Should “agricultural income” be redefined more clearly?

Introductory Remarks

1. It may be surprising to note that "agricultural income" which is defined in section 2 (IA) of the Income-tax Act (the Act) has given rise to controversy with regard to interpretation of the definition itself. Though the issue discussed is quite interesting from the readers' point of view but it is not so from the point of view of the assessee and it becomes irksome as there will always be uncertainty with regard to exemption of income derived from land used for agricultural purposes or taxability of such income

It is interesting to note that though the phrase "agricultural income" has been defined the terms "agriculture" and "agricultural purposes" have not been defined as can be seen from the next paragraph before we embark upon the subject "agricultural income" under the heading "Understanding the terms agricultural land, agriculture and agricultural purposes"

"Understanding the terms agricultural land, agriculture and agricultural purposes"

2. The Uttarakhand High Court in the case of *CIT* v. *Green Gold Tree Farmers (P.) Ltd.* [2008] 167 Taxman 151/299 ITR 262 (Uttarakhand) while deciding the issue "whether sale proceeds of plants raised in nursery on land belonging to assessee constitutes income from agriculture" in favour of the assessee made the following observations at paras.12 and 13 of its decision, which in the considered opinion of the author, are quite relevant-

12. The terms "agriculture" and "agricultural purposes" not having been defined in the Indian Income-tax Act, but necessarily fall back upon the general sense in which they have been understood in common parlance. "Agriculture" in its root sense, means a gear, a field and cultivate, cultivation of field which of course implies expenditure of human skill and labour upon land. Turning to the Dictionary meaning of "agriculture", Websters' New International Dictionary describing it as the art or science of cultivating the ground, including rearing and management of livestock husbandry farming etc. and also including in its good sense farming, horticulture, forestry, butter and cheese making etc. Murray's Oxford Dictionary describes it as the science and art of cultivating the soil, including the allied pursuits of gathering in the crop and rearing livestock, tillage, husbandry, farming in the widest sense. In Bouviers' Law Dictionary quoting the Standard Dictionary agriculture is defined as the cultivation of soil for food products or any other useful or valuable growths of the field of garden, tillage, husbandry, also by extension, farming, including any industry practiced by cultivator of the soil in connection with such cultivation as breeding and rearing of stock, dairying etc. The science that treats of the cultivation of the soil. In Corus Juris Secondum the term "agriculture" has been understood to mean, art or science of cultivating the ground, especially in fields of large quantities, including the preparation of

soil, the planting of seeds, the raising and harvesting of crops, and the rearing, feeding and management of livestock tillage, husbandry and farming. In its general sense, the word also includes gardening or horticulture. Century Dictionary and Anderson's Dictionary of Law: -The primary meaning of 'agriculture' is the cultivation of the ground, and in its general sense, it is the cultivation of the ground for the purpose of procuring vegetables and fruits for the use of man and beast including gardening or horticulture and the raising or feeding of cattle and other stock. Wharton's Law Lexicon adopts the definition of agriculture, in 8 Edn. VII, C. 36. As including horticulture, forestry and the use of land for any purpose of husbandry etc. In 10 Edn. VII, C8, section 81, it was defined so as to include the use of land as meadow or pasture land or orchard or osier or woodland or for market gardens, nursery grounds, or allotments, etc. In 57 and 58 Vict C 30 section 22, the term 'agricultural property' was defined so as to include agricultural land, pasture, and woodland etc.
13. The Hon'ble Supreme Court in a case *CIT* v. *Raja Benoy Kumar Sahas Roy* [1957] 32 ITR 466 (SC) has held that —
"the term 'agriculture' cannot be confined merely to the production of grain and food products for human beings and beasts but, must be understood as comprising all the products of the land which have some utility either for consumption or for trade and commerce and would also include forest products such as timber, sal and piyasal trees, casuarina plantations, tendu leaves, horranuts, etc.""

These 2 paragraphs were extracted by the Punjab & Haryana High Court in the case of *Land Acquisition Collector* v. *Addl. CIT* [2016] 73 taxmann.com 7/242 Taxman 389/[2017] 396 ITR 410 (P & H) while correcting the wrong approach made by the Tribunal when the Tribunal incorrectly observed that "the words "agricultural land" are to be determined with reference to the definition in section 2(14) of the Act.

This paragraph has been coined to make the professionals understand that so much as controversy exists not only in undertaking the terms which have not been defined but also in undertaking the words "agricultural income" which appear to have been defined extensively in section 2(1A) of the Act as can be seen in this article.

Definition of "Agricultural income" in the Act

3. Section 2(IA) of the Act, as on date, reads as under-

(1A) "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:

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 ; or (B) in any area within the distance, measured aerially,— (I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten thousand but not exceeding one lakh ; or (II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than one lakh but not exceeding ten lakh ; or (III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten lakh.

Explanation 1.— 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;

Explanation 2. — For the removal of doubts, it is hereby declared that income derived from any building or land referred to in sub-clause (*c*) arising from the use of such building or land for any purpose (including letting for residential purpose or for the purpose of any business or profession) other than agriculture falling under sub-clause (*a*) or sub-clause (*b*) shall not be agricultural income.

Explanation 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;

Explanation4. — For the purposes of clause (*ii*) of the proviso to sub-clause (*c*), "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;

Amendments were made to section 2(1A) of the Act through Finance Acts 1989,2000 and 2008 which have been captured in para.5 below.

A few observations from the Highest Court

4.1 The Privy Council speaking through Lord Simonds who presided over the Bench in the case of *Raja Mustafa Ali Khan* v. *CIT* [1948] 16 ITR 330 (PC) held that "on reading both the clauses (*a*) and (*b*) of the definition of the "agricultural income", it is clear that the income must be derived from land which is used for agricultural purposes" and that "though it must always be difficult to draw the line yet unless there is some measure of cultivation of the land, some expenditure of skill or labour upon it, it cannot be said to be used for agricultural purposes, within the meaning of the Income-tax Act."

It is to be noted that section 2(1) read with section 4(3)(*viii*) of the Indian Income-tax Act, 1922 [akin to Section 2(1A) read with section 10(1) of the Income-tax Act, 1961] was considered by the Privy Council.

This decision of the Privy Council can be considered as the forerunner on the subject of "agricultural operations/purposes *vis-à-vis* agricultural income."

4.2 What constitutes "agricultural income" has been succinctly explained after analysing the concept of agricultural operations, if one may be permitted to say so, by the Supreme Court in the case of *Raja Benoy Kumar Sahas Roy* (*supra*) in the following words-

" . . . . . Agriculture is the basic idea underlying the expressions "agricultural purposes" and "agricultural operations" and it is pertinent therefore to enquire what is the connotation of the term "agriculture". As we have noted above, 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, *e.g.*, 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. But even though these subsequent operations may be assimilated to agricultural operations, when they are in

conjunction with these basic operations could it be said that even though they are divorced from these basic operations they would nevertheless enjoy the characteristic of agricultural operations? Can one eliminate these basic operations altogether and say that even if these basic operations are not performed in a given case the mere performance of these subsequent operations would be tantamount to the performance of agricultural operations on the land so as to constitute the income derived by the assessee therefrom agricultural income within the definition of that term?

We are of opinion that the mere performance of these subsequent operations on the products of the land, where such products have not been raised on the land by the performance of the basic operations which we have described above would not be enough to characterize them as agricultural operations. In order to invest them with the character of agricultural operations, these subsequent operations must necessarily be in conjunction with and a continuation of the basic operations which are the effective cause of the products being raised from the land. It is only if the products are raised from the land by the performance of these basic operations that the subsequent operations attach themselves to the products of the land and acquire the characteristic of agricultural operations. The cultivation of the land does not comprise merely of raising the products of the land in the narrower sense of the term like tilling of the land, sowing of the seeds, planting, and similar work done on the land but also includes the subsequent operations set out above all of which operations, basic as well as subsequent, form one integrated activity of the agriculturist and the term "agriculture" has got to be understood as connoting this integrated activity of the agriculturist. One cannot dissociate the basic operations from the subsequent operations and say that the subsequent operations, even though they are divorced from the basic operations can constitute agricultural operations by themselves. If this integrated activity which constitutes agriculture is undertaken and performed in regard to any land that land can be said to have been used for "agricultural purposes" and the income derived therefrom can be said to be "agricultural income" derived from the land by agriculture."

The Supreme Court referred to the decision of the Privy Council in the case of *Raja Mustafa Ali Khan* (*supra*) more than dozen times in the course of its judgment and opined that different High Courts had interpreted this decision of the Privy Council differently.

Series of amendments made to section 2(IA) of the Act

5.1 By the Finance Act 1989

Circular No. 550, Dated 1-1-1990

Clarificatory amendment of provisions relating to agricultural income

"10.2 Therefore, as a measure of rationalisation, it has been clarified by way of insertion of an *Explanation* to clause (1A) of section 2 that capital gains arising from the transfer of

the aforesaid agricultural land will not constitute 'revenue' within the meaning of section 2(1A)(*a*) of the Income-tax Act.
10.3 This amendment will take effect retrospectively from 1st April, 1970 and will, accordingly, apply in relation to the assessment year 1970-71 and subsequent years."

[Section 3 of the Finance Act, 1989]

5.2 By the Finance Act 2000

Circular No. 794, Dated 9-8-2000

Definition of "agricultural income"

"5.2 The Act has inserted an *Explanation* in section 2(1A) to clarify that any income from such building or land arising from the use of the building or land for any purpose other than agriculture shall not be included in the definition of "agricultural income". For example, if a person has income from using such building or land for purposes such as letting it out for residential purposes or for the purposes of any business or profession, then such income shall not be treated as agricultural income.
5.3 This amendment shall take effect from the 1st day of April, 2001 and will, accordingly, apply to the assessment year 2001-2002 and subsequent years."

[Section 3(*a*) of the Finance Act 2000]

5.3 By the Finance Act, 2008

Circular No. 1/2009, Dated 27-3-2009

4. Widening the scope of "agricultural income"

"4.2 With a view to giving finality to the issue, an *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.
4.3 Applicability - This amendment has been made applicable with effect from 1st April, 2009 and shall accordingly apply for assessment year 2009-10 and subsequent assessment years."

Cases wherein exemption was denied

6.1 The assessee in the case which arose before the ITAT Chennai in *E. Palaniappan* v. *ITO* [2009] 119 ITD 385 (Chennai) had grown sugarcane on his agricultural land and converted the same into jaggery. The profit on sale of jaggery was shown as agricultural income exempt from tax. The Assessing Officer rejected the assessee's claim and the assesse declared agricultural income as his business income. On first appeal, the Commissioner of Income-tax (Appeals) upheld the order of the Assessing Officer.

The Tribunal, on second appeal from the assessee, dismissed his appeal by holding as under-

"It is clear from the perusal of the statutory provision as mentioned in section 2 (1A) that what is taken to the market and sold must be the produce which is raised by the cultivator. Even though for the purpose of making it marketable or fit for sale, some process may have to be undertaken, yet the section does not contemplate the sale of an item or a commodity which is different from what is cultivated and processed. The immediate source of income must be land of the description or character mentioned in the definition. There exists no nexus between jaggery and agricultural operations. The nature of the commodity becomes different after the application of the process. When sugarcane was converted into jaggery, it resulted in the production of a different commodity. Conversion of sugarcane into jaggery is not a necessary process performed by the cultivator to render sugarcane fit for being taken to the market. As such, profit from the sale of jaggery falls beyond the ken of agricultural income. Therefore, the impugned order was to be upheld."
The Tribunal explained at para.12 of its order that "after examining the process and the dictionary meaning of gur and jaggery, we find that both the items are of the same nature. Actually, in Allied's Hindi-English Dictionary, the meaning of gur is given as jaggery."

The assessee filed an appeal before the Madras High Court. [*E.Palaniappan* v. *ITO* in [IT Appeals Nos. 1467 & 1468 of 2008, dated 22-6-2021].

The Madras High Court identified the common point as to whether "the profit from the sale of Jaggery falls within the definition of agricultural income?".

The Madras High Court expressed that "It is common knowledge that the expression "agricultural income" connotes any income derived from land by agricultural operations including processing of agricultural produce raised or received so as to render it fit for the market. It is sine *qua* non that the produce must retain its original character and the only change which is permitted in the produce would be that which makes it marketable."

The High Court listed out the facts of the case and referred to the decisions of the Bombay High Court in the cases of *CIT* v. *H.G. Date* [1971] 82 ITR 71 (Bom.) and *CIT* v. *Kirloskar Bros. Ltd.* [1990] 48 Taxman 146/181 ITR 523 (Bom.) wherein the Bombay High Court

held that the conversion of sugarcane into jaggery was a process essential to make sugarcane marketable.

Relying on the decision of the Allahabad in the case of *Seth Banarsi Das Gupta* v. *Commissioner of Income-tax* [1977] 106 TTR 804 (All.) it was argued on behalf of the Revenue that wherein the assessee had sold part of the sugarcane in its original form and the remaining was converted into jaggery claiming exemption for both the incomes it was held that the portion of income earned from sale of jaggery was not an agricultural income and it was not entitled for any exemption from tax. It was also argued on behalf of the Revenue that unlike the Bombay case in the case of *H.G. Date* (*supra*) wherein the sugarcane did not have a ready market and it had to be converted into jaggery, there was no compulsion or necessity in this(Madras) case to convert sugarcane into jaggery.

The Madras High Court, appreciating the argument raised on behalf of the Revenue that there was no reason or justification for converting sugarcane into jaggery, dismissed the appeal of the assessee.

The High Court noted that "It is further observed by the Assessing Officer that the assessee has incurred an expenditure of Rs. 1,70,000/- for manufacturing of jaggery while he incurred expenditure of Rs. 1,30,000/- towards cultivating sugarcane" meaning thereby that substantial amount was spent on second stage before marketing the jaggery.

The High Court extracted the procedure for converting sugarcane into jaggary from the order of the Tribunal in para.9 of its judgment and noted that "there is more profit in making it as jaggery and selling."

It is submitted, with great respect, that the author has noted 2 strange things in this decision-

The first one is-The Supreme Court in the case of *Shiv Raj Gupta* v. *CIT* [2020] 117 taxmann.com 871/272 Taxman 391/425 ITR 420 (SC) held that "substantial question of law" has to be framed by the High Court before starting the process of answering it. The Madras High Court, in this case, does not seem to have framed "the substantial question of law" to be answered by it.

The second one is about the observation of the High Court at para.9 of its judgment which, in the considered opinion of the author, is not in tune with the object of the legislature. In other words, when exemption for agricultural income is specified in the Act and the assessee- no reference in this regard is made to this judgment but only a general statement by the author- adopts one perfect method to claim exemption the High Court, with great respect, cannot make a sweeping remark as was done in this case which ran as under-

"If the exemption of agricultural income is extended to the sale of jaggery, it would only facilitate many agriculturists to claim this exemption and carrying revenue loss to the exchequer."

6.2 The Allahabad High Court in the case of *Seth Banarsi Das Gupta* (*supra*) held that "the income from gur business was not agricultural income exempt from tax. In order to bring the case within the meaning of "agricultural income" as defined in section 2(1)(*a*) of the Act, it is necessary, to establish that the nature of the commodity remains the same even after the application of the process. When sugarcane is converted into gur, it results in the production of a different commodity. The conversion of sugarcane into gur is not a necessary process performed by a cultivator to render sugarcane fit for being taken to the market."

The facts of the case were that the assessee sold part of the sugarcane raised on its land, while the remaining part was converted into gur. The Assessing Officer included the profit from the sale of the gur in the assessee's taxable income rejecting the assessee's plea that it was agricultural income and the same stood confirmed by the Tribunal.

The Allahabad High Court confirmed the disallowance as stated earlier.

Author-Gur (jaggery) is a natural product of sugarcane. It is in more unrefined form than sugar. It is a brown raw mass of sucrose which gets it colour because of other elements found in concentration such as wood ash and bagasse. Jaggery is commonly made from two products, that are sugar cane and date palm tree.

6.3 The Madras High Court in the case of *CIT* v. *Stanes Amalgamated Estates Ltd.* [1998] 232 ITR 443 (Mad.) "on noticing the fact, that eucalyptus leaves had ready market which was evidenced by contract allowed by forest department for cutting green leaves by private merchants, held that it could not be said that income arising from sale proceeds of eucalyptus oil was in nature of agricultural income and, therefore, was not assessable to tax."

The High Court, while allowing the appeal of the Revenue also held that "Even though the assessee contended that the leaves themselves had no market, it was not substantiated before the Tribunal. Therefore, the Tribunal was not right in holding that the income arising from the sale proceeds of eucalyptus oil extracted by the assessee from the leaves of the eucalyptus trees grown by it was in the nature of agricultural income and hence it was not assessable to tax."

It is to be noticed that the assessee-company extracted eucalyptus oil from leaves of eucalyptus trees grown by it.

6.4 The Supreme Court in the case of *K. Lakshmanan & Co.* v. *CIT* [2000] 108 Taxman 167/[1999] 239 ITR 597 (SC) observed that "under the provisions of section 2(1)(*b*)(*ii*) Act, agricultural income would include an income derived from such land by the performance by a cultivator of any process ordinarily employed by him to render the produce raised by him fit to be taken to market and what is clear from the reading of the aforesaid statutory provision that what is taken to the market and sold must be the produce which is raised by the cultivator. Even though for the purpose of making it marketable or fit for sale, some process may have to be undertaken, the section does not contemplate the sale of an item or a commodity which is different from what is cultivated and processed."

The assessee in this case was engaged in the activity of growing mulberry leaves and rearing silkworms and for this purpose it purchased silkworm eggs and when they were hatched, the worms were principally fed on mulberry leaves. The mulberry leaves were plucked from the trees grown by the assessee and these leaves were cut into strips which were fed to the silkworms. The worms would wind around themselves the saliva oozing from their mouth and the hardened saliva would then form the protective cocoons. These cocoons were then sold in the market by the assessee. The assessee claimed that the entire income which it derived from the growing of the mulberry leaves and the sale of the cocoons was exempt from levy of tax claiming as it was 'agricultural income'. The Assessing Officer, however, concluded that part of the income which was attributable to growing of mulberry leaves alone constituted agricultural income and was exempt from levy of income-tax but the income derived from the rearing of silkworms on the leaves and selling of the cocoons was not agricultural income. Therefore, the Assessing Officer estimated the income derived from the process of growing silkworms and rearing of cocoons at 25 per cent of the total income and subjected the same to tax in the assessment years involved. Though the First Appellate Authority allowed the appeal of the assessee, the same was reversed by the Tribunal which (the order of the Tribunal) was confirmed by the Karnataka High Court.

The issue reached the Supreme Court.

The Supreme Court referred to its earlier decision in the case of *Dooars Tea Co. Ltd.* v. *Commissioner of Agricultural Income-tax* [1962] 44 ITR 6 (SC) and extracted the following observations from this earlier decision at para. 9 of its judgment -

" . . .Section 2(1) (*b*) consists of three clauses. Let us first construe clauses (*ii*) and (*iii*). Clause (*ii*) includes cases of income derived from the performance of any process therein specified. The process must be one which is usually employed by the cultivator or receiver of rent-in-kind; it may be simple manual process or it may involve the use and assistance of machinery. That is the first requirement of this proviso. The second requirement is that the said process must have been employed with the object of making the produce

marketable. It is, however, clear that the employment of the process contemplated by the second clause must not alter the character of the produce. The produce must retain its original character and the only change that may have been brought about in the produce is to make it marketable. The said change in the condition of the produce is only intended to make the produce a saleable commodity in the market. Thus, clause (*ii*) includes within the categories of income, income derived from the employment of the process falling under that clause. As we have just observed, the object of employing the requisite process is to make the produce marketable but in terms the clause does not refer to sale and does not require that the income should be obtained from sale as such though in a sense it contemplates the sale of the produce." (p. 12)"

The Supreme Court finally held as under at para. 10 of its judgment-

"We are in respectful agreement with the aforesaid observations. The High Court, as we have already observed, has rightly come to the conclusion that the income derived by the appellant from the sale of the cocoons could not in law be regarded as agricultural income. The question of law was, therefore, rightly answered in the affirmative and against the appellant."

6.5 The facts of the case which arose before the Karnataka High Court in *CIT* v. *Namdhari Seeds (P.) Ltd.* [2011] 16 taxmann.com 83/203 Taxman 565/[2012] 341 ITR 342 (Kar.) were that the assessee-company was engaged in the business of cultivation, production and marketing of hybrid seeds in the domestic market as well as exports of these products. It was doing contract farming by entering into an agreement with farmers for production of tomato seeds with ownership of the land continuing with the farmers. The assessee was supplying the foundation seeds and financing the cost of all the activities carried out by the farmers at different stages of cultivation, subject to farmers carrying out preparation of the land, sowing of seeds, application of fertiliser, weeding, irrigation, pollination, harvesting and seed extraction and harvesting under supervision of the assessee's personnel with the seeds continuing to be the property of the assessee. The farmers were entitled to an assured pre-fixed price per quintal of the tomato seeds corresponding to the specifications. The Assessing Officer felt that the assessee's entire income was taxable as non-agricultural income, while the First Appellate Authority accepted the claim of the assessee for treating entire income as agricultural income. When the matter reached the Tribunal, it was held by the Tribunal that only 10 per cent. of the net profit would be taxable as business income and the balance would be exempt as agricultural income. The High Court, on appeal by the Revenue, after an elaborate review, held that as the assessee had neither derivative interest in the land nor did it actually cultivate the land, the entire activity was in the nature of business, so that the income of the assessee was taxable as non-agricultural income. Some of the factors which were taken into account for holding against the assessee were that (*a*) the assessee had not paid any rent for the land and that (*b*) the consideration which was

paid to the farmers depended upon the quantity and quality of the harvested seeds supplied by the farmers.

6.6 Following the decision of the Karnataka High Court in the case of *Namdhari Seeds (P.) Ltd.* (*supra*) the ITAT Delhi Bench in the case of *P.H.I. Seeds (P.) Ltd.* v. *Deputy CIT* [2018] 96 taxmann.com 493 (Delhi - Trib.) held that where the assessee entered into lease and service agreement with farmers for cultivation of seeds on their own land, since farmers had to ensure watering, fertility and suitability of land, mere supervision by the assessee without carrying out basic operation for cultivation of land would give rise to business income in the hands of the assessee and not agricultural income.

The Delhi Bench referred to the decision of the Supreme Court in the case of *Raja Benoy Kumar Sahas Roy* (*supra*) in para 18 of its order which ran as under-

"We find from the arrangement between the farmer and the assessee that the assessee is not carrying any agricultural operations required in terms of tests laid in the judgment of the Hon'ble Supreme Court in the case of *Raja Benoy Kumar Sahas Roy* (*supra*). The actual cultivation on the land is done by the farmer like tilling, sowing, etc. The mere supervision by the assessee without the carrying of the basic operations would leave no manner of doubt that no agricultural income arose in the hands of the assessee. The argument of the assessee that the company is an artificial person and could not have conducted the agricultural operations by itself and, therefore, required such kind of an arrangement with the farmers for earning agricultural income does not have any merit. The farmers are not the employees of the assessee company. Had it been the case where the actual agricultural operations were carried out by the employees of the assessee company, it would have been a different case altogether."

Cases wherein exemption was available

7.1 The facts of the case which arose before the Bombay High Court in *H.G. Date* (*supra*) were that the assessee, who cultivated sugarcane on his land and converted it into jaggery for sale in the market, claimed exemption for the income received as agricultural income. The Tribunal found that the quality of sugarcane cultivated by the assessee was such that it could not be used for chewing. Sugarcane could not be stored as a crop as it would start losing its sugar content within 48 hours of being cut. The Revenue contended that there was a sugar mill near the lands belonging to the assessee which bought sugarcane in its natural condition. But the Tribunal found on evidence that the mill bought sugarcane mainly from cultivators in the factory area and from Government farms and had refused in the past to buy from the assessee and concluded from this that the existence of the single mill would not constitute a market for the assessee's sugarcane in its natural condition and that conversion of sugarcane into jaggery had been the process ordinarily employed in India to render it fit to be sold in market.

The High Court held that "there was evidence before the Tribunal to justify its finding that there was no market for the sugarcane produced by the assessee in its natural condition. Hence, the income received by the assessee from sale of jaggery was exempt from income-tax as agricultural income."

7.2 The Bombay High Court, in a subsequent decision in the case of *Kirloskar Bros. Ltd.* (*supra*) following its earlier decision in the case of *H. G. Date* (*supra*), held as under at para.8 of its judgment-

"8. In *H.G. Date's* case (*supra*) this Court was concerned with a situation where the assessee cultivated sugarcane on his land and converted it into jaggery for sale in the market. He claimed exemption from tax on the income received, it being agricultural income. The finding of the Tribunal was that sugarcane could not be stored as a crop as it started losing its sugar content within 48 hours of being cut. There was a sugar mill near the land belonging to the assessee which bought sugarcane in its natural condition, but the evidence showed that the mill bought sugarcane mainly from cultivators in the factory area and from the Government farms and had refused in the past to buy from the assessee. The Tribunal concluded that the existence of the single mill would not constitute a market for the assessee's sugarcane in its natural condition. Conversion of sugarcane into jaggery was a process ordinarily employed in India to render it fit to be sold in the market This Court noted that findings of fact made by the Tribunal were open to attack in a reference only if they were perverse or were reached without due consideration of relevant matters. It was not for the Court in reference, to scrutinise the details of the evidence to ascertain whether there had been evidence before the Tribunal to justify the finding that there was no market for the sugarcane produced by the assessee in its natural state. The income received by the assessee from the sale of jaggery was, accordingly, held to be agricultural income exempt from income-tax."

7.3 The Punjab & High Court in the case of *CIT* v. *Rana Gurjit Singh* [2012] 21 taxmann.com 93/340 ITR 108 (P & H) held that "where conversion of raw peas into pea seeds had only been done keeping in view that there was no market readily available for sale of raw peas, income derived by assessee from pea seeds was agricultural income and, thus, not exigible to tax"

The High Court, at para.16 of its judgment observed that "A perusal of the aforesaid observations shows that the Tribunal had recorded a finding that the assessee was involved in the process of converting the raw peas into pea seeds wherein ***no substantial technique or mechanism was to be employed and the conversion of raw peas into pea seeds had only been done keeping in view that there was no market readily available for sale of raw peas.*** It is further clear from the above observations that the raw peas being perishable item was converted into pea seeds by just uprooting the plant as a whole and then by drying, thrashing and winnowing such uprooted pea plant for which ready market was available.

In view of these observations, it was held that the assessee was carrying on agricultural activities and the income derived from that was his agricultural income. The findings recorded by the Tribunal noticed above deleting the addition sustained by the Commissioner of Income-tax (Appeals), have not been shown to be perverse."

7.4 In the case which arose before the ITAT Bangalore Bench in *Advanta India Ltd.* v. *Asstt. CIT* [2013] 34 taxmann.com 188/143 ITD 387 (Bang. - Trib.) the assessee-company was engaged in development and production of basic and hybrid seeds and up to basic seed activity, all primary operations were performed by the assessee-company on its own lands or lands leased by it under its own direct supervision and guidance with help of casual labour engaged by it and then basic seeds were given to farmers for producing hybrid seeds on their own lands under supervision of assessee. The cost of production was reimbursed to farmers and produce was taken back by the assessee. The question that arose before the Tribunal was whether production of hybrid seeds from basic seeds was agricultural activity and income earned by the assessee from this activity would be agricultural income exempt under section 10 of the Act.

The Tribunal, compared the present case with the one decided by the Karnataka High Court in the case of *Namdhari Seeds (P.) Ltd.,* (*supra*) by preparing a chart and observed at para.11 of its order that "it can be seen that the decision of the Hon'ble High Court of Karnataka in the case of *Namdhari Seeds (P.) Ltd.,* (*supra*) is based on the peculiar facts and circumstances of its case. The Hon'ble High Court has held that the assessee therein, *i.e.Namdhari Seeds (P.) Ltd.*, is in fact purchasing the hybrid seeds produced by the farmers and the contract is to produce hybrid seeds as per the specifications. In the case on hand, we find that the farmers though are employed to cultivate the lands are acting on behalf of the assessee company under its supervision and the entire produce is taken by the assessee only."

The Tribunal allowed the appeal of the assessee by holding as under at para.12 of its order-

"12. In view of the same, we are of the opinion that the decision of the Hon'ble Karnataka High Court in the case of *Namdhari Seeds (P.) Ltd.*, (*supra*) is not applicable in its entirety to the facts of the case before us. The issue is covered in favour of the assessee by the decision of this Tribunal in the assessee's own case for the assessment year 2002-03. Respectfully following the decision of the Co-ordinate Bench to which one of us *i.e.*, J.M is a signatory, the grounds of appeal relating to the claim of exemption under section 10 of the Income-tax Act are allowed."

7.5 The facts of the case which arose before the ITAT Hyderabad Bench in *Vibha Agrotech Ltd.* v. *ITO* [2009] 120 ITD 182 (Hyd.) were that the assessee-company, engaged in research, production and marketing of hybrid seeds, filed its return wherein a part of

income was claimed as exempt being agricultural income under section 10(1) of the Act. The Assessing Officer was of the view that the main activity of the assessee was development of high yielding crop hybrids for commercial purposes and he further opined that in order to attain its ultimate objective of sale of hybrid seeds, the assessee was producing foundation basic seeds which were multiplied into hybrid seeds and, thus, production of basic seeds was subservient and incidental to its main activity of sale of hybrid seeds. Accordingly, the Assessing Officer concluded that the basic seed production was not 'agricultural activity' and income derived from it was not exempt under section 10(1) of the Act. The Commissioner of Income-tax (Appeals) upheld the order of the Assessing Officer.

On second appeal filed before the Tribunal by the assessee, the Tribunal observed that the basic seeds were produced by assessee by doing basic agricultural operations and, moreover, it was not revenue's case that without performing the said basic operations, subsequent operations had been carried out. Based on these facts the Tribunal held that "since basic seeds sold by the assessee were result of primary as well as subsequent operations involving huge skills and efforts as defined under section 2(1A) of the Act, the same was an agricultural income entitled to exemption under section 10(1) of the Act."

7.6 The ITAT Hyderabad Special Bench in the case of *Deputy CIT* v. *Inventaa Industries (P.) Ltd.* [2018] 95 taxmann.com 162/172 ITD 1 (Hyd - Trib.) (SB) held that where in order to grow mushrooms, instead of horizontal use of soil, vertical space is used, still growth of mushrooms would not stand apart from agricultural operations and therefore income from production and sale of such mushrooms has to be regarded as agricultural income.

The Special Bench speaking through the Hon'ble Accountant Member made pertinent observations, with regard to the subject "agricultural operations" via-a-vis utilisation of land for such purposes, some of which have been captured below-

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

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. [Para 12.13]

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. [Para 12.14]

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. [Para 12.16]

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. [Para 14.6]"

7.7 An interesting case arose before the Supreme Court in *Commissioner of Sales-tax* v. *D.S. Bist* [1980] 3 Taxman 61 (SC) wherein the assessee owned some tea gardens in U.P. The tea-leaves grown by him in his gardens were sold in the market after being processed and packed. The process of preparing tea involved withering, crushing, roasting, fermentation or final roasting with charcoal for obtaining suitable flavour or colour and grading them with sieves. The assessee claimed that the tea-leaves sold by him were agricultural produce grown by himself and, therefore, the sales were not exigible to sales tax. His claim was not accepted.

On reference (appeal) by the final revising authority, the High Court held that the tea so produced did not cease to be an agricultural produce and would not be exigible to sales tax. The Revenue filed an appeal before the Supreme Court.

The Supreme Court Bench consisted of 2 Hon'ble Judges namely Hon'ble Justice Shri. N.L. Untwalia and Hon'ble Justice Shri. R.S. Pathak (as His Lordship then was) and the main judgment was written by Hon'ble Justice Shri. N.L. Untwalia and Hon'ble Justice Shri R.S. Pathak (as His Lordship then was) agreed with the main judgment except for one point about which we will see later. Wherever reference is made to the judgment of the Supreme Court it is the main judgment authored by Hon'ble Justice Shri. N.L. Untwalia.

The Supreme Court held as under- (Headnote of Taxmann)-

1. Tea-leaves are plucked from tea plants as green tea-leaves. The same are not fit for consumption and are not sold in the open market. They are often purchased by big tea concerns from the owners of the gardens and, after processing and packing, they sell them in the market. In their cases, the sales will be exigible to sales tax.

2. Unlike many agricultural produces, tea-leaves are not marketable in the market fresh from the tea gardens. Nobody eats tea-leaves. It is meant to be boiled for extracting juice out of it to make tea liquor. Tea-leaves are, therefore, only fit for marketing when by a minimal process they are made fit for human consumption. The processing may stop at a particular point in order to produce inferior quality of tea and bit more may be necessary to be done in order to make it a bit superior. But that by itself will not substantially change, the character of the tea-leaves, still they will be known as tea-leaves and sold as such in the market.

All the six processes enumerated from the primary findings of the fact recorded in the order of the revising authority were necessary for the purpose of saving the tea-leaves from

perishing, making them fit for transporting and marketing them. The process applied was minimal. Withering, crushing and roasting the tea-leaves will surely be necessary for preserving them. The process of fermentation or final roasting with charcoal for obtaining suitable flavour or colour and also the process of grading them with sieves were all within the region of minimal process and at no point of time it crossed that limit and robbed the tea-leaves, the agricultural produce, of their character of being and continuing as such substantially.

3. In the instant case, the assessee had not sold his tea-leaves from his gardens to any manufacturing tea company. He had himself applied some indigenous and crude manufacturing process in order to enable him to sell his tea in the market. In such a situation, there is no difficulty in holding that the sale was of his agricultural produce.

4. The High Court was, therefore, right in law in holding that the tea produced by the assessee was not exigible to sales tax.

The Supreme Court approved the decisions of the Madras High Court in the cases of *State of Madras* v. *R. Saravana Piliaj* [1956] 7 STC 541 and N. *Deviah Gowder* v. *Commercial Tax Officer* [1962] 13 STC 422 where a similar question arose with respect to areca nuts (seeds of betel palm) and the Supreme Court extracted page 544 from the decision of the Madras High Court in the case of *R. Saravana Piliaj* (*supra*) which were in the following words-

"As we have pointed out, it was common ground that there is no market in Coimbatore or elsewhere for areca nuts as they are when plucked from the trees, and it should be remembered that they are gathered when they are still unripe. The proviso to section 2(*i*) of the Act is obviously conceived in the interests of agriculturists. It excludes from any tax liability under the Act sale of agricultural and horticultural produce, the primary condition to be satisfied being that it must be produce of the land which either belongs to the seller or of the land in which he has an interest as specified by section 2(*i*). To restrict that concession to sale of areca nuts, for instance, only if those areca nuts are sold in the stage in which they are immediately on being gathered from the trees, would render the statutory exclusion meaningless."

The Supreme Court then referred to the decisions of the Bombay High Court in the cases of *R.B.N.S. Bora wake* v. *State of Bombay* [1960] 11 STC 8 and *H.G. Date* (*supra*) and extracted the following passage from page 11 (of STC) from the decision of the Bombay High Court in the case of *R.B.N.S. Bora* (*supra*) in its judgment-

"It is true that gur cannot be regarded as an agricultural produce grown on land. But if gur is prepared out of the agricultural produce which is grown on land, in the absence of any indication to the contrary suggesting that the agricultural produce must be sold in the form

in which it is grown, we will be justified in holding that an agriculturist who is exclusively selling agricultural produce grown on the land either in the form in which it is grown or in the form in which it is converted for the purpose of transportation or preventing deterioration is within the exception provided by section 2(6). In the present case, with a view to prevent deterioration and for the purpose of facilitating transportation the assessee converted the sugarcane grown by him into gur and sold it."

The Supreme Court in the next paragraph opined that "It appears, as I have done, that this case has gone a bit too for and on an appropriate occasion it may require further consideration."

The Supreme Court then held as under- "I" in both the places including the one below refers to Hon'ble Justice Shri. N.L. Untwalia-

"Nonetheless, in the instant case, one can safely conclude, as I have done, that with a view to prevent deterioration and for the purpose of facilitating transport and making it marketable, the assessee himself did some processing to the plucked tea-leaves and hence the High Court was right in holding that such sales were not exigible to sales tax. Similar or identical principles have been applied by other High Courts also in respect of different commodities such as rubber, sole crepe, casuarina, pig bristles, etc."

Concluding Remarks

8. The difference of opinion between the two Hon'ble Judges in the case of *D.S. Bist* (*supra*), which however did not affect the final outcome of this decision, arose in analysing the judgment of the Calcutta High Court in the case of *Killing Valley Tea Co. Ltd.* v. *Secretary to State* AIR 1921 Cal. 40.

Hon'ble Justice Shri. N. L. Untwalia agreed with the following view of the High Court which His Lordship extracted in his judgment-

"That the process in its entirety cannot be appropriately described as agriculture. The earlier part of the operation when the tea bush is planted and the young green leaf is selected and plucked may well be deemed to be agriculture. But the latter part of the process is really manufacture of tea, and cannot, without violence to language, be described as agriculture. . . The green leaf is not marketable commodity for immediate use as an article of food, but it is a marketable commodity to be manufactured by people who possess the requisite machinery into tea fit for human consumption."

Hon'ble Justice Shri. R.S. Pathak [as His Lordship then was] struck a different note by finding fault with the approach of the High Court which drew a distinction between the two processes for the purpose of apportioning the income between agricultural income and

non-agricultural income. Hon'ble Justice Shri. R.S. Pathak [as His Lordship then was] then went to observe as under-

"The question before us is whether after the tea leaf had been put through the process of withering, crushing, roasting and fermentation it continued to be agricultural produce. If the Calcutta High Court can be said to have laid down that as a result of those processes the tea leaf ceased to be agricultural produce, ***I am unable to agree with it. To my mind, the tea leaf remained what it always was***. It was tea leaf when selected and plucked, and it continued to be tea leaf when after the process of withering, crushing and roasting it was sold in the market. The process applied was intended to bring out its potential qualities of flavour and colour. The potential inhered in the tea leaf from the outset when still a leaf on the tea bush. The potential surfaced in the tea leaf when the mechanical processes of withering, crushing and roasting, fermenting by covering with wet sheets and roasting again were applied. ***The tea leaf was made fit for human consumption by subjecting it to those processes. At no stage, did it change its essential substance. It remained a tea leaf throughout. In its basic nature, it continued to be agricultural produce***."

From the above it is submitted, with respect, that there is no unanimity with regard to the concept of agricultural produce even among the judges of the Highest Court of the land.

This point of disagreement, which was not relevant for deciding the main issue, goes to show that the issue as to what is agricultural produce is not free from doubt.

It is apt to note that the Supreme Court in the case of *CCE* v. *Hari Chand Shri Gopal* 2010 [260] ELT 3 (a Bench consisting of 5 Hon'ble Judges) *vide* its decision dated 18th November, 2010, has held at paragraph 22 of the judgment that "the law is well-settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption. In *Novopan Indian Ltd.* v. *CCE&C* [1994] Supp. 3 SCC 606, this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in *Hansraj Gordhandas* v. *H.H. Dave* [1996] 2 SCR 253, held that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for

any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, *i.e.*, by the plain terms of the exemption.".

The Supreme Court went on to hold that the execution of bonds as provided in Chapter X of the Central Excise Rules, 1944 (dealing with declaration, etc.) is not an empty formality for obtaining the duty-free excisable goods and unless the other conditions associated with bonds are fulfilled no exemption can be claimed by the manufacturer of a specified final product falling under the Schedule of the Central Excise Tariff Act, 1985. It was also held that these details to be furnished are also statutory in nature, which relate to the "substance" and "essence" of the requirements under Chapter X and as these statutory details were not furnished in the case the manufacturer was denied exemption and the appeal of the Revenue was allowed.

The Supreme Court in the case of *Commissioner of Customs (Import)* v. *Dilip Kumar & Company* [2018] 95 taxmann.com 327/69 GST 239 (SC) [a Bench consisting of 5 Hon'ble Judges] held that "Exemption notifications should be interpreted strictly, assessee cannot take benefit of ambiguity in exemption notification; benefit of such ambiguity must be interpreted in favour of revenue."

The following conclusions/observations made by the Hon'ble Supreme Court speaking through Hon'ble Justice N.V. Ramana (as His Lordship then was) at paras.50 to 52 sum up the position with regard to reading and understanding an exempted provision/notification-

50. In *Tata Iron & Steel Co. Ltd.* v. *State of Jharkhand* [Appeal (civil) 1912 of 2004-Judgment dated 30th March,2005] which is another two-Judge Bench decision, this Court laid down that eligibility clause in relation to exemption notification must be given strict meaning and in para 44, it was further held -
"The principle that in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted, would have no application to construction of an exemption notification, as in such a case it is for the assessee to show that he comes within the purview of exemption (See *Novopan India Ltd.* v. *CCE and Customs*)."
51. In *Hari Chand Shri Gopal's* Case (*supra*), as already discussed, the question was whether a person claiming exemption is required to comply with the procedure strictly to avail the benefit. The question posed and decided was indeed different. The said decision, which we have already discussed *supra*, however, indicates that while construing an exemption notification, the Court has to distinguish the conditions which require strict compliance, the non-compliance of which would render the assessee ineligible to claim exemption and those which require substantial compliance to be entitled for exemption. We are pointing out this aspect to dispel any doubt about the legal position as explored in this decision. As already concluded in para 50 above, we may reiterate that we are only concerned in this case with a situation where there is ambiguity in an exemption

notification or exemption clause, in which event the benefit of such ambiguity cannot be extended to the subject/assessee by applying the principle that an obscure and/or ambiguity or doubtful fiscal statute must receive a construction favouring the assessee. Both the situations are different and while considering an exemption notification, the distinction cannot be ignored.

52. To sum up, we answer the reference holding as under —

"(1) Exemption notification should be interpreted strictly, the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpretated in favour of the revenue.

(3) The ratio in *Sun Export Corporation* v. *Collector of customs* [1997] 6 SCC 564 is not correct and all the decisions which took similar view as in *Sun Export* Case (*supra*) stand overruled."

However, it is earnestly requested by the author that illustrations can be given at least in respect of exempted provisions covered under section 10 of the Act, wherever it is possible, as given in most of the sections in Indian Contracts Act, 1872 so that controversies and disputes get reduced though not fully eliminated.

S. KRISHNAN

(Source: Taxmann.com)