

**IN THE INCOME TAX APPELLATE TRIBUNAL
SPECIAL (B) BENCH, HYDERABAD**

**BEFORE SHRI D. MANMOHAN, VICE PRESIDENT,
SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND
SMT. P. MADHAVI DEVI, JUDICIAL MEMBER**

ITA No.	Asst. Year	Appellant	Respondent
1015/Hyd/15	2008-09	Dy. Commissioner of Income Tax, Circle-2(1), HYDERABAD	M/s. Inventaa Industries Private Limited, (Earlier known as M/s. Inventaa Chemicals Limited) HYDERABAD [PAN: AAACI4539B]
1016/Hyd/15	2010-11		
1017/Hyd/15	2011-12		
1018/Hyd/15	2012-13		

C.O. No.	A.Y.	Cross-Objector	Respondent
53/Hyd/15 In ITA No. 1015/Hyd/15	2008-09	M/s. Inventaa Industries Private Limited, (Earlier known as M/s. Inventaa Chemicals Limited) HYDERABAD [PAN: AAACI4539B]	Dy. Commissioner of Income Tax, Circle-2(1), HYDERABAD
54/Hyd/15 In ITA No. 1016/Hyd/15	2010-11		
55/Hyd/15 In ITA No. 1017/Hyd/15	2011-12		
56/Hyd/15 In ITA No. 1018/Hyd/15	2012-13		

For Revenue	:	Ms. K. Mamata Choudary, Sr. Standing Counsel for I.T. Dept.,
For Assessee	:	Shri S. Rama Rao, & Shri K. Gopal, ARs

Date of concluding the Hearing : 25-06-2018
Date of Pronouncement : 09-07-2018

ORDER

PER J Sudhakar Reddy, AM:

The Hon'ble President ITAT, constituted this Special Bench to decide the following question and appeals vide order dt.25-07-2017

“Merely because instead of horizontal use on soil, vertical space is used, does the growth of mushrooms stand apart from agricultural operations?”

At the time of hearing, both the parties objected to the question framed. The Ld. Counsel for the assessee, Shri S. Rama Rao, submitted that the question, as framed, does not arise from the grounds raised by the revenue in these appeals. The Ld. Senior Standing Counsel, Ms. K.Mamata Choudary, submitted that the question does not reflect the grievance of the revenue, raised in its appeal. Both the parties requested the Bench to re-frame the question to be decided by the Special Bench and filed a combined memo in this regard suggesting a draft question. We are in agreement with the reframed question suggested by both the parties. This re-framed question was referred to the Hon'ble President, ITAT, who vide his order dt. 10th April, 2018, referred this re-framed question, to this Special Bench for disposal, along with the appeals as well as the cross objections for Assessment Years 2008-09, 2010-11, 2011-12 and 2012-13:-

The question referred is as follows:

“Whether in the facts and circumstances of the case, the income from production and sale of Mushrooms can be termed as ‘agricultural income’ under the Income Tax Act, 1961?”

Facts in brief:

2. The assessee is a company engaged in the business of manufacture of bulk drugs. It also derives income from growing of **“Edible white button mushrooms” (Mushroom)** under the name and style of **‘Premier Mushroom’**. The assessee was treating the income from growing mushrooms as “income from agriculture” and hence exempt u/s. 10(1) of the Income Tax Act, 1961 [Act]. A survey operation u/s. 133A of the Act was conducted on 23rd September, 2013, at the mushroom growing unit of the assessee-company located at Kallakal – Village, Toopran – Mandal, Medak – District, Telangana. The Ld.Assessing Officer (AO) records that the survey was conducted to verify the process of mushroom growing by the assessee-company. During the course of survey, statements were recorded from Mr. K. Jagadish, Vice President (Operations) and Mr. C. Rajesh, another Vice President of the company. During the course of scrutiny proceedings, in reply to the queries raised by the AO, the assessee made various submissions. The gist of the submissions as summarized by the Ld.AO are set out in para 8, page 9 of the assessment order, the extract of which is as under:

"8. The gist of the submissions of the assessee is as under:

- *Whether cultivation of mushrooms is agriculture or not is a question of fact.*
- *Operations are conducted on land which is agricultural land and the operations are agriculture in nature. Mushroom is a nutritious vegetable. The spawn is grown on soil.*
- *The operations are akin to nursery which has been recognized by the Act as agriculture by insertion of Explanation 3 to section 2(1A).*
- *Various Government authorities, Banks/FIs, World organizations and food organizations, Excise Department and others treat mushrooms as 'vegetables'.*
- *Mushroom growth is a natural agricultural activity and assessee is only a facilitator. Therefore, the decision of the Apex Court in the case of M/s. Venkateswara Hatcheries Pvt Ltd (237 ITR 174) applies. In the said decision, the Supreme Court held that a natural product can be produced only through natural process and the facilities provided by human effort is not relevant and the production would always remain as natural product and cannot be attributed to any other process or activity associated or undertaken by human effort.*
- *The term "land" and "soil" are interchangeable and soil is nothing but land. The assessee also quotes dictionary definitions of land and soil.*
- *Reliance on section 80JJA is of no use as the section is repealed and perhaps it was the intention of legislature to treat mushroom cultivation as agriculture and hence repealing of the section.*

Findings of the A O :

The findings of the Ld. Assessing Officer (A.O.) are summarised as follows:

a. Mushrooms are grown by the assessee in 'growing rooms' under 'controlled conditions' in racks placed on shelves above land and on Compost (manure) which is prepared with paddy straw, Horse manure, Chicken manure, Gypsum and Urea which is not land. Hence the activity is not agricultural activity.

b. The Hon'ble Supreme Court in the case of *CIT Vs. Raja Benoy Kumar Sahas Roy (1957) [32 ITR 466]* held that, income derived from some measure of cultivation of land with some expenditure of human skill and labour, renders the profit derived from the 'product' agriculture income which would be exempt u/s. 2(1A) of the Act. In the case of *CIT Vs. Kokine Dairy (1938) [6 ITR 502]*, it was held that the term 'agriculture' does not cover activities remotely connected with land and when the assessee has not performed the basic operations on land, the income derived was held not to be agriculture income. Some of such instances are income from coconut thopes, income from sale of cocoons, income from sale of eucalyptus oil etc.

c. Rule 7A, 7B and 8 of the Income Tax Rules, 1962 were referred to in support of the contention that unless income is derived from

performing basic operations on the land, the same could not be construed as 'agriculture income'.

d. Section 80JJA of the Act inserted by the Finance Act, 1979 w.e.f. 01-04-1980 provided a deduction in respect of profit and gains from business of growing mushrooms and Circular No. 258, dt. 14-06-1979 and the explanatory Memorandum to the Finance Act, 1979, and Circular No. 372/1983 were relied upon to conclude that intent and understanding of the Legislature is that growing of mushrooms is not in the nature of agriculture income but is reckoned as income from business. He rejected the contention of the assessee that the withdrawal of this Section 80JJA of the Act was because the Government was of the view that the income earned from growing of mushrooms is agriculture income and hence exempt from tax. Therefore, no further deduction was required, on the ground that this is far-fetched and illogical.

e. There is no dispute regarding the various processes mentioned in the letters dt. 10-01-2014 and 17-02-2014 written by the assessee setting out the various stages involved in the growing of mushrooms. It is important to note that no operations are carried out on land. In the detailed submissions made by the assessee, which ran into several pages, there is no categorical assertion by the assessee that some of the basic operations are carried out on land. On the reliance placed by the assessee

on the definition of 'land' as given in the Black's Law Dictionary, he held that soil could be construed as 'land', as per the dictionary meaning, if and only if, it remains attached to the earth. He held that the argument that soil even if removed from land would still be land, does not hold water.

f. Regarding exemption of income derived from saplings or seedling grown in soil in pots, he held that this is a deeming provision introduced by the statute by way of explanation 3 to Section 2(1A) of the Act and hence cannot be extended to the assessee who is in the business of growing mushrooms.

g. Mushroom cultivation is not "agriculture" and falls under the category of "Fungi Culture". Reference was made to information available in Wikipedia, on the website [http://www.americanmushroom.org / agaricus.pdf](http://www.americanmushroom.org/agaricus.pdf). He held that Mushroom is not a vegetable as argued by the assessee, but is a fungus. In outdoors, mushrooms grow on wood and the activity is not akin to that of a nursery.

h. The claim of the assessee that it owns 33 acres of land is not in dispute but the mushroom growing activity is not performed on this land. When the assessee is in possession of 33 acres of agricultural land, it was not necessary to purchase ballclay at Rs. 1 per Kg from M/s. Nyvelli

Lignite Corporation, Nyvelli for use in growing of mushrooms. Thus, land was never involved in the process of growing of mushrooms.

i. Classification by or views of various Government and public sector agencies on whether growing of mushroom is an agricultural activity or not is of no consequence and does not help the assessee in claiming exemption u/s. 10(1) of the Act.

j. The statements recorded from the two senior functionaries of the assessee-company proves the fact that no agricultural operations were carried out on the land by the assessee, let alone basic operations on land. Even from the description of the activity, as evidenced from the website of the assessee-company, soil is only used for the purpose of providing stable bed in the trays and such activity is remotely connected with land.

k. The Bangalore Bench of ITAT in the case of Blue Mountain Food Products Ltd., [14 ITD 254] held that mushroom growing is a business activity.

l. The statement recorded from the Managing Director of the assessee-company demonstrates that the main layer bed is compost which is not soil and that ballclay is obtained by the assessee from M/s. Nyvelli Lignite Corporation, Nyvelli. The Casing layer is only another

layer of manure mixed with coirpith, nutrients and ballclay, which helps in growth of mushrooms. The Managing Director did not give specific answers to the issue as to whether use of land was involved at any stage in the growth of mushrooms and whether the mushrooms in question are grown under controlled conditions.

At para 40 & 41, the Ld. Assessing Officer concluded as follows:

“40. From the above discussion, it is clear that either during the production of Spawn or in the preparation of Compost or Spawning the Compost no operations involving land or soil are carried out. The only instance of use of soil is when clay and coir pith is used as top dressing for providing moisture to the mushroom which are already sprouting or growing in the Compost. Hence, the operations carried out by the assessee in the growth of mushrooms do not meet the test of agricultural operations laid by the Hon'ble Supreme Court in the case of CIT Vs. Raja Benoy Kumar Sahas Roy (1957) [32 ITR 466]. Even the explanation 3 under section 2(1A) is not of any help to the assessee as no operations are carried out by it on land or in soil. Use of soil at a subsequent stage in the operations cannot be said to be carrying out of basic operations in the soil/land as discussed in the judgment supra.

41. In view of the detailed reasons mentioned above, I hold that income derived by the assessee from growing of mushrooms is not agricultural income and I proceed to assess the same as income under the head “Business or Profession”. Addition Rs. 12,13,05,430/-”

3. Aggrieved, assessee carried the matter in appeal before the Ld.CIT(A) challenging, for all the Assessment Years, the findings of the

Assessing Officer that income derived from production of mushroom is not agricultural income. It also challenged the reopening of the assessments by the AO for the AYs. 2008-09 and 2010-11. The issue of non-grant of depreciation by the Assessing Officer, in respect of the assets held for production of mushrooms, was also challenged for all the four Assessment Years.

3.1. Before the Ld.CIT(A) assessee reiterated that growing of mushroom is an agricultural activity. It was submitted that, mushrooms are grown manually on the land in a specified atmosphere. It was contended that the assessee was producing a nutritious vegetable called mushroom which grow over a period of 1 ½ months on certain types of soil. A chart giving comparison between growing of mushroom and other crops was furnished. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of *CIT Vs. Sri Venkateswara Hatcheries Pvt Ltd [237 ITR 174]* on the proposition that growth of mushroom is a natural and biological process and hence mushrooms are not articles or things. Reliance was placed on the views of various governmental departments such as NABARD, State Bank of Hyderabad, Ministry of Commerce and Industry, Central Excise Department and Ministry of Agriculture on the proposition that Government of India has treated mushroom production as an agricultural production. Reliance was placed on a number of judgments in support of the proposition of law relied upon by the

assessee. The findings of the Ld. AO were sought to be rebutted by the assessee in its submissions before the Ld.CIT(A).

4. In his rejoinder to these submissions, the Ld. AO for strengthening his findings that the cultivation of mushroom is not agricultural activity and that it is 'fungi' culture, relied on a report issued by PENN STATE College of Agricultural Sciences with regard to basic procedures for mushroom growing, wherein two different methods of growing mushrooms are given.

5. **Findings of the Ld.CIT(A):**

After considering the rival submissions, the Ld. First Appellate Authority has held as follows:

- a. The reopening of assessments is valid in law.
- b. He relied on the definition of 'Land' and 'Soil' given in the Black's Law Dictionary and in Random House dictionary and held that the word 'land' includes any soil, and hence the prepared soil is land. That soil is the basis for production of mushroom as initial mushrooms spawn is prepared and the spawn is then cultured in a similar type of prepared soil, to be used as seed for cultivation of mushroom. Thereafter the same is removed from the soil and is

spread over the soil arranged in giant size trays, the depth of which is up to 8 inches. These trays contain soil and trays are kept vertically on the land and the watering of the soil is done through coir pith to maintain the required moisture. The Ld. CIT(A) relied on the literature published by the “Director of Mushroom Research” of “Indian Council of Agricultural Research” (ICAR) and came to a conclusion that usage of soil in these trays can be considered as usage of land. The Ld.CIT(A) also stated that ‘even for cultivation of other crops, the land in the form of ground cannot be used and that only the upper layer of the soil is to be prepared for tilling, ploughing, watering and manuring’. As preparation of soil is required for production of mushroom, he concluded that edible mushroom is grown on land.

- c. The Ld. CIT(A) held that the reference to Rule 7A, 7B and 8 of the Income Tax Rules, 1962 do not have any relevance to the facts of the assessee’s case.

- d. On the issue as to whether mushroom is a “plant” or “fungi”, the Ld.CIT(A) held that the questions in this case as to whether the process of production is agriculture or not and whether the produce grown is “plant” or “fungi” are not relevant and that the relevant factor to be determined is the process of production.

- e. He held that the word 'agro' means "land" and this definition includes soil which means all types of soils. The process of enriching the "soil" by adding fertilizers and wastages etc., is "culture of the soil" and when the soil is used for production of edible product, it is called as an agricultural product.
- f. The reference to provisions of Section 80JJA by the AO is not relevant as this provision of law is no longer in existence.
- g. On the reference to the material available in Wikipedia by the Assessing Officer, the Ld. CIT(A) held that though several thousands of species of mushrooms are there, only those which are grown on "soil" are "edible".
- h. The Ld.CIT(A) referred to the judgement of the Hon'ble Supreme Court in the case of *CIT Vs. Sri Venkateswara Hatcheries Pvt Ltd* [237 ITR 174] for the proposition that merely because the conventional method of production is given a go by and artificial production is introduced, it would not change the character of production which is natural.
- i. The Ld.CIT(A) observed that just because the assessee-company is using the land vertically by using large trays, for producing mushroom, by adopting a natural agricultural process and by

cultivating the soil, it cannot be said that land is not used for production of mushroom. It is a fact that the land is used for production, the sub-strata of which is soil. The ingredients of agricultural operations are embedded in the production of mushroom and the entire activity is similar to the production of any other vegetable and to the process of any other agricultural produce.

- j. The decision of the Bangalore Bench of the ITAT in the case of Blue Mountain Food Products Ltd., [14 ITD 254] is not relevant, as the question before the Bench was, whether depreciation can be allowed for determining the income or not and that this decision of the Bangalore Benches was given when the provision of Section 80JJA of the Act, was in existence in the statute and that a decision with reference to a section which was later repealed, cannot be a precedence.
- k. The views of various Government authorities and financial institutions, wherein mushroom is treated as a vegetable is relevant for the purpose of determining the issue.
- l. He relied on various decisions of the Hon'ble Supreme Court for the proposition that incentive provisions have to be liberally

interpreted and held that Section 10(1) of the Act has to be liberally interpreted.

m. He held that the decision of the Chandigarh Bench of the Tribunal in the case of Chander Mohan Vs. ITO [52 taxmann.com 203] (Chandigarh- Trib) is distinguishable as the process for production followed in that case is different from the process followed by the assessee and that the type of mushroom produced in that case is different from those produced by the assessee.

6. The Ld. CIT(A) concluded that production of mushroom is a process of agricultural production and income derived from such a process is agricultural income eligible for exemption u/s. 10(1) of the Act. The ld. CIT(A) did not adjudicate the grounds of the assessee relating to its claim of depreciation.

7. Aggrieved, Revenue has filed these appeals against this finding of the Ld. CIT(A) that income from production of mushroom is agricultural income. The assessee has filed cross-objections for the AYs. 2008-09 and 2010-11 on the issue of reopening and for all the four Assessment Years on the issue of claim of depreciation.

Revenue's submissions:

8. Ld. Sr. Standing Counsel Smt. K. Mamata Choudary supported the order of the Ld.AO and made detailed arguments. The brief submissions filed by her, stated succinctly are as follows:

- Mushrooms are fungus which are produced from spawn and not plants or crops and hence not agriculture. They are grown in trays of prepared soil in climate controlled rooms for commercial purposes. Even if certain activities are akin to cultivation, it cannot be treated as an agricultural income.
- A fundamental characteristic of land is that it is immovable and is a fixed part of the topography. Soil is a component of land/ earth but loses its identity of land once removed from it. Therefore soil ought not to be treated synonymously with land.
- The reliance placed by the Assessee on the incomplete and selective definition of "Land" in Black's Law Dictionary to include soil and thereby equating soil to land is misleading, misplaced and contrary to the principles of *noscitur a sociis*. In fact the definition of "Land" as occurring in the 8th Edn. of Black's Law Dictionary makes it clear that land is the immovable portion of the earth's surface.

- *Extract of "Land "from Black's Law Dictionary (8th Edn.)*
- *Online extract of Balck's Law "Land"*
- *UoIvs. V Krishnamurthy 1994-2-L.W 452 (Mad HC) @pa14*
- *(Noscitur a sociis)- State of Bombay and Ors. V Hospital Mazdoor Sabha AIR 1960 SC 610 @ pa 9.*

- The interpretation of 'land' for the purposes of Section 2(lA) assumes importance as it goes to the root of the legislative competence of the Parliament to tax such income. Entry 82 of List I of the Seventh Schedule read with Entry 46 of List II of the Seventh Schedule of the Constitution of India reserves the right to tax agricultural income with the States and outside the purview of the Union. Article 366(I) defines Agricultural Income to mean agricultural income as defined for the purposes of the enactments relating to Indian income tax.
 - *CIT vs. Williamson Financial Services (2008) 2 SCC 202 @pa 18-30*

- Contextually, 'land' under the Income Tax Act is the real immovable property as can be seen from its use in relation to rent, income, capital asset, etc. To clothe it with the interpretation as sought to be

advanced by the Assessee would be contrary to the legislative use of such word in the statute.

- An exemption provision presumes the ability to tax certain types of income but such income being kept out of the scope of tax liability. The exclusion of agricultural income from the total income under Section 10(1) of the Act is not an exemption, as commonly perceived, as it is excluded on account of the Parliament having no power to tax agricultural income.
- The Hon'ble Supreme Court has held in *CIT vs. Raja Benoy Kumar Sahas (1957) 32 ITR 466* (and reaffirmed time and again) that the primary activities of cultivation of the land such as tilling, sowing, planting, etc. have to be carried out on the land itself in order it to be treated as agriculture or as agricultural income. Undisputedly, in the present case, no such primary activities are carried out on the land and the land is only the premise from where such activity is carried on.
- Classification of the land as agricultural land for land revenue purposes would not automatically lend the character of an agricultural income to activities carried out on it. Agricultural

income would necessarily, by statutory definition, mean income from land actually used for agricultural purposes.

- The legislative intent and understanding had expressly been stated to treat production of mushrooms under controlled conditions as business income and sought to briefly incentivise such business by providing for certain deductions under the then Section 80JJA.
 - *Section 80 JJA*
 - *Explanatory Note to Finance Act 1979*
 - *CBDT Circular No. 258 of 1979 dt 14.06.1979*
- Controlled conditions are commonly understood to mean that the climatic/environmental factors such as humidity, temperature, carbon dioxide, etc. are controlled.
- Explanation 3 to Section 2(la) relating to income from seeds and saplings grown in nurseries would not aid the case of the assessee as the income from such nurseries have been included in the scope of 'agricultural income' by way of a deeming fiction. A deeming provision is enacted for the purpose of assuming the existence of a fact which really does not exist. Hence, by necessary corollary, it would mean that the fact is that income from such nurseries is not agricultural income. A deeming fiction can only apply to the

particular fiction it creates and cannot be expanded to any other type of activity.

- *Explanatory Note to Finance Act, 2008*
- *Manisli Trivedi vs. State of Rajasthan (2014) 14 SCC 420 @pa 14*
- The ITAT has, though in different contexts, consistently considered income from production of mushrooms as **not** to be agricultural income. In fact, the ITAT, in Blue Mountain Foods, rejected the Revenue's contention that mushroom production is agriculture and allowed depreciation.
 - *Blue Mountain v. ITO (1985) 14ITD 254 (BANG)*
 - *Chander Mohan vs. ITO [2014] 52 taxmann.com 203 (Chandigarh) @ pa 12-13*
 - *ACIT vs. Malhotra Mukesh Satpal [2008] 115 ITD 467 (Pune) @ pa 3.24-3.27*
- The ratio of judgment of the ITAT in Rachna Dogra vs. ITO does not pertain to the issue on hand and the observation therein as to production of mushrooms being agricultural must therefore be one of *sub silentio* and therefore not binding.
 - *Sub silentio- Municipal Corporation of Delhi v. Gurnam Kaur (1989) 1SCC 101 @ pa 11.*

- The reliance sought to be placed by the assessee on various organisations, banks and departments' classification of mushroom production as agriculture is not tenable as such classifications are not in pari material with that of the Income Tax Act and hence cannot be relied upon.
 - *Maheshwari Fish Seed Farm vs. TNEB (2004) 4 SCC 705 @ pa 10-16*
- The submission that the definition of mycelium is the vegetative part of the fungi and therefore is a vegetable is not tenable, as what is meant by vegetative part is the reproductive part of the fungus and not its classification as a vegetable.

Assessee's submissions:

9. Ld. Counsel for the assessee Shri S. Rama Rao, relied on the order of the Ld.CIT(A) and in support thereof made the following submissions:

- That mushrooms are broadly of two different categories, those which are edible and those which are not edible. Mushrooms grow spontaneously and among the edible mushrooms, the assessee produced a variety called "Edible white button mushrooms" which

normally grow spontaneously in certain districts of Andhra Pradesh on Ant Hills.

- That the AO considered a variety of mushroom which is called “Shiitake Mushroom” which is normally grown on wood and trees and therefore is not relevant to the facts of the assessee’s case.
- That ballclay is a type of soil and that this soil is “cultured” by way of adding paddy straw, chicken manure, and other manure which degenerates into the soil.
- That the terms ‘earth’, ‘land’ and ‘soil’ have to be understood in the right perspective and that the top layer of earth, of about 8” to 10”, is “soil” and this “soil” is only useful for the purpose of any agriculture. That in any type of cultivation, this top 8” to 10” of land, which is “soil”, is what the farmer uses and that this is ploughed and cultured and prepared for agriculture production.
- Referring to the argument of the Ld. Standing Counsel that land is immovable property and that the soil attached to such land, when cultured and used for production of plants is agriculture, he submitted that when the top layer of the land which is, “soil” becomes unfit for agriculture due to salinity, barrenness or otherwise, it is a common practice that soil is brought from river

beds or some other sources and filled on top of the barren land and used for cultivation. Traditionally “soil” was being excavated from one place and transported and used for cultivation in certain other place depending on the requirements.

- That the argument that land is immovable property and once soil is detached from the land, it does not retain the character of the land, is not correct. The word ‘land’ as per the definition of Black’s Law Dictionary, 6th edition is synonymous for soil and includes material on the earth. That the words ‘soil’ and ‘land’ are used interchangeably based on the requirement.
- Reference was made that the definition of the word ‘soil’ in Random House dictionary and the definition of the word ‘agriculture’ in Black’s Law Dictionary, and it was argued that the actual crux is for carrying out operations to make soil suitable for growth and for production.
- He submitted that the soil/compost is prepared by mixing of paddy stock or other cellulose material, nitrogen and other ingredients in soil and that this is called ‘land’. That the entire land held by the assessee is used for the production of mushrooms, as structures are erected upon the land and trays with soil have been placed in these structures, which are used for growing of mushrooms. That

all the components like straw etc., degenerate and become soil and as specific type of soil is required for good growth of mushroom, clay is purchased by the assessee and after enriching the clay, it is used for production of mushrooms.

- He further submitted that the term 'controlled conditions' has to be viewed as opposed to wild growth and that the conditions of growth are "controlled" by way of supplying water at the required time and in quantity, enriching the soil with fertilizers, manure and such other material, to suit the crop which is sought to be grown. Pesticides are used to control pests from damaging the crop etc. He submitted that with the improvement of technology in agricultural operations, the degree of control has increased in agricultural activity and simply because advanced technology is used for agricultural production, the operation does not cease to be an agricultural operation. It is submitted that mushrooms are grown on soil with the expenditure of human, labour and skill and that technology is used to aid the natural growth of this agricultural produce.
- Referring to the argument of the Ld. Standing Counsel that what is used is spawn seed which means a group of eggs of fish, he submitted that "spawn" by definition is also the mycelium of fungi,

especially of mushroom grown to be eaten. He referred to 'mycelium' as defined in Random House dictionary and submitted that it is 'the vegetative part or thallus of fungi' being composed of one or more filamentous elements or hyphae and that the use of the word 'spawns' does not decide whether the process in question is an agricultural process or not. He claimed that the activity involved in production of mushroom is agricultural operation.

- A comparative chart of the process of growth of mushrooms and process of growth of vegetables and fruits was given to demonstrate that basic agricultural operations are performed in the production of mushroom
- That the assessee possesses Ac. 33.50 Guntas of agricultural land at Kallakal – Village, Toopran – Mandal, Medak – District as well as 27.1 acres of agricultural land at Peddapuram, East Godavari District of Andhra Pradesh and that at both the places the land is classified as agricultural lands, as per Revenue records. He submitted that land is used for cultivation of mushrooms. He listed out the various operations undertaken and argued that it is not correct to state that land is not used for cultivation of mushrooms.
- The Ld. Counsel submitted that whether mushrooms are 'fungus' which are produced from spawn and not plants or crops, is not

relevant as the term 'agriculture' refers to systematic production by performing basic operations on land. Once soil is cultured and certain basic operations are performed for the production of either plant or fungi, it is called 'agriculture'. Such basic operations performed on the land may be done for production of either the plant or fruit or vegetables or flowers or any other item and the term 'Floriculture' etc., have come into use. The word 'Fungi Culture' is used to denote the process of agriculture undertaken to produce "fungi" instead of "plant" and that mushroom is considered as an agricultural product. Reference is made to the report of 'Directorate of Mushroom Research' that mushroom production is considered as diversification of agricultural activities for meeting the challenges of providing food the nutritional security to people. He relied on certain articles published in certain journals for the proposition that mushrooms are edible vegetables.

- On the reliance placed by the Revenue on Section 80JJA, it was submitted that it supports the case of the assessee as only income derived from the business of growing mushroom was considered for the purpose of grant of exemption and if income derived from

growth of mushroom, is not of agricultural activity, the exemption would not be available.

- On the statements recorded from the officers and staff during the course of survey, it was submitted that the questions were misleading. In response to such misleading questions, the employees had given replies and that these replies have been quoted by the Revenue authorities out of context and that affidavits were filed before the AO, explaining the statements and rebutting the conclusions of the AO.
- That the reliance placed on the Transfer of Property Act for the definition of immovable property is not relevant to the facts of this case.
- On the reliance placed on the decision in the case of *Chander Mohan Vs. ITO* [52 taxmann.com 203] (Chandigarh- Trib), he submitted that the assessee appeared in court in person and relied on a circular of Government of Himachal Pradesh, which was referring to certain type of mushrooms and not to “Edible white button mushroom”, grown by the assessee and that the process of growing mushrooms was not explained and the production in that case was done within the city in residential houses.

- On a query from the Bench, the assessee filed the photographs of mushrooms and of the green house cultivation of fruits and vegetables.
- In brief a summary of the submissions of the assessee are as follows:

“(a) The assessee’s object is to produce a nutritious vegetable required for the increased population.

(b) For production of Mushrooms agricultural lands are used;

(c) The lands held by the assessee are agricultural lands and are treated as such by the Banking authorities and also the revenue authorities.

(d) The base for production is land/soil prepared with Paddy straw, manure and other ingredients;

(e) The soil so prepared is cultivated by providing manures, pesticides, water and other necessary ingredients;

(f) The process of production is the same as in any other agricultural produce/plant.

(g) Seeds are obtained from the matured mushroom; they are spawn over the processed soil; watering is done periodically; the growth is observed and harvesting is done.

(h) The whole cycle is like growing any other vegetable plant;

(i) The Govt. departments; financial institutions; world organization; the Food Organisations treated mushroom as agriculture.”

10. Cross objections:

On the cross-objections, Ld. Counsel for the assessee Sri K. Gopal submitted that the reasons for reopening were not provided to the assessee despite several reminders. The Ld. Standing Counsel pointed out that reasons for reopening were furnished to the assessee and that the copy of the same were placed by the assessee in its Paper Book. No other arguments were advanced by the ld. Counsel for the assessee on this issue of re-opening. This ground on the issue of reopening of assessment u/s. 147 of the Act arises for the AYs. 2008-09 and 2010-11 only. As the argument of the Ld. Counsel for the assessee is found to be factually incorrect, these grounds of cross-objections are dismissed.

10.1. The other grounds taken up by the assessee in the cross-objections for all the four assessment years have not been pressed for the reason that, relief was granted to them by the Ld.CIT(A) during the course of 154 proceedings. Hence these grounds are dismissed.

Revenue's rejoinder:

11. In her rejoinder, Smt. Mamata Choudary reiterated her contention that, for an income to be an agricultural income, it should be derived by performing basic operations on land which is an immovable property. On a query from the Bench, she submitted that the Revenue does not dispute that what is spread in the trays is 'soil' on which mushroom is grown.

Findings:

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.

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.*

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?

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, urbanisation 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;]

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 agricultural operations at all.

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)

This judgment makes it clear that the term ‘agriculture’ is “cultura” i.e. cultivation of the “ager” 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.

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, jute 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 his 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."

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".

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".

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.

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."

"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.

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.

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.

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”.

‘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.

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)

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.

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."

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.

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."

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

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.

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.

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).

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

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.

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”.

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.*

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.

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 land. 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.

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'.

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.

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.

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.

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.

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 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.

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.

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.

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.

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'.

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.

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.

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.

18. Before parting, we place on record our appreciation for the excellent contribution of the Ld. Standing Counsel Ms. K. Mamata Choudary and the Ld. Counsels for the assessee Shri S. Rama Rao and Shri K. Gopal.

19. In the result, all the appeals of the revenue and cross-objections of the assessee are dismissed for all the four assessment years.

Order pronounced in the open court on 9th July, 2018

Sd/-	Sd/-	Sd/-
(D. MANMOHAN)	(P. MADHAVI DEVI)	(J. SUDHAKAR REDDY)
VICE PRESIDENT	JUDICIAL MEMBER	ACCOUNTANT MEMBER

Hyderabad, Dated 9th July, 2018

SHAMIK CHAKRAVORTY, Sr. P.S.
And PV Vinodan & Murali Mohan, Sr.PS

Copy to :

- 1. The Dy. Commissioner of Income Tax, Circle-2(1), Hyderabad.**
- 2. M/s. Inventaa Industries Private Limited, (Earlier known as M/s. Inventaa Chemicals Limited), D.No. 10-91, Opp: IDPL Colony, Sowbhagyanagar, Hyderabad.**
- 3. CIT(Appeals)-2, Hyderabad.**
- 4. Pr.CIT-2, Hyderabad.**
- 5. D.R. ITAT, Hyderabad.**
- 6. Guard File.**