods and Farm Products Limited Vijayawada PAN : AABCA8733E	*Vs.*	The Asst. Commissioner of Income Tax, Circle -2(1), Vijayawada
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri Pawan Chakrapani, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Shri Badicala Yadagiri, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	07.08.2025
घोषणा की तारीख/ Date of Pronouncement	:	09.09.2025

O R D E R

प्रति रवीश सूद, जे.एम./**PER RAVISH SOOD, J.M.**

The present appeal filed by the assessee company is directed against the order passed by the Commissioner of Income-Tax (Appeals), Vijayawada, dated 16.03.2017, which in turn arises from the order passed by the A.O. u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961

(for short, "Act") dated 31.03.2015 for A.Y. 2007-08. The assessee company has assailed the impugned order on the following grounds of appeal before us:

> "1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.
>
> 2. The learned Commissioner of Income Tax (Appeals) has not appreciated the fact the AO has passed the Assessment order without passing the speaking order for the objections raised by the appellant company.
>
> 3. The learned Commissioner of Income Tax (Appeals) has not considered the fact that in the original assessment the Appellant has disclosed all the materials i.e. sale of agricultural land and the computation there of. The Additions made during the original Assessment will be added to the computation of income and it is evident that the AO has gone through the transactions under question. Hence the learned Commissioner of Income Tax(Appeals) is erred in coming to the conclusion that there is no change of opinion.
>
> 4. The learned Commissioner of Income Tax(Appeals) has not observed the fact that the Appellant company has not converted the land into stock-in-trade and adopted the sale of land as business receipt.
>
> 5. The learned Commissioner of Income Tax (Appeals) has not observed the fact that the deferred revenue expenditure is well within the balance sheet and this expenditure was spent before the year under consideration.
>
> 6. Any other ground that may be urged at the time of appeal hearing."

2. Before proceeding, we may herein observe that the captioned appeal was, on an earlier occasion, disposed of by the Tribunal, vide its ex-parte order dated 26.03.2024. However, the same, on an application filed by the assessee company under Rule 24 of the Income Tax (Appellate Tribunal) Rules, 1963, was recalled by the Tribunal vide its order passed in MA No. 12/Viz/2024, dated 11.12.2024.

3. Ostensibly, the present appeal involves a delay of 60 days. Shri Pawan Chakrapani, C.A., the learned Authorized Representative (for short "Ld. AR") for the assessee company, at the threshold of the hearing of the appeal, submitted that the delay in filing the present appeal has crept in for the reason that Shri. Avva Venkata Subramanyeswara Sarma, the Director of the assessee company, at the relevant point of time, having been implicated in the Agri Gold Group Cases since April 2017 onwards, was in judicial custody at Eluru District Jail, Eluru, West Godavari District. It was submitted that as the Director had been moving to various courts, therefore, his accessibility for taking signatures on the appeal papers has caused the delay in filing the present appeal. The Ld. AR further submitted that as soon as the appellant reached Eluru District Jail, all the necessary steps for filing the appeal were taken and the appeal was filed on 04.12.2017. The Ld. A.R., to support his aforesaid contention, had drawn our attention to the application filed by the assessee company seeking condonation of the delay involved in the present appeal along with a supporting "affidavit" of its director. It was, thus, submitted that as the delay of 60 days involved in filing the present appeal is due to reasons beyond the control of the assessee and is neither intentional nor deliberate, therefore, the same in all fairness be condoned.

4. Per contra, Shri Badicala Yadagiri, learned CIT, Department Representative (for short, "Ld. CIT-DR") objected to the seeking of condonation of the delay involved in the present appeal filed by the assessee company.

5. We have thoughtfully considered the contentions advanced by the Ld. Authorized Representatives for both parties regarding the delay involved in the filing of the present appeal before us. Although we are of the firm conviction that an appellant is expected to remain vigilant and file an appeal within the time frame prescribed under law, but at the same time, considering the fact that Shri. Avva Venkata Subramanyeswara Sarma, the Director of the assessee company, at the relevant point of time, having been implicated in the Agri Gold Group Cases since April 2017 onwards, was in judicial custody at Eluru District Jail, Eluru, West Godavari District, and was not available, therefore, for the said reason, the filing of the present appeal was delayed. We, thus, are of the considered view that as the delay in filing the present appeal had crept in not because of any malafide reason or lackadaisical conduct of the assessee company, but because of a justifiable reason, therefore, the same in all fairness merits to be condoned. Our aforesaid view that a liberal view should be adopted while considering the application filed by an appellant seeking

condonation of the delay involved in filing the appeal is supported by the recent decision of the **Hon'ble Supreme Court** in the case of **Vidya Shankar Jaiswal vs. The Income Tax Officer, Ward-2, Ambikapur in Special Leave Petition (Civil) Nos. 26310-26311/2024, dated 31st January, 2025.** The Hon'ble Apex Court, while setting aside the order of the Hon'ble High Court of Chhattisgarh, which had approved the declining of the condonation of the delay of 166 days by the Tribunal, had observed that a justice-oriented and liberal approach should be adopted while considering the application filed by an appellant seeking condonation of the delay involved in filing the appeal. We thus, in terms of our aforesaid observations, condone the delay involved in the filing of the present appeal.

6. Succinctly stated, the assessee company, which is engaged in the business of manufacturing cattle feed and seeds, had filed its return of income for A.Y. 2007-08 on 26.04.2008, declaring a loss of (-) Rs. 1,59,44,684/-. The return of income was initially processed as such u/s 143(1) of the Act. Thereafter, assessment was framed by the A.O. vide his order u/s 143(3) of the Act, dated 20.04.2009, wherein he had, after making certain disallowances restricted the assessee's returned loss to an amount of (-) Rs. 1,07,24,316/-.

7. Subsequently, the A.O. initiated the reassessment proceedings u/s 147 of the Act. Notice u/s 148 of the Act, dated 27.03.2014 was issued by the A.O. In compliance, the assessee company, vide its reply dated 11.02.2015, submitted that its original return of income for the subject year that was filed on 26.04.2008 may be treated as the return of income filed in response to the notice u/s 148 of the Act. The A.O. accepted the aforesaid request of the assessee company and proceeded with the reassessment and issued notices u/ss. 143(2) and 142(1) of the Act.

8. During the course of reassessment proceedings, the A.O. observed that the assessee had, in the subject year, transferred certain agricultural land to its subsidiary company, but thereafter had separated both the sale proceeds of the said agricultural land along with its cost from the credit and debit side of its Profit and Loss account, and separately disclosed the same in its return of income under the head "Capital Gains." The A.O. observed that the assessee company had disclosed the profits on the sale of the subject land at Rs. 13.26 crores and claimed the same as exempt u/s 2(14) of the Act.

9. The A.O. on verification of the facts of the case and the material available on record, observed that the claim raised by the assessee

company of exemption of profit / income on the ground that the land transferred was not a capital asset u/s 2(14) of the Act was not correct. Elaborating on his observation, the A.O. observed that the assessee company was in the practice of purchasing lands and subsequently selling the same and making profit from the said transactions. The A.O. to support his aforesaid conviction, took cognizance of the fact that a comparative analysis of the turnover of the assessee company for the immediately preceding and the succeeding years revealed that a major portion of its turnover was from the sale of lands. Accordingly, the A.O. based on his firm conviction that the assessee company was purchasing lands for the purpose of selling the same at a profit and not for exploiting them for agricultural purposes, therefore, held that the income derived on the sale of the subject land during the year under consideration was liable to be assessed as its business income and was not to be construed as a simpliciter sale of agricultural land. Also, the A.O. observed that as the assessee company had not submitted any proof that any agricultural operations were actually carried out on the subject land and had also not derived any agricultural income from the same, therefore, the fact remained that it had purchased the subject land in the normal course of its business of trading of land and not as a capital asset. Accordingly, the A.O., based on his aforesaid observations,

concluded that the isolated transaction of sale/transfer of the agricultural land by the assessee company to its subsidiary company cannot be held to be a transaction in the capital field for the standalone reason that it was recorded as such in its books of account. The A.O. supported his aforesaid view by relying upon the judgment of the Hon'ble Supreme Court in the case of Raja Vs. J. Rameswar Rao, CIT 42 ITR 179 (SC)**.** The A.O. based on his aforesaid deliberations, re-characterized the profit/income of Rs.13.26 crores (supra) that was originally disclosed by the assessee company as exempt income, and was accepted as such by his predecessor while framing the original assessment vide his order passed u/s 143(3) of the Act, dated 20.04.2009, as the business income of the assessee company. Accordingly, the A.O., vide his impugned order u/s 143(3) r.w.s 147 of the Act, dated 31.03.2015, determined the income of the assessee company at Rs. 12,18,75,684/-.

10. Aggrieved, the assessee company carried the matter in appeal before the CIT(A). The assessee company, in the course of the proceedings before the CIT(A), assailed the order passed by the A.O. u/s 143(3) r.w.s 147 of the Act, dated 31.03.2015, wherein he had re-characterized the exempt capital gain of Rs.13.26 crores (supra) disclosed by the assessee company on sale of the subject agricultural

land and was accepted in the course of the original assessment, inter alia, on two grounds viz., (i). that the reopening of the reassessment by the successor A.O. based on a "change of opinion" as against the view taken by his predecessor while framing the original assessment vide his order u/s 143(3) of the Act, dated 20.04.2009, was not sustainable in the eyes of law and was liable to be vacated for want of valid assumption of jurisdiction; and (ii). that as there was no failure on the part of the assessee company to fully and truly disclose all the material facts necessary for framing of the assessment for the subject year, therefore, the A.O. had grossly erred in law and on facts of the case in reopening its concluded assessment after the expiry of four years from the end of the relevant assessment year, as the same related the mandate of the "First Proviso" to Section 147 of the Act. Apart from that, the assessee company assailed the impugned addition made by the A.O. on the merits of the case. However, we find that the CIT(A) did not find favour with the contentions advanced by the assessee company and dismissed the appeal. For the sake of clarity, the observations of the CIT(A) are culled out as under:

> "5. I have perused the submissions of the appellant and the relevant ITMR.
>
> 5.1. Ground of appeal nos.1,6&7 are general in nature. They do not require any adjudication

5.2. Appellant in ground of appeal no.2 challenged the invocation of jurisdiction u/s 147 of the Act by the Assessing Officer when original scrutiny assessment was completed u/s.143(3) of the Act.

5.2.1. In this regard. relevant ITMR was obtained and details were perused. In the original scrutiny assessment order dated 20.04.2009, Assessing Officer made disallowance of Rs 46,94,533/- towards selling & distribution expenses and consumption of raw and packing material. Another addition of Rs.5,25,835/- was made towards disallowance u/s 40(a)(ia) of the Act in respect of rent & advertisement and publicity. Thus, total addition of Rs.52,20,368/- was made to the admitted loss of Rs.1,59,44,684/-.

5.2.2 On perusal of ITMR, it could be noted that no details/reasons were called for by the Assessing Officer for the increased valuation of land from Rs.10,35,95,759/- (cost of the land Rs.1,59,53,391/- + Deferred revenue expenditure Rs.8,76,42,368/-) to Rs 23,61,95,760/- (value for which the said lands were claimed to have been transferred to wholly owned subsidiary company). No details were furnished by appellant in this regard during original assessment proceedings. No finding/discussion either positive or negative was arrived at/made by Assessing Officer during the course of original assessment proceedings. No evidence for impugned transfer of the said land to M/s. Haritha Sadhana Projects Pvt. Ltd. was produced during original assessment proceedings. It is pertinent to note that the wholly owned subsidiary company, M/s. Haritha Sadhana Projects Pvt. Ltd.. was incorporated only on 23.03.2007 just one week before close of fin. year 2006-07. Under such circumstances, I am of the view that there is no question of change of opinion on the part of Assessing Officer. Emergence of new issue out of the file can be the basis for reopening of assessment. Further, initiation of reassessment proceedings was based on definite materials which were not considered at the time of original assessment proceedings. Under such circumstances, reopening of assessment, in my view, is justified. Reliance is placed on the following decisions:

i. ALA. Firm Vs. Commissioner of Income Tax(Mad) 102 ITR 622

ii Ess Kay Engineering Co. (P) Ltd. Vs. Commissioner of Income Tax(SC) 247 ITR 818

iii. EMA India Ltd. Vs. ACIT (All) 30 DTR 82.

5.2.3 From the records of appellant for subsequent Assessment Year i.e., Assessment Year 2008-09, it was observed that the appellant was in the practice of purchase of lands and selling the same subsequently by making profit out of the said transactions. There is no agricultural operation in the said land during the relevant Assessment Year Subsequent sale of such land amounted to a trading activity when appellant acquired the land with a view to selling it later after developing it. Hence, Assessing Officer for Assessment Year 2007-08 also regarded such land sale transaction as in the nature of 'trade' or 'business' and income on sale of such land amounted to business profit and income therefrom should not be treated as agricultural income.

5.2.4 The appellant treated profit of Rs.13,26,00,000/- (Rs.23,61,95,750 (-) Rs 10,35,95,759/-) arising on impugned transfer of land as agricultural income in its computation i.e., the surplus from impugned sale of agricultural land has been claimed as exempt being 'agricultural income'. Assessing Officer held that income chargeable to tax had escaped assessment since appellant treated the profit as agricultural income and the same is to be treated as income of the appellant from business.

5.2.5. Several Courts have held that proceedings initiated u/s.147 of the Act are valid in respect of information obtained in assessment proceedings of a subsequent year. Some case laws are as follows:

1. Raymond Woollen Mills Limited Vs. ITO & Anr.

   (SC) 236 ITR 34.

2. Kalyanji Mavji & Co. Vs. Commissioner of Income Tax

   (SC) 102 ITR 287.

5.2.6. In the case of ACIT Vs. Kanga & Co. 2010-TIOL-464-ITAT-Mumbai held that for reopening of assessment u/s,148 of the Act, the 'Tangible material' need not be from outside the return of income.

5.2.7 When an income liable to tax has escaped assessment in the original assessment proceedings due to oversight and inadvertence or a mistake committed by Assessing Officer, he has jurisdiction to reopen the assessment was held in the following cases as the taxpayer cannot be allowed to take advantage of any of those lapses, as ultimately if such an advantage is allowed, it would be prejudicial to the interests of the revenue and public interests.

i. Commissioner of Income Tax & Anr Vs. Rinku Chakraborthy (Kar) 56 DTR 227.

ii. Kalyanji Mavji & Co. Vs. Commissioner of Income Tax(SC) 102 ITR 287.

5.2.8. In appellant's case, Assessing Officer has recorded the following reasons for reopening of assessment

REASONS FOR RE-OPENING U/S 148 FOR THE A.Y. 2007-08

The assessee company filed its return of income for the assessment year 2007-08 on 26/04/2008 admitting loss of Rs.1,59,44,684/- and the assessment was completed on 20/04/2009 by making an addition of Rs.52,20,366/-.

From the record of subsequent assessment year, it is observed that the assessee is in the practice of purchase of lands

and subsequently selling it, thus making profit out of it. As this activity is a trade and does not come under any agricultural activity, the income so derived is to be treated as business income. As the assessee purchased the lands for the purpose of selling them only and not for utilizing them for agricultural purposes, this income falls under business income only. Therefore, the income derived from the sale proceeds of the lands of Rs.13,26,00,000/- is not be considered as agricultural income and the same is to be treated as the income of the assessee from business. Thus, the assessee had failed to disclose fully and truly all material facts necessary for the assessment.

The same issue is involved in the assessment year 2008-09 which was allowed. The assessee had not sold any agricultural lands in the subsequent assessment years.

In view of the facts mentioned above, there is reason to believe that, in this case there is escapement/concealment of income amounting to Rs.13,26,01,000/- for the assessment year 2007-08.

5.2.9. Approval of competent authority has been obtained and reopening is within the time limit prescribed u/s.149(1)(b) of the Act. The appellant verified the reason for notice u/s.147 of the Act and requested Assessing Officer to treat the original return filed earlier as the return in response to notice u/s.147 of the Act. Hence, the claim of appellant that no reasons for reopening of assessment were supplied to it is not correct.

5.2 10. In my view, there is prima facie some material on the basis of which Assessing Officer could reopen the case (i.e.) the materials for reopening of assessment existed in appellant's case. Case laws relied upon by appellant in this regard can be distinguished from that of appellant. There was .no change of opinion on the part of Assessing Officer. Hence, reopening of assessment is held to be valid as Assessing Officer had complied with the provisions of the Act in this regard. Consequently, appellant's ground of appeal no.2 is dismissed.

5.3 In ground of appeal no.3, appellant contended that the Assessing Officer was not justified in rejecting the claim of the appellant as to the transfer of land to subsidiary company as per Sec.47(iv) of the Act and thus the transfer is exempt from taxability to capital gains. Consequently, Assessing Officer is not justified in assessing the resultant accretion on transfer to the subsidiary company as income from business of appellant. Further, it was also contended that the said land should not be treated as 'business asset' and thereby the resultant surplus should not be assessed as business income.

5 3.1. As per the profit & loss account filed by the appellant in the 12th Annual Report for the fin. year 2006-07, profit before tax as on 31.03.2007 was Rs.11,94,72,332/- and net profit was Rs 11,68,92,762/- i.e., a sum of

Rs,11,68,92,762/- has been transferred to general reserves and surplus under Schedule-2 of Balance Sheet, Details of P&L A/c. are as follows:

…….x……x…….

However, while preparing computation of income, appellant made certain adjustments which resulted in business loss of Rs.1,59,44,684/-. Details of adjustments are given below.

…….x……x…….

5.3.3. In this regard, copy of 1 Annual Report of M/s. Haritha Sadhana Projects Private Ltd. for the year ending 31.03.2008 was obtained and details were perused. Date of incorporation of this company is 23.03.2007. As per the director's report, this company (M/s Haritha Sadhana Projects Private Ltd.) is yet to start any commercial activity during the year ending 31.03.2008. Hence no P&L A/c. was drawn up.

Further this company claimed to have acquired 12.90 acres of land and other assets from the appellant company for consideration, pending finalization of registration formalities in respect of immovable properties.

5.3 4. On examination of statement of encumbrance on property in respect of such lands said to have been transferred by appellant ((i.e.) 12.90 acres) in Assessment Year 2007¬08, no such transfer to M/s. Haritha Sadhana Projects Private Ltd. had taken place till March, 2017. This is ascertained from the details available in the registration department website of AP Government.

From the above, it is evident that land (12.90 acres) was not transferred through registered sale document. Even assuming that possession is given, subsequently there should be transfer. But till now, land was not transferred by appellant to M/s, Haritha Sadhana Projects Private Ltd. as per the records of SRO. This is not controverted by appellant, in view of the remark in the Director's report of M/s. Haritha Sadhana Project Private Ltd. that finalisation of registration formalities are pending in respect of land of 12 90 acres (i e.) land is not transferred by registered sale deed by appellant company as on date is a fact.

5 3.5 Further based on the encumbrance certificate, it is evident that such impugned land is sold to some others subsequently by the appellant company only.

5.3.6. Also for the year ending 31.03.2008, M/s. Haritha Sadhana Projects Private Ltd had made a preferential allotment of 97,000 equity shares of Rs.100/- each at a premium of Rs.2,300/- per share to appellant company. Newly born company without any commercial activity during fin. year 2007-08 had issued shares with such huge premium of Rs.2,300/- each is without any basis. No details in this regard were produced with necessary evidence even during appeal proceedings.

5.3,7. Prima facie, the whole transaction of impugned transfer of land by appellant company to its subsidiary company viz., M/s, Haritha Sadhana Projects Private Ltd appears to be fictitious in nature.

5 3.8. There is no actual transfer of the land and the appellant had got the shares in the subsidiary company.

5.3.9 The very basis of valuation of land is also not available on record.

5.3 10. There is no transfer in the eye of law like possession agreement, transfer deed, GPA etc. as per the Sec.53A of the Transfer of Property Act, 1882.

5.3 11 From the report of Auditor for M/s. Haritha Sadhana Projects Private Ltd. for the year ending 31.03.2008, it is noticed that this company had earned the impugned land of 12.90 acres to Collective Investment Scheme (CIS), a division of appellant company (i.e.) its Holding Company at free of cost. Details in this regard as to why this arrangement of transfer of land from appellant company to its subsidiary company and then subsequent leasing of the same to one of appellant's divisions was effected were not made known This lease transaction appears to be sham.

Hence, in my view, provisions of Sec.47(iv) will not be applicable as claimed by the appellant. Consequently, the profit arising out of impugned transfer i.e., Rs.13,26,00,000/-is, in my view, not exempt under Sec.47 of the Act.

53.11. The impugned transferred lands were acquired by appellant company during 1997 & 1998 and appellant claimed deferred revenue expenditure to the tune of Rs.8,76,42.368/- for the year ending 31.03.2006. There was no expenditure claimed during fin. year 2006-07 relevant to Assessment Year 2007-08. Deferred revenue expenditure is not commensurate with the agricultural income offered by appellant Any expenditure incurred for the purpose of earning revenue is business expenditure. The appellant had developed the land, hence Sec.2(14) is, in my view, not applicable to appellant's case.

5.3.12. The appellant had not transferred the deferred revenue expenditure to the land value (i e) block of assets (i.e.) block of asset under the head "land" was not capitalised. Without capitalization, the allowability of expenditure at the time of transfer is questionable.

5.3.13. It is not known from the records whether the expenditure had been incurred in respect of impugned transferred land.

5.3.14. By accounting entry in the books of account, the appellant had increased the reserves and simultaneously increased the investment.

Hence lam of the view that accretion to the reserves because of this entry should be taxed as unexplained income.

Ground of appeal no.3 is dismissed.

Assessment Year 2007-08 is the relevant year under consideration. The block asset value as per Fixed Assets (Schedule-4) for land of appellant company is as follows.

Opening balance of land as on 01.04.2006	Rs.7,13,43,115

Additions during the year	Rs.29,94,380
Total:	Rs.7,43,37,495
Deletions during the year	Rs.2,56,79,202
Balance of land value as on 31.03.2007	Rs.4,86,58,293

…….x……x…….

5.4 1. As per explanation of appellant, the cost of land transferred to M/s. Harithasadhana Projects Pvt. Ltd. was Rs.1,59,53,391/- out of the total deletion of fixed assets (land block) of Rs 2.56,79,202/- during the relevant Assessment Year 2007-08.

An amount of Rs.8,76,42,368/- relating to Assessment Year 2006-07 (fin. Year 2005-06) was shown in the balance sheet under "miscellaneous expenses not written off" (deferred revenue expenditure). Relevant balance sheet figures are reproduced below:

This figure of Rs.8,76,42,368/- was added to the cost of the land i.e Rs.1 59,53,391/- said to have been transferred to M/s, Harithasadhana Projects Pvt. Ltd

Cost of the land	Rs.1,59,53,391
Deferred revenue expenditure relevant to Assessment Year 2006-07	Rs.8,76,42,368
Total:	Rs.10,35,95,759

5.4.2 The transfer value of land to the wholly owned appellant's subsidiary company is Rs.23,61,95,760/- as against the value of Rs.10,35,95,759/- (even after considering the deterred revenue expenditure) in the books of appellant company,

5.4.3, In a case where a subsidiary Indian company has acquired a capital asset from its parent company falling under this clause (iv) of Sec.47, the written down value of transferred capital asset to the subsidiary company would be taken to be the same as it would have been if the parent company had continued to hold the capital asset, and the actual cost of the transferred capital asset to the subsidiary company shall also be taken to be the same as it would have been if the parent company had continued to hold the capital would have been if the parent company had continued to hold the capital asset, and the actual cost of the transferred capital asset to the subsidiary company shall also be taken to be the same as it would have been if the parent company had continued to hold the capital asset for the purposes of its business (Sec.43(6), Explanation 2, and Sec.43(1) Explanation 6)

5.4.4 Appellant should have adopted cost of the land for transfer to subsidiary company at Rs.1.59.53,391 it- as per the value in block of assets (land) in the Balance Sheet of the appellant as on 31.03.2007. Appellant included the deferred revenue expenditure of Rs 8,76,42,368/- with the cost of the above land to arrive at the value of the land at Rs 10,35,95,759/-. Deferred revenue expenditure cannot be capitalized at the time of sale unless and otherwise

capitalized in the specific category under the respective block of asset. Deferred revenue expenditure was neither capitalized nor transferred as per the accounting standards In appellant's case, provisions of sub-sec.43(6) Explanation-2 and Sec.43(1), Explanation-6 were not followed during the impugned transfer of land to its subsidiary company.

5.4.5 Mere claim of market value as per revaluation by experts at Rs.23,61,95,760/- will not suffice when the actual cost of impugned land in the books of appellant was Rs 1,59,53,391/- and including deferred expenditure of land development expenditure of Rs 8,76,42,368/-, it amounted to Rs_10,35,95,759/-. No details with supporting evidence were produced during appeal proceedings.

5.4.6 In the return of income electronically filed on 26.4.2008, the following details were admitted.

5.4.7 From the above, it is evident that appellant's income on account of agricultural operations was only to the tune of Rs.8,73,478/-. Sum of Rs.13,26,00,000/- represented surplus from impugned transfer of asset (land) from appellant to its wholly owned subsidiary company on account of revaluation of land which is claimed under Schedule E above as net agricultural income. No evidence for carrying out agricultural operations in the said land of 12.90 acres was produced. Hence a sum of Rs.13,26.00,000/- cannot be the income on account of agricultural operations in the said land of 12.90 acres. Further claim of deferred revenue expenditure to the tune of Rs.8,76,42,368/- related to development of said impugned land indicated that no agricultural peration was carried out in the impugned land during relevant Assessment Year,

5.4.8. As the transfer value of Rs.23,61,95,760/- is against the actual value of Rs 10,35,95,759/- (including the deferred revenue expenditure), this surplus amount of Rs 13,26,00.0001- is accretion to reserve of the appellant company, this amount is liable for taxation as unexplained income and Assessing Officer's action of taxing this amount, in my view, is justified.

5.4.9. Appellant did not give the reason/evidence for increased value of land to the tune of Rs 13,26,00,000/- (capital/reserve accretion) on impugned transfer of land when in the books of account of appellant, land value was only to the tune of Rs.1,59,53,391/-. The value of Rs.10,35,95,759/- included deferred revenue expenditure of Rs.8,76,42.368/- on land value (i.e.) Rs.1,59,53,391 + Rs.8,76,42,368. Appellant also conceded resultant capital/reserve accretion to it of Rs.13,26,00,000/- on impugned transfer of land to subsidiary company

5.4.10. In my view, the accretion to the reserves because of entry in the books of account is to be taxed as unexplained income. There is no basis for a nascent subsidiary company of appellant company to make preferential allotment of 97,000 equity shares of Rs.100/-each at a premium of Rs.2,300/- per share to appellant company. Appellant did not explain on this share premium issue with evidence during the course of appeal proceedings.

5.4.11. Appellant's reliance on the order of Hon'ble ITAT Visakhapatnam in appellant's own case in ITA No.451Nizag/2012 order dated 30.07.2014 for Assessment Year 2008-09 can be distinguished on facts from appellant's case for Assessment Year 2007-08.

1. The issue before Hon'ble ITAT in that case was the order u/s.263 of the Act.

2. The ground for proposing revision u/s.263 was that Assessing Officer did not examine the aspect that 'as per the profit and loss account furnished, the assessee has derived a net profit of Rs.8,18,60,630/- and hence liable to pay tax under the provisions of Sec.115JB, but the same was neither paid nor levied The book profit, after contemplating necessary adjustments provided under the law works out to Rs.8,88,21,7591- on which the assessee ought to pay MAT'.

3 Hon'ble ITAT quashed the order of Commissioner of Income Tax on the ground that a profit arising on transfer of agricultural land partakes the character of agricultural income and is not to be included in the total income as provided in Sec.10(1) of the Act. Since 115JB provides that the income listed u/s 10 other than listed in Clause(38) shall be reduced from the book profit and whereby meaning that agricultural income shall not form part of book profit for the purpose of Sec.115JB of the Act,

4. In appellant's case for Assessment Year 2007-08. the income is computed under normal provisions of the Act and not u/s.115JB of the Act.

5. Though appellant claimed the impugned sale transaction of 12.90 acres of land, as per SRO records there was no transfer of such lands. Some lands are still in the name of appellant. Others were sold by appellant. Hence facts are distinguishable.

6. The accretion to reserve was on account of revaluation of property in the pretext of impugned transfer to subsidiary company.

7. Provisions of Explanation 2 to Sec.43(6) and Explanation 6 to Sec.43(1) were not complied with for Assessment Year 2007-08.

Under such circumstances, appellant's reliance on the 'TAT decision cited supra is of no avail to appellant Hence, ground of appeal no,4 is dismissed.

5.5 Charging of interest u/s.234A& 234B being consequential in nature, ground of appeal no.5 is dismissed.

6. In the result, appeal is dismissed."

11. The assessee company, being aggrieved with the order of the CIT(A), has carried the matter in appeal before us.

12. We have heard the learned Authorized Representatives of both parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. A.R. to drive home his contentions.

13. Shri Pawan Chakrapani, C.A. the learned Authorized Representative (for short, "Ld. AR") for the assessee company, assailed the validity of jurisdiction that was assumed by the A.O. for reopening the concluded assessment of the assessee company that was originally framed by the A.O. vide his order passed u/s 143(3) of the Act, dated 20.04.2009, for two fold reasons viz., (i). that the reopening of the reassessment by the successor A.O. based on a "change of opinion" as against the view taken by his predecessor while framing the assessment vide his order passed u/s 143(3) of the Act, dated 20.04.2009, was not sustainable in the eye of law and was liable to be vacated for want of valid assumption of jurisdiction; and (ii). that as there was no failure on the part of the assessee company to fully and truly disclose all the material facts necessary for framing of the assessment for the subject

year, therefore, the A.O. had grossly erred in law and on facts of the case in reopening its concluded assessment after the expiry of four years from the end of the relevant assessment year, as contemplated in the "First Proviso" to Section 147 of the Act.

14. Per Contra, the Ld. CIT-DR relied on the orders of the lower authorities.

15. Before proceeding further, we deem it apposite to cull out the "reasons to believe" based on which the concluded assessment of the assessee company was reopened by the A.O under Section 147 of the Act, which, as extracted from the letter dated 20.05.2025, made available by the A.O to the assessee company, reads as under (Page 53 of APB):

> **"1. Reasons for the belief that income has escaped assessment:**
>
> The assessee company filed its return of income for the A.Y 2007-08 admitting loss of Rs. 1,59,44,684/-. In this case assessment u/s 143(3) of the IT Act was completed on 20/04/2009 by making an addition of Rs. 52,20,366/-.
>
> From the record of subsequent assessment year, it is observed that the assessee is in the practice of purchase of lands and subsequently selling it, thus making profit out of it. As this is a trade and does not come under any agricultural activity, the income so derived is to be treated as business income. As the assessee purchased the lands for selling them only and not utilizing them for agricultural purposes, thus income falls under business income only. Therefore, the income derived from the sale proceeds of the lands of Rs. 13,26,00,000/- is not to be considered

as agricultural income and the same is to be treated as the income of the assessee from business. Thus the assessee had failed to disclose fully and truly all material facts necessary for the assessment.

The same issue was involved in the Asst. Year 2008-09 which was disallowed. The assessee had not sold any agricultural lands in the subsequent asst. years.

In view of the facts mentioned above, I have reason to believe that in this case there is escapement/concealment of income amounting to Rs. 13,26,00,000/- for the Asst. Year 2007-08. As the assessment was completed u/s 143(3) of the IT Act and more than four years has elapsed from the end of the relevant assessment year, proposals are submitted to the Commissioner of Income Tax, Vijaywada requesting for according necessary approval to issue notice u/s 148 of IT Act.

Sd/-
(C.P.K. Dutt)
Deputy Commissioner of Income-tax
Circle 2(1), Vijaywada"

As observed by us hereinabove, the A.O., after the culmination of the original assessment u/s. 143(3) of the Act dated 20.04.2009, had referred to the records of the assessee company, and observed that as the assessee company was in the practice of purchase/sale of lands, therefore, the profit/income derived from the sale of the rural agricultural land during the subject year was not its income from the sale of land that was claimed as exempt on the ground that the subject land was not a capital asset u/s 2(14) of the Act, but was to be treated as his business income. Considering the aforesaid facts, the A.O held a

conviction that as the profit/income of Rs. 13.26 crores derived from the sale of the subject land was liable to be brought to tax in the hands of the assessee company as its business income, therefore, its income to the said extent had escaped assessment. Further, it was observed by the A.O. that as the escapement of income had occurred, due to the failure of the assessee company to disclose fully and truly all material facts that were necessary for assessment, therefore, its case could validly be reopened u/s.147 of the Act.

16. On the basis of the aforesaid facts, it can safely be gathered that the reopening of the concluded assessment of the assessee company was based on the same set of facts as were available with the A.O. while framing the original assessment. Rather, we find that the said fact has been accepted by the CIT(A), who had observed that the emergence of a new issue out of the file can be a basis for reopening of the assessment. To sum up, no fresh material/ document had come into the possession of the A.O. after the culmination of the original assessment proceedings, which could have otherwise vested jurisdiction with him to reopen the concluded assessment of the assessee company. Our aforesaid conviction is duly fortified on a bare perusal of the “reasons to believe”, which clearly reveals that the reopening of the concluded assessment of

the assessee company by the successor A.O was for re-appreciation of the facts available on the record. Although the A.O in the "reasons to believe" had observed that the formation of his *belief* about the escapement of the income of the assessee chargeable to tax was based on a reference to the record for the subsequent year, but the same, in absence of any "tangible material" coming on record subsequent to the framing of the original assessment for the subject year is merely a fresh application of mind to the same set of facts, which will be nothing but seeking the reopening of the concluded assessment based on a "change of opinion". Although, in a case where certain "tangible material" had come on the record of the A.O, which reveals that the income of the assessee had escaped assessment, then based on such fresh "tangible material" he remains well within his jurisdiction to reopen the concluded assessment for the said year and the said action on his part cannot be brought within the meaning of a reopening based on a "change of opinion". However, based on the same set of facts as were available before the A.O. in the course of framing the original assessment, the reopening of the concluded assessment will be nothing but an exercise embarked upon by him for re-appreciating the facts guided by a better wisdom, i.e., reopening of the case based on a "change of opinion", which we are afraid is not permitted as per the clear

mandate of law. The Ld. Departmental Representative ("D.R", for short) on being confronted with the aforesaid factual position, could not rebut the same.

17. Considering the fact that the case of the assessee company had been reopened with the purpose to re-appreciate the facts that were already available on record, and not on the basis of any fresh tangible material/document coming on the record of the A.O after the culmination of the original assessment by his predecessor vide order passed u/s.143(3) dated 20.04.2009, which would reveal that any income of the assessee company chargeable to tax had escaped assessment, we find substance in the Ld. AR's claim that the A.O. had clearly traversed beyond the scope of his jurisdiction and had wrongly reopened the concluded assessment of the assessee company under Sec. 147 of the Act. We are of the firm conviction that re-appreciation of the facts available before the A.O. while framing the original assessment is not permissible u/s 147 of the Act. Our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **Asian Paints Ltd. Vs. DCIT (2008) 308 ITR 195 (Bom).** The Hon'ble High Court, by drawing support from the landmark judgment of the "Full bench" of the **Hon'ble High Court of Delhi** in the case of **CIT Vs. Kelvinator of India (2002) 256 ITR 1 (Del)** [which thereafter had been

approved by the **Hon'ble Apex Court** in **CIT Vs. Kelvinator of India (2010) 320 ITR 561 (SC)**] had observed that the department cannot take recourse to the provisions of Section 147 of the Act for the failure of the A.O. to apply his mind in the original assessment proceedings to the material which, according to him, is relevant and which was available on record. Relying on the observations of the "Full bench" of the High Court of Delhi in CIT Vs. Kelvinator of India Ltd. (supra), the Hon'ble High Court of Bombay in Asian Paints Ltd. Vs. DCIT (supra), had observed that where according to the A.O he had failed to apply his mind to the relevant material in making the assessment order, he cannot take advantage of his own wrong and reopen the assessment by taking recourse to the provisions of Sec. 147. The Hon'ble High Court had further observed that, fresh application of mind by the A.O to the same set of facts for the reason that some material that was available on record while framing the original assessment was inadvertently excluded from consideration would not justify reopening of the assessment u/s 147 of the Act. For the sake of clarity, the observations of the Hon'ble High Court of Bombay in the case of Asian Paints Ltd. Vs. DCIT (supra) are culled out as follows:

> **"7.** We have heard the learned counsel appearing for both sides. We have also gone through the judgments on which reliance was placed by the learned counsel appearing for both sides.

8. In the order rejecting the objection filed by the petitioner to the notice under section 148, respondent No. 1 has observed "verification of assessment record reveals that the said details were called for but inadvertently the same were not taken into account while framing the assessment and, therefore, it cannot be said that there is a change of opinion." According to respondent No. 1, thus, the relevant material was available on record, but he failed to apply his mind to that material in making the assessment order. **The question is, can respondent No. 1 take recourse to the provision of section 147 for his own failure to apply his mind to the material which, according to him, is relevant and which was available on record. We find that this situation has been considered by the Full Bench of the Delhi High Court in its judgment in the case of *CIT* v. *Kelvinator of India Ltd.* [2002] 256 ITR 1** and the Full Bench has observed thus (page 19) :

> "The said submission is fallacious. An order of assessment can be passed either in terms of sub-section (1) of section 143 or sub-section (3) of section 143. When a regular order of assessment is passed in terms of the said sub-section (3) of section 143 a presumption can be raised that such an order has been passed on application of mind. It is well known that a presumption can also be raised to the effect that in terms of clause (*e*) of section 114 of the Indian Evidence Act judicial and official acts have been regularly performed. **If it be held that an order which has been passed purportedly without application of mind would itself confer jurisdiction upon the Assessing Officer to reopen the proceeding without anything further, the same would amount to giving a premium to an authority exercising quasi-judicial function to take benefit of its own wrong**."

9. It is clear from the observations made above that the Full Bench of the Delhi High Court has taken a view that in a situation where according to the Assessing Officer he failed to apply his mind to the relevant material in making the assessment order, he cannot take advantage of his own wrong and reopen the assessment by taking recourse to the provisions of section 147. We find, ourself, in respectful agreement with the view taken by the Full Bench of the Delhi High Court.

10. It is further to be seen that the Legislature has not conferred power on the Assessing Officer to review its own order. Therefore, the power under section 147 cannot be used to review the order. **In the present case, though the Assessing Officer has used the phrase "reason to believe", admittedly between the date of the order of assessment sought to be reopened and the date of formation of opinion by the Assessing Officer, nothing new has happened, therefore, no new material has come on record, no new information has been received, it is merely a fresh application of mind by the same Assessing Officer to the same set of facts and the reason that has been given is that the some material which was available on record while assessment order was made was inadvertently excluded from consideration. This will, in our opinion, amount to opening of the assessment merely because there is change of opinion. The Full Bench of the Delhi High Court in its judgment in the case of *Kelvinator* [2002] 256 ITR1 referred to above, has taken a clear view that**

> **reopening of assessment under section 147 merely because there is a change of opinion cannot be allowed**. In our opinion, therefore, in the present case also, it was not permissible for respondent No. 1 to issue notice under section 148.
>
> **11.** In the result, therefore, petition succeeds and is allowed. Rule is made absolute in terms of prayer clause (*a*) with no order as to costs."
>
> **(emphasis supplied by us)**

At this stage, it would be relevant to point out that the view taken by the "Full bench" of the Hon'ble High Court of Delhi in CIT Vs. Kelvinator of India (2002) 256 ITR 1 (Del), that the failure of the A.O to consider certain material that was available on record while framing the original assessment cannot justify the reopening of its concluded assessment, as the same would amount to reopening of the assessment on the basis of a "change of opinion", which is not allowed as per the mandate of law, had thereafter been approved by the **Hon'ble Apex Court** in **CIT Vs. Kelvinator of India (2010) 320 ITR 561 (SC).** The observations of the "Full bench" of the Hon'ble High Court of Delhi in CIT Vs. Kelvinator of India (2002) 256 ITR 1 (Del), which thereafter had been approved by the Hon'ble Apex Court in 320 ITR 561, are culled out as under (relevant extract):

> "10. It is further to be seen that the legislature has not conferred power on the AO to review its own order. Therefore, the power under s. 147 cannot be used to review the order. In the present case, though the AO has used the phrase "reason to believe", admittedly between the date of the order of assessment sought to be reopened and the date of formation of opinion by the AO, nothing new has happened, therefore, no new material has come on record, no new information has been received; it is merely a

> fresh application of mind by the same AO to the same set of facts and the reason that has been given is that the some material which was available on record while assessment order was made was inadvertently excluded from consideration. This will, in our opinion, amount to opening of the assessment merely because there is change of opinion. The Full Bench of the Delhi High Court in its judgment in the case of Kelvinator (supra) referred to above, has taken a clear view that reopening of assessment under s. 147 merely because there is a change of opinion cannot be allowed. In our opinion, therefore, in the present case also, it was not permissible for respondent No. 1 to issue notice under s. 148".

18. At this stage, we may herein observe, that as per the mandate of law, even where a concluded assessment is sought to be reopened by the A.O within a period of 4 years from the end of the relevant assessment year, it is a must that the A.O has fresh material or information with him, that had led to the formation of belief on his part that the income of the assessee chargeable to tax has escaped assessment. Our aforesaid view is fortified by the judgments of the **Hon'ble High Court of Bombay** in the case of **NYK Lime (India) Ltd. Vs. DCIT (No.2) [2012] 346 ITR 361 (Bom)** and **Purity Tech Textile Pvt. Ltd. Vs. ACIT & Anr. [2010] 325 ITR 459 (Bom).**

19. Alternatively, we find substance in the Ld. AR's claim that the reopening of the concluded assessment of the assessee company is also hit by the "1st proviso" to Section 147 of the Act. Admittedly, the original assessment was framed in the case of the assessee company for the year

under consideration, i.e., A.Y. 2007-08 vide order passed under Sec. 143(3) of the Act, dated 20.04.2009. The concluded assessment of the assessee was thereafter reopened vide notice issued under Section 148 of the Act, dated 27.03.2014. It is the Ld. A.R's claim that the A.O. had exceeded his jurisdiction and passed the reassessment order under Sec. 143(3) r.w.s 147, dated 31.03.2015, inter alia, for the reason that the same had been passed in violation of the mandate of the "1st proviso" of Sec. 147 of the Act. Admittedly, as stated by the Ld. A.R and, rightly so, in a case where an assessment had earlier been made under Section 143(3) of the Act, and action thereafter is sought to be taken for the reopening of the case u/s.147 after the expiry of four years from the end of the relevant assessment year, then, it would be necessary that the twin conditions contemplated in the said statutory provision are satisfied, i.e. (i). that A.O. must have reason to believe that income chargeable to tax has escaped assessment; AND (ii). he must also have a reason to believe that such escapement had occurred by reason of failure on the part of the assessee for either of the two conditions, viz. (a). to make a return of income under Section 139 or in response to notice issued under sub-section (1) of Section 142 or Section 148; or (b). to disclose fully and truly all material facts necessary for his assessment for that purpose.

20. Coming back to the twin conditions carved out in the "1st proviso" to Sec. 147 of the Act, as it is neither the case of the department nor a fact discernible from the record that the income of the assessee chargeable to tax had escaped assessment for the reason that there was any failure on its part to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148, therefore, the first condition contemplated in the "1st proviso" to Sec. 147 is not satisfied by the assessee company.

21. We shall now advert to the second condition contemplated in the "1st proviso" to Sec. 147 of the Act, i.e., as to whether or not there has been any failure on the part of the assessee to disclose fully and truly all material facts as were necessary for its assessment for the year under consideration, i.e., A.Y. 2007-08. On a perusal of the record, it transpires that the assessee company had disclosed fully and truly all the material facts regarding the sale of the subject agricultural land in its return of income for the year under consideration. Rather, the sale of the subject land by the assessee company to its subsidiary along with the cost of the land sold, was disclosed in the "Profit & Loss account" of the assessee company for the year under consideration. Further, the assessee company had in its "Notes on accounts" forming part of its financial statements for the year under consideration, made a full

disclosure of the sale of the subject land, i.e., 12.90 acres at Village: Chinakakani, which reads as under (Page 88 of APB):

> **"B. Notes on Accounts:**
>
> 4. a. The agricultural land of 12.90 acres at Chinakakani is revalued by experts and transferred to its wholly owned subsidiary company M/s Haritha Sadhana Projects Private Limited inclusive of land development expenses of Rs. 876 Lacs (Defferred Revenue Expenditure)"

Apart from that, we find that the assessee company, vide its reply dated 23.03.2009 (filed with the A.O in the course of the original assessment proceedings), had furnished the complete details regarding the sale of the subject land i.e. 12 Acres – 90 cents situated at Village: Chinna Kakani, Mangalagiri, District: Guntur to its wholly owned subsidiary company, viz. M/s Haritha Sadhana Projects Private Limited. For the sake of clarity, the relevant extract of the reply filed by the assessee company vide its letter dated 23.03.2009 is culled out as under (Page 110 of APB):

> "**Note on sale of land to Subsidiary**: During the year, the Company has transferred the agricultural land admeasuring Acres 12-90 Cents situated at Chinnna Kakani Village, Mangalagiri Mandal, Guntur Dist. to it's wholly owned subsidiary company – Haritha Sadhana Projects Private Limited. The cost of the land is Rs. 10,35,95,759/- and the same has been transferred to wholly owned subsidiary company for Rs. 23,61,95,760/-. The profit Rs. 13,26,00,000/- arising on transfer of land is exempt from income tax u/s 47 since, the transfer is exempt (the details

are mentioned in Notes to Accounts in Annual Report under para no. 8 of 4 and 5)."

22. We may herein observe that the **Hon'ble Supreme Court** in the case of **New Delhi Television Ltd. vs. Deputy Commissioner of Income Tax (2020) 116 Taxmann.com 151 (SC)**, has, inter alia, held that though the assessee is obligated to disclose the "primary facts" but it is neither required to disclose the "secondary facts" nor required to give any assistance to the A.O by disclosure of the other facts and it is for the A.O to decide what inferences are to be drawn from the facts before him. It was observed by the Hon'ble Apex Court that the extended period of limitation for initiating proceedings under the "1st proviso" of Section 147 of the Act would only get triggered where the assessee had failed to disclose fully and truly all material facts necessary for its assessment. Now, in the case before us, we are unable to comprehend what facts the assessee company had failed to disclose that would have otherwise justified bringing its case within the realm of the extended time period contemplated in the "1st proviso" of section 147 of the Act. As the assessee company had disclosed fully and truly all the material facts regarding the aforesaid issue, i.e., the sale of the agricultural land to its subsidiary company as were necessary for its assessment for the

year under consideration, i.e., AY 2007-08; therefore, it could by no means be held to be in default for the purpose of bringing it within the sweep of the "1st proviso" of Section 147 of the Act.

23. Analyzing the scope of the "1st proviso" to Sec. 147 of the Act, which contemplates that where assessment in the assessee's case had been framed u/s 143(3) of the Act, then no action under Sec. 147 shall be taken in its case after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax had escaped assessment for such assessment year for failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment, the **Hon'ble Supreme Court** had dismissed the Special Leave Petition (SLP) filed by the revenue in **ACIT Vs. Marico Limited, 117 taxmann.com 244 (SC),** and impliedly approved the decision of the **Hon'ble High Court of Bombay** in the case of **Marico Limited Vs. ACIT, WP NO.1917 of 2019 dated 21.08.2009.** The Hon'ble High Court of Bombay in Marico Limited Vs. CIT (supra) [as approved by the Hon'ble Apex Court] had observed as follows:

> **5. Upon hearing learned counsel for the parties and upon perusal of the documents and record, what we gather is that the notice of reopening of assessment has been issued beyond the period of four years from the assessment year. The reasons recorded by the Assessing Officer are elaborate and refer to various issues on which he wishes to carry out the reassessment. However, the central theme which passes though all these issues is that the Assessing Officer had gathered the information and material from the record of the assessment. For example in**

Paragraph No. 3 of the reasons which contains several sub-paragraphs which are different elements of the grounds for reassessment begins with the expression "On perusal of the record for the assessment year 2011-12, the following issues were found". Thus, with reference to various issues arise on the basis of the perusal of the record of the assessment year in question. Clearly, therefore, there is no material alien to the record which the Assessing Officer has referred to for issuing the impugned notice. Further, almost for every ground which is part of various sub-paragraphs of Paragraph No. 3, he has referred to either scrutiny or verification of the case records. In clear terms, therefore, the Assessing Officer was acting on the information available from the record of the assessment.

6. As is well known, in an instance where the Assessing Officer exercises power of reassessment beyond the period of four years from the end of relevant assessment year, an essential requirement is that the escapement of income chargeable to tax is due to the failure on the part of the assessee to disclose truly and fully all material facts. This is part of section 147 of the Act itself and is on number of occasions by various judgments of High Court and Supreme Court held to be mandatory pre-requirement. In view of such settled law, it is not necessary to refer to any judgment. Revenue is unable to bring to our notice any aspect or element which did not form part of the record and on the basis of which from the reasons recorded, it can be culled out that the Assessing Officer had formed a belief that income chargeable to tax had escaped assessment. In clear terms therefore, there was no failure on the part of the assessee to disclose truly and fully all material facts.

7. Counsel for the revenue however submitted that one of the issues raised by the Assessing Officer is that the activity carried on by the assessee does not amount to manufacturing activity. In the present petition, it is not necessary for us to comment on this aspect of the matter. What is important however is such belief also the Assessing Officer has formed on the basis of material already on record. Looked from any angle, the Assessing Officer cannot justify issuing the notice of reopening of assessment beyond the period of four years from the end of relevant assessment year.

8. Under the circumstances, impugned notice is quashed. Petition allowed and disposed of accordingly.

24. Considering the aforesaid settled position of law, we are of the view that as in the case before the Hon'ble Apex Court in Marico Limited (supra), the concluded assessment in the case of the present assessee company before us for the year under consideration, i.e., A.Y 2007-08

had been reopened vide notice u/s 148, dated 27.03.2014, i.e., beyond 4 years from the end of the relevant assessment year, for the purpose of reappreciating the material that was available on the record while framing the original assessment u/s 143(3) of the Act, dated 20.04.2009, and not for any failure on the part of the assessee company to fully and truly disclose all material facts necessary for its assessment, therefore, the reopening of the said concluded assessment of the assessee company would be clearly hit by the "1st proviso" to Sec. 147 of the Act.

25. We have thoughtfully considered the aforesaid issue and are of a firm conviction that the assessment of the assessee company for AY 2007-08 that was earlier framed under Sec. 143(3), dated 20.04.2009, *de hors* any failure on its part to fully and truly disclose all material facts necessary for its assessment could not have been reopened by the AO vide Notice u/s 148, dated 27.03.2014, i.e, after the expiry of four years from the end of the relevant assessment year.

26. On the basis of our aforesaid deliberations, we are of the view that the A.O had wrongly assumed jurisdiction and reopened the concluded assessment of the assessee company for two fold reasons, viz. (i). that fresh application of mind by the successor A.O to the same set of facts,

for the reason that he had a view different from that arrived at by his predecessor after necessary deliberations on the subject issue while framing the original assessment vide his order passed u/s 143(3) of the Act, dated 20.04.2009 will not justify reopening of the concluded assessment u/s 147 of the Act; and (ii). that the concluded assessment of the assessee company for the year under consideration, i.e., A.Y 2007-08, had been reopened, vide notice u/s 148, dated 27.03.2014, i.e., beyond 4 years from the end of the relevant assessment year, for the purpose of reappreciating the material that was available on the record while framing the original assessment u/s 143(3), dated 20.04.2009, and not for any failure of the assessee company to fully and truly disclose all material facts necessary for its assessment; therefore, the reassessment order passed by him u/s. 147 r.w.s 143(3), dated 31.03.2015, cannot be sustained for want of a valid assumption of jurisdiction. The **Grounds of appeal Nos.1 & 3** raised by the assessee company are allowed terms of our aforesaid observations.

27. As we have quashed the reassessment order passed by the A.O under Section 143(3) r.w.s 147 of the Act, dated 31.03.2015 for want of valid assumption of jurisdiction, therefore, we refrain from adverting to and dealing with the other grounds based on which the order passed by the CIT(A) has been assailed before us, which, thus are left open.

28. We, thus, in terms of our aforesaid observations, set aside the order of the CIT(A) and quash the reassessment order passed by the A.O u/s 147 r.w.s 143(2), dated 31.03.2015 for want of valid assumption of jurisdiction on the part of the A.O.

29. Resultantly, the appeal filed by the assessee company is allowed in terms of our aforesaid observations.

Order pronounced in the Open Court on 9th September, 2025.

Sd/- **(एस. बालकृष्णन)** **(S. BALAKRISHNAN)** **लेखा सदस्य/ACCOUNTANT MEMBER**	**Sd/-** **(रवीश सूद)** **(RAVISH SOOD)** **न्यायिक सदस्य/JUDICIAL MEMBER**

Hyderabad, dated 09.09.2025.
#*TYNM/sps

आदेशकी प्रतिलिपि अग्रेषित/ **Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	M/s Agri Gold Foods and Farm Products Limited, D.No.40-6-3, NSS Rao Street, Old Revenue Colony, Labbipet, Vijayawada
2.	राजस्व/ The Revenue	:	The Asst.Commissioner of Income Tax, Circle – 2(1), Vijayawada
3.	The Principal Commissioner of Income Tax, Visakhapatnam.		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, / DR, ITAT, Visakhapatnam.		
5.	गार्डफ़ाईल / Guard file		

BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam