IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 290 of 2010

With
R/TAX APPEAL NO. 900 of 2012

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

==

Approved for Reporting	Yes	No
	✓	

==

COMMISSIONER OF INCOME TAX - I
Versus
M/S J K PAPER LIMITED

==

Appearance:
MR KARAN G SANGHANI(7945) for the Appellant(s) No. 1
MS PRACHI DARJI WITH MR MAYUR PUNJABI FOR MR ANANDODAYA S MISHRA(8038) for the Opponent(s) No. 1

==

CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 02/09/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned Senior Standing Counsel Mr. Karan G. Sanghani for the appellant-Revenue

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

and learned advocate Ms. Prachi Darji with learned advocate Mr. Mayur Punjabi for learned advocate Mr. Anandodya S. Mishra for the respondent.

2. Tax Appeal No.290/2010 is filed by the Revenue under section 260A of the Income Tax Act, 1961 (For short “the Act”) against the judgment and order dated 04.09.2009 passed by the Income Tax Appellate Tribunal, “D” Bench, Ahmedabad (For short “the Tribunal”) in ITA No. 346/Ahd/2008 for Assessment Year 2004-2005. By order dated 01-02/02.2012, the appeal was admitted for consideration of the following substantial questions of law:

> “[1] Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in restricting the addition made by the Assessing Officer and confirmed by the Appellate Commissioner of Rs.78,12,884/- on account of disallowance of agricultural loss [including depreciation of Rs.4,32,380/] to Rs.9.43 lakh ?

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

> [2] Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in deleting disallowance made by the Assessing Officer of Rs.1,63,85,686/ being the expenditure incurred for the purpose of agricultural activities for the purpose of computing book profit under Section 115JB of the Act, and confirmed by the Appellate Commissioner?”

3. Tax Appeal No.900/2012 is filed by the Revenue under section 260A of the Income Tax Act, 1961 (For short “the Act”) against the judgment and order dated 11.05.2012 passed by the Income Tax Appellate Tribunal, “C” Bench, Ahmedabad (For short “the Tribunal”) in ITA No. 128/Ahd/2010 for Assessment Year 2004-2005. By order dated 18.06.2013, the appeal was admitted for consideration of the following substantial question of law:

> “Whether the tribunal was right in law in that assessee has shown loss is sufficient reason for deleting the penalty while there was concealment of income?”

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

4. Tax Appeal No.290 of 2010 is treated as lead matter and facts are recorded from the same.

5. The assessee company is engaged in the manufacture and trading of Pulp and Board having two Paper Mills, one located at Songadh, Gujarat and the other at Rayagada, Orissa having its Head Office at New Delhi.

6. During the course of assessment proceedings for the Assessment Year 2004-2005, the Assessing Officer disallowed the loss incurred by the assessee in its Social Forestry Division on the ground that the activity of the assessee company in raising plant saplings was connected to basic agricultural operations connected with land and also that its activity in helping the farmers to maintain the plantations are also connected to subsequent operation on land and

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

therefore, it was held by the Assessing Officer that income from sale of saplings to the farmers is nothing but an agricultural income and as income includes loss, which was claimed by the assessee on account of agricultural operation which is relatable to exempt income under section 10(1) of the Act and therefore, it was held to be not allowable.

7. Alternatively, the Assessing Officer also held that as per the provisions of section 14A of the Act, the expenditure incurred in relation to the income which is not includable in total income is not allowable. The Assessing Officer also referred to the proceedings of previous Assessment Years 2002-2003 and 2003-2004, wherein similar loss claimed by the assessee was not allowed by the Revenue while computing income of the assessee and the activities classified as

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

Social Forestry were held to be agricultural operations connected with land and agricultural activities and income/loss was held to be arising out of agricultural operation. Accordingly, the Assessing Officer disallowed the loss of net expenditure of Rs.73,80,504/- as well as depreciation of Rs.4,32,380/-, totalling to Rs.78,12,884/-.

8. The Assessing Officer also added Rs.163,85,686/- in the computation of book profit under section 115JB of the Act which was debited by the assessee in the Profit and Loss Account on account of amortized expenses incurred on account of Social Forestry on the same basis.

9. Being aggrieved, the assessee preferred an appeal before the CIT(Appeals) who dismissed the appeals by observing as under:

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

“9.16. I have perused the facts of the case as discussed by the Assessing Officer in his assessment order and the remand report and also carefully went through the submission as made by the A.R. before me. It is seen that in respect of narrating the nature of activity as carried out by the appellant company, saying that such activities were incidental to its business activities, such as facilitation of procurement of continuous supply of raw materials from the adjoining areas (from the farmers, who grew plantation on their land) and also to ensure the availability of good quality of raw materials in the form of Bamboo and trees, it had also relied upon various judicial decisions in support of its contention (as referred above). After the perusal of the decisions as quoted above, it is found that in such decisions, it has been laid down by the courts that the nature of income arising from a particular business activity depends upon the intention of the assessee in leasing out the assets. According to the A.R, in such decisions, the courts have further held that where income is derived from commercial exploitation of the assets and there is only a difference in the manner of exploitation, that is to say, instead of user of assets by the assessee itself, the assets are exploited by another person, income derived must be considered to be of

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

the same nature “business income”. But, on the other hand, if the intention in leasing out the assets is to go out of business altogether and earn rental income, the income there from would be assessable as ‘income from other sources’. Thus, based on above referred findings of various courts, it has been submitted by the A.R that the intention of the appellant company in carrying out Social Forestry activity was to obtain the raw material, which was otherwise fljns2rtsnJy. According to the A.R, while carrying out such activity under the Social Forestry Division, its intention was not to derive income from sale of saplings to the farmers but rather it was towards attaining/improving the core activity i.e to make arrangement for the continuous supply of good quality of raw materials in the form of Bamboo and trees and hence its activity may not be treated as agricultural activity.

9.17 While going through the findings of the assessing officer, it is seen that he is very categorically analyzed the activity carried out by the appellant company under its Social Forestry Division and tried to prove beyond doubt that such activity is agricultural activity in nature. In support of his contention, it is found that the assessing officer had relied upon various decisions as quoted above, such as the findings of Hon’ble

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

Supreme Court of India in the case of CIT vs Raja Benoy Sahas Roy (2002-TIOSC-150-SC-IT) along with the findings of Hon'ble High Court of Madras in the case of CIT vs Soundarya Nursery 241 ITR 530, wherein, according to him, the Hon'ble court has categorically held that all the products of the land which have some utility either for some consumption or for trade or commerce if they are based on land would be agricultural products. In this case, on the similar set of facts as that of the appellant company, the Hon'ble Court has held that the activities as carried out by MIs Soudharya Nursery were nothing else than the agricultural activity and the income derived from such activity i.e from sale of seeds and saplings was nothing but agricultural income. Besides the above referred judgments, the assessing officer also referred the findings of Hon'ble Delhi ITAT in the case of Sudisha Farm Nursery vs ITO bearing ITA No.1065/Del of 2002, wherein, the Hon'ble ITAT on similar set of facts, after relying on the findings of Hon'ble Supreme Court of India in the case of CIT vs Raja Benoy Sahas Roy (supra) held that such activities were agricultural activities and the income derived out of such agricultural operations was agricultural income.

9.18 The plea as taken by the A.R of the appellant company that its activities under its Social Forestry

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

Division were carried out to facilitate the availability of raw materials by holding out the farmers of the adjoining areas in the form of selling of saplings to them (as grown in its farm land) at concessional rate and also by arranging finance on behalf of these farmers to help them to grow bamboo and plants and therefore, the same cannot be treated as agricultural, activity is not acceptable at all. It is an old fact where and whenever a big industry set up with various ancillary units are found set up by various other people in neighboring areas to provide and supply various accessories and raw materials noted by the said company in its day to day business activities. This is an universally accepted fact and cannot be denied by any prudent man, who is aware of the procedure of setting up of big industries and its functioning. In a situation, where other independent assessees, who have set up their small industries to supply accessories or raw materials to a big company set up in the neighboring area does not mean that the activities of such small units are part of the business activity of the said big company. The company depends upon small units, which are found set up around it for procuring various useful material such as accessories, spare parts and sometimes raw materials also for carrying out its business activities but inspite of these supplies, such units are independent

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

units. In the case of the appellant company, it is seen that it has grown saplings on the mother bed in its campus consisting of over 100 acres of land and after growing them in proper atmosphere, sold the same to various farmers. It is seen that these farmers, after buying these saplings from the appellant company grow the same in their fields by looking after these and when these plants became fit for commercial use, sold the same to the appellant company as raw material.

9.19. Here, the nature of activity as carried out by the farmers are independent than that of the activities of the appellant company and in no way can be treated as sawing of seeds and growing of saplings by the appellant company in its nursery by providing all kind of convenient climate and by taking the help of all its infrastructure, such as, man, money and machine and after growing the saplings to a reasonable height, selling of the same on a much scale to various farmers is nothing but an agricultural activity. It is also seen that for the sake of convenience that such activity should not intermingle with other activities as carried out at the Division which looked after these activities, had been named as Social Forestry. It is further observed that by giving a particular nomenclature/name to an activity does not alter its characteristic. The entire gamut of activity as

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

> carried out by the appellant company was sowing and growing of saplings and selling the same to outside parties is nothing but a pure agricultural operations by stretch of imagination. I, therefore, in view of the facts as discussed above and also keeping in view the judicial decisions as relied upon by the assessing officer, hold that the findings of the assessing officer that the activities as carried out by the appellant company under its division known as Social Forestry is nothing but an agricultural activity, and therefore, the addition made by the assessing officer under this head amounting to Rs.2,78,29,039/- is hereby confirmed."

10. Being aggrieved by order passed by the CIT(Appeals), the assessee preferred an appeal before the Tribunal. The contentions of the assessee raised before the Tribunal were recorded in the order as under:

> "8.5.2 Against the above, the learned AR of the assessee submitted that there are two routes (Seed Route and clonal route) through which saplings are developed by the assessee. Seed route Plantation procedure in Nursery is as under:

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

1) Land is taken on lease

2) Seed of Eucalyptus are obtained from seed orchards.

3) Seeds are sown in Primary beds where they germinate in 5 days and are transplanted in Polybags after about 20 days from germination.

4) Thereafter the plants are in the polybags for next 6 months i.e. 180 days approx wherein they attain a height of 30 cms as per the requirement of the farmers.

Clonal Route (Clones of Eucalyptus) production procedure is as under:

The Coppice shoots (Small shoots which arise from Sujps of Eucalyptus trees) from Farmers fields is collected by our staff from various areas away from the Mill. These coppice shoots are of no use to the farmers and they destroy it. In the Clonal Technology these shootes are utilized by cutting the shoots in small pieces of 1.5 inches to 2 inches. These cuttings are then treated in bavistin fungicide to avoid any fungal infection. One end is then dipped in a rooting hormone and then these cuttings are placed in Root trainer blocks having an artificial medium called Vermiculite. Soil in any stage is not used.

These cuttings are then placed in Mist chambers under controlled

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

conditions of Temperature (38 degrees C) &Humidity 85%. For a period of 45 days in after which they are brought out and kept in Hardening chambers for a period of 15 – 20 days. Here the plants are graded p ace in each block by healthy plants. After being kept for 20 days in the hardening chamber the plants are then brought to the open and kept on wire benches for a period of 90 days wherein they develop into plants ready for planting.

These plants are then transported to the farmers field as per requirement of the farmers. Once the saplings are planted in the field our field staff is regularly visiting the farmers for imparting the necessary awareness on what needs to be followed for a good crop to be raised.”

8.5.3 It was further submitted that 80% of saplings are developed through Seed Route and 20% through Clonal Route. As per the terms of agreement saplings are sold to the farmers, payment is made on credit by the bank and trees are finally purchased by the assessee and payment is made to the farmers through bank deducting there from the saplings price and interest. The learned AR of the assessee then referred to the definition of “agricultural income” as defined in Section 2(1A) of the Act. From this definition he emphasized that

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

agricultural income can arise only in respect of income derived from land which is used for agricultural purposes. Thus, even though saplings are in the nature of agriculture but if purpose is not agriculture then income or loss could not be of agriculture nature. In the case of the assessee sapling production is not for the purpose of carrying out agricultural activity but it is a part of overall activities undertaken by the assessee to ensure uninterrupted supply of raw material for the purpose of business. The assessee only provides assistance to the farmers for plantation of good saplings. Thus the use of the land is not for the purpose of agriculture but with the ultimate objective to procure raw material like bamboo and hardwood. The activities of agriculture are only incidental to the attainment of ultimate objective of the assessee for running its manufacturing uninterrupted. The income derived from the sale of saplings only reduces the cost of raw material and therefore it should not be viewed independent of other activities of procuring raw materials for its manufacturing activities. The intention of the assessee is not to derive income from such sale but to ensure commitment to grow the trees in the fields of the farmers for ultimate supply to the assessee. The learned AR of the assessee submitted that the expenditure claimed by the assessee are not exclusively for

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

growing saplings but include expenditures incurred on supervision, monitoring and procuring trees and relates expenses. Therefore, it is unreasonable to adopt the entire expenses claimed by the assessee as pertaining to growing saplings alone. Therefore, in case activities of the assessee are treated as agricultural activities then only those expenses are required to be disallowed which were specifically incurred on growing saplings and not what is incurred for monitoring and supervision for growing trees by the farmers. The learned AR of the assessee further submitted that the intention of the assessee is important in determining the nature of income. He submitted following details to buttress his argument that all the expenditure of Rs. 3,16,12,469/- incurred by the forestry division of the assessee were not incurred on growing saplings alone

Particulars	Saplings					Forest/ Others	Total
	Seed Route			Colonal Route	Total		
	Lend	Non-Land	Total				
	1	2	3(1+2)	4	5(3+4)	6	7(5+6)
-Labour/ Seeding cost	2.06	11.70	13.76	9.123	22.89	106.46	129.35
-Supervision	0.62	3.53	4.15	1.04	5.19	28.83	34.02
-Material	3.21	18.21	21.42	1.32	22.74	0.50	23.24
-Rent	1.01	5.73	6.74	-	6.74	-	6.74
-Salary	0.46	2.64	3.10	0.80	3.90	56.44	60.34

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

-Conveyance	0.07	0.43	0.50	0.13	0.63	17.27	17.90
-Miscellaneous	0.60	3.32	3.92	0.98	4.90	39.63	44.53
-Total	8.03	45.56	53.59	13.40	66.99	249.13	316.12
-Sapping Sale	5.46	30.96	36.42	9.10	45.52	-	45.52
-Net Expenditure	2.57	14.60	17.17	4.30	21.47	249.13	270.60
Notes:- 1. Expenses incurred in Seed Route Saplings, Keeping in view number of days seeds remain in primary beds, 15% of total expenditure has been allocated to land related expenditure. 2. Sapling sale- 80% has been considered as developed through Seed route and balance 20% through Clonal route (mist Chambers)							

8.5.4 It was further submitted by the learned AR of the assessee that the assessing officer has accepted that the social forestry expenses claimed by the appellant also included the expenditure incurred by the appellant subsequent to the sale of saplings. However, the assessing officer has misinterpreted the object of the incurrence of the expenditure by the appellant in holding that the appellant may be making profit from plant nursery activity. In fact it has made an overall loss due to its commitment to farmers in maintenance of plantation. It is submitted that the aforesaid observation of the assessing officer is misconceived in as much as incurring forestry expenses is not prompted by any commitment to help the farmers in maintenance of plantation but with the sole object to get the desired

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

quality and quantity of raw material necessary for the production of paper and board in which the appellant is engaged. The amount disallowed by the assessing officer is not a loss incurred in carrying out any agricultural activity but is an expenditure incurred with the sole object of ensuring the timely supply of adequate quality and quantity of raw material necessary for the production of paper and board, which is otherwise not available in adequate quantity.

8.5.5 In the alternative it was submitted that if the sale of saplings is considered by the Revenue to be income from agricultural activities and related expenditure is disallowable, then the expenditure incurred by the appellant subsequent to the sale of the saplings cannot be disallowed as the same does not relate to sale of saplings but to the procurement of trees by the appellant and forms a part of the raw material cost. Similarly, the cost incurred by the appellant on the procurement of seeds for growing saplings to the extent the same are distributed free of cost to the farmers cannot be said to be expenditure incurred on agricultural operations by the appellant and, thus, cannot be disallowed under section 14A of the Act as agricultural loss.

8.5.6 The learned AR of the assessee submitted that one contention of the

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

Assessing Officer is that the expenses claimed by the appellant on account of social forestry should have been shown as work-in-progress in the Profit & Loss Account as the trees from the saplings supplied by the appellant to the farmers would be available for use by the appellant only after the expiry of 5 to 7 years. In this regard, it was submitted by the learned AR of the assessee that the expenditure incurred by the appellant towards forestry cannot be regarded as work-in-progress of a project. The expenditure has been incurred in order to purchase raw material necessary for production of paper and not to create a capital asset which could be kept as work in progress. The expenditure incurred is purely of revenue nature. There is no requirement under accounting standards or tax laws to keep such expenditure accumulated as work in progress and claim the same as expenditure only at the time of purchase of trees. Thus, ld. A.R. prayed that the assessing officer may be directed to allow the expenditure incurred by the appellant towards forestry.

8.5.7 While advancing alternative contention, it was submitted that such expenditure should be considered as relating to agricultural operations as they were incurred on activities performed on land i.e. upto primary bed stage in seed route Plantation. In the event

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

this is not acceptable then only the expenditure incurred up to the sale of saplings should be considered as relating to agricultural activities as post saplings sale expenditure has no relationship with the growing of saplings. These in any case should not be considered for the purposes of computing the disallowable amount. In this regard it was submitted that in the clonal route production there is no use of soil and therefore, the expenditure incurred in clonal production should not be considered as agricultural related expenses. Mist Chambers are used in clonal route production and therefore, the depreciation on assets in the Mist Chambers amounting to Rs.768675 (forming part of total disallowance of Rs.2,78,29,039) disallowed in the assessment order needs to be excluded besides the expenditure incurred in clonal route production of saplings.

8.5.8. After making the above submissions, the learned AR of the assessee pointed out that the entire expenditure of Rs.316.12 lakhs was not incurred on agricultural activities. Part of it was incurred on growing seeds on land, transferring the small saplings into plastic bags and then on supervision under controlled conditions for allowing the saplings to grow up to 30 cms before sales. In addition, these expenses also included expenses on supervision of trees

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

grown by the farmers till the time of purchase of trees from them. Seeds are distributed to the farmers also in addition to sale of saplings. Total expenditure incurred on distribution of seeds to the farmers and on supervision of growing trees by the farmers was worked out at Rs.249.13 lakhs. On the other hand total expenditure incurred on in-house growing of saplings amounted to Rs.66.99 lakhs only. The learned AR of the assessee then submitted that saplings grown through clonal rout does not require any operation on the land. The small shoots, called coppice shoots, which arise from stamps of Eucalyptus trees in farmers' field, are collected by the staff of the company from various areas. These shoots are of no use to the farmers and are generally destroyed by them. The staff of the Company after collecting these shoots cut them into small pieces. These cuttings are then treated in bavistin fungicide to avoid any fungal infection. One end is then dipped in a rooting hormone and then these cuttings are placed in Root trainer blocks having an artificial medium called Vermiculite. These coppices are then placed in Mist chambers under controlled conditions of Temperature (38 degrees C) & Humidity 85% for about 45 days in which the roots and shoots develop. Thereafter they are brought into Hardening chambers for a period of 15 – 30 days. These plants are then

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

transported to the farmers' field as per their requirement and sale proceeds are collected through Bank. Thus clonal root is purely a technical process where no soil is used at any stage.

8.5.9 The learned AR of the assessee submitted in alternative that the entire activities are integral and has been carried out for commercial exigencies for procuring raw material for their plan. If it is considered that some part of the expenditure is incurred in agricultural operation then a reasonable proportion of such expenses be only disallowed and not the entire expenditure of Rs.316.12 lakhs reduced by sale proceeds of Rs.45.52 lakhs."

11. From the above submission canvassed on behalf of the assessee, the Tribunal summarized the several operations being carried out by the assessee as under:

"(i) Assessee is growing saplings over the land owned by the assessee on which all the basic operation like tilling of the land, sowing of the seeds, planting and similar operations in addition to weeding, removal of undesirable growth, cuttings, making the saplings fit for sale to the farmers are carried out.

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

> (ii) In addition, the assessee is procuring coppice shoots from the land of the farmers, carrying out chemical process and growing them under controlled conditions. There is no use of land for the purpose of growing these coppice shoots.
>
> (iii) The assessee has also spent money on distributing the seeds, conveyance, salaries of the staff etc., for the purpose of supervision of growing of trees by the farmers. No basic operation over the land is carried out by the assessee."

12. After considering the above analysis, the Tribunal referred to and relied upon the decision of the Hon'ble Supreme Court in case of **CIT v. Raja Benoy Kumar Sahas Roy** reported in (1957) 32 ITR 466 (SC) as well as decision of Hon'ble Supreme Court in case of **Commissioner of Income Tax,Bihar and Orissa v. Ramakrishna Deo** reported in (1959) 35 ITR 312 (SC) and decision of Hon'ble Supreme Court in case of **Commissioner of Income tax v. Jyotikana Chowadhurani** reported in (1957) 32 ITR 705(SC) and decisions of other High

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

Courts to arrive at the following conclusion:

> "8.8.8. Regarding the argument of the learned AR of the assessee that growing saplings, nursing them and selling to farmers for growing trees is an integral part of business of the assessee for procuring raw materials to be used in the business of manufacturing and sale of paper and board, we are of the view that the principle of business integrity, exigencies and prudence would come into operation only when income generated comes within the statutory provisions. If any expenditure is otherwise allowable under the I.T.Act,, only then those principles will come into play. Agricultural income and agricultural expenses are outside the purview of the I.T.Act. Business urgency or justification in carrying out farming or growing saplings is not the answer to the constitutional definition of subject between Union and State Legislature."

13. The Tribunal thereafter referred to the decision of ITAT Kochi in case of **Kancor Flavours and Extracts Ltd. v. Deputy Commissioner of Income Tax** reported in 312 ITR (AT) 148 (ITAT, Cochin) and held as under:

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

"...Thus expenditure incurred on cost of seeds, labour charges, purchase of manure, pesticide, tilling, weeding, labour and other expenses for the purpose of growing spice to standard quality and debited to the P & L account by the assessee who is carrying out the business of manufacturing of spice extract, and forming part of total expenses claimed by the assessee were in the nature of expenses incurred for agricultural operation and not deductible in computing its taxable income. In the same way as surplus of agricultural income cannot be considered for taxation then net loss/expenses relating to such agricultural operation cannot be allowed as expenditure for computing the business income. Therefore, we are not impressed with the argument of the learned AR of the assessee that the activities of growing saplings on the land should be considered as integral part of overall business activities of the assessee and accordingly be allowed as business expenses.

8.8.9. From a care full reading of all above judgments on the subject we cull out following principles:

A. Expenses incurred will not be agriculture expenses and income earned from sale of produce will not be agriculture income---

1. Where operations in forestry are performed after the produce had sprouted from the soil and no human

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

skill and labour is spent by the assessee on the cultivation of the land.

2. Where the produce on the land have not been raised by the performance of the basic operations such as ploughing the land, planting or sowing seeds, etc.,

3. Only for the reason that there is a business expediency and business prudence ; and there is a close connection of farming operation with the business of the assessee; Or that product is closely related with the land; or that ultimate source of the product is land or operation on the land.

4. Where plants are grown in a nursery and sold after the use of the earth, but without carrying out any basic operation on land.

5. Where operations are carried out without conjunction with and in continuation of the basic operations. The subsequent operations divorced from the basic operations cannot constitute by themselves agricultural operations.

B. Expenses incurred will be agricultural expenses and income earned from the sale of produce will be agricultural income if ---

1. Basic operations on the land are carried out and in conjunction and continuation, subsequent operations are also carried out.

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

2. If in addition to caretaking of spontaneous growth the assessee in between such spontaneous growth uses the land for sowing the seeds after tilling, then income from such basic operations alone will be agriculture income.

8.8.10. On the basis of discussion made above when we apply above principles we find that the expenses of Rs.249.13 lakhs being expenses incurred on forest , supervision of growing trees by farmers, conveyance, salary of the staff engaged in that purpose could not be treated as expenditure on agricultural operation and therefore should be allowed as business expenses. Similarly expenditure of Rs.13.40 lakhs incurred by the assessee on growing coppice seeds without using the land by primary operation cannot be disallowed. The only expenditure which can be considered for disallowance is the sum of Rs.53.59 lakhs which included a sum of Rs.8.03 lakhs incurred on growing saplings on land and Rs.45.56 lakhs incurred on operations on growing saplings after their removal from the land. In our considered view growing saplings in the pots/polythene bags after plucking them from ground and planting them in such pots is an integrated activity which is in conjunction with and in continuation of growing saplings on the land and therefore, expenditure incurred there upon would be treated as

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

agricultural expenses and therefore has to be disallowed. Accordingly, only the expenses to the extent on Rs. 53.59 lacs would be considered as agricultural expenses out of total claim of expanses at Rs. 316.12 Lacs. and would not be allowed. Against this the assessee has shown sale of agriculture produce (relatable to growing of saplings through land) at Rs.36.42 lacs and sale of saplings not relatable to agricultural operations at Rs.9.10 lacs. Therefore agricultural loss would be only Rs.53.59 – 36.42 = 17.17 lacs. The sale of saplings at Rs.9.10 lacs would be non-agricultural receipts and therefore cannot be allowed to be adjusted against agriculture expenses. So far as the depreciation of Rs.7.69 lacs (as per assessment order page 16) is concerned the same has been claimed on mist chambers and other assets used in growing saplings through clonal routes which has been treated as non-agricultural operation in our discussion made above. Thus the disallowance is restricted to Rs.17.17 lacs and accordingly assessee gets relief of Rs.(278.29 – 17.17) = 261.12 lacs/”

14. The aforesaid findings arrived at by the Tribunal is for the Assessment Year 2002-2003 and same is adopted for the year under consideration for Assessment Year 2004-2005

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

as under :

> “28.1. This relates to disallowance of Rs. 78,12,884/- including depreciation of Rs. 4,32,380/- incurred on agricultural operations, growing saplings and supervision of trees grown by farmers. Similar issue has arisen before us in the assessment year 02-03. This year also we have heard Ld. A.R. and Ld. D.R on this issue. We notice that facts and circumstances for the issue are the same as in earlier year. The details of expenditure incurred on various activities as given by the assessee are as under:

Particulars	Saplings					Forest/ Others	Total
	Seed Route			Colonal Route	Total		
	Lend	Non-Land	Total				
	1	2	3(1+2)	4	5(3+4)	6	7(5+6)
-Labour/ Seeding cost	0.85	4.79	5.64	1.41	7.05	26.42	33.47
-Supervision	0.15	0.88	1.03	0.26	1.29	7.12	8.41
-Material	0.92	5.21	6.13	1.53	7.66	0.13	7.79
-Salary	0.17	0.95	1.11	0.28	1.39	14.01	15.40
-Conveyance	0.06	0.31	0.37	0.09	0.46	3.65	4.11
-Miscellaneous	0.13	0.74	0.87	0.22	1.09	10.68	11.17
-Total	2.27	12.88	15.15	3.79	18.94	62.01	80.95
-Sapping Sale	0.86	4.86	5.72	1.42	7.14	-	7.14
-Net Expenditure	1.41	8.02	9.43	2.37	11.80	62.01	73.81

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

-Depreciation	-	-	-	4.32	4.32	-	4.32
-Grand Total	1.41	8.02	9.43	6.69	16.12	62.01	78.13
Notes:- 1. Expenses incurred in Seed Route Saplings, Keeping in view number of days seeds remain in primary beds, 15% of total expenditure has been allocated to land related expenditure. 2. Sapling sale- 80% has been considered as developed through Seed route and balance 20% through Clonal route (mist Chambers)							

28.2. Following our order for the assessment year 2002-03 only the expenses to the extent on Rs. 15.15 lacs would be considered as agricultural expenses out of total claim of expanses at Rs. 80.95 Lacs. and would not be allowed. Against this the assessee has shown sale of agriculture produce (relatable to growing of saplings through land) at Rs.5.72 lacs and sale of saplings not relatable to agricultural operations at Rs.1.42 lacs. Therefore agricultural loss would be only Rs.15.15-5.72 = 9.43 lacs. The sale of saplings at Rs.1.42 lacs would be non-agricultural receipts and therefore cannot be allowed to be adjusted against agriculture expenses. So far as the depreciation of Rs.4.32 lacs is concerned the same has been claimed on mist chambers other assets used in growing saplings through clonal routes which has been treated as non-agricultural operation in our discussion made in assessment year 2002-03 while disposing of similar ground. Thus the disallowance is restricted to Rs.9.43 lacs and

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

> accordingly assessee gets relief of Rs.(78.13 – 9.43) = 68.70 lacs.”

15. With regard to amortised expenses claimed by the assessee in the books of account for computation of book profit under section section 115JB of the Act for the Assessment Year 2002-2003, the Tribunal after considering the provisions of section 115JB of the Act held as under:

> “10.3.7 It clearly provides a scheme of computation of book profit which shall be deemed as total income of the assessee. The base for computation of book profit is taken as the profit determined in the profit and loss account prepared for the relevant previous year in accordance with the provisions of Part-II and III of Schedule-VI of the Companies Act, 1956 and after taking into account the accounting policies, accounting standards and method and rates for calculating the depreciation provided therein. Such book profit, being net profit as per profit and loss account would be adjusted by several items as provided in Explanation which is enumerated above in the section. The expenditure relating to exempted income as provided in section 10, 11 and 12, if debited in profit and

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

loss account, are required to be added by virtue of clause-f to Explanation. This clause does not mention section 14A though it also relates to disallowance of expenditure relating to exempted income. If legislature had intended to increase the profit by the expenditure relating to exempted income as provided in Section 14A, they would have so provided in clause 'f' to explanation. The fact that Section 10, 11 and 12 are mentioned in clause-f of Explanation, but not Section 14A even though they deal with similar type of expenditure i.e. relating to exempted income, gives clear indication that legislatures have not intended to disallow and consequently add to the book profit, expenditure relating to exempted income, and debited in profit and loss account prepared as per Companies Act.

10.3.8 The only argument raised by the revenue in this regard is that Sub Section-5 or Section 115JB provides the applicability of all the provisions of the Act and therefore provision of Section 14A would also apply and consequently expenditure relating to exempted income would be required to be added to the book profit. In our considered view, this argument is not tenable. Sub Section 5 starts with "save as otherwise provided in the Section ……" It means that wherever Section 115JB has provided

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

and other provisions of the Act also provide on the same point then what is provided in Section 115JB would be applicable and not the other provisions of the Act. In our considered view Section 115JB is a complete code in itself for the purposes of computing book profit. No additional item of adjustment is required to be borrowed even if it is so provided in other provisions of the Act. For the purposes of computing book profit only those adjustments which are specifically provided in Section 115JB are required to be made and no other. This is also the ratio of the judgment of the Hon’ble Supreme Court in Apollo Tyres Case (supra) and other judgments rendered following Apollo Tyres. In other words, what is to be computed under various heads of income as per section 14 to 59 is replaced by book profit as per Schedule-VI of the Companies Act. Therefore, no provision comprising between Section 14 to 59 and also other provision in the Act providing for addition into income will affect book profit except the statuary adjustments provided under Section 115JB. The initial wordings in Section 115JB(1) also makes it clear. It starts with “notwithstanding anything contained in any other provision of this Act…”. This non-obstante clause prohibits operation of any other provision of the Act which may have effect on the book profit. Sub Section 5 of Section 115JB enables

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

the Assessing Officer to invoke other provisions of the Act relating to the field not provided in Section 115JB. The computation of book profit, which is treated as total income is provided in this Section, therefore, other provisions relating to computation of income in other Sections of the Act will not be operative in this field. Provisions relating to other field such as, procedure for assessment, collection and recovery, appeals and revision etc. not provided in section 115JB would apply in case of adopting adjusted book profit as total income. Therefore, disallowance of expenditure relating to exempted income as per section 14A, even though debited by the assessee in the profit and loss account, but auditors have certified it as for business purposes cannot be made.

10.3.9 In view of above, we are of the considered view that expenditure relating to growing of saplings, and supervision of growing trees by the farmers and debited by the assessee in the profit and loss account and a part of which has been considered as relating to agriculture operations in our discussions above cannot be added back while computing book profit under section 115JB."

16. For the year under consideration i.e, Assessment Year 2004-2005, the Tribunal

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

applied the aforesaid reasoning as under:

> “35.2.1 This ground relates to upholding the action of the A.O. in not allowing deduction of Rs.1,63,85,686/- amortized in the accounts by the assessee and claimed as deduction in computing book profit. The A.O. disallowed the claim while computing book profit u/s 115JB on the ground that this expenditure related to exempted income. This expenditure related to social forestry and incurred on growing saplings by the assessee in-house and also on supervision of growing trees by the farmers from the seeds and saplings provided by the assessee and finally purchased by it from the farmers. The assessee had incurred an expenditure of Rs.73,80,504/- during this year and claimed in return and in the books amortized sum of Rs.1,63,85.686/-. The ld. A.O. held that raising of saplings is connected to basic agricultural operations connected with the land. Similarly activities in helping the farmers to maintain the plantations are also connected with the operation on land. Thus, entire expenditure is agricultural expenses and, therefore, not allowable u/s 14A.
>
> 35.2.2 The ld. CIT(A) has confirmed the order of the ld. A.O.
> 35.2.3 We have heard ld. A.R. and ld. D.R. Similar issue had arisen before us in the assessment year 2002-03 in ground No.6 (c) and in

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

> the assessment year 2003-04 in ground No. 7(b). We have held therein that computation of book profit will not be affected by sec. 14A. For the detailed reasoning given there, we hold similarly also this year and decide the issue in favour of the assessee. As a result, this ground of assessee is allowed.”

17. Learned Senior Standing Counsel Mr. Karan Sanghani for the Revenue submitted that considering the nature of activities carried out by the assessee company, the entire operation right from growing of saplings till purchase of trees from farmers is required to be considered as one agricultural activity and the Tribunal has committed an error by bifurcating the same into two activities, one pertaining to agricultural operation of growing saplings which is sold to the farmers and other business activity of the assessee company by incurring expenditure on distributing the seeds, conveyance, salaries of the staff etc., for the purpose of

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

supervision of growing trees by the farmers to whom the saplings were sold by the assessee. It was submitted that the assessee was engaged in agricultural activity of basic operations like tilling of the land, sowing of the seeds, planting and similar operations in addition to weeding, removal of undesirable growth, cuttings, making the saplings fit for sale to the farmers and thereafter incurring expenditure for supervision of trees, saplings planted by the farmers till purchase of trees as per the agreement between the assessee company and the farmers.

18. It was therefore, submitted that expenditure incurred on cost of seeds, labour charges, purchase of manure, pesticide, tilling, weeding, labour and other expenses for the purpose of growing saplings to standard quality and debited to the Profit

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

and Loss account have been rightly disallowed by the Tribunal but the Tribunal has committed an error while considering the expenses incurred by the assessee for subsequent operation carried out by the farmers on behalf of the assessee as business expenditure.

19. It was therefore, submitted that the findings of the CIT(Appeals) on facts of the case are required to be restored by treating the operation of social forestry division of the assessee as an agricultural operation. It was submitted that CIT(Appeals) has rightly held that merely because agricultural activities carried out by the assessee has been named as social forestry, would not make any difference, as giving a particular nomenclature/name to an activity does not alter its characteristic and entire activity as carried out by the assessee company for

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

sowing and growing of saplings and selling the same to outside parties and thereafter supervising the growth of saplings till it is converted into trees which is purchased by the assessee company as per the terms of agreement, would amount to agricultural operation of the assessee company. It was therefore, submitted that the Tribunal was not justified in restricting the loss to Rs. 9.43 lacs for the year under consideration.

20. It was submitted that the Tribunal has further committed an error by interpreting the provisions of section 115JB of the Act as once the activity is held to be an agricultural activity, same would be exempt from zone of consideration of total income as per section 10(1) of the Act and therefore, as per sub-section (5) of section 115JB of the Act, the Tribunal ought to have directed the Assessing Officer to add the amount of

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

disallowance to the book profit by computation of book profit as income. It was therefore, submitted that as the Revenue has claimed that entire expenditure incurred by the assessee for the year under consideration pertains to agricultural operation, the Tribunal was not justified in deleting the addition of Rs.1,63,85,686/- being expenditure incurred for the purpose of agricultural activity added by the Assessing Officer as income of the assessee for computation of book profit under section 115JB of the Act.

21. On the other hand, learned advocate Ms. Prachi Darji appearing with learned advocate Mr. Mayur Punjabi for learned advocate Mr. Anandodya S. Mishra for the respondent assessee referred to and relied upon the findings of the Tribunal as well as the contentions raised before the Tribunal on

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

behalf of the assessee.

22. Having heard the learned advocates for the parties and considering the facts of the case, following undisputed facts emerge from the record:

1) The assessee company incurred expenditure for growing saplings over the land owned by it on which all the basic operations like tilling of the land, sowing of the seeds, planting and similar operations in addition to weeding, removal of undesirable growth, cuttings, making the saplings fit for sale to the farmers were carried out.

2) In addition, the assessee had also procured coppice shoots from the land of the farmers, carrying out chemical process and growing them under controlled conditions.

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

23. The Tribunal has considered both these activities of the assessee as agricultural activities and on the basis of the alternative contention raised by the assessee, disallowed the loss of Rs. 9.43 lacs for the year under consideration while adopting the reasoning which was assigned for Assessment Year 2002-2003 wherein in similar facts, loss of Rs.17.17 lacs was disallowed by the Tribunal from the total income.

24. The Tribunal has after applying the decision of the Hon’ble Supreme Court in case of **CIT v. Raja Benoy Kumar Sahas Roy (**supra) which was followed by Hon’ble Supreme Court and other High Courts held that if forestry is spontaneously grown and sold, then income derived from the sale of such trees would not be an agricultural income. In facts of the case, the Tribunal has held that the assessee had sold saplings and thereafter the farmers

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

have carried out the agricultural activity and therefore, the expenditure incurred by the assessee for supervision, salary, etc. cannot be considered as an agricultural activity as the same would fall under the business activity of the assessee and accordingly, the expenses incurred on forest, supervision of growing trees by farmers, conveyance, salary of the staff engaged for that purpose has rightly not been considered as expenditure on agricultural operation.

25. Similarly, the expenditure incurred by the assessee for growing coppice shoots without using the land by primary operation was also not considered as agricultural activity.

26. In view of such findings of fact recorded by the Tribunal, which is reproduced here-in-above, we are of the opinion that the

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

Tribunal was right in law in restricting the addition made by the Assessing Officer and confirmed by CIT(Appeals) to Rs.9.43 lacs as against total addition made of Rs. 78,12,884/- on account of disallowance of agricultural loss including depreciation of Rs. 4,32,380/-.

27. We therefore, answer question no.1 of Tax Appeal No.290/2010 in favour of the assessee and against the Revenue.

28. Insofar as Question no.2 in Tax Appeal No.290/2010 which pertains to disallowance made by the Assessing Officer of Rs.1,63,85,686/- being the expenditure incurred for the purpose of agricultural activities for the purpose of computing book profit under Section 115JB of the Act is concerned, same would be a consequential question as once we accept the findings of

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

the Tribunal that only the expenditure incurred qua growing of saplings to be considered as an agricultural activity then in such circumstances, only the loss which has been disallowed by the Tribunal amounting to Rs.9.43 lacs can be considered for computation of book profit under section 115JB of the Act in view of provision of sub-section (5) of section 115JB of the Act and clause (f) to the Explanation and therefore, we answer the question partly in favour of the Revenue to the aforesaid extent.

29. Tax Appeal No.290/2010 is accordingly disposed of.

30. So far as Tax Appeal No.900/2012 is concerned, in view of our above findings on merits and quantum, the Tribunal has rightly upheld the order passed by CIT(Appeals) deleting the penalty as under:

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

"2.3 We have considered the rival submissions, perused the material on record and have gone through the orders of authorities below and the judgement cited by the Ld. A.R. We find that this fact is undisputed that as per the appeal effect order passed by the A.O. on 15.10.2009, regular income was assessed at Rs.28.30 crores before allowing set off of brought forward unabsorbed depreciation and after allowing such set off, regular income was assessed at Rs. 'nil' whereas the book profit was assessed at Rs.18.70 crores as disclosed by the assessee in the return of income. In the light of these facts, now we examine the applicability of this judgement of Hon'ble Delhi High Court cited by the Ld. A.R. being the judgment rendered in the case of Nalva Sons Investments Ltd. (supra). As per the facts of this case, original return of income was filed by the assessee declaring loss of Rs.43.47 crores and thereafter, revised return was filed showing income at Rs.3,86,82,128/- under the provisions of Section 115JB of the Income tax Act, 1961. The assessment was completed by the A.O. u/s 143(3) at a loss of Rs.36.95 crores as per the normal provisions and at book profit was computed at Rs.40163180/- u/s 115JB of the Income tax Act, 1961. This goes to show that in that case, addition was made by the A.O. for computation of income as per the normal provisions of the Income tax Act, 1961 and also for computing

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

book profit u/s 115JB of the Income tax Act, 1961. For the additions made by the A.O., penalty was levied by him u/s 271(1)(c) of the Act. Under these facts, it was held by the Hon’ble Delhi High Court in that case that when the income computed in accordance with normal provisions is less than the income determined by the legal fiction namely the book profit u/s115JB of the Income tax Act, 1961 and the income of the assessee is assessed u/s 115JB and not under the normal provisions and the tax is paid on the income assessed u/s 115JB of the Income tax Act, 1961, concealment of income would have no role to play and could not lead to tax evasion and, therefore, penalty cannot be imposed on the basis of disallowance or addition made under the normal provisions. Hon’ble Delhi High Court has also considered the judgement of Hon’ble Apex Court rendered in the case of Gold Coin Health & Food Ltd. as reported in 304 ITR 308. Since, the facts are similar in the present case, we uphold the order of Ld. CIT(A) by respectfully following this judgment of Hon’ble Delhi High Court cited by the Ld. A.R. rendered in the case of Nalva Sons Investments Ltd. (supra).

2.4 In the result, this appeal of the revenue in I.T.A.No. 128/Ahd/2010 for the assessment year 2004-05 is dismissed.”

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

31. On perusal of above reasoning, it is clear that the Tribunal has followed the decision of Hon’ble Delhi High Court in case of **Commissioner of Income Tax v. Nalwa Sons Investments Ltd. r**eported in (2010) 327 ITR 543 wherein in similar facts, penalty levied under section 271(1)(c) of the Act in respect of addition made by computation of book profit under section 115JB was deleted, as no penalty could be levied on account of concealment under section 115JB of the Act as the tax has been paid on income computed on the book profit and not on statutory provision which would not result in any tax evasion.

32. Decision of Hon’ble Delhi High Court has been followed by this Court in case of **Commissioner of Income Tax -II v. CIT Tiles Ltd.** reported in (2015) 370 ITR 127 wherein it is held as under:

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

“**10.** Having thus heard the learned counsel for the parties, we notice that under section 271 of the Act, if the Income-tax authority prescribed therein is satisfied that if any person has concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct that such person shall pay penalty, which shall not be less than but shall not exceed three times of the amount of tax sought to be avoided by the reasons of the concealment of the particulars of his income or furnishing of inaccurate particulars of such income. Clause (c) of Explanation 4 to section 271(1) of the Act provides that for the purpose of clause 3 of the said sub-section, the expression "amount of tax sought to be avoided" means the difference between tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished. It is in the context of such penalty provisions we have to examine the view of the Tribunal bearing in mind the facts of the case. If, therefore, even after the concealment is unearthed or the assessee's act of supplying inaccurate particulars comes to light, the tax liability before or after such concealment or providing of inaccurate particulars remains the same ; by virtue of clause (c)

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

of Explanation 4 to section 271(1) of the Act there would be no penalty imposable. This is so because the penalty is to be computed in terms of the amount of tax sought to be avoided, such expression "amount of tax sought to be avoided" is explained in Explanation 4. We have noticed that clause (c) thereof when applied to such a case, the amount of tax sought to be avoided would be 'nil'. If this is so, the penalty under section 271(1)(c) of the Act would not be possible to be imposed. This is precisely what the Delhi High Court also held in the case of Nalwa and Sons Investments Ltd. (supra). It was observed as under (page 553) :

> "The judgment in the case of CIT v. Gold Coin Health Food P. Ltd. [2008] 304 ITR 308 (SC), obviously does not deal with such a situation. What is held by the Supreme Court in that case is that even if in the Income-tax return filed by the assessee losses are shown, penalty can still be imposed in a case where on setting off the concealed income against any loss incurred by the assessee under other heads of income or brought forward from earlier years, the total income is reduced to a figure lower than the concealed income or even a minus figure. The court was of the opinion that 'the tax sought to be evaded' will mean the tax

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

chargeable on the concealed income as if it were the total income. Once, we apply this rationale to Explanation 4 given by the Supreme Court, in the present case, it will be difficult to sustain the penalty proceedings. Reason is simple. No doubt, there was concealment but that had its repercussions only when the assessment was done under the normal procedure. The assessment as per the normal procedure was, however, not acted upon. On the contrary, it is the deemed income assessed under section 115JB of the Act which has become the basis of assessment as it was higher of the two. Tax is thus paid on the income assessed under section 115JB of the Act. Hence, when the computation was made under section 115JB of the Act, the aforesaid concealment had no role to play and was totally irrelevant. Therefore, the concealment did not lead to tax evasion at all.

The upshot of the aforesaid discussion would be to sustain the order of the Tribunal, though on different grounds. Therefore, while we do not agree with the reasoning and approach of the Tribunal, for our reasons disclosed above, we are of the opinion that penalty could not have been imposed even in respect of claim of depreciation

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

made by the assessee. This appeal is accordingly dismissed."

11. In the present case, we have noticed that the Commissioner in his order dated November 14, 2008, partially allowed the assessee's appeal in terms of quantum addition and in terms held that no addition for the purpose of computation of book profit under section 115JB of the Act could have been made. The Commissioner in order to come to such conclusion relied on the decision of the Supreme Court in the case of Apollo Tyres Ltd. v. CIT reported in [2002] 255 ITR 273 (SC) and Malayala Manorama Co. Ltd. v. CIT reported in [2008] 300 ITR 251 (SC), in which it is held that it is not open for the Assessing Officer to rescrutinise the accounts and satisfy that the accounts have been maintained under the provisions of the Companies Act. While computing the income of a company under the provision for minimum alternative tax, the Assessing Officer has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The Assessing Officer, thereafter, has the limited power of making increases and reductions as provided in the Explanation to such provision.

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

12. To this proposition of the Commissioner, we have serious doubt. In a case like this, when the assessee concealed certain income not only for the purpose of avoiding excise duty but also Income-tax, we wonder whether the provisions of section 115JB of the Act would prevent the Revenue authorities from making suitable additions not only in the normal computation but also for computing the book profit for minimum alternative tax. We also wonder whether the decisions of the Supreme Court in the case Apollo Tyres Ltd. (supra) and Malayala Manorama Co. Ltd. (supra) lay down such a proposition. When the assessee holds back certain facts even from the statutory auditors, we wonder whether their certification that the accounts have been maintained as required under the Companies Act would be final and it would be impermissible for the Assessing Officer to go behind that. Such issue, however, we would answer in an appropriate case as and when such facts are presented before us. In the present case, we shall have to proceed on the basis that the order of the Commissioner has become final. It is, thus, binding both on the Revenue as well as the assessee. Such order in effect was that addition for normal computation sustained, for the purpose of computation of book profit deleted. The result of this decision of the Commissioner would be that the tax that the assessee would pay before

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

and after additions would remain exactly the same. In other words, since the Commissioner did not permit any increase in the assessee's book profit computation under section 115JB of the Act, even after unearthing the concealed income, the assessee ended up paying the same amount of minimum alternative tax under section 115JB of the Act even after the concealments were unearthed and accepted by the assessee. It is in this background, our discussion on the implication of Explanation 4 to section 271(1) of the Act must be seen. When in facts of the case, the assessee's tax liability did not change despite unearthing of concealed income, no penalty could have been levied. We may clarify that our conclusions should not be seen as laying down that simply because before and after the additions the assessee remained a MAT company and paid tax under section 115JB of the Act or such similar provision, that by itself would mean that no penalty could be imposed. If the effect of the addition of the concealed income results into higher minimum alternative tax by increasing the book profit also, penalty could as well be imposed. With this clarification, we answer the question against the Revenue."

33. In view of the above decisions, as well as in view of the findings of fact arrived at

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026

by the Tribunal, question of law raised in Tax Appeal No. 900/2012 is answered in favour of the assessee and against the Revenue. Tax Appeal No.900/2012 is accordingly dismissed.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

RAGHUNATH R NAIR

Uploaded by RAGHUNATH R NAIR(HC00196) on Wed Sep 16 2026 Downloaded on : Thu Sep 17 00:31:36 IST 2026