

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T. VARKERY, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.: **969 & 970/Chny/2022**

निर्धारण वर्ष / Assessment Years: 2017-18 & 2018-19

Deputy Commissioner of
Income Tax,
Corporate Circle -1(1),
Chennai – 600 034.

M/s. British Agro Products
v. (India) Pvt. Ltd.,
No. 9, State Bank Officers
Colony, Shastri Nagar,
Adyar, Chennai – 600 020.

[PAN: AAFCB-8238-H]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. M. Rajan, CIT

प्रत्यर्थी की ओर से/Respondent by

: Shri. Y. Sridhar, FCA

सुनवाई की तारीख/Date of Hearing

: 21.03.2023

घोषणा की तारीख/Date of Pronouncement

: 05.04.2023

आदेश / O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

These appeals filed by the Revenue are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, both dated 12.09.2022 and pertains to assessment years 2017-18 & 2018-19. Since, facts are identical and issues are common, for the sake of convenience these appeals are heard together and are being disposed off, by this consolidated order.

2. The Revenue has more or less raised common grounds of appeal for both assessment years. Therefore, for the sake of brevity, grounds of appeal filed for assessment year 2017-18 are reproduced as under:

"1. The order of the CIT(A) is contrary to law, facts and circumstances of the case.

2. The learned CIT(A) erred in by considering the income from production and sale of mushrooms as 'agricultural income' overlooking the definition of agricultural income u/s 2(1A) of the Income Tax Act, 1961.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored."

3. The brief facts of the case are that, the assessee is a company, filed its return of income for the assessment year 2017-18 on 05.11.2017, declaring a total income of Rs. 6,76,24,270/-and said return has been revised on 31.10.2018, declaring total income of Rs. Nil. In the revised return, the assessee has declared agricultural income and claimed the said income as exempt from tax. The case was selected for scrutiny and during the course of assessment proceedings, the AO noticed that the assessee has declared agricultural income

from sale of white button mushrooms. Therefore, called upon the assessee to explain as to why income generated from sale of white button mushrooms cannot be treated as income from business. In response, the assessee submitted that cultivation of white button mushrooms is an agricultural activity and consequently any income derived from sale of said agricultural produce is exempt from tax. The assessee had filed a detailed written submissions on the issue and explained the process of cultivation of white button mushrooms and also filed certain evidences to prove that mushroom cultivation is an agricultural activity.

4. The AO, however was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, the assessee is engaged in the business of trading in white button mushrooms as an systematic business activity, which is evident from various process of manufacturing employed by the assessee in its facility at Puludivakkam, where the assessee is carrying out production of white button mushrooms in a temperature controlled facility. The AO, further noted that the assessee has employed various fixed

assets like plant and machinery and other packing material and from the above, it is very clear that the activity carried out by the assessee is in the nature of manufacturing of product, but not carrying out agricultural operations as defined under the Act and thus, rejected arguments of the assessee and treated income derived from production and sale of white button mushrooms as income from business assessable under the head profit and gains of business and profession. The relevant findings of the AO are as under:

5. The averments of the assessee is not accepted on account of the following: i) It is seen from the foregoing discussions the assessee is relying on the decision of the Hon'ble ITAT Hyderabad Bench in the case of DCIT V Inventaa Industries Pvt Ltd. It is pertinent to note here that the case has not reached its finality since the department has filed further appeal before the Hon'ble High Court of Andhra Pradesh which is pending. i) Even the assessee company originally filed return declaring the income as business income and later on as an afterthought claimed as exempt of income on account of agricultural activity. So far assessee was declaring taxable income in its ROI consistently for earlier years.

ii) The views of various Government and financial institutions should not influence interpretation of the statute and the same should be interpreted based on the language used in the statute and not based on the views of other institutions. It is also to be noted that the classification adopted by central government for GST purposes does not necessarily apply for income tax purposes as the governing ACTS are different. Now edible button mushroom is neither a plant nor a fruit or vegetable but a fungus in its strict sense of scientific classification. Further as per GST prawns are also classified as agricultural produce and exempt from GST but income derived from it is not agricultural income as per IT ACT and not exempt from taxation.

iv) As per section 80JJA of Income tax Act which was included in Finance act 1979, it is Stated that under section 10(1), agricultural income is exempt from income-tax. For this purpose "agricultural income" includes any income derived from land situated in mra and used for agricultural purposes. Mushrooms are generally grown in a closed chamber and not necessarily in an open field. Its raw material is a composite made of Wheat straw, poultry manure, calcium carbonate, gypsum and other fertilizers. Dimerent layers of artificial soil are prepared in wooden trays and temperature is Controlled to a specific degree by closing the inlets and outlets of air to provide the necessary humidity for cultivation of mushrooms. The processs is known as "mushrooms growing under controlled conditions". Income derived from a business of growing mushrooms under controlled conditions cannot be regarded as agricultural income and is, therefore, chargeable to income-tax. With a view to encouraging cultivation of mushrooms under controlled conditions, the Finance Act, 1979 has inserted a new section 80JJA in order to provide that in computing the total income of a tax payer deriving profits and gains from the business of growing mushrooms under controlled conditions a deduction will be allowed in an amount equal to one-third of such profits and gains, or Rs. 10,000, whichever is less. However section 80JJA of Income tax Act is omitted by the Finance Act 1983, the condition on which deduction had been denied is still prevailing and relevant to the facts of the case.

V) However assessee has claimed vide letter filed on 23.12.2019 that the company is dealing in button mushroom only and all sale proceeds pertains to it. But product listina in its own website and in Indiamart digital marketing website reveals that the assessee is dealing in trading of Paneer, Corn, Fresh fruits, Vegetable, Dry fruit also. Relevant screen shots are placed below.

From the above it is clear that the assessee is engaged in trading of not only White Button Mushrooms but also in trading of dairy products, fruits and vegetables as packaged, sealed and branded items also like 'Panneer in the name of Dr. Akilan's British Panneer.

vi) The assessee has obtained loan from Karur Vysya Bank and in the Loan application before Karur Vysya Bank dated 27.07.2016, assessee has mentioned that it

is under manufacturing industry having a factory in Puludivakkam. Relevant pages of the scanned loan application is reproduced below-

From the above it is clear that the assessee is engaged in manufacturing operation which is quite evident from Assessee's fixed asset schedule, where Plant and machinery makes around 50% of total fixed asset.

Vii) Purchase of raw packing material, significant expense towards advertisement for promoting the brand, professional and managerial expenses, interest expense on working capital requirement, management of large amount outstanding with respect to creditors and debtors, packaging and Selling product directly to secondary market/ Traders, Branding and trade Marking on own packaged and canned product - all this facts suggest that the operation of the assessee is non-agricultural in nature.

ix) Reliance is also placed on the case of **Chander Mohan vs. ITO** in ITA No. 377 & 389 (Chd.) of 2012, where the Hon'ble Chandigarh Tribunal on 28.10.2014 has decided that -

Assessee claimed growing of mushroom as agricultural income - It was observed that there was no land on which tilling operations etc., was carried out, and same was basic operation for carrying out agricultural activities - mushrooms were grown under controlled conditions - since assessee had failed to explain basic agricultural operations carried out in mushroom production, income from growing of said mushroom to be treated as non-agricultural income.

Now some land mark judgement on Agricultural income is given below **CITv.Raja Benoy Kumar Sahas Roy [1957] 32 ITR 466 (SC)**

'Agriculture' in its primary sense denotes the cultivation of the field and is restricted to cultivation of the land in the strict sense of the term, meaning thereby tilling of the land, sowing of the seeds, planting and similar operations on the land. These are basic operations and require the expenditure of human skill and labour upon the land itself. Operations which the agriculturist has to resort to and which are absolutely necessary for the purpose of effectively raising produce from the land, e.g., weeding, digging the soil around the growth, removal of undesirable undergrowth, and all operations which foster the growth and preservation of the same and save it not

only from insects and pests but also from depredation from outside, tending, pruning, cutting, harvesting and rendering the produce fit for the market, would all be agricultural operations when taken in conjunction with the basic operations. The human labour and skill spent in the performance of these subsequent operations cannot be said to have been spent the land itself. The mere performance of these subsequent operations cannot be said to have been spent on the land, where such products have not been raised on the land by the performance of the basic operations, would not be -enough to characterise them as agricultural operations.

Agriculture comprises within its scope the basic as well as the subsequent operations described above regardless of the nature of the products raised on the land. These products may be grain or vegetables or fruits.

♦♦

Smt. Manyam Meenakshamma vs. CWT [1967] 63 ITR 534 (AP)/Syed Rafiqur Rahmanv. CWT [1970] 75 ITR 318 (Pat.)

The word 'agriculture' means the performance of operations like tilling of the land, sowing of the seeds or planting in order to raise products of some utility. The nature of the products raised on the land is immaterial. The word 'agricultural' means 'of or pertaining to agriculture; connected with husbandry or tillage of the ground'.

♦♦

CITv. Green Gold Tree Farmers (P.) Ltd. 2007 Tax LR 609 (Uttaranchal)

The terms 'agriculture' and 'agricultural purposes' not having been defined in the Indian Income-tax Act, one necessarily has to fall back upon the general sense in which they have been understood in common parlance. 'Agriculture' in its root sense, means a gear, a field and cultivation of field which of course implies expenditure of human skill and labour upon land.

By applying the above rationale in this instant case- since edible button mushroom is neither a plant nor a fruit or vegetable but a fungus in its strict sense of scientific classification and also in the process of growing it in trays makes the use of field, tillage of land operation non-existent and artificial environment conditioning has been used for production and quality control, the entire operation is far from

the definition of agricultural income u/s 2(1A) but closely associated with production and manufacturing.

*Reliance is placed on the ITAT Bangalore decision in the case of **M/s Blue mount food Products Limited vs. ITO** in ITA No. 1128 (BANG.) OF 1983 dated 06.05.1985 where it has been held that-*

GROWING MUSHROOMS UNDER CONTROLLED CONDITIONS COULD BE TREATED AS A BUSINESS ACTIVITY AND SHED USED FOR GROWING THEM AS FACTORY BUILDING SO AS TO ENTITLE ASSESSEE TO CLAIM DEPRECIATION AT 15 PER CENT

*In view of the detailed foregoing discussions it is construed that the income claimed as agricultural income is factually wrong as assessee. is engaged in trading of multiple products including mushroom manufactured by it. Hence the income of **Rs. 6,76,24,270/-** is brought to tax as Profits and gains of business and assessed as such.*

Addition: Rs. 6,76,24,270/-"

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A),NFAC.Before the CIT(A), the assessee has filed a detailed written submission on the issue along with certain judicial precedence which has been reproduced at Para 5.2 of Pages 9to 45 of Ld.CIT(A) order. The sum and substances of arguments of the assessee before the Id. CIT(A) are that, white button mushroom is cultivated by carrying out basic and subsequent operations of agriculture as defined u/s. 2(1A) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), which includes preparation of soil for the purpose of growing mushrooms, seeds cultured from

spawn from matured mushrooms and other operations. The assessee has explained the process of cultivation of white button mushrooms and also justified the activity as an agricultural activity in light of Hon'ble Finance Minister's speech in the Parliament while introducing explanation (3) to section 2(1A) of the IT Act, and claimed that income generated from production and sale of mushrooms is an agricultural income, which is exempt from tax.

6. The Ld. CIT(A), after considering relevant submissions of the assessee and also by following the decision of ITAT, Special Bench in the case of DCIT vs M/s. Inventaa Industries Pvt Ltd [2018] 65 ITR 625 (Hyd), held that income generated from production and sale of white button mushrooms is agricultural activity and income is exempt from tax. The Ld. CIT(A) has discussed the issue at length in light of various judicial precedences and also distinguished the decision relied upon by the Assessing Officer in the case of Blue Mountain Food Products Ltd vs ITO in ITA No. 1128/(Bang)/1983, and held that the term agriculture cannot be confined merely to the production of grain and food products for human beings

and beasts, but, must be understood as comprising all the products of land which have some utility either for consumption or for trade and commerce and would also include forest products such as timber etc. Since, cultivation of white button mushrooms is in the nature of agricultural activity and any income derived from said activity is agricultural income which is exempt from tax. The relevant findings of the CIT(A) are as under:

"5.22 I have perused the above observations of the A.O. The observation of the assessing officer is very general in nature and has been made without any analysis of the books of accounts of the appellant. Neither the books of account has been rejected nor any substantial evidence has been brought on record which indicated any adverse finding in the books of account of the appellant. The assessing officer has brought nothing on record to suggest that the investment made in the plant and machinery has not been put to use in the cultivation of mushrooms and the depreciation claimed by the appellant is on some other activity. There is nothing on record to establish that the plant and machinery to the extent of 50% of the total fixed assets has not been used for the business of the appellant or has been used for some other businesses of the appellant company.

5.23 Same applies to the observation of the AO in regard to the expenses claimed by the appellant company on account of Purchase of raw packing material, expense towards advertisement for promoting the brand, professional and managerial expenses, interest expense on working capital requirement, et cetera and the mentioning of the activity of the assessee as manufacturing in the loan paper of Karura Vysya Bank. In absence of any analysis/inquiries/investigations and to bring sufficient proof on record to rebut the claim of the assessee in regard to nature of the activity carried out by the appellant company, i.e the turnover achieved from sale of

white button mushrooms or the trading activity, no such general observations of the assessing officer is of any help to make an opinion that the activity of the assessee/ company is manufacturing and non-agriculture in nature.

5.24 *As far as the reliance on the various judgements of the appellant it is found that in the case of Inventaa (supra), the Ld ITAT has considered the cases of CITv. RajaBenoy Kumar Sahas Roy[1957] 32 ITR 466 (SC) and Chander Mohan vs. ITO in ITA No. 377 & 389 (Chd.) of 2012. For the sake of brevity the judgement is not reproduced again here. The judgement is appearing above at Para 5.7 of the order.*

5.25 *The AO has also relied upon **Smt. Manyam Meenakshamma** Vs Commissioner of Wealth Tax reported in 63 ITR 534. I have gone through the decision. The question in this case was framed to decide "Whether the forest lands, trees in which are of spontaneous growth, constitute agricultural lands within the meaning of Section 2(e)(i) of the Wealth Tax Act and liable to exemption?"*

5.26 *It was argued by the appellant's counsel that the forest lands are capable of being used for agricultural purposes and therefore constitute agricultural lands. The Court observed that "This leads us to a consideration of the meaning of the expression "agricultural lands" in section 2(e) (i) of the Act"*

5.27 *The relevant part of the decision was as under:*

"(10) In our opinion, "agricultural land" means land ordinarily used for the purpose of agriculture or for purposes subservient to or allied to agriculture.

(11) SirI. Vishnu Rao strongly relies on certain observations of the Federal Court in Megh Raj v. Allah Rakhia, AIR 1942 FC 27 and of the Madras High Court in Sarojini Devi v. Sri Krishna, AIR 1944 Mad 401. In AIR 1942 FC 27, after referring to the conflict of authorities as to the connotation of "agriculture" Varadachariar, J. said:-

"It may on a proper occasion be necessary to consider whether for the purposes of the relevant entries in Lists 2 and 3, Constitution Act, it will not be right to take into account the general character of the land (as agricultural land) and not the

use to which it may be put at a particular point of time. It is difficult to impute to Parliament the intention that a piece of land should, so long as it is used to produce certain things, be governed by and descend according to laws framed under List 2, but that when the same parcel of land is used to produce something else (as often happens in this country), it should be governed by and descend according to laws framed under List 3".

(12) Similarly, in AIR 1944 Mad 401, Patanjali Sastri, J., stated:-

".....it would be somewhat grotesque to suppose that Parliament intended that lands devoted to the production of one kind of crop should devolve according to laws passed by Provincial Legislatures, while those used for growing another kind should pass according to laws made by the Central Legislature, or that the circumstances in which the cultivation is carried/on' (per/Reilly J. in 'Chandrasekara Bharati Swamigal v. Duraiswami Naidu, ILR 54Mad 900(AIR 1931 Mad 659)) should determine the law which governs the devolution of the land. Nor could it have been intended that succession to such lands should depend on the degree of tillage or preparation of the soil or off skill and labour expended in rearing and maintaining the plants. We are of opinion that for the purposes of the relevant entries in Lists II and III of Sch. 7, the expression "agricultural lands must be taken to include the lands which are used or are capable of being used for raising any valuable plants or trees or for any other purposes of husbandry."

(13) Both the learned Judges had in mind the meaning given to the word "agriculture" based on the nature of the products raised on the land. This consideration, however, arises no longer in view of the pronouncement of the Supreme Court in . The general character of a land, if it is to be considered independently of its connection with agriculture, would give little content to the adjective "agricultural" in the expression "agricultural land". If the capacity for being used for agriculture is a criterion, as observed by Bhagwati J., in Rasiklal Chiman Lal v. Commissioner of Wealth Tax, 1965-1 ITJ 82: (AIR 1965 Guj 259) even building sites lying idle would be agricultural lands "since it would always be possible to say of them that they are capable of being used for agricultural purpose." We

are inclined to agree with the observation of Hedge and Ahmad Ali Khan, JJ. in *Krishna Rao v. Third WT. Officer*, AIR 1963 Mys 111, that the present characteristics and not the potentialities of a land are the proper criterion. If a land is originally used for purposes of agriculture or for purposes subservient to or allied to agriculture, it would be agricultural land. If it is not so used, it would not be agricultural land. The question how a land is ordinarily used would be one of fact depending on the evidence in each case. If for instance, an agricultural land as we have interpreted above, is left fallow in a particular year owing to adverse seasonal conditions or to some other special reason, it would not cease to be agricultural land.

(14) The Tribunal has observed in paragraph 8 of its statement of the case that the contention as to the forest lands in question being agricultural lands was put forward for the first time during the appeal to the Tribunal. This may not be correct because, as pointed out by Sri I. Vishnu Rao, even in her return dated 19-5-1958 the assessee stated referring to the forest "I claim it non-taxable as it is agricultural in nature." In its order of 1-1-1962, the Tribunal has stated that "admittedly no agricultural operations are being performed. on the forest lands. Sri I. Vishnu Rao denies that the assessee made any such admission. Be that as it may, we find nothing on the record to suggest that the forest lands were being ordinarily used either for the purpose of agriculture or for purposes subservient to or allied to agriculture by the valuation date. It follows that our answer to the first question must be in the negative."

5.28 So the case was decided for the question that whether the impugned Forest Land was agricultural Land or not. Entirely on a different issue and therefore has no relevance here.

5.29 AO has further relied on the case of **Syed rafquar Rahaman Vs CWT reported in 75 ITR 318 Patna**. I have perused the decision. In this the case, again in connection with the WT Act, it was held, on the facts of that case, that the land in question was not agricultural land. Again, this judgment is of no help to the AO because the facts were different.

5.30 AO has then relied upon on **CIT Vis Green Gold Tree Farmers (P) Ltd. 2007 Tax LR 609 (Uttaranchal)**. I have

perused the judgement. The question framed in this case to decide was:

"Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was legally justified in confirming the view of the Commissioner of Income-tax (Appeals) who held that the sale proceeds of the plants raised in the nursery on the land constituted the income from agriculture?"

5.31 Hon'ble High Court has rather decided the case in favour of the assessee as below:

13. The hon'ble Supreme Court in a case CIT V. Raja Benoy Kumar Sahas Roy, has held that the term 'agriculture' cannot be confined merely to the production of grain and food products for human beings and beasts but. must be understood as comprising all the products of the land which have some utility either for consumption or for trade and Commerce and would also include forest products such as timber, sal and piyasal trees, casuarina plantations, tendu leaves, horranuts, etc.

14. Therefore, on the facts of the case, as well as on the basis of the judicial pronouncements detailed above, we have no hesitation in holding that the sale proceeds of the land belonging to the assessee constitute income from agriculture, hence exempt from tax under the Income-tax Act We do not find any good ground to interfere with the findings recorded by the income-tax Appellate Tribunal. The question of law framed in this reference is answered against the Revenue Department and in favour of the assessee. The Income-tax reference is disposed of accordingly."

5.32 I have perused the judgement in the case of MIs Blue Mountain Food Products Limited Vs ITO in ITA No. 1128 (Bang), of 1983 on which the AO has relied upon further. The facts of the case was that the assessee is carrying on business of manufacture of canned products, fruits and mushrooms, etc. He claimed depreciation at 15 per cent on the shed in which mushrooms are grown. The ITO allowed depreciation at 7.5 per cent as applicable to third class building negating the assessee's claim that the shed as a factory building was entitled to depreciation at twice the normal rate.

5.33 Moreover, on perusal of the judgment it is found that the assessment year involved is 1980-81 when the provisions of Sec.80JJA were in existence. In view of the observation of the Spl Bench in the case of *Inventaa (supra)*, on the deleted provisions of section 80JJA, the said decision has no application to the facts of the present case.

5.34 On perusal of the decision in the case of *DCIT vs Inventaa (supra)* it is noted that the Hon'ble Bench has discussed several judgements of the Jurisdictional High Court of Madras while deciding the case. Two of such cases are *CITv. K.E. Sundara Mudaliar [1950] 18 ITR 259 (MAD.)* and *Commissioner of Income-tax v. Soundarya Nursery (2000) 241 TR 530 (Madras)*. Consideration of the above two cases of jurisdictional High Courts in length in the decision of *DCIT Vs Inventaa (supra)* becomes relevant in comparison to the decision of non jurisdictional High Courts and Tribunal on different facts.

5.35 In view of the above discussion and respectfully relying upon the decision of the Hon'ble Hyderabad Tribunal Special Bench in the case of *DCIT v. Inventaa Industries Private Limited (supra)*, it is held that the agricultural income of Rs.6,76,24,270/, arising from the sale of white button mushroom is 'agricultural income' and hence exempted u/s 10(1) of the Act.

5.36 AO is therefore, directed to delete the addition of Rs. 6,76,24,270 under the head business income. Consider the income of Rs. 6,76,24,270/ as 'agricultural income' and allow exemption u/s 10(1) of the Act on the same. Ground No. 1 to 8 are therefore ALLOWED."

7. The Ld. CIT-DR, Mr. M. Rajan, submitted that growing white button mushrooms cannot be treated as agricultural activity, because the assessee is growing white button mushrooms in a temperature controlled facility by employing

various plant and machinery and also availed huge loans from banks and financial institutions under the category industry and thus, said activity can only be considered as industrial, but not agricultural activity. The CIT-DR further submitted that, in order to treat any income as agricultural income, there should be a basic operation like tilling of the land, sowing of the seeds, planting and similar operations on the land by employing human skill and labour. In this case, the assessee is growing white button mushrooms in a tray kept in a temperature controlled room without carrying out any basic operation like tilling of soil, sowing of seeds, planting etc. Therefore, the AO has rightly held that production and sale of white button mushrooms is a business activity and income derived from said activity is assessable under the head income from business and profession.

8. The Id. Counsel for the assessee, supporting the order of the CIT(A) submitted that the assessee has carried out basic and subsequent agricultural operations and grown edible white button mushrooms and said activity is considered as an agricultural activity and income derived there from is exempt

from tax. The Ld. Counsel for the assessee, relying upon the decision of ITAT, Special Bench in the case of DCIT vs M/s. Inventaa Industries Pvt Ltd (supra), submitted that a similar issue had been considered by the Special Bench of Tribunal and after considering relevant facts held that growing white button mushrooms is an agricultural activity and income derived from said activity is agricultural income which is exempt from tax. The Id. Counsel for the assessee, further referring to various documents including reply received from Directorate of Mushroom Research, Solan ICAR and letter issued by Ministry of Agriculture and Co-operation, Ministry of Agriculture, Government of India submitted that all the authorities have treated mushroom cultivation as an agricultural activity. He further referring to RTI reply received from National Horticultural Board submitted that even National Horticultural Board recognized mushroom cultivation as agricultural activity. Further, Goods and Service Tax Act has classified mushroom as a vegetable for the purpose of human consumption. He further, submitted that Hon'ble Finance Minister while introducing explanation (3) to section 2(1A) of the Act, clarified that income arising from saplings and

seedlings grown in a nursery is also exempt from tax. From the above, it is very clear that in a modern day of developed agriculture, vertical form of farming in a green house or a temperature controlled facility can be considered as agricultural activity, in case such activity is involved in carrying out certain basic and subsequent operations of agriculture as defined under the Act. Since, the assessee is carrying out various basic operations and cultivates mushroom in a soil, said activity falls under the agricultural activity and income derived from said activity is only an agricultural income, which is exempt from tax. In this regard, he relied upon the decision of ITAT Special Bench in the case of DCIT vs M/s. Inventaa Industries Pvt Ltd (supra).

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee is engaged in the activity of cultivation of white button mushroom in a temperature controlled facility. The assessee has explained the process of cultivation of white button mushroom, which involves various processes in agricultural land right from preparation of soil by using clay, paddy straw, chicken manure etc. The soil so prepared is

loaded in big trays and these trays are placed vertically. Then, spawn (Seed) is cultured from matured mushroom and kept in soil prepared for this purpose. The process involves ruffling of soil, scratching the soil, leveling the soil, watering the soil, usage of fungicide/pesticide, usage of bactericide, weeding, disease control, pruning, de-clustering, removing the undesirable under growth, plucking and harvesting. Further, in the case of mushroom after it is harvested same is kept in cold storage before it is dispatched for sale, keeping in view the fact that it cannot survive for long time in the normal room temperature. From the activity carried out by the assessee, it is very clear that the assessee is carrying out certain basic operations, if not like tilling of soil, sowing of seeds and planting, but preparation of soil with various mixtures to make it ready for cultivation of mushroom. Therefore, it is necessary to understand the activity carried out by the assessee in light of the meaning of word Agriculture to ascertain whether said activity comes under agricultural activity and income derived from said activity is agricultural income or not.

10. The term agriculture and agricultural purpose has not been defined under the Act. Therefore, one must necessarily fall back upon the sense in which they are understood in common parlance. Agriculture in its root sense means employing human skill and labour upon land. The Hon'ble Supreme Court in the case of CIT vs RajaBenoy Kumar Sahas Roy [1957] 32 ITR 466 (SC), has explained the term 'Agriculture' and agricultural purpose, and as per the observations of the Hon'ble Supreme Court, in order to consider any activity as agricultural activity, some basic operations is essential which would involve expenditure of human skill and labour upon the land itself and not merely on the growth from the land. Some of the said operations are tilling of land, sowing of the seeds, planting and similar operations on the land. Besides the basic operations, there are certain subsequent operations which are performed after they produce sprouts from the land which includes weeding, digging the soil around the growth, removal of undesirable undergrowths and all operations which foster the growth and preserve the same not only from insects and pests but also from depredation from outside. Further, cultivation of the land

does not comprise merely raising the products on the land, in the normal sense of the term like tilling of the land, sowing of the seeds, planting and similar works done on the land which also includes a subsequent operation like weeding, digging etc. The Hon'ble Supreme Court, further observed that agriculture does not merely imply raising the food and grains for the consumption of men and animals, it includes a product from the performance of basic as well as subsequent operations on land. These products for instance may be grain, vegetable or fruits including plantation of groves etc. From the above observation of the Hon'ble Supreme Court, it is very clear that in order to consider any activity as agricultural activity there should be some basic and subsequent operations in the land for the purpose of raising grains or vegetables or fruits including plantation or groves. In this case, if you go through the basic and subsequent operations carried out for production and sale of white button mushroom, the assessee is carrying out exactly similar basic operations in land by digging out clay soil, it is a material of earth and mixed with Paddy straw, chicken manure etc. The soil so prepared is loaded in big trays and these trays are placed vertically and then spawn (Seed) is

cultured from matured mushroom. The assessee had also carried out subsequent operations like weeding of soil, usage of fungicide/pesticide, usage of bactericide, weeding, disease control, de-clustering, removing of undesirable under growth, plucking and harvesting. Thus, we are of the considered view that the operations which are undertaken for the production of mushroom is nothing but agricultural operations and income derived there from is agricultural income which is exempt from tax.

11. At this stage, it is necessary to understand the concept of historical agriculture and modern day agriculture. Historically agriculture operations are carried out in a land and cultivated various types of grains or vegetables or fruits etc. In modern day agriculture, very same agriculture operations are carried out in green house and other temperature controlled facility to grow various kinds of grains and vegetables to make it more profitable. Further, in a present day agricultural operations, most of grains, vegetables are grown in green house by using modern agricultural techniques which is called vertical agriculture. Merely, because the assessee has cultivated

agricultural produce in a green house or temperature controlled facility, it cannot be said that such activity is commercial activity, but not agricultural activity, for the purpose of taxation of income derived from such activity. Thus, when assessee carried out basic and subsequent operations involved in agricultural operations for cultivation of grains, vegetables and fruits, even if such activity is carried out in green house and temperature controlled facility, said activity can be considered as agricultural activity. In so far as, the observations of the AO with regard to various plants and machinery employed and financial assistance from banks, we find that even agricultural operations are carried out by employing various agricultural implements and machineries in a modern day and also financial assistance is taken from banks and financial institutions for the purpose of making agriculture a systematic activity and more profitable. Merely because the assessee has employed plant and machinery and borrowed loan from bank, it does not change the nature of activity carried out by the assessee and product grown therein. Therefore, we are of the considered view that observations of the AO in light of plant and machinery employed by the

assessee and bank loan facility to come to the conclusion that said activity is a business activity is devoid of merits.

12. Further, the Hon'ble Finance Minister has clarified while introducing explanation (3) to section 2(1A) of the Act, in light of certain divergent judicial precedence and clarified that even income derived from saplings or seedlings in a nursery is exempt from tax. Further, various Government authorities have clarified that cultivation of white button mushroom is an agricultural activity. The assessee has filed RTI reply received from Directorate of Mushroom Research, Solan, ICAR where the authority has clarified that cultivation of white button mushroom is an agricultural activity. Similarly a copy of letter issued by Department of Agriculture and Co-operation, Ministry of Agriculture, Government of India dated 12.09.1997 addressed to various state governments clarified that mushroom cultivation is an agricultural activity. The assessee has also filed RTI reply received from National Horticultural Board, where it has been clarified that cultivation of white button mushroom comes under agricultural activity. Ministry of Commerce and Industry, Government of India has also

classified mushroom as a vegetable for human consumption. Similarly Central Board of Indirect Taxed and Customs (CBIC), Ministry of Finance has also classified mushroom as a vegetable under GST laws. From the above, it is very clear that the Government of India and other institutions which govern production and sale of mushroom are considered mushroom cultivation as an agricultural activity. Therefore, we are of the considered view that cultivation of white button mushroom comes under the agricultural activity and income derived from said activity is an agricultural income which is exempt from tax.

13. At this stage, it is relevant to consider case laws relied upon by the assessee. The assessee has relied upon the ITAT, Special Bench decision in the case of DCIT vs M/s. Inventaa Industries Pvt Ltd (supra), where the Tribunal has considered an identical issue in light of activity carried out by the assessee for production and sale of white button mushroom, and after considering relevant facts held that, cultivation of white button mushroom is an agricultural activity and income derived from said activity is agricultural income which is

exempt from tax. The relevant findings of the Tribunal are as under:

"12. We have carefully considered the submissions of both the Ld. Counsels, the orders of the Ld.AO, as well as Ld.CIT(A), case law cited by both the parties and material placed before us, as well as before the Revenue authorities.

12.1. The process followed by the assessee for production of "Edible white button mushroom" is as follows:-

Stage-I Preparation of compost involves taking the ingredients such as Paddy Straw, Chicken manure, Gypsum and some Ammonia compound and adding sufficient water and mixing. Then, transferred to bunkers for further decomposition under aeration.

Stage-II After five days the compost is transferred from bunkers to tunnels for pasteurization and conditioning.

Stage-III. The above prepared compost is transferred to growing rooms with SPAWN (seed) and placed in the shelves. This layer will be of about 200 mm thickness. The SPAWN run (i.e., spreading of SPAWN) takes about 12 days to 20 days. This is done under controlled conditions in the growing rooms.

Stage-IV After the SPAWN Run, the beds are cased with casing soil of about 50 mm thickness. The casing soil is prepared by mixing Coir Pith, Ballclay with suitable other micro nutrients and SPAWN. Then Case Run is allowed for the SPAWN to spread. It may take 6-8 days. After this venting is done by giving Air, Temperature, CO₂ and moisture to SPAWN upon which it starts forming, Pins (primodia).

Stage- V After the Pins, the mushroom grows into Harvesting in 13-21 days. The Harvesting is done in 2-3 flushes (picking).

Stage- VI After the 2-3 flushes, the growing room is cooked out i.e., heated up to 65 C Degrees to kill the remaining mycelium, mushrooms pins and mushrooms. The racks and shelves are unloaded and kept cleaned for next loading. The One batch Cycle in growing rooms takes about 45-53 days.

12.2. On these facts and circumstances, the following issues arise for our consideration which would answer the question referred to us.

i. "Land" is immovable property. Soil is part of land. If "soil" is placed

in trays or pots and when operations are carried out on this "soil", which is detached from land, for production of mushroom, could such activity be termed as agricultural activity?

ii. Is mushrooms a "fungi" or "vegetable or plant"? Is the income derived from the production and sale of mushroom, agricultural income if the product is a 'fungi'?

iii. When agricultural production is done in "controlled conditions", does it cease to be agricultural operation resulting in the income derived therefrom not being agricultural income?

12.3. Before we go into these questions, we reproduce Section 2(1A) of the Act:

"(1A) 4]" agricultural income" means-

(a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes;

(b) any income derived from such land by-

(i) agriculture; or

(ii) the performance by a cultivator or receiver of rent- in- kind of any process ordinarily employed by a cultivator or receiver of rent- in- kind to render the produce raised or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent- in- kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub- clause;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent- in- kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub- clause (b) is carried on: 1 Provided that-

(i) the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent- in- kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out- building, and

(ii) the land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated-(A) in any area which is comprised within the jurisdiction of a

municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or

(B) in any area within such distance, not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item (A), as the Central Government may, having regard to the extent of, and scope for, urbanization of that area and other relevant considerations, specify in this behalf by notification 2 in the Official Gazette.] 3 Explanation.- For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of sub- clause (iii) of clause (14) of this section;]"

12.4. We now reproduce the relevant portions of the landmark judgment of the Hon'ble Supreme Court in the case of CIT Vs. Raja Benoy Kumar Sahas Roy (1957) [32 ITR 466] on agricultural issue.

"The primary sense in which the term agriculture is understood is agar—field and cultra—cultivation, i.e., the cultivation of the field, and if the term is understood only in that sense agriculture would be restricted only to cultivation of the land in the strict sense of the term meaning thereby, tilling of the land, sowing of the seeds, planting and similar operations on the land. They would be the basic operations and would require the expenditure of human skill and labour upon the land itself. There are however other operations which have got to be resorted to by the agriculturist and which are absolutely necessary for the purpose of effectively raising the produce from the land. They are operations to be performed after the produce sprouts from the land, i.e., weeding, digging the soil around the growth, removal of undesirable undergrowths and all operations which foster the growth and preserve the same not only from insects and pests but also from depredation from outside, tending, pruning, cutting, harvesting, and rendering the produce fit for the market. The latter would all be agricultural operations when taken in conjunction with the basic operations above described, and it would be futile to urge

that they are not. The term 'agriculture' is understood as comprising within its scope the basic as well as subsequent operations in the process of agriculture and the raising on the lands of products which have some utility either for consumption for trade and commerce, it will be seen that the term 'agriculture' receives a wider interpretation both in regard to its operations as well as the results of the same. Nevertheless there is present all throughout the basic idea that there must be at the bottom of its cultivation of land in the sense of tilling of the land, sowing of the seeds, planting, and similar work done on the land itself.(Emphasis ours)

12.5. This judgment makes it clear that the term 'agriculture' is "cultra" i.e. cultivation of the "agar" i.e. field/land. Agricultural activity requires expenditure of human skill and labour, upon the land itself and this should result in effectively raising a "product" from the land. The "product should have some utility either for consumption, for trade and commerce. The term "Agriculture" receives a wider interpretation both with regard to its "operations" as well as the "results" of such operation.

12.6. The horizon of interpreting the term 'agriculture' was given a more adaptive width by the High Court of Madras in CIT v. K.E. Sundara Mudaliar [1950] 18 ITR 259 (MAD.), wherein the court stated as under:

" In Panadai Pathan v. Ramasami Chetti [1922] ILR 45 Mad...Spencer. J., at page 713 stated his conclusion in these words: In my opinion agriculture connotes the raising of useful or valuable products which derive nutriment from the soil with the aid of human skill and labour;...Ramesam. J., at page 714 was against placing a narrower interpretation upon the word for he says: To give a narrower interpretation to the term and to confine it to the raising of products used as food for man and beast will exclude all cultivation of fibrous plants such as cotton, jut and linen and all plants used for dyeing purposes, such as indigo, etc., all timber trees, and flowering plants. I do not think this is the intention of the Act."

The concurrent view in this very judgment of Shri Vishwantha Sastri.J., is that "There being no definition of "agriculture" and agricultural purpose in the Act the words have to be construed and understood in their popular sense and according to their ordinary meaning.

It is a matter of ordinary experience at least in this part of the country that mango,coconut, palmyra, orange, jack, arecanut,

tamarind and other trees are planted usually in an enclosed land and that these trees do not yield any fruit or crop in the early years of their growth. They remain on the land for a long number of years yielding fruit only after their maturity. There is no reason why the planting rearing, watering, fencing and protection of such trees and the gathering of their fruits during the annual seasons should not be held to be agriculture". There is some kind of cultivation or prodding of the soil at the inception when the planting is done and subsequently also at intervals. In the case of coffee grown on hiss slopes, there is no ploughing or tillage as in the case of wet and dry fields, but it cannot be maintained that growing coffee is not an agricultural operation."

12.7. The Hon'ble High Court as far back as in the year 1950, held that operations on land does not necessarily mean ploughing, tillage and can be of some other kind also. The operation would depend on the requirements of the circumstances of the case. A wide meaning has been given to the term agricultural operation".

12.8. Though the Ld. Assessing Officer has held that the compost used for production of mushroom by the assessee is not "soil", the Ld. St. counsel, in reply to a specific query from the Bench, stated that this compost on which mushroom is grown is "soil".

12.9. Hence, the undisputed facts are that, mushrooms are grown on "soil". Certain basic operations are performed on such "soil" which require "expenditure of human skill and labour" on the soil resulting in raising a "product" called "Edible white button mushroom". The product "Edible white button mushroom" has utility for consumption, trade and commerce.

12.10. The Ld. Standing Counsel referred to the decision of the Hon'ble Madras High Court in the case of Union of India Vs. Krishna Murthy (supra) wherein at para 14, Mullah's commentary on Transfer of Property Act has been extracted along with definition of immovable property under "General clauses Act", and argued that land is immovable property and once soil is detached from land, it ceases to be land. Definitions as relied upon by the parties are extracted for ready reference:

"LAND

In the Black's Law Dictionary, free online legal dictionary, 2nd Edition, "land" is defined as:

In the most general sense, "comprehends any ground, soil or earth whatsoever; as meadows, pastures, woods, moors, waters, marshes, furzes and heath. Co.Litt 4a. The word "land" included not only the soil but everything attached to it, whether attached by the course of nature, as trees, herbage, and water, or by the hand of man, as buildings and fences. "land" is the solid material of the earth, whatever may be the ingredients which it is composed of whether soil, rock or other substance ."

'SOIL'

The word "soil" as per Random House Dictionary – The Unabridged Edition to include "any place or condition providing the opportunity for growth or development."

12.11. "Soil" is the thin skin that covers the land. "Soil" is material in the top layer of the surface of the earth on which plants can grow and is a non-renewable resource. It takes ages for rocks to wither into soil and rich organic matter to build up. Land is a part of the earth, while soil refers to one part of the land. Land, as commonly understood means, the surface of the earth not covered by a body of water. Thus, the term land includes soil. In the definition referred above, "land" is defined in an inclusive manner.

12.12. The Ld. Standing Counsel relied on the principles of "Noscitur A Sociis" for interpretation the word 'Land'. She also argued that contextually The Indian Income Tax treats land as real immovable property. The terms 'Noscitur a Sociis' is related to legal doctrine and statutory interpretation of laws. In Latin the term 'Noscitur a Sociis' means 'the meaning of a word may be known from accompanying words'. It is also used for interpreting questionable words in statutes. When a word is ambiguous, its meaning may be determined by reference to the rest of the statute. It is one of the rules of the language used by the courts that helps to interpret legislation. For the case with "noscitur a sociis" the questionable meaning of a word or doubtful words can be derived from its association with other words within the context of the phrase. This indicates that words in a list which is within a statute have meanings that are related to each other.

The principle of Noscitur a Sociis is a rule of construction. It is used by the court to interpret legislation. This means that the meaning of an unclear word or phrase must be determined by

the words that surround it. In other terms, the meaning of a word must be judged by the company that it keeps. The questionable meaning of a doubtful word will be derived from its association with other words. It is used wherever a statutory provision constitutes a word or phrase that is capable of bearing more than one meaning. This rule is explained in the Maxwell on the interpretation of statutes in the 12th edition in following words – When two or more words susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. The words take their color from and are quantified by each other, the meaning of the general words being restricted to a sense analogous to that of the less general. This principle needs a word or phrase or even a whole provision that stands alone has a clear meaning, will be given quite a different meaning while viewed in the light of its context.

12.13. No doubt the term 'land', as argued by the Ld. Sr. Standing Counsel, is generally understood as immovable property, under the Income Tax Act and under the T.P. Act. But in the case on hand, the context and purpose for which the term 'Land' has been used by the legislature has to be understood. Use of land and performing activity on land itself, is the requirement specified for a natural product that raises from land itself, to be an agricultural product, the income from which is exempt from tax. If the question to be answered is whether land is used for production or not, then in our view strict interpretation cannot be applied.

12.14. The term 'Land' in our view has to be interpreted by using the principles of 'Purposive Interpretation'. The purposive approach (sometimes referred to as purposivism, purposive construction, purposive interpretation, or the modern principle in construction) is an approach to statutory and constitutional interpretation under which common law courts interpret an enactment (a statute, part of a statute, or a clause of a constitution) within the context of the law's purpose. Purposive interpretation is a derivation of mischief rule set in Heydon's Case, and intended to replace the mischief rule, the plain meaning rule and the golden rule. Purposive interpretation is used when the courts use extraneous materials from the pre-enactment phase of legislation, including early drafts, Hansard's committee reports, and white papers. The purposive interpretation involves a rejection of the exclusionary rule.

Supreme Court in *Tirath Singh v. Bachittar Singh* approved and adopted the said approach. In *Shamrao V. Parulekar v. District Magistrate, Thana, Bombay* the Court reiterated the principle from Maxwell:

"If one construction will lead to an absurdity while another will give effect to what commonsense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the Courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided."

In *Molar Mal v. Kay Iron Works (P) Ltd*, the Hon'ble Supreme Court while reiterating that courts will have to follow the rule of literal construction, which enjoins the court to take the words as used by the Legislature and to give it the meaning which naturally implies, held that there is an exception to that rule. The Court observed:

"That exception comes into play when application of literal construction of the words in the statute leads to absurdity, inconsistency or when it is shown that the legal context in which the words are used or by reading the statute as a whole, it requires a different meaning."

In *Mangin v. Inland Revenue Commission* the Privy Council held:

"The object of the construction of a statute, be it to ascertain the will of the legislature, it may be presumed that neither injustice nor absurdity was intended. If, therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted".

12.15. 'Soil' is a part of the land. Land is also part of earth. The upper strata of the land is soil and this is cultured and made fit for production of crops, vegetables and fruits etc., by enriching the soil. When such soil is placed on trays, it does not cease to be land and when operations are carried out on this "soil", it would be agricultural activity carried upon land itself.

12.16. If the strict interpretation, as argued by the Ld. Standing Counsel is accepted then, when 'Soil' attached to earth is cultivated, it is agricultural activity and when 'Soil' is cultivated after detaching the same from earth, it is not

agricultural activity. Such an interpretation in our view, would be unintended and unfair. The only part of the land that is cultivable, and which is useful for agricultural activity is 'Soil' which is the top layer of land. Then whether such soil is attached to land or is placed in containers above the land should in our humble view, not make a difference. Though these strong arguments of the Ld. Standing Counsel appealed to us ab-initio on an analysis of the purpose for which the term is to be interpreted, we are unable to persuade ourselves to accept the same. If the term 'Agri' is 'field', then 'field' can be on land or on a 'terrace' or on a 'pot', 'tray' etc., In view of the above discussions, we hold that it is important to distinguish between the meaning of the term 'soil' from 'land', because the cultured top strata of the earth's surface, which is fit for arable cultivation, is actually what is required for agricultural purposes and this top layer (being 'soil') is one on which actual agricultural growth takes place. In contrast, the meaning attributed to land (primarily as an immovable object) is of a wide import. For the purpose of understanding the nexus between an agricultural operation and an agricultural land, what needs to be inferred from the term 'land' is that, the cultured top layer of the earth, which is fit for any sort of cultivation, is land for this purpose. Hence, in our opinion, the soil which is placed on the vertical space above the land in trays, in one sense of the term, is also land.

13. We now consider the arguments on the explanation 3 to Section 2(1A) of the Act. The assessee relies on Explanation-3 to Section 2(1A) which reads as follows:

"3. For the purposes of this clause, any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income." Thus, what is not otherwise agricultural income, is deemed under the explanation as agricultural income. Shri P. Chidambaram, the then Hon'ble Finance Minister, while presenting Union Budget for 2008-09 at para 167 stated as follows:

"Agriculture income is exempt from income tax. However, courts have ruled the growing saplings or seedlings of land is agriculture. But growing them in pots is not agriculture. This does not seem to be fair. Hence, I propose to exempt from tax income arising from saplings or seedlings grown in a nursery." (Emphasis on) While introducing

explanation 3 to Section 2(1A) of the Act, in the explanatory note at para 4.2. It is stated as follows:-

"With a view to giving finality to the issue, and Explanation in Section 2 of the Income-tax Act, has been inserted providing that any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income. Accordingly, irrespective of whether the basic operations have been carried out on land, such income will be treated as agricultural income, thus qualifying for exemption under sub-section(1) of Section 10 of the Act."(Emphasis ours)

13.1. It is true that this Explanation 3 to Section 2(1A) of the Act, is a deeming provisions in the Act. It is also true that deeming fiction cannot be extended and should be strictly restricted to the fiction created. The impression that this amendment was brought into the statute to nullify certain judicial pronouncements is factually incorrect. The courts have decided that income from nursery is agricultural income.

13.2. The Hon'ble High Court of Madras in Commissioner of Income-tax v. Soundarya Nursery [2000] 241 ITR 530 (Madras), in which the court observed as under:

"8. All the products of the land, which have some utility either for consumption or for trade or commerce, if they are based on land, would be agricultural products Here, it is not the case of the revenue that without performing the basic operations, only the subsequent operations, as described in the decision of the Apex Court have been performed by the assessee. If the plants sold by the assessee in pots were the result of the basic operations on the land on expending human skill and labour thereon and it was only after the performance of the basic operations on the land, the resultant product grown or such part thereof as was suitable for being nurtured in a pot, was separated and placed in a pot and nurtured with water and by placing them in the greenhouse or in shade and after performing several operations, such as weeding, watering, manuring, etc., they were made ready for sale as plants all these operations would be agricultural operations and all this involves human skill and effort. Thus, the plants sold by the assessee in pots were the result of primary as well as subsequent operations comprehended within the term 'agriculture' and they are clearly the products of agriculture."

13.3. Thus, the Hon'ble High Court gave breadth to a more expansive definition of the term 'agricultural products' by

including within its meaning all products of land, having some utility either for consumption or for trade or commerce and also, inferred that plants sold by the assessee in pots to be comprehended within the term 'agriculture'. This judgment was delivered in the year 1998, August 5th, much before the introduction of explanation 3 to Section 2(1A) of the Act in the year 2008. Similar is the judgement in the case of CIT, Chennai vs. K.N. Pannerselvam (2016) 75 taxmann.com 98 (Madras). The judgment of the Hon'ble Allahabad High Court in H.H. Maharaja Vibhuti Narayan Singh vs. State of U.P. (1967) 65 ITR 364, was considered by the Hon'ble Madras High Court in the case of Soundarya Nursery (supra) at para 6 of the judgment. The Court held that the observation of the Hon'ble Allahabad High Court was clearly an obiter. This judgment in the case of Soundarya Nursery (supra) required basic objections to be performed on land for the income to be exempt as agricultural income. Before the introduction of Explanation 3 to Section 2(1A) of the Act, growing plants in pots was interpreted as agricultural activity by the courts. What this explanation does is to expand this interpretation further. It lays down that the basic operations are not necessary in nurseries, as required by the judgment in the case of Soundarya Nursery (see explanation note). Hence, even without this explanation, the income from plants grown in pots was held as agricultural income by the courts. As this explanation is a deeming provisions, we cannot apply the same to the assessee. But as the assessee performs basic operations on soil, the ratio of the judgment in the case of Soundarya Nursery (supra) applies to the facts of this case.

13.4. The Ahmedabad Bench of the ITAT in the case of DCIT vs. Best Roses Biotech Ltd. (2012)17 taxmann.com 56 (Ahd.) has held as follows:-

"6.1 Activity in question : The company had developed a greenhouse for the establishment of a floriculture project. The company had grown good quality of rose flowers and also exported them abroad. It was explained that for the plantation of roses a very well treated soil is required. The quality of the soil is therefore tested. Manures are mixed for preparing a base for growing the rose plants. The company has installed a proper drainage system. Certain operations such as mixing of soil and watering of plants through drainage are explained. Then the activity of pruning and bending of growing plants

carried out to get best size of rose buds. It has also been explained that pest control is also required. Insecticides are sprinkled to save the plants from any disease. From the facts as emerged from the compilation filed we have gathered that within greenhouse the floriculture activity comprises of growing of rose by deploying hydroponics technique for the farming of best quality roses. It is stated that the assessee has deployed a budding technical plant. Further it was explained that root stocks were brought from the market and placed in the green house. The plantation and the generation of sapling was nothing but agricultural activity. The mother plant is otherwise reared on earth. For rearing of mother plant human labour is involved. The tilling of soil, watering and other primary agricultural activity is the basic requirement for the growing of the rose plants. Subsequently the saplings are planted on plastic trays, which were kept at the height 2-3 ft. placed on MS stand. It was explained that the purpose of growing the rose plants at a height is primarily to avoid the pest and to develop in a controlled atmosphere. By this method, the rose plant is protected from climate, pest, as well as other disease, to minimize the possibility of damage. The drainage system for watering the plants with the help of dipper is required. The watering of rose plants are also a technical method to avoid excessive watering so that the roots of the rose plants should not get damaged. The commercial greenhouse i.e. "bent canopy" is used for various benefits so that the sun-light and the humidity level both can be maintained. For meeting the international demand, it is explained, that the assessee-company adopted best measure to ensure best quality of rose.

6.2 Conditions of Agriculture operation - From the side of the respondent- assessee there was detailed discussion about the growing of rose plants and other connected agricultural operation carried out by the assessee. However, the objection of the Revenue was that the rose plants were not grown on the land, therefore the generation of income was not directly connected with the operation of land. Somehow we are not agreeing with the said proposition of the Revenue-department because on due consideration of the activity as explained to us, it is not justifiable to say that the growing of rose plants at all is not connected with the utilization of land. It is not in dispute that the agricultural land was acquired by the assessee from agriculturists. It is also not in disputed that mother plants are always been grown on the agricultural land.

As far as ingredients of basic operation is concerned the assessee's case is that the technology deployed is (i) use of soil and operation on soil (ii) use of particular soil type contents i.e. coco peat, manure, etc. present in the soil, (iii) drainage system as over watering harms the roots as well as quality (iv) bending shoots for maximizing the quality of roses, and (v) pest and diseases control for providing protection to roses. Therefore we hold that the activity which is connected with the land cultivation , such as ploughing of field, leveling of field, sowing of seed in the ploughed and leveled field, growing of plants, as case the may be, plantation, manuring, watering, weeding-out of weeds, so and so forth. These agriculture operations are said to be 'basic cultivation activity' and thereafter an agriculturist has to perform 'subsequent agriculture operation', namely tending of grown plants, pruning, cutting or shaping and finally harvesting of crop. We have to clarify, as held by few honourable courts as well, that the subsequent operations ought to be a continuation of basic Agriculture operation. The fundamental requirement is that it should remain connected with the basic agriculture operation."

13.5. We agree with this view of the Tribunal. The process followed in the case of Best Roses Biotech (P.) Ltd., (supra) in similar to the process followed by the assessee.

13.6. Hence, the view of the courts was that the income in question was agricultural income and the explanation only acknowledges this fact. We should not take a 'pedantic' view on this issue. The view of the legislature is more expansive and purposive than the view of the courts.

13.7. In view of the above discussion, we conclude that "soil", even when separated from land and placed in trays, pots, containers, terraces, compound walls etc., continues to be a specie of land and hence "land" for the sole purpose of determining whether activity performed on such land is for production of an agricultural product.

14. The second issue is whether mushroom is a "fungi" and not "vegetable". The Revenue relied on the word 'spawn' while the assessee relied on the word 'mycelium'. The definitions are extracted for ready reference:

SPAWN:

The word "Spawn" is defined by Collins dictionary as the Spawn is a soft, jelly-like substance containing the eggs of fish, or of animals such as frogs, When fish or animals such as frogs spawn, they lay their eggs.

1. To produce or deposit (eggs, sperm, or young)
2. To bring forth or be the source of (esp. something regarded with contempt and produced in great numbers)
3. Horticulture to plant with spawn, or mycelium noun
4. The mass of eggs or young produced by fish, mollusks, crustaceans, amphibians, etc.
5. Something produced, esp. in specif., numerous offspring or progeny great quantity; usually contemptuous

6. The mycelium of fungi, esp. of mushrooms grown to be eaten The word "spawn" is defined by Random House Dictionary – The mass of eggs deposited by fishes, amphibians, mollusks, crustaceans etc

2. Bot, the mycelium of mushrooms, esp of the species grown for the market
3. To plant with mycelium

Mycelium:

The word "Mycelium" is defined by Random House Dictionary as – The vegetative part or thallus of the fungi, being composed of one or more filamentous elements, or hyphae.

14.1. Ld. Counsel for the assessee submitted that mycelium is a vegetative part of the fungi. Ld. Standing Counsel submits that vegetative part does not mean that the classification is vegetable and it only refers to the reproductive feature of the "fungi". "A mushroom or toadstool, is the fleshy, spore-bearing fruiting body of a fungus, typically produced above ground on soil or on its food source and the scientific classification is Kingdom; Fungi, Division. Basidiomycota" (Wikipedia).

14.2. On a careful consideration of the material on record, we conclude that mushroom, is not a 'vegetable' 'plant' or an 'animal' but a 'fungus'.

14.3. The contention of the assessee is that, what is produced by performing basic operations on the soil, is an agricultural product, even though the product is not a 'plant' or the 'flower' or a 'vegetable' or a 'fruit'. It was emphasized that the nature of the product is irrelevant as far as it is produced by performing some basic operations on the soil.

14.4. In the case of CIT vs. Raja Benoy Kumar Sahas Ray (supra), as already stated, it is laid down that the "product"

should be "raised on the land" by "performing some operation on land by expenditure of human skill and labour" and that the "product" should be "of some utility for consumption, for trade and commerce".

14.5. The term "product" is defined as:

- a) an article of substance i.e. manufactured or refined for sale.
- b) A thing or person that is the result of an action or process.
- c) A product in modern times is also defined as a item or thing which is offered for sale. A product can be a service or an item. It can be physical or in virtual or cyber form.

14.6. It is clear that we cannot restrict the word "product" to 'plants', 'fruits', 'vegetables' or such botanical life only. The only condition is that the "product" in question should be raised on the land by performing some basic operations. Mushroom produced by the assessee is a product. This product is raised on land/soil, by performing certain basic operation. The product draws nourishment from the soil and is naturally grown, by such operation on soil which require expenditure of "human skill and labour". The product so raised has utility for consumption, trade and commerce and hence would qualify as an "agricultural product" the sale of which gives rise to agricultural income.

14.7. Mushroom, like vegetables and other crops or plants are grown on soil/land and are always attached to the soil until harvested. They draw their nourishment from the soil only. The product mushroom does not arise from any secondary agricultural operation. Unlike in the case of CIT vs. Kokine Dairy (1938) 6 ITR 502, relied on by the Ld.AO it cannot be said that production of mushroom is remotely connected with and. This product arises from land and is attached to land during growth and thereafter, just like 'plants' or a 'crop'. Comparison made by the Ld.AO with sale of silk cocoons by relying on the judgment in the case of K.Lakshmansa & Co. vs. CIT [1981] 128 ITR 283 (Kar.), is wrong, as on facts silkworms feed on mulberry leaves and are not products which are raised from land. Mulberry leaves which are product arising from land, are fodder to silk worms.

14.8. Hence, we conclude that Mushroom on the facts and circumstances of this case is an agricultural product raised from land.

15. The third issue is whether agricultural production done under "controlled conditions", results in the 'product' so raised not being a 'product from agricultural activity'.

15.1. Each and every agricultural operation involves certain procedures and protocols. Certain conditions are necessary for natural growth of the product. The degree of control and the type of scientific input differs from product to product. The type of soil to be used, the nature of agricultural operations to be undertaken, material required to be used to enrich the soil, the timing of sowing, transplanting, harvesting etc., the quantity and quality of inputs such as water, fertilizer, pesticides etc. to be used and the timing at which they have to be used, are all controls that a farmer exercises in every type of agricultural activity. There can be no agriculture without controlling the conditions of production by human intervention. Just because the degree of control of the conditions are greater in some cases, as compared to others, the product produced out of such process would not cease to be an agricultural product. The degree of control is irrelevant in arriving at a conclusion on this issue. With the advancement of technology, every aspect of production is monitored and controlled, so as to obtain optimum use of the produce. This is true with the use of greenhouse technologies.

15.2. The ITAT Pune Bench in the case of Asst. CIT v. KF Bio Plants (P.) Ltd. [Pune Bench 'A', ITA No. 1110/PN/2011] held that the nature of agricultural income would not change merely because agricultural operation was carried out in a greenhouse under a controlled environment. The assessee in that case was engaged in the business of plant floriculture and tissue culture, and claimed exemption of income as being agricultural income under section 10(1) of the Act. The A.O. disallowed the exemption on the ground that basic operation was done in a greenhouse. The ITAT held that the involvement of a greenhouse and controlled environment would not change the nature of agricultural income. We endorse this view.

15.3. The ITAT Ahmedabad Bench 'A' decision in the case of DCIT v. Best Roses Biotech (P.) Ltd., (supra) has analyzed the advanced mechanism of growing rose plants in a controlled environment and held as under:

"7.2 Considering the advancement of technology and the use of the advanced equipment in cultivation coupled with the conventional cultivation method put together, it has to be held

that the operation carried out by the assessee was agricultural operation in nature. Therefore, the income in question was an agricultural income. It cannot be included in total income being with the ambits of the provisions of section 10(1).” We concur with this view.

15.4. With the advancement of modern technology, we find that most of the crops, fruits, vegetables and flowers are being grown in controlled conditions, in green houses and in pots. In these advanced scientific agricultural techniques, soil is removed from the land and is placed in different containers such as pots, trays and stands etc. and agricultural operations are performed on them to yield the desired results of production of products which have some utility.

15.5. In view of the above discussion we hold that, just because mushrooms are grown in controlled conditions it does not negate the claim of the assessee that the income arising from the sale of such mushrooms is agricultural income.

16. We now discuss the other contentions raised by the parties.

- The assessee submits that the Govt. authorities and Financial Institutions treated growing of mushrooms as agriculture.*
- That for the purpose of Mushroom cultivation, the Assessee Company borrowed funds from State Bank of Hyderabad with guidance provided by National Bank for Agriculture and Rural Development (NABARD) and the loans sanctioned are agricultural loans.*
- NABARD conducted survey and observed that mushrooms are fruiting bodies of some members of lower group of plants. They are fleshy spore bearing structures containing numerous spores which are functionally similar to seeds of higher plants. They are used in reproduction of mushrooms. After conducting the studies, the NABARD certified Mushroom cultivation as an agricultural operation and kept the same under "agricultural" segment.*
- That for the purpose of commencement of production activity, the assessee requires a certification from the Ministry of Commerce and Industry, Govt. of India. The said Ministry also categorized activity as "other agricultural industry". The assessee is also granted licence by the Fruit products Order, 1995 by the Ministry of Food Proceedings Industries, Government of India .*

- *The Central Excise Department classified in chapter 7 that the Mushrooms are Edible Vegetables and did not levy any tax on the assessee.*

- *The Ministry of Agriculture, Government of India categorized Mushroom cultivation as the agricultural operation. Various Universities in India and abroad also treated the Mushroom cultivation as an Agricultural Operations.*

16.1. *The Ld. Standing Counsel submits that, the view of various Government and Financial Institutions, should not influence the interpretation of a statute. She submits that the statute has to be interpreted based on the language used therein and not based on views of universities and other organisations.*

16.2. *Words of the statute, when not defined, have to be construed and understood in their popular sense and according to their ordinary meaning. No doubt, statute cannot be interpreted based on the views of different Governmental Authorities and Financial Institutions, as their purpose and intent would be different, from the purpose and intent of the enactment in question. But the manner in which other Government authorities and agencies views this issue, can be gathered and understood from this material. A common man's view, as expressed by the organisations, have some use in coming to a conclusion on this issue. It would not be appropriate to hold that different arms of the Government have contrary views on the same issue.*

16.3. *Now we consider the argument of the Ld. Standing Counsel by placing reliance on Section 80JJA of the Act. The assessee relies on explanation 3 inserted in Section 2(1A) of the Act. Much water has flown since the introduction and repeal of Section 80JJA. With the passage of time the views change. We are of the opinion that the conclusion on this issue cannot be guided by this Section 80JJA of the Act.*

16.4. *The order of the Bangalore Bench of the Tribunal in the case of Blue Mountain vs. ITO (1985) 14 ITD 254 (Bang.), does not discuss the issue in question and hence not relevant. The Pune Bench of the Tribunal in the case of ACIT vs. Malhotra Mukesh Satpal (2008) 115 ITD 467 (Pune), is on the issue of levy of penalty u/s 271(1)(c) and hence not relevant. The decision of the Chandigarh Bench of the Tribunal in the case of Rachna Dogra (supra) is also not relevant, as the observations on the issue in question are one of 'sub silentio'.*

16.5. *The Chandigarh 'A' Bench of the ITAT in the case of Chander Mohan v. ITO in ITA No. 389.377/Chd/2012, order dt. 28.10.2014, in our view, does not lay down the correct law in the facts and circumstances of the case. In any event, the type of mushroom grown in that case and the place at which it was grown and the fact that the process of growth was not properly explained. As the division Bench has not agreed with this view of the Pune Bench of the ITAT, this issue was referred to this larger Bench.*

16.6. *Hence as basic operations are performed by expenditure of human skill and labour on land by the assessee, which results in the raising of the 'product' called "Edible white button mushroom" on the land and as this product has utility for consumption, trade and commerce, the income arising from the sale of this product is agricultural income and hence exempt u/s 10(1) of the Act.*

16.7. *Thus we uphold the order of the Ld. CIT(A) on this issue.*

17. *In view of the above discussion, we answer the question referred to us by the Hon'ble President in the affirmative, in favour of the assessee."*

14. The Hon'ble Madras High Court in the case of CIT vs Soundarya Nursery [2002] 123 Taxman 372 (mad) had considered an identical issue and held that income from plants grown in pots and income from sale of seeds is an agricultural income. The relevant findings of the Hon'ble Madras High Court are as under:

"All the products of the land, which have some utility either for consumption or for trade or commerce, if they are based on land, would be agricultural products.

If the plants sold by the assessee in pots were the result of the basic operations on the land on expending human skill and labour thereon and it was only after the performance of the basic operations on the land, the resultant product grown or

such part thereof as was suitable for being nurtured in a pot, was separated and placed in a pot and nurtured with water and by placing them in the green house or in shade and after performing several operations, such as weeding, watering, manuring, etc., they were made ready for sale as plants. all these operations would be agricultural operations that involved human skill and effort. Thus, the plants sold by the assessee in pots were the result of primary as well as subsequent operations comprehended within the term 'agriculture' and they were clearly the products of agriculture.

So far as the seeds are concerned, it is not possible for the seeds to exist without the mother plants, and the mother plant is grown on land. It was not the case of the revenue that the seeds were the result of the wild growth and not on account of cultivation by the assessee. The seeds were clearly a product of agriculture and the income derived from the sale of seeds, was agricultural income”

15. In so far as, case laws relied upon by the Assessing Officer in the case of M/s. Blue Mountain Food Products Ltd vs ITO (supra), we find that although the ITAT Bangalore Bench has taken a contrary view on the issue of growing and sale of mushroom, and held that said activity is business activity. But, fact remains that subsequent decision of Special Bench in the case of DCIT vs M/s. Inventaa Industries Pvt Ltd (supra), after considering the above judgment has held that growing of edible white button mushroom is an agricultural activity and income derived from said activity is agricultural income exempt from tax. Therefore, we are of the considered view

that when Special Bench decision is in favour of the assessee on the very similar activity, then question of following the ratio laid down by other bench of Tribunal on the very same issue does not arise, more particularly, when the Special Bench has considered the earlier decision of Tribunal and overruled said decision.

16. In this view of the matter and considering facts and circumstances of the case and also by following the decision of ITAT, Special Bench in the case of DCIT vs M/s. Inventaa Industries Pvt Ltd (supra), we are of the considered view that cultivation and sale of white button mushroom is an agricultural activity and income derived from said activity comes under the head agricultural income, which is exempt from tax. The Ld. CIT(A), after considering relevant facts has rightly deleted additions made by the AO towards income derived from cultivation and sale of white button mushroom and thus, we are inclined to uphold the findings of the Id. CIT(A) and dismiss appeal filed by the revenue.

17. In the result, appeal filed by the revenue for assessment year 2017-18 is dismissed.

ITA NO: 970/CHNY/2022:

18. The facts and issues involved in this appeal are identical to facts and issues which we had considered in ITA No. 969/Chny/2022 for assessment year 2017-18. The reasons given by us in preceding Paragraphs 9 to 17 in ITA No. 969/Chny/2022, *mutandis mutatis* shall apply for this assessment year as well. Therefore, for similar reasons, we are inclined to uphold the findings of the Id. CIT(A) and dismiss appeal filed by the revenue.

19. In the result, appeals filed by the revenue for assessment years 2017-18 and 2018-19 are dismissed.

Order pronounced in the court on 05th April, 2023 at Chennai.

Sd/-
(एबी टी. वर्क,)
(ABY T VARKEY)
न्यायिकसदस्य/Judicial Member

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 05th April, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/PCIT |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |