

1. **Since issue decided by Commissioner (Appeals) was not arising out of orders of any of lower authorities, order passed was not only incorrect but also beyond his jurisdiction.** The Commissioner of Income-tax (Appeals) probably by overlooking the fact that the issue to be decided pursuant to the direction of the hon'ble Supreme Court is only the disallowance of the cost of two comber machines and one auto coner, proceeded to adjudicate that even the cost of 339 units of yarn clearers is capital expenditure, even though the said issue was not before the hon'ble Supreme Court. Since the issue is not arising out of the orders of any of the lower authorities originally is decided by the Commissioner of Income-tax (Appeals) which is not only incorrect but also beyond his jurisdiction. It is a mistake apparent from record also. Thus we modify the order of the Commissioner of Income-tax (Appeals) restricting the disallowance only to cost of two comber machines and one auto coner. Ground No. (ii) raised by the assessee is allowed. Since the Commissioner of Income-tax (Appeals) has no jurisdiction to decide the issue which is not before the lower authorities at any stage originally, he could have rectified his order on the application filed by the assessee. The assessee preferred an appeal against the order of the Commissioner of Income-tax (Appeals) in rejecting the petition filed under section 154 of the Act. In view of our above findings, we allow the appeal of the assessee filed against the order under section 154 of the Commissioner of Income-tax (Appeals). **Sri Vignesh Yarns (P.) Ltd. v. Deputy Commissioner of Income-tax [2015] 38 ITR(T) 543 (Chennai - Trib.).**
2. **When once it is established that land owned by assessee has been used for agricultural purpose, he becomes entitled for claim under section 54B on sale of land even if he is not a cultivator himself but gets it cultivated under his supervision.** As per section 54B, assessee has to establish the fact that land in question is being used by assessee for agricultural purpose in two years immediately preceding the relevant two assessment years. So, agricultural activity on the land in question cannot be negated on the basis of not shown agricultural income in its return of income. It does not affect assessee's claim under section 54B once it is established that land has been used for agricultural purpose, assessee becomes entitled for claim under section 54B. In the instant case, assessee has proved beyond doubt on the basis of relevant revenue record that he was in cultivator possession of the agricultural land in question. Even this fact has not been disputed in the remand report by Assessing Officer. In appeal, the Commissioner (Appeals) verified the same and found that as per revenue record, land in question was used for agricultural purpose. The explanation used for agricultural purpose in section 54B can only be description of agricultural land which is subject matter of transfer and not condition precedent for granting relief under section 54B. There is nothing on record to suggest that assessee was not engaged in agricultural activity on the land in question which is evident from relevant revenue records as well. Burden is on assessee to establish that land is agricultural one. At the same time, onus is on department to establish otherwise that land was non-agricultural one. In instant case, as per revenue record, land

in question is agricultural land. In view of above the Commissioner (Appeals) was justified in directing to allow the claim of exemption under section 54B to assessee in respect of agricultural land in question. Same is upheld. This reasoned finding of the Commissioner (Appeals) needs no interference. **Shree Bhagwanbhai Revabhai Prajapati v. ACIT, [2015] 154 ITD 710(Ahmadabad – Trib)**