IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

AND

SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA Nos. 1456 & 1457/HYD/2017 Assessment Years: 2012-13 & 2013-14		
Nuziveedu Seeds Ltd., R.R. District. PAN – AACCN7214Q	Vs.	Dy. Commissioner of Income-tax, Circle – 16(1), Hyderabad.
(Appellant)		(Respondent)
ITA Nos. 1463 & 1464/HYD/2017 Assessment Years: 2012-13 & 2013-14		
Dy. Commissioner of Income-tax, Circle – 16(1), Hyderabad.		Nuziveedu Seeds Ltd., R.R. District. PAN – AACCN7214Q
(Appellant)		(Respondent)

Assessee by:	Shri Sriram Seshadri
Revenue by:	Shri Y.V.S.T. Sai
Date of hearing:	18/05/2022
Date of pronouncement:	31/05/2022

O R D E R

PER BENCH :

These are the cross appeals filed by the assessee and revenue against the orders of CIT(A) – 4, Hyderabad for the AYs 2012-13 &

2013-14. As the facts and grounds are identical in these appeals, the

same were clubbed and heard together and, therefore, a common order is passed for the sake of convenience.

2. To dispose of these appeals, we refer to the facts from AY 2012-13 and the decision taken in this AY shall mutatis-mutandis apply to other AY 2013-14 as well.

3. Briefly the facts of the case are that the appellant company engaged in the business of Research, Production and sale of Agricultural seeds, filed its return of income for the A.Y. 2012-13 admitting a total income of Rs. 17,78,44,464/- under normal provisions and book profit u/s 115JB was admitted at Rs. 14,74,06,124/-. The case was selected for scrutiny and accordingly notices were issued. In response to the notices, the AR of the appel1ant appeared and filed the information. After going through the information, the Assessing Officer completed the assessment by making additions of Rs.50,94,74,053/- towards disallowance u/s 10(1), Rs. 1,00,08,831/- towards disallowance u/s 14A and assessed the total income at Rs. 69,73,27,348/-.

4. When the assessee preferred an appeal before the CIT(A), the CIT(A) partly allowed the appeal of the assessee by deleting the disallowance made u/s 10(1) and confirmed the disallowance made u/s 14A of the Act.

5. Aggrieved by the order of the CIT(A), both the assessee and revenue are in appeal before us, by raising the following grounds of appeal:

5.1. Grounds raised by the assessee in AY 2012-13 which are common in AY 2013-14 also are as under:

> "*1. On the facts and in the circumstances of the case, the order of the CIT(A) dismissing the appeal of the appellant is erroneous, illegal and unsustainable both on facts and in law.*
>
> *2. The CIT(A) erred in upholding the disallowance of expenditure of Rs. 1,00,08,831/- relating to exempted income by applying provisions of section 14A of the Act read with rule 8D of the Rules."*

5.2 Grounds raised by the revenue in AY 2012-13, which are common in AY 2013-14, are as under:

> *"1. On the facts and in the circumstances of the case, and in law, the Hon'ble CIT(A) erred in deleting the disallowance of exemption claimed u/s 10(1) of Rs. 50,94,74,053/-·*
>
> *2. The Hon'ble CIT(A) erred in allowing exemption u/s 10(1) of the Income Tax Act, 1961, without appreciating that the activity of development and marketing of seeds is purely a commercial activity bereft of carrying of agricultural activity.*
>
> *3. The Hon'ble CIT(A) erred in not appreciating the fact that the assessee itself did not undertake any agricultural operations but procured hybrid seeds from farmers and as such the activities carried by farmers can only be said to the agricultural activities and not that of the assessee.*
>
> *4. The Hon'ble CIT(A) erred in ignoring the fact that Revenue's appeal on identical issue in assessee's own case for AY 2011-12 is pending before Hon'ble High Court.*
>
> *5. Any other ground that may be urged at the time of hearing."*

6. The facts with regard to claim of exemption u/s 10(1) in respect of the agricultural income of Rs. 50,94,74,053/-, the AO observed from the statement of computation that the assessee has made a claim of Rs. 39.26 crores as exempt u/s 10(1) of the Act.

The assessee has been asked to furnish information in support of its claim. In the said reply the assessee AR filed a note on activity carried out by the assessee company, break up for income and expenditure in respect of agriculture as well as business income, details of research and development and expenditure thereof, details of processing expenses etc. The AO concluded that it is evident that the assessee only carries out scientific and technological process to the seeds and multiplying them in the farmer's fields so as to derive income commercially from sale of such modified and processed seeds. To aid the process of such multiplication in larger quantity, the assessee entered into agreements with farmers for carrying out such specialized job through contract. Hence, the assessee company is neither cultivating the seeds nor deriving income from agriculture (REF PARA 3.3 AND 3.4) .

6.1 The assessing officer in paragraph 6.1 of the order, had mention that the assessee company has entered into seed production agreement-Master agreement with the farmers, wherein the assessee company with the cooperation of the farmers are producing the hybrid seeds by supplying the foundation seeds and other agricultural input to the farmers. The assessee had submitted that though the earlier assessment years, the assessee was claiming the activities of the assessee as business income however on account of demerger of the seed undertaking, the risk and rewards of growing receipts is entirely to the account of the assessee company. The assessing officer has not agreed to the

above said version and have rejected this contention (paragraph 6 .3 and 6.4) of the assessee.

6.2 The AO observed that the activity is of the assessee is an integrated and composite one, right from the research and development to the final marketing/sale of hybrid seeds which involves several stages and the first few stages cannot be isolated and termed as agricultural activity, just because they are produced in the fields allegedly leased in by the assessee company. The definition of agriculture as contemplated in section 2(1A) of the I.T. Act, 1961 does not cover the activity of foundation seeds production by assessee, just because the assessee is undertaking the basic agricultural operations like sowing, weeding, irrigation, inter-cultivation, etc. These agricultural activities are only incidental to the main activity of the assessee, i.e., foundation seed production.

7. Further, the AO observed that the assessee company has departed from the basic agricultural operation and indulged into production of parent seeds by planned scientific and specialized procedures. Further, the assessee company itself is not carrying any agricultural operations but it is the farmers, who upon contractual obligation by the assessee company, are carrying out the multiplication of the parent seeds and the assessee only procures the agriculture produce through this contract. Hence, the claim made by the assessee company is hereby rejected and added to the income returned.

8. The CIT(A) after considering the submissions of the assessee and the remand report of the AO, deleted the disallowance made by the AO following the decision of ITAT in assessee's case for AY 2011-12 in ITA No. 1594/Hyd/2014 dated 20/03/2015.

Submissions of Revenue

9. Before us, the Ld. departmental representative relied upon the order passed by the assessing officer, it was the contention the Ld. DR that the agriculture land was not taken on lease by the assessee, further the assessee has not carried out any agriculture activities, which per say can be termed as agricultural activities and assessee has made false and incorrect statement before the assessing officer and also before the Ld. CIT(A) in support of its case wrongly claiming benefit of section 10(1) of the Act . The ld. DR submitted that the Revenue had also filed an application for admission of the additional evidence dated 01.10.2019, whereby revenue is requesting for evidence like the statements of various farmers, organizers, minutes of meetings of the Collectors and other documents. It is the case of the Revenue that if these documents are read collectively then it would be amply clear that assessee were not carrying out any agricultural activities within the meaning of law and was not entitled to the benefit under section 10(1) of the Act.

9.1 It was also submitted by DR that the Revenue is entitled to bring on record, these new correct facts before the Tribunal as the proceedings are pending before the tribunal pertaining to the year

under consideration. It was submitted that the tribunal is having the power to admit the additional documents/evidence/ new evidence if it came into possession of the revenue, even after passing of the impugned order, this is essential so that correct finding of fact can be recorded by the Tribunal . The Ld. DR relied upon power of tribunal mentioned in section 255(6) read with section 131 of the act. Besides that the Ld. DR referred to Rule 29 of the Income Tax Appellate Tribunal Rules which reads as under :

> *The parties to the appeal shall not be entitled to produce additional evidence er oral or documentary before the Tribunal, but if the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be able it to pass orders or for any other substantial cause, or, if the income-tax authorities have decided the case without giving sufficient opportunity to the o adduce evidence either on points specified by them or not specified by them, the Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such to be adduced."*

9.2 It was also submitted by the Learned DR that even the CIT (Appeals) while exercising the jurisdiction under section 251(1) has co-terminus power to decide the issue and CIT(A) failed to examine the documents/farmers / organiser before recording the finding of fact and had merely relied upon the order passed in earlier year. It was submitted that the decision for the earlier assessment year was also not binding as, demerger of the company had taken place and the new entity is solely into agriculture activities. It was submitted that this aspect was required to be examined by the lower authorities on the basis of the material

available on record and also by exercising its power under section 131/ 133 of the Act.

9.3 Further, before us, the ld. DR also filed written submissions in support of revenue's case, which are as under:

> *"2. It is humbly submitted that the assessee is engaged in the following activities:*
>
> *(i) Research & Development on germplasm leading to development of hybridd seeds, which consists of two stages viz., (a) fixation of desired traits in the seeds (say cotton seeds) to breed pure lines and (b) then hybridize them to develop a high yielding plant variety;*
>
> *(ii) Development of foundation seeds leading to development of certified seeds;*
>
> *(iii) Supply of these foundation seeds to farmers who enter into production contract agreements with the assessee to produce the seeds meant for sale. This activity involves payment of advances, providing inputs and also supervision to ensure the right quality;*
>
> *(iv) Purchase of the seeds from farmers and selling them to farmers in market under the brand of the assessee through the sales and distribution network;*
>
> *3. Out of the above, only the second stage of the item (i) above and (ii) stage are the areas in which agricultural operations are conducted by the assessee. The first stage of item (i) above involves high level R&D which cannot be under taken by a normal farmers or cultivator in kind.*
>
> *4. In the stage (iii) described above, the entire agricultural operations including the risk of the quality of the produce are undertaken by the farmers themselves and not by the assessee. It is humbly submitted that the following pertinent questions related to agricultural operations would yield the right answer in the present case:*

(i) Who owns the land or who is the leaseholder of the land?

(ii) Who tills the land, sows the seeds, provides the fertilizer and pesticides or other inputs?

(iii) Who engages and pays for the labour who are employed in agricultural operations?

(iv) Who harvests the produce?

(v) Who is the owner of the produce?

(vi) Who bears the risk of rejection of the produce when the quality standards laid down by the assessee are not met?

5. For all the above questions, the single answer is that the farmers is the person. Merely because the assessee pays some advance and employs his field staff to periodically monitor the operations, the assessee would not become an agriculturist. It is humbly submitted tile;: if the assessee is treated to have conducted agricultural operations in such a situation of contract farming, then each and every money lender cum trader in the villages who pay advance and acquire the monopoly to purchase the produce from the farmer would also become an agriculturist.

6. It is humbly submitted that a model copy of the seed production agreement is available at pages 220 to 231 of the paper book filed by the assessee for A.Y 2012-13 ami pages 293 to 301 of the paper book filed by the assessee for A.Y 2013-14. As seen from the alleged agreements, the assessee pays compensation for land use and service charges to the farmers. Even from these agreements, it is clearly evident that it is the farmer who carries out all the agricultural operations and not the assessee. Therefore, the assertion that the assessee has exclusive right to use the land and the farmer is carrying out agricultural operations is devoid of merit. The assessee is not recognized as a tenant in the Land Revenue records nor a tenancy agreement is entered into with the owner of the land.

7. It is also humbly submitted that as per section 6 of the Andhra Pradesh (Telangana Area) Tenancy & Agricultural Lands Act, 1950, no lease of agricultural land is permitted

except as per the conditions/situations specified in section 7 of the said Act, which reads as under:

"7. Special cases in which leases are permitted:. - (1)(0) Notwithstanding anything contained in Section 6, a landholder holding land the area of which is equal to or less than three times the area of the family holding for the local area concerned may lease the land held by him:

Provided that every such lease notwithstanding any agreement to the contrary shall be for a period of five years and at the end of the said period and thereafter at the end of each period of five years in succession, the tenancy shall, subject to the provisions of Clauses (b) and (c) be deemed to be in force for a further period of five years on the same terms and conditions except to the extent that a modification therefor consistently with this Act is agreed to by both parties.

(b) The landholder may by giving the tenant at least one year's notice in writing before the end of each of the periods referred to in Clause (a) terminate, subject to the provisions of Section 45, the tenancy in the last year of each of the said periods if he requires the land for cultivating personally:

Provided that the area of the land, the tenancy of which can be so terminated, shall not exceed one family holding for each adult worker in a family.

(c) Notwithstanding anything contained at Clause (a) such tenancy shall, subject to the provisions of Sections 27 and 28, be liable to be terminated by the landholder or the tenant on any of the grounds and in the manner provided in Section 19".

8. It is also humbly submitted that as per section 9 of the above referred Act, the copy of the lease has to be filed with Tehsildar within 30 days of the execution of the lease deed. It is humbly submitted that the seed production agreement is not in the nature of lease of land and also not as per terms of the Andhra Pradesh (Telangana Area) Tenancy & Agricultural Lands Act, 1950.

9. It is also humbly submitted that the alleged seed production agreement is also made only for the purpose of taxation and not followed in reality. It is humbly submitted that on

17/01/2018, search action u/s 132 of the I.T Act, 1961 was conducted on the assessee and during the search incriminating evidence establishing the real nature of the alleged agreements with farmers is unearthed. Statements of various farmers were recorded. Copies of statements of four farmers recorded on 24/01/2018 and also minutes of meeting held by Collector, Jogulamba Gadwal District with seed cotton growers, seed cotton organizers and companies on 21/12/2017 are submitted as additional evidence under Rule 29 of ITAT Rules as additional evidence. It is humbly submitted that the additional evidence is material to establish the real nature of the seed production agreements and though the statements are recorded at a later date, the nature of agreements/activity remains the same as in the season 2011-12 and 2012-13. Therefore, it is humbly prayed that the additional evidence may kindly be admitted.

10. It is submitted that the farmers stated that they have never leased out their land on tenancy. They stated that they entered into the agreement only for sale of seeds. It is also stated by the farmers that the assessee advances certain amounts through its organizers arc purchases the seeds from the farmer and even interest @ 15% p.a is charged on the advances. The assessee provides hybrid seeds and 10 kg Zinc per acre and recover the cost in final payment. All the expenses for water, fertilizers, pesticides etc are met by the farmers only. The risk of production is also borne by the farmer only. The assessee does not pay ar.y compensation for loss of crop or loss of quality. It is stated by one farmer K. Govindu that years ago (most likely in 2013-14) he lost the crop due to lack of yield but the assessee c,;:: not make any compensation. The statements clearly indicate that the recitals in the said agreements are not implemented in reality. Some of the farmers also stated that they did not sign any such agreement with the company. It is also stated that the payment for the procure is made per packet.

11. The minutes of the meeting with the Collector, Jogulamba Gadwal District. indicate similar facts. In the meeting the representatives of the farmers demanded that wastage losses of 8% presently borne by the seed grower (farmer) should be stooped, the labour cost to the farmer has increased, the seed

companies should waive interest in advance payments as heavy rains occurred in October, 2017 and the organizers should not take margin of' 80 per packet of 750 gms because the farmer is getting only' 420/- per packet whereas the seed company pays' 500. The companies rejected the demand for increase in the price per packet but agreed to enter into a model bilateral agreement from 2018. The District Administration directed the seed companies that the advance of ' 50,000 shall be directly transferred to the accounts of farmers instead of disbursement through organizers. It was also directed that the organizer system should be abolished.

12. From the above, it can be clearly noticed that the assessee and other seed companies do not take the land on lease but pay an advance that too after charging interest @ 15% p.a and the organizers also pocket part of the price. The seed production agreements are in reality in the nature of produce buy back agreements and by no stretch of imagination, the assessee can be treated as an agriculturist or cultivator. Apparently, the assessee is also not reflecting income from interest @ 15% on the advances made to farmers.

13. Therefore, the claim of exemption u/s 10(1) made by the assessee is untenable and the reliance on the decision in the case of the assessee for A.V 2011-12 is also distinguishable on facts. Also the decision of Hon'ble High Court of Andhra Pradesh in the case of Prabhat Agri Biotech Ltd is not applicable to the present case as the facts are totally different. Reliance in this regard is also placed on the following decisions.

14. In the case of K. Lakshamanan & Co (239 ITR 597), the Hon'ble Supreme Court held that "agricultural income would mean an income derived from such land by the performance by a cultivator of any process ordinarily employed by him to render the produce raised by him fit to be taken to market. It is clear from the reading of the aforesaid statutory provision that what is taken to the market and sold must be the produce which is raised by the cultivator. Even though for the purpose of making it marketable or fit for sale, some process may have to be undertaken, the section does not contemplate the sale of

an item or a commodity which is different from what is cultivated and processed".

15. In the case of Pioneer Overseas Corporation, the Hon'ble ITAT, Delhi Bench (127 TIJ 640) examined in detail, the issue of production and sale of hybrid seeds and held that "the assessee's operations of regenerating seeds or grains by way of repeated cultivation after seeds produced by the assessee at the first stage were crossed to obtain a hybrid germplasmas or seeds of desired quality, which operation were being carried out over a number of years until a desired result or trait is obtained, are not at all essential to make seeds or grains or produce originally produced or raised by the assessee fit to be taken to market though such operations were carried about on a land to produce or develop breeder seeds or hybrid germ plasm with desired traits concentrated therein. Therefore, the income attributable to these operations of developing/producing breeder seeds or hybrid germplasm or parent hybrid seed containing desired traits cannot be treated as agricultural income and should be treated as business income. In the light of the provisions contained in rule 7(l)(a), the 10 per cent of the income shown by the assessee can be treated to be the price at which the grains or seeds originally produced in first crop would have been sold during the relevant previous year would be treated as agricultural income".

16. The case of taking land on lease and employing the owner-farmers to grow seeds (contract farming) was also considered in the case of PHI Seeds Pvt Ltd by Hon'ble ITAT, Delhi bench ill ITA No: 1988/DEL/2016. Vide its decision dated 18/12/2017, the Hon'ble ITAT held that the entire income from such contract farming is business income. Para 57 of the decision, which is relevant is quoted below:

"21. The judgment of the Hon'ble Karnataka High Court rendered in the case of CIT Vs. Namdhari Seeds Pvt. Ltd. is applicable to the facts of the present case. The submission of the Ld. AR that the present case is different from Namdhari Seeds (supra) case and, therefore, the ratio of the said

judgment is not applicable does not appeal to us. It has been submitted by the Ld. AR that the aforesaid was a case where the agreement was contrary to the Karnataka Land Reforms Act however, in the present case, the agreement is not in contravention with any law. We find that the said ground was only an additional factor for denying the claim of agricultural income to the assessee therein. The principle ground for rejection of the claim of the assessee was that no actual agricultural operations were carried out by the assessee therein. The facts are similar to the present case and the ratio of the aforesaid judgment is squarely applicable to the present case. In the aforesaid judgment of Namdhari Seeds, the Hon'ble High Court held as under:-

"54. From different terms and conditions of arrangement, what we notice is except supplying the foundation seeds and giving scientific advice from time to time, either at the time of sowing or pollination or harvesting, none of th6e normal activities of agriculture are undertaken by the assessee company. Except sowing the foundation seeds belonging to the assessee, farmer is not entitled to grow any other seeds in the land earmarked for the purpose of growing hybrid seeds and is not allowed to part with the seeds supplied to him to anyone else and so far as unused seeds, he had to give back the same to the company.

Farmer conducts the cultivation and assessee-company only allots machinery and personnel for the purpose of achievement of better results in producing the quality hybrid seeds. Preparation of bed, sowing of the seeds, cultivation and harvesting of hybrid seeds is done by the farmer. He is entitled for the price fixed by the assessee per quintal for all such seeds which would qualify the specification indicated by the assessee. The seeds which do not qualify the specification" are also not sold by the farmer, but by the company and the sale consideration, if any is given to the farmer. The farmer while multiplying foundation seeds, uses his land and labour. The input given by the assessee is only technical supervision of the company. Whatever seeds grown by the farmer whether qualifies the specification indicated by the assessee or not has to be given to the assessee and the assessee will pay a fixed price so far as the seeds which quality the specification and other seeds will be sold in the open market by the assessee and

there is no fixation of any price for the seeds which do not meet the specification. The farmer has to ensure fertility of the land, suitability of the land, cultivation of the land, watering of the land, use of the seeds supplied by the assessee and also had to sell the hybrid seeds at a price fixed by the assessee If the farmer has to arrange the labour and pay the labour charges and also spend money for other operations either basic or subsequent operations, he can only take advance amount from the assessee and such amount paid by the assessee would be deducted from the so called compensation to be paid for the qualified foundation seeds at the end by the assessee. The entire terms of agreement would only indicate that the foundation seeds grown by the farmer would be purchased by the assessee at the end for a certain price provided seeds qualify the specifications as per the agreement. It is nothing short of a fertile womb being offered by a surrogate mother for the growth of child of someone else. The assessee supervises and oversees the sowing cultivation right from the process of sowing till the end in order to get the qualified foundation seeds as per the specifications so as to carry on his trade in selling certified seeds. The main interest of the assessee is to see that good or d healthy seeds are produced by the farmer meeting the requirement specified by it. Such input or scientific method in giving advice to the farmer cannot be termed as either basic agricultural operation or subsequent operations ordinarily employed by the farmer or agriculturist. If the basic operations of agriculture are not carried on by the assessee-company, then the harvested foundation seeds purchased by him and converting them to certification seeds cannot be termed as integrated part of the foundation activity of agriculture. Therefore even if we agree that the mechanical process of agricultural operations either basic operations or subsequent operations would not be an impediment to make such operations as agricultural operations, the question is whether such operations are conducted by the assessee or the farmer or someone else. The entire reading of the terms of the agreement would only indicate that assessee-company was interested only to have healthy foundation seeds grown for the process of converting the same as certified seeds.

58. Therefore the view of first appellate authority that 100 per cent of the operations upto conversion of the foundation seeds as agricultural activity conducted by the assessee company and therefore income deserves to be exempted from tax under s. 10(1) of the Act is erroneous. Similarly exemption given by the Tribunal for 90 per cent of the income is also erroneous. We opine that the Tribunal was justified in treating 10 per cent of the income as business income which involved processing of foundation seeds to certified seeds. In that view of the matter, we hold that the entire income amounts to business income. As a matter of fact for some of the assessment years based on the opinion of one of the senior counsel on taxation Mr. K.R. Prasad, the assessee - company offered its income as business income and even claimed deduction under s. 80HHC of the Act".

17. In light of the above, it is humbly submitted that the assessee is entitled for exemption u/s 10(1) only with regard to the activity of production of foundation seeds and with regard to other activities, there is no merit in seeking exemption. The learned C1T(A) did not consices the true facts of the case and allowed the exemption. It is humbly submitted that the Hon':!= ITAT may kindly confirm the addition made by the AO and also remand the matter back to the AO on the issue of interest income received from farmers as revealed in the subsequent search action in the case of the assessee."

Submissions of Assessee

10. Per contra Learned AR for the assessee, on the other hand, opposed the admission of the additional evidence/documents/affidavits filed by the Revenue. **Firstly** it was the contention of the Learned AR that as per Rule-29 of ITAT Rules, the option to file the additional evidence/documents are not available to the Revenue and it was submitted that there are certain guidelines under which the additional

evidences/documents which are to be filed duly mentioned in Rule 29 of I.T.A.T. Rules itself. Referring to Rule-29, it was the contention of the Learned AR that Rule-29 does not contemplate filing of the additional documents by the Revenue.

10.1. **Secondly,** it was the contention of the Learned AR that after search was carried out at the premises of the assessee on 24.12.2018, the assessee has challenged the action of the search etc by filling a writ petition before the Hon'ble High Court of Telangana. The Hon'ble High Court of Telangana vide order dated 11.12.2019 (WP No. 9719 of 2019) has granted interim stay to the assessee allowing the interim prayer of the assessee. The relevant observations of the Hon'ble High Court of Telangana dated 29.04.2019 reads as under :

> *"Petition under Article 226 of the Constitution of India praying that in the circumstances stared in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction especially in the nature of writ of Mandamus calling for the relevant records from the Respondents, and (i) declaring the reason to believe purportedly recorded by 2nd and 3rd Respondents u/s. 132 (I) of the Income Tax Act, 196 I as being arbitrary, illegal, without jurisdiction, malafide and for collateral purpose and (ii) declare the warrants of authorization dated 03rd January, 2018 and 08th January, 2018 issued by the 2nd and 3rd Respondents respectively as arbitrary, without jurisdiction and illegal, and (iii) declare the consequent searches on the Petitioners premises as arbitrary, without jurisdiction and illegal and (iv) consequently, quash the notices dated 24th December, 2018 issued by the with Respondent u/s.153A for the assessment years 2012-13 to 2017-18 and (v) without prejudice to above, no incriminating material seized during the course of search, quash the notices dated 24th December, 2018 issued by the 4th Respondent u/s.153A of the Act for the Assessment Years 2012-13 to 2017-*

18 and (vi) without prejudice to above, the statement recorded from farmers/growers do not constitute incriminating material, quash the notices dated 24th December, 2018 issued by the 4th Respondent u/s.153A for the Assessment Years 2012-13 to 2017- 18 without prejudice to above, the assessment for the A Y 2015-16 could not be subject to proceeding under section 153A of the Act, quash the notice dated 24th December, 2018 issued by the 4th Respondent u/s.153A of the Act for the AY 2015-16 and .viii, restrain the Respondents from initiating any further action pursuant to the said searches.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.DIVYA DATLA Advocate for the Petitioner and Sri.B.NARASIMHA SARMA Advocate for the Respondents I to 5, the Court made the following.

ORDER

There shall be interim stay as prayed for, for a period of three weeks from today. Post on 11.12.2019."

10.2. AR submitted that if all these additional evidence/documents are admitted, it will have an impinged on the proceedings pending before the Hon'ble High Court of Telangana. In so much so these documents formed basis of initiation of proceedings for the search, hence the documents cannot be relied upon by the revenue through backdoor by moving the application of admission of additional documents in these appeals. It was submitted that the seized material recovered pursuant to research conducted at the premises of the assessee, can only be subject matter of the proceedings under section 153A, which admittedly being stayed by the Hon'ble High Court, therefore what the revenue cannot do directly, it cannot do indirectly also.

10.3 **Thirdly** AR has submitted that the assessing officer was aware of seed protection agreement entered by the assessee with the farmers, however nothing was brought on record by the revenue during the assessment proceedings against the assessee by way of recorded statements of farmers. Therefore It was submitted that the revenue can not be given the second inning to plug the holes in its case, through this clandestine method .

10.4 Fourthly Learned AR submitted that it is the consistent case of the Revenue before the Tribunal that the facts of the present case are identical to the earlier order which is subject matter of appeal pending before the Hon'ble High Court of Telangana.

10.5 Lastly it was further submitted by the Learned AR that the proceedings initiated under section 153A are separate and independent proceedings and the material covered by the Revenue pursuant to search under section 132 of the I.T. Act cannot be relied upon by the Revenue for the present proceedings. Further the learned AR relied upon the following judgments including the decision in the case of Shri B. Balanarasimha Reddy :

> *2. The assessee/petitioner is involved in finance and other businesses and during survey operations conducted on 31.1.2008 by the respondent - Department, in respect of one G.Sanjeeva Reddy, who is said to be a partner of M/s S.V. Constructions, an agreement of sale was found, as per which, the petitioner was found to have individually paid an amount of RS.1,22,50,000/-, out of RsA.9Iakhs, for purchase of landed property, along with three others and he has explained the source of income. Out of the total amount, which the petitioner has paid, the assessment officer accepted the petitioners*

contribution of RS.5,00,000/- and the balance amount of RS.1,17,50,000/- was treated as unexplained investment. Based on certain receipts, which were impounded during survey, an additional amount of RS.25,00,000/- was also brought to tax, on the ground that the petitioner along with others paid RS.5.9 crores, but not RsA.9 crores, as claimed by them. Challenging the assessment order dated 30.12.2009, the petitioner filed appeal before the Commissioner of Income Tax (Appeals) and by order dated 21.2.2011, the appellate authority, by accepting the explanation of the petitioner, deleted the addition of RS.25,00,000/- and confirmed the balance amount of Rs.1.17,50,000/-, as unexplained investment, for tax. Aggrieved by order of the Commissioner (Appeals), in confirming the assessment order for RS.1,17,50,000/-, the petitioner filed appeal, before the Income Tax Appellate Tribunal and similarly assailing the deletion of Rs.25,00,000/-, the Revenue filed cross-appeal. The Tribunal by order dated 25.1.2012 allowed the appeal filed by the Revenue and dismissed the appeal of the petitioner and thus, the initial order of the assessment officer was restored. As per the claim of the petitioner, out of the total demand of Rs.68,91,242/-, an amount of RS.58,71,064/- was paid and an amount of RS.10,00,000/- was the balance due to be paid to the Revenue. As the balance amount was not paid within the period stipulated, the assessment officer by an order dated 25.7.2014 levied interest of RS.29,13,413/- under Section 220(2) of the Income Tax Act, 1961. Explaining the grounds for non-payment of amount, within time, the petitioner filed a petition under Section 220(2A) of the Act, seeking waiver of interest and by the impugned order dated 16.2.2015, the ist respondent Principal Commissioner of Income Tax, rejected the petition. Hence the writ petition.

3· The impugned order reads as under:

There are no reasonable grounds nor hardship exists in the instant case warranting waiver of interest as sought, hence the petition for waiver of interest is rejected.

4· The claim of the petitioner is that because of the circumstances beyond his control, which he has mentioned in the petition for waiver, he was unable to pay the amount due, within the period stipulated and that as he satisfies the three

conditions under Section 220(2A) of the Act, he is entitled to be considered for waiver of interest.

5· The learned Standing Counsel for the respondents stated that though the impugned order does not contain reasons, the Department has filed a detailed counter affidavit justifying the rejection of the claim of the petitioner for waiver of interest and hence, the impugned order does not warrant interference.

6. A perusal of the impugned order, which is extracted above, shows that the 1st respondent Commissioner, has not considered the grounds raised by the petitioner in the petition filed under Section 220(2A) of the Act and has passed an order bereft of reasons.

7· The settled legal proposition is that the impugned order itself shall contain reasons justifying the decision taken and they cannot be supplemented by way of an affidavit. For better appreciation, the law laid down by the Apex Court in MOHINDER SINGH GILL v. CHIEF ELECTION COMMR. , may be referred:

8. The second equal relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (AIR 1952 SC 16) (at p.18):

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what he was in his mind, or what he intended to co.

Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectivity with reference to the language used in the order itself.

8. Inasmuch as the impugned order is bereft of any reasons and further the same has not dealt with the contentions raised by the petitioner in his application filed under Section 220(2A) of the Act, and in view of the above facts and circumstances and the law laid down by Apex Court, the impugned order cannot be sustained and the same is hereby set aside.

9· It is made clear that the 1st respondent Principal Commissioner of Income Tax, shall consider the petition filed under Section 220(2A) of the Act, by affording the petitioner an opportunity of being heard and shall pass a reasoned order in accordance with law.

10. The writ petition is accordingly allowed. No order as to costs."

10.6 The ld. AR for the assessee relied on the order of the coordinate bench of this Tribunal in assessee's own case for earlier years. However, he has not made any argument with respect to merit of the additional evidence filed by the ld. DR. the Ld.AR Reserves with the argument in respect of the additional evidences, to be taken at the appropriate stage, after the said documents/evidences are admitted by the tribunal.

REJOINDER ARGUMENTS BY REVENUE

11. The Learned CIT-DR intervening the arguments advanced by the Learned AR submitted that the arguments of Learned AR are self-contradictory, on one hand, and the plea that was taken before the Hon'ble High Court of Telangana that there is no incriminating material apart from other things and on the other hand it is to sort-out to make before the Tribunal that it will have bearing on the proceedings under section 153A. Copy of W.P.No.9719 of 2019 is placed on record at page no.340 of the PB filed by the assessee in which the assessee had made the following statement :

"Statement recorded from farmers, organizers, growers do not form incriminating material."

11.1. The Learned CIT-DR further submitted that even if it is assumed the search is illegal as contested by the assessee relying on the judgment in the case of Pooranmal 93 ITR 505 (SC) wherein the Hon'ble Supreme Court held that material covered in a search can be used in the assessment proceedings. In the case of UOP LLC 108 ITD 186 (Del.) the ITAT held that there is no bar for the Revenue to produce any additional evidence suo-motu before the Tribunal under Rule 29 of ITAT Rules. In the case of Venkat Ramaiah (1963) AIR 126 (SC), it was held by the Hon'ble Supreme Court that additional evidences can be admitted if there is some thing absurd to be uncovered.

FINDING BY THE TRIBUNAL

12.1 We have heard the rival contentions and perused the material on record as well as have gone through the orders of revenue authorities. It is observed that the primary reason for filing of additional evidences/documents, etc. by the revenue are that a search action was taken place in the premises of the assessee on 24/12/2018, during the course of which, some incriminating material was found and, therefore, notice u/s 153A was issued to the assessee. In the search seed agreement – Master agreement entered by the assessee farmers were seized by the Department. The revenue has recorded the statements of 169 farmers/organizers and also collected minutes of the meeting of the revenue authorities were obtained.

12.2 We are reproducing one of the statement of farmer , recorded by the revenue after the search , albeit remaining statements were identical to the this statement in material aspect . The statement mentioned as under :-

" English Version of Statement Recorded in Telugu

Sworn statement recorded in the case of K. Govindu s/o, K. Narsappa, Pagunta Village, K.T. Doddi Mandai, Gadwal Dist u/s 131 of the Income Tax Act at the camp office at RDO office, Gadwal on 24/01/2018.

Signed Ch. Rajeswara Reddy 24/01/2018 Signed K. Govindu 24/01/2018

(Oath Administered)
(Oath taken)

01. Please introduce yourself? Please tell about yourself?

My name is K. Govindu. My village is Pagunta, K.T Doddi MandaI. I am a farmer. I have two bulls and 100 sheep.

02. Please state whether oath was administered to you and the penal consequences of furnishing of wrong information on oath were informed to you?

I was administered oath. If 1 give wrong information what would be the penal consequences were explained to me.

03. Are you participating in cultivation activities? If you are doing farming, how much agricultural land do you have?

I am doing farming. 1 have 3 acres land.

04. Please sign your typical signature and if you do not know how to sign, affix your thumb impression?

(Shri Govindu signs with dated 24/01/2018)

(Signatures of the officer and the deponent with date at the end of first page)

05. Did you lease out your lands or given them on rent? If Yes, how many acres were given?

I have not leased out or rented out my land to anyone. I am only cultivating my land.

06. Have you entered into seed production agreement with any seed company in relation to your agricultural land or leased out your land to any seed company?

No. I have never entered into agreement with any seed company.

07. For leasing out or renting out or for any other agreement regarding your agricultural land, have you given copies of your ration card or Voter ID card or Aadhar Card at any time to anyone?

For agreement for sale of seeds, the field assistant of Nuziveedu seeds came to me and took Aadhar card copy and xerox of pattadar passbook.

Q8. I am showing a copy of the agreement purportedly signed by you. The copy of the agreement was seized from the plant of Nuziveedu company. Please state whether the signature on this agreement copy is that of your or not (Annexure A/NSL/Kompally/04)?

In the agreement shown by you, the signature is in Telugu. I will never sign in Telugu. The signature is not mine.

Q9. If the signature is yours, have you understood all the contents of the agreement before signing or whether you signed without seeing anything if some one told you to sign?

The signature is not mine. I do not know the agreement.

(Signatures of the officer and the deponent with date at the end of second page)

Q10. In this agreement copy it is written that you have granted permission to Nuziveedu seed company to cultivate your land? Is it true? If not, what you would like to say?

I did not grant permission to anyone to cultivate my land. I am only tilling and cultivating my land.

Q11 In this agreement copy it is written that after giving the land to Nuziveedu seed company, you are doing cultivation/have to do cultivation on behalf of the company? Is it true? If not, what would you like to say?

We are only cultivating our land. However, for each crop Shri Ramachandra Reddy provides the seed. After harvesting the cotton, we separate the seeds and the company persons either Lakshman or Prabhakar will come and buy the seeds. They give a chit to us. Shri Ramachandra Reddy pays money as per the chit.

Q12. In this agreement copy it is written that you are cultivating your land on behalf of Nuziveedu seed company in the manner informed by them to you? Is it true? If not, what would you like to say?

I am cultivating myself. Company person comes and gives advice. We grow the crop as per their advice.

(Signatures of the officer and the deponent with date at the end of third page)

Q13. Did any seed company contact you for production of seeds? If yes, please specify the method in which seeds are procured through organizer?

Shri K. Ramachandra Reddy, the organizer gives foundation seeds to us. We grow the crop upon the advice of the company. We sell the produce back to the company again through

organizer. Organizer gives some amount as advance. The remaining amount is paid by the organizer on sale of produce. On the advances, company charges interest of 15%.

Q14. Whether the organizer or the seed company provided agricultural inputs like fertilizer, hybrid seeds, pesticides to you at any time?

Company gives hybrid seeds through organizer. They give 10 Kg Zinc per acre. The cost of Zinc of 400/- is recovered from final payment.

Q15. Whether the expenses incurred by you for the growing the crop/seeds are paid back to you by the company or organizer?

The expenses for crop are met by us only. Expenditure for water, fertilizer, pesticides is met by us only.

Q16. After growing the crop, to whom you have sold the crop or seeds? Please inform?

After growing cotton crop, We take the same to Sri Krishna Ginning Mill of Shri Ramachandra Reddy. We separate the seeds and handover the seeds to the company person. We get our payment through Shri Ramachandra Reddy.

Q17. Have you sold the seeds on the basis of income received by you or on the basis of per acre?

The risk of the crop is borne by us. If we sell higher yield, we get more money. If we sell lower yield, we get less money. The payment is not on the basis of per acre.

Q18. Did you incur loss in any year in growing seeds? If you got loss, whether the seed company took the loss?

Four years ago, due to lack of water facility our crop has gone dry. The yield fell down heavily. I got loss. The company did not pay any compensation to me.

(Signatures of the officer and the deponent with date at the end of fourth page)

Q19. For growing seeds, did any seed company help you? If yes, explain the nature of the help?

For growing crop, they provide foundation seed. They also render advice on growing the crop. They pay advance on interest. We sell the seeds back to the company.

Q20. After you harvest the crop, who purchases the seeds?

The company person purchases the seeds

Q21. Whether the seed companies purchase the entire crop or do they purchase only seeds which meet specific quality requirements?

They purchase the entire crop. If there is less quality or if there is failure, they return back the crop. In such a case they won't pay any money. We have to bear that risk.

Q22. What do you do with the produce rejected by the seed companies?

We use such rejected seeds to grow commercial crop in our own fields.

Q23. Did you work under any seed company or did farming on behalf of any seed company?

No

Q24. Did you get any salary from any seed company?

Yes. We took foundation seed from Nuziveedu Seed company.

Q25. Who will pay the money for purchasing the seeds from you and how it is paid?

After the seeds are taken by the company person, when testing is passed after two months, the payment would be made in cheque through Shri Ramachandra Reddy.

Q26. At the time of growing seeds, do you get any money as loan or in any other form from the seed company or the organizer?

At the time of growing crop, we get' 20 to 30 thousand per acre in the form of advance from the company through the organizer. They charge interest @ 15% on the advance.

(Signatures of the officer and the deponent with date at the end of fifth page)

Q27. If you get money in the form of loan, do they charge any interest? If yes, how much interest would they charge and how do you repay the loan and interest?

On the money advanced by the company, they charge interest @ 15%. This interest is recovered from the payment for purchase of crop.

Q28. Do you want to say anything more?

I am a farmer. As I get more income by growing seeds, I take foundation seed from the company and resell the produce to the company only. As I get more income, all the difficulties and losses in growing the crop are borne by me only. Even if the crop is dry or wet, washed away, all the loss is borne by me only. The company does not bear any loss. If there is a way for the company to bear part of the loss, it would be better for the farmers.

(Signatures of the officer and the deponent with date)

All the assertions made by me above are stated without any inducement or threat or influence. "

12.3 From the perusal of above statement and remaining statements it is clear that the farmers have denied execution of any agreement for leasing their lands for seed cultivation and they also denied that the assessee company is farming seeds/modify genetical seeds on the farmers land. Further farmers had also denied that the agreements

bear their signatures. Further risk and rewards were of the farmers and not of the assessee.

Though the agreement confronted by the revenue pertains to the Kharif season of 2016-17, however it is undisputed that the assessee entered into similar agreement with the farmers, which was mentioned by the Assessing Officer in the order , however there was complete denial of giving the land on lease by the farmer to the assessee in the duly sworn statement recorded even for the years under consideration.

12.4 Thus, prima-facie, we are of the opinion that the assessee had made the lower authority to believe that the land was taken on lease by the assessee, however neither the lease of land was taken by the assessee nor the crops were cultivated by the assessee nor any permission was taken from the competent authority before taking the land on lease as per applicable law.

12.5 On going through these statements of the farmers, organisers, etc, we are of the opinion, that the assessee was not into agricultural activities and was into development and improvements of the seeds only, meaning thereby that the assessee is into research and development activities. Statements recorded by the revenue after search action goes to prove that the assessee was not into agricultural activities and, therefore, exemption u/s 10(1) is not available to the assessee. We are of the opinion that these facts were only surfaced after the search was carried out in the premises of the assessee and the statements recorded by the officials for various years including the AY under consideration.

12.6 With respect to scope and ambit of Rule 29 of ITAT Rules, it is fairly settled by the decision of the Hon'ble Delhi High Court in the case of The Commissioner Of ... vs Text Hundred India Pvt. Ltd. on 14 January, 2011 vide ITA Nos. ITA Nos.2077, 2061 and 2065/2010 that tribunal is obliged to admit the documents/ evidence even at the appellate stage on the application of the revenue. Hon'ble Delhi High Court has held as under:

> *"13. The aforesaid case law clearly lays down a neat principle of law that discretion lies with the Tribunal to admit additional evidence in the interest of justice once the Tribunal affirms the opinion that doing so would be necessary for proper adjudication of the matter. This can be done even when application is filed by one of the parties to the appeal and it need not to be a suo motto action of the Tribunal. The aforesaid rule is made enabling the Tribunal to admit the additional evidence in its discretion if the Tribunal holds the view that such additional evidence would be necessary to do substantial justice in the matter. It is well settled that the procedure is handmade of justice and justice should not be allowed to be choked only because of some inadvertent error or omission on the part of one of the parties to lead evidence at the appropriate stage. Once it is found that the party intending to lead evidence before the Tribunal for the first time was prevented by sufficient cause to lead such an evidence and that this evidence would have material bearing on the issue which needs to be decided by the Tribunal and ends of justice demand admission of such an evidence, the Tribunal can pass an order to that effect.*
>
> *14. The next question which arises for consideration is as to whether the exercise of discretion in the instant case permitting the additional evidence by the Tribunal, is apposite? It is undisputed that Rule 29 of the Rules is akin to Order 41 Rule 27(1) of the Code of Civil Procedure. The true test in this behalf, as laid down by the Courts, is whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. The legitimate occasion, therefore, for exercise of discretion under this rule is not before the Appellate Court hears and examines the case before it, but arises when on examining the evidence as it stands, some inherent lacuna or defect becomes apparent to the Appellate Court coming in its way to pronounce judgment, the expression „to enable it to pronounce judgment" can be invoked. Reference is not to pronounce any judgment or judgment in a particular way, but is to pronounce its judgment satisfactory to the mind of Court delivering it. The provision does not apply where with existing evidence on record the Appellate Court can pronounce a satisfactory judgment. It is also apparent that the requirement of the Court to enable it to pronounce judgment cannot refer to pronouncement of judgment in one way or the other but is only to the extent*

whether satisfactory pronouncement of judgment on the basis of material on record is possible. In Arjan Singh v. Kartar Singh, AIR 1951 SC 193, while interpreting the provisions of Order 41 Rule 27, the court remarked as follows:-

"The legitimate occasion for the application of Order 41, rule 27 is when on examining the evidence as it stands, some inherent lacuna or defect becomes apparent, not where a discovery is made, outside the court of fresh evidence and the application is made to impart it. The true test, therefore, is whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced."

[See also Netha Singh Vs. Financial Commissioner, AIR 1976 SC 1053]

15. In the present case the reason which was given by the assessee in support of its plea for admission of additional evidence was that the assessee could not produce these records before the lower authorities due to non- retrievability of e-mail on the date because of technological difficulties. This reason was specifically mentioned in the application filed. No reply to this application was filed refuting this averment, though the departmental representative had opposed the admission of the additional evidence. The ground pleaded by the assessee was not confronted. In this backdrop, the Tribunal looked into the entire matter and arrived at a conclusion that the additional evidence was necessary for deciding the issue at hand. It is, thus, clear that the Tribunal found the requirement of the said evidence for proper adjudication of the matter and in the interest of substantial cause. Rule 29 of the Income Tax (Appellate Tribunal) Rules categorically permits the Tribunal to allow such documents to be produced for any substantial cause. Once the Tribunal has predicated its decision on that basis, we do not find any reason to interfere with the same. As a result, the questions of law are answered in favour of the assessee and against the Revenue resulting into dismissal of these appeals. No costs."

12.7 Even otherwise, from the bare perusal of Rule 29 of ITAT Rules, it is abundantly clear that it gives discretion to the Bench for admitting additional evidence or documents if filled by the parties (including the revenue). Further Tribunal is the final fact-finding authority under the Income tax Act , therefore it is required to maintain equilibrium and neutrality for the both i.e assessee as well revenue . Hence it cannot be held that only the assessee would have right to file the additional evidence and the same right is not available to the revenue. The Tribunal is meant to

impart justice to both the parties, and in deserving cases the additional documents may be admitted in the interest of justice and to find out the correct facts .

There is one more important aspect of the argument of the assessee that the statements recorded by the revenue authorities either of the farmers or organizers are not incriminating in nature and, therefore, cannot be relied upon. This contention of the AR is incorrect, as in the statement there is denial of lease agreement etc by the farmers, hence in our considered opinion, what is the true colour and substance of the arrangement between the assessee and farmers/organizers is required to be examined by the lower authority. Further CIT(A) is having coterminous power as that of AO and it was incumbent upon him to go into root of the matter and find out true arrangement of the assessee with the farmers/organizers. We may like to refer to a decision of the Hon'ble Delhi High Court in the case of Commissioner of Income-tax- II v. Jansampark Advertising & Marketing (P.) Ltd. [2015] 56 taxmann.com 286 (Delhi) wherein it was held that the CIT(A) is duty bound to examine the authorities/officers/farmers/organizers, if the AO is failed to examine them. The relevant paragraph of the said decision is as under:

> *"42. The AO here may have failed to discharge his obligation to conduct a proper inquiry to take the matter to logical conclusion. But CIT (Appeals), having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and deleting the additions made. It was also the obligation of the first appellate authority, as indeed of ITAT, to have ensured that effective inquiry was carried out, particularly in the face of the allegations of the Revenue that the account statements reveal a uniform pattern of cash deposits of equal amounts in the respective accounts preceding the transactions in question. This necessitated a detailed scrutiny of the material submitted by the assessee in response to the notice under Section 148 issued by the AO, as also the material submitted at the stage of appeals, if deemed proper by way of making or causing to be made a "further inquiry" in*

exercise of the power under Section 250(4). This approach not having been adopted, the impugned order of ITAT, and consequently that of CIT (Appeals), cannot be approved or upheld."

12.8 In fact the above said judgment was confronted to the parties during the course of hearing, however, no response came forthwith from the ld. AR. In fact the lower authorities have failed to examine the farmers during the assessment proceedings and thereafter and have not brought on record correct facts. Now since the statements of farmers are available on record which prima facie belies the case of the assessee, therefore these statements along with other documents are required to be confronted to the assessee by the assessing officer in accordance with law so as to find out the real substance and nature of transaction between the assessee and the farmers. In the light of the above discussion, in our considered opinion, the additional evidences/documents filed by the revenue are required to be admitted.

12.9 Another argument raised by the ld. AR of the assessee , was with regard to opposing the admission of the additional evidences/documents that the Hon'ble Telangana High Court has already seized with the matter in the writ petition cited supra wherein various reliefs were sought by the assessee by passing an interim order. In our humble understanding of the proceedings, the interim order passed by the High court had not precluded the revenue from relying upon the said documents during any incidental or other proceedings like one before us. The said documents, in any case, go to the root of the matter and on examination will demonstrate whether the activity of the assessee

was agricultural in nature or not and further the income earned by the assessee from the said activities are exempt u/s 10(1) of the Act or not. These documents/ evidence , though came into existence after passing the assessment order on account of search, however these statements/ documents prima facie shows to us incorrect and contrary stand taken by the assessee for the purposes of availing the benefit before the AO . Law abhors the perpetuation of falsehood and commands us to examine the facts of the case either ourselves as per section 255 of the Act or to direct the lower authority to examine the facts of the case in accordance with law. Proving of agriculture activities by the assessee after taking the land on lease is sina-qua-non for claiming the benefit under section 10A of the Act. Statements of farmers prima face shows otherwise. In our considered view, the Tribunal cannot close its eyes and [as1]oblivious to the above said clinching evidences/ stand of the farmers, now collected by the revenue. If the Tribunal chooses to ignore the above said facts despite those documents produced before the Tribunal, the Tribunal would not be discharged its function within the four corners of the law. It is the settled position in law that the Tribunal is the final fact finding authority , having responsibility to decide the issue on the basis of the facts, documents and evidence conclusively . The powers of the Tribunal are akin to civil court, as per section 255(6) of the Act read with section 131 of the IT Act.

12.10 Moreover, there is no bar in law for the Tribunal to examine the documents/ statements came to it notice either itself or directing the lower authority to examine it. Further the

assessment or reassessment in respect of any of the assessment years pending on the date of initiation of the search u/s 153A shall abate, meaning thereby, the Act had only contemplated for abatement of the assessment or reassessment pending before the AO, however no such abetment took place for the pending appeals before the tribunal. In our view if the document/ statements recorded/ found during the course of search had a bearing on the outcome of the case, than those facts/ documents/ evidence can not be rejected merely on the ground that these were subject matter of proceedings under section 153A of the Act.

12.11 In fact, the Tribunal during the course of hearing had requested the ld. AR for the assessee to get a positive mandate in its favour from the Hon'ble High Court so that those documents submitted by the revenue need not be considered. However, no response was given by the ld. AR and as such the Tribunal is left with no other option but to examine the said documents and the application filed by the revenue to admit those additional evidence/documents and decide whether the documents are required to be admitted. As observed, the documents are the clinching evidence and goes to the root of the matter and the same are required to be examined after following the due process by the AO/CIT(A) and by the Tribunal.

12.12 Another argument raised by the ld. AR for the assessee is that, the revenue has no ground to file additional evidences/documents as the Tribunal in assessee's own case decided the issue in favour of the assessee in the previous years. In this regard, we are of the opinion that neither the Tribunal nor the

lower authorities were having a benefit of examining the documents now filed by the ld. DR for the revenue to find out the correct nature of the business and activities of the assessee whether agricultural in nature or not. These evidences / statements now filed by the revenue are essential to be considered for coming to the conclusion that whether the activities of the assessee are agricultural in nature and the income of the assessee is eligible claim deduction u/s 10(1) of the Act. There are change of facts , on account of additional evidences/ documents/ information have now been furnished by the revenue and, therefore, earlier order of the Tribunal cannot be relied upon by the assessee so as to urge that the case of the assessee is squarely covered by the Tribunal order passed in earlier AY in case of assessee. In our view any order passed by the tribunal on account of either concealment of facts or fraud can not be said to be binding on the coordinate bench. We may draw support from the Judgment of Hon,ble Supreme court in the case of **State Of U.P.& Ors vs Ravindra Kumar Sharma & Ors 4 SCC 491 , wherein it was held as under :-**

"6. In the facts of the instant case there was a serious complaint lodged by Viklang Sangh of illegal usurpation of the quota reserved for specially abled by large number of persons who were not in fact specially abled and have procured certificates fraudulently from their districts under the Rules of 1996. On the basis of the said complaint Government has issued an order for the purpose of verification of such certificates issued by the Medical Board and certificates of 21% of selected candidates of handicapped category were found to be fraudulent. It is settled proposition of law that fraud vitiates and in such a case when large number of candidates have illegally usurped the reserved seats of the persons suffering from disability the action of State Government did not call for interference.

7. In Bhaurao Dagdu Paralkar v. State of Maharashtra & Ors. (2005) 7 SCC 605, it was observed :

"16. In Lazarus Estates Ltd. v. Beasley (1956) 1 All ER 341, Lord Denning observed at QB pp. 712 and 713: (All ER p. 345 C) "No judgment of a court, no order of a minister,

can be allowed to stand if it has been obtained by fraud. Fraud unravels everything." In the same judgment Lord Parker, L.J. observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. (p.

722) These aspects were recently highlighted in State of A.P. v. T. Suryachandra Rao (2005) 6 SCC 149."

8. In Ram Chandra Singh v. Savitri Devi (2003) 8 SCC 319 it was held thus:

"15. x x x Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together.

16. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter.

17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.

x x x x x

23. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous.

x x x x x

25. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata.

26. In Shrisht Dhawan v. Shaw Bros. (1992) 1 SCC 534, it has been held that: (SCC p. 553, para 20) "20. Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct." x x x x x

29. In Chittaranjan Das v. Durgapore Project Ltd. (1995) 99 CWN 897, it has been held: (Cal LJ p. 402, paras 57-58) "57. Suppression of a material document which affects the condition of service of the petitioner, would amount to fraud in such matters. Even the principles of natural justice are not required to be complied with in such a situation.

58. It is now well known that a fraud vitiates all solemn acts. Thus, even if the date of birth of the petitioner had been recorded in the service returns on the basis of the certificate produced by the petitioner, the same is not sacrosanct nor the respondent company would be bound thereby."

9. This Court in Express Newspapers (P) Ltd.& Ors. v. Union of India & Ors. (1986) 1 SCC 133 at para 119 has held thus:

"119. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in S. Partap Singh v. State of Punjab AIR 1964 SC 72. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an 'alien' purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in General Assembly of Free Church of Scotland v. Overtoun (1904) AC 515, 'that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred'. It was said by Warrington, C.J. in Short v. Poole Corpn. (1926) Ch 66, that:

'No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative.'"

13. Considering the totality of the facts and circumstances of the case, we are of the considered opinion that the additional evidences filed by the revenue are required to be admitted and we admit the same. Having admitted the said documents, the matter is restored to the file of the AO with the following directions:

1) The AO shall examine the case of the assessee de-novo in the light of these documents/ statements and any other documents , record etc and thereafter record a categorical

finding whether the nature of the activities of the assessee are agricultural in nature and whether the assessee is entitled to claim deduction u/s 10(1A) of the Act or not .

2) The AO may exercise his power as conferred under the IT Act for examining and enforcing attendance of any person whether farmers, organizers or the officials of the company for the purpose of recording statements, etc.

3) The AO while deciding the issue shall follow principles of natural justice and afford opportunity of hearing to the assessee in accordance with law and permit the assessee to file any document or evidence to prove its case

14. In the light of the above, the grounds raised by the revenue against the action of the CIT(A) in deleting the disallowance of exemption claimed by the assessee u/s 10(1) of the Act are treated as allowed for statistical purposes.

15. As regards the issue raised by the assessee in its appeals pertaining to disallowance u/s 14A of the Act, the AO observed that the assessee company had shown an amount of Rs. 182.81 crores towards investment in equity shares of its subsidiaries and associate companies as against Rs. 113.83 crores of last year. The assessee company had earned dividend income of Rs. 24,90,84,000/- and claimed the same as exempt. Further, he observed that the assessee company incurred net interest

expenditure of Rs. 5,97,56,141/-. The AO asked the assessee company to furnish the details of expenditure incurred in relation to the above investments. In this regard, the submission of the assessee company had been considered. From the submissions of the assessee company, the AO noticed that the interest bearing borrowed funds had been invested in the exempt income generating investments. Therefore, not satisfied with the explanation of the assessee company that no expenditure has incurred towards these exempt incomes, the AO disallowed an amount of Rs. 1,48,39,684 u/s 14A rwr 8D and added the same to the income returned, which was confirmed by the CIT(A).

16. The Learned AR drew the attention of the Bench at page 76 of the PB and submitted that Rs.10 crore attributable to interest from other source which has been accepted by the A.O. but still entire interest is taken for the purpose of disallowance. He further drew the attention of the Bench at page-362 of the PB and submitted that agricultural income [4th item] finance expenses [2nd item] are included expenses relatable to agriculture at Rs..3 crore and Rs.9.7 crore as exempt income, therefore, not claimed as deduction and if both these are excluded there is no interest.

17. Lastly the Learned AR drew the attention of the Bench with respect to investments i.e., share capital and reserves are at Rs.373 crores at page-7 of the PB and investments at Rs.182 crores. He submitted that there are sufficient funds available on hand and prayed that a direction may be given to avail only dividend bearing investments taken.

18. The Learned CIT-DR, on the other hand, drew the attention of the Bench the fund flow statement of the assessee. He further submitted that the new Finance Act, 2022 has made various changes in the application of section 14A and rules framed thereafter for the purpose of computing disallowance u/s 14A. Further, it is submitted that irrespective of year of assessment and decision of the Hon'ble Supreme court shall not be beneficial to the assessee. He submitted that determination of the issue whether the assessee is having exempt income, from agricultural or not, will have a bearing on the outcome of the second issue namely the application of section 14A or not. He, therefore, submitted that this issue may be remitted to the file of the AO for fresh adjudication.

19. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. As submitted by the ld. DR that whether the nature of the business of the assessee is agricultural or not to be decided by the AO and, therefore, the outcome of the result will have bearing on the application of section 14A. Therefore, we remit the issue to the file of the AO with a direction to compute the disallowance u/s 14A based on the outcome of the nature of the business of the assessee. Thus, the ground raised by the assessee is treated as allowed for statistical purposes.

20. In the result, all the appeals under consideration are treated as allowed for statistical purposes in above terms.

Pronounced in the open court on 31st May, 2022.

Sd/-	**Sd/-**
(R.K. PANDA)	**(LALIET KUMAR)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Hyderabad, Dated: 31st May, 2022.

kv

Copy to :

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3	*CIT(A) - 4, Hyderabad.*
4	*Pr. CIT – 4, Hyderabad.*
5	*ITAT, DR, Hyderabad.*
6	*Guard File.*