आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

IN THE INCOME TAX APPELLATE TRIBUNAL INDORE BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.486/Ind/2019
Assessment Year:2015-16

Shri Jitendra Patidar (L/H of Late Shri Satyanarayan Patidar) 184, Khajrana Main Rd. Khajarana, Indore	**बनाम**/ Vs.	Pr. CIT-2 Indore
(Appellant)		(Revenue)
P.A. No.BXEPP0823N		
Appellant by	Shri S.N. Agrawal, CA	
Revenue by	Smt. Ashima Gupta, CIT-DR	
Date of Hearing:	**01.10.2020**	
Date of Pronouncement:	**21.10.2020**	

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal by the assessee is directed against the order of ld. Pr. Commissioner of Income Tax(in short 'Ld. Pr. CIT',-2 Indore dated 29.03.2019 pertaining to assessment year 2015-16.

The assessee has raised following grounds of appeal:

"1. That on the facts and in the circumstances of the case and in law, the Ld. Pr. CIT erred in setting aside the order as passed by the assessing officer under section 143(3) of the Act by invoking the provisions of section 263 of the Act even when the order as passed by the assessing officer was neither erroneous nor prejudicial to the interests of the revenue.

2. That on the facts and in the circumstances of the case and in law, the Ld. Pr. CIT erred in setting aside the roder as passed by the assessing officer by invoking the provisions of section 263 of the Act even when the order was passed by the assessing officer under section 143(3) of the Act after conducting necessary enquiries and after due application of mind.

3.That on the facts and in the circumstances of the case and in law, the Ld. Pr. CIT erred in setting aside the order as passed y the assessing officer by invoking the provisions of section 263 of the Act without properly appreciating the facts of the case and submissions made before him even when amount of investment in agricultural land of Rs.1,40,18,850/- claimed as deduction under section 54B of the Act was legal and proper.

4. The assessee craves leave to add, alter modify the grounds of appeal as taken by him.

2. The facts giving rise to the present appeal are that the in this case assessment was completed by the assessing officer u/s 143(3) of the Income Tax Act 1961 (hereinafter referred as the Act) on 27.03.2017, assessing the income at Rs. 2,98,060/-. Subsequently, the Ld. Pr. CIT on going through assessment records found that certain points

which were mentioned in the selection of the case for scrutiny under CASS were not taken into consideration by the assessing officer while completing assessment u/s 143(3) of the Act. The Ld. Pr. CIT was of the view that the assessing officer passed an order without making required investigation for examination which has resulted the assessment being erroneous in so for as it is also prejudicial to the interest of the revenue. Hence, Ld. Pr. CIT issued notice u/s 263 of the Act calling upon the assessee as to why assessment order should not be revised. Basis of issuing notice u/s 263 is recorded in para 3 of the show cause notice which is reproduced as under:

> *"As per the information available on records, it is noted that you have sold immovable property (land) for a total sale consideration of Rs.1,60,65,000/- and shown long term capital gain of Rs.1,36,25,525/-. Furtehr you have claimed deduction u/s 54B of the IT Act amounting to Rs.1,40,18,850/- on purchase of agriculture land and shown capital loss of Rs.(-)3,93,265/-. On perusal of the details of deduction claimed u/s 54B regarding agriculture land purchased, it appears that no agriculture land has been purchased on your name. the said lands have been purchased on the name of your sons and daughter in law. Hence the claimed deduction should have been*

disallowed as per provisions of Section. 54B of the I.T. Act. The AO has not examined this factor and no enquiry/investigation has been made. Therefore, the assessment order passed by the AO appears to be erroneous in so far as it is prejudicial to the interest of the revenue. You are therefore, required to show cause why provisions of section 263 be not invoked in your case for the reasons mentioned above."

3. In response thereto, the assessee filed written submissions through its Authorized Representative (AR), CA, Satyanarayan Agrawal. However, explanation offered by the assessee was not found acceptable by the Ld. Pr. CIT, he therefore, held that the assessment order dated 27.03.2017 is erroneous in so far as also prejudicial to the interest of the revenue on account of passing of the order without making requisite enquiry/investigation in respect of deduction u/s 54B of the Act . He, therefore, set aside the assessment order and directed the assessing officer to reexamine the issue afresh after causing necessary enquiry/investigation.

3. Aggrieved against this the assessee preferred an appeal before this Tribunal. Ld. counsel for the assessee vehemently argued that the Ld. Pr. CIT has not applied his mind on the facts of the case and preceded against the assessee mechanically. He further reiterated the submissions as made in the written submission for the sake of clarity submission of the assessee are reproduced as under:

A.1] The present appeal is filed by the appellant against the order as passed by the Ld Pr. Commissioner of Income Tax - 2 on 29-03-2019 under section 263 of the Income Tax Act.

A.2] The assessee filed his return of income for AssessmentYear 2015-16 declaring total income of Rs. 2,98,060/- on 28-08-2015.

A.3.1] The assessing officer issued noticedated 12-01-2017 under section 142(1) of the Income Tax act to the assessee calling for the information and explanation in respect of sale of agricultural land situated at Halka No. 19 [New No. 38], Khasra No.284,Gram BalyaKheda, Indore for the consideration of Rs. 1,60,65,000/- and the purchase of new agricultural land at Rs. 1,40,18,850/- claiming exemption under section 54B of the Income Tax Act.

A.3.2] The assessee in response to the said notice under section 142(1) of the Income Tax Act filed his reply dated 30-01-2017 and 09-03-2017 along with the necessary documents and information as required in the course of assessment proceedings so as to justify the claim of deduction under section 54B of the Income Tax Act.

A.3.3] The assessing officer, thereafter passed an assessment order u/s 143(3) of the Income Tax act on 27-03-2017and accepted the returned income as declared by the appellant at Rs. 2,98,060/- .

A.4] The assessee died on 06-05-2017 and his son Shri JitendraPatidar was appointed as the Legal heir of the assessee.

A.5.1] That subsequently, proceedings u/s 263 were initiated by way of issue of show cause notice dt 17-07-2018 in the name of Late Shri SatyanarayanPatidar for the following reasons:

1	*Disallowance of deduction claimed u/s 54B regarding agriculture land purchased, lands have been purchased in the name of son and daughter-in- law of the ass and not inhis in his own name.*

A.5.2] However, the legal heir of the assessee vide letter dated 05-09-2018 has objected the issuance of notice u/s 263 of the Act in the name of deceased person. Thereby, fresh notice u/s 263 was issued in the name of legal heir of the deceased Shri Jitendra Patidar dated 31-10-2018.

B]The appellant in the present appeal has taken the following grounds of appeals before the Hon'ble Bench:-

1.1] That on the facts and in the circumstances of the case and in law, the Ld Pr. CIT erred in setting-aside the order as passed by the assessing officer under section 143[3] of the Act by invoking the provisions of section 263 of the Act even when the order as passed by the assessing officer was neither erroneous nor prejudicial to the interests of the revenue.

1.2] That on the facts and in the circumstances of the case and in law, the Ld Pr. CIT erred in setting-aside the order as passed by the assessing officer by invoking the provisions of section 263 of the Act even when the order was passed by the assessing officer under section 143[3] of the Act after conducting necessary enquiries and after due application of mind

2] That on the facts and in the circumstances of the case and in law, the Ld Pr. CIT erred in setting-aside the order as passed by the assessing officer by invoking the provisions of section 263 of the Act without properly appreciating the facts of the case and submissions made before him even when amount of investment in agricultural land of Rs. 1,40,18,850/- claimed as deduction under section 54B of the Act was legal and proper

GROUND No 2- ON MERIT – CHALLENGING THE DENIAL OF DEDUCITON AS CLAIMED UNDER SECTION 54B OF THE INCOME TAX ACT IN RESPECT OF PURCHASE OF AGRICULTURAL LAND

*1.1]**The assessee had sold his inherited agricultural land**situated at Halka No. 19 [New No. 38], Khasra No.284,Gram BalyaKheda, Indore admeasuring 1.215 Hectares for the consideration of Rs. 1,60,65,000/- on 30-06-2014.*

1.2] Copy of sale deed as executed by the assessee is enclosed. In Para 2 of the said deed it was stated that the said Agricultural land as sold by the assessee was not actually purchased from his own funds but was inherited to him. Hence the said Land was sold with the consent of his sons and brother of the assessee. The name of the consentor as mentioned in the sale deed as under:

S.no.	Name of the Consentor	Relation with the assessee

1.1	Shri Prem Narayan s/o Shri MangilalPatidar	Brother of the assessee
1.2	Shri Ganesh S/o Shri Prem Narayan Patidar	Son of Brother of the assessee
1.3	Shri Jitendra S/o Shri SatyanarayanPatidar	Son of the assessee
1.4	Shri Nitesh S/o Shri SatyanarayanPatidar	Son of the assessee

1.3] That the land as sold by the assessee was with the consent of his sons and therefore new lands in dispute were purchased by the assessee in the name of his son's and also in the name of his son's wife. That as per provision of section 64 of the Income Tax Act, the amount as invested by the assessee in the name of his his son's wife is to be clubbed with the assessee. Hence, investment as made by the assessee in the name of his son's wife is eligible for deduction u/s 54B of the Act.

1.4.1] That it is also settled position of law, in case of any inherited property, right of all the family members were automatically created in it and in common parlance the same is called as property of HUF or joint property. Since, the same was not purchased by the assessee himself from his income in his life time.

1.4.2] That the land as sold by the assessee with the consent of his sons'. Since, the said land was inherited by the assessee and therefore his sons' also having interest in this Land. Thus, the investment as made in the name of his sons' was also eligible under section 54B of the Income Tax Act.

1.5] That the assessee was an old man at the time of sale/ purchase of land. He died on 06-05-2017. That it was not in dispute that the amount as invested in the name of his sons was also from the sale proceed of the land as received by the assessee. The amount as invested in the name of his son is also eligible for deduction under section 54B of the Act.

1.6] That it is now stand settled in favour of the appellant, that if any agricultural land is purchased in the name of the spouse of the appellant, in the name of his son's and also in the name of his son's wife is eligible for deduciton under section 54B of the Income Tax act.

1.7.1] Detail of land as purchased by the assessee in the name of his family members are as under:

S.No	**Name of the person**	**Relation**	**Cost**	**Expenses**	**Total cost [Rs]**
1	Jitendra Patidar	Son	10,19,000	71,855	10,90,855
2	Jitendra Patidar	Son	16,45,000	1,16,150	17,61,150
3	Nitesh Patidar	Son	31,54,000	2,22,555	33,76,555
4	Nitesh Patidar	Son	21,11,000	1,49,060	22,60,060
5	Divya Nitesh Patidar	Sons' wife	51,66,000	3,64,230	55,30,230
					1,40,18,850

1.7.2] The amount of deduction under section 54B of the Income Tax Act is restricted to the extent of capital gain of Rs 1,36,25,585/-.

1.8] That in the following decisions it was held even if the investment was made in the name of his wife and also in the name of his son and son's wife are eligible for deduction under section 54B of the Income Tax Act.

S.No	Citation	Reference
1.8.1	CIT vs Kamal Wahal	Appeal No. ITA 4/2013
1.8.2	CIT Vs Natarajan	154 Taxmann 399
1.8.3	CIT Vs BalmukundMeena	Appeal no. ITA 118/2016
1.8.4	Shri Raja Ram Patidar	Appeal no. 371/Ind/2015
1.8.5	DIT Vs Mrs Jennifer Bhide	252 CTR 444 [Karnataka]
1.8.6	CIT Vs Gurnam Singh	327 ITR 278
1.8.7	CIT vs Ravindra Kumar Arora	(2012) 342 ITR 38 (Del)
1.8.8	CIT Vs V Natarajan	154 Taxmann 399

Relevant extracts from the judicial rulings that highlight the above discussed principle are reproduced as under for your kind reference:

1.9.1] That Hon'ble Delhi High court in the case of CIT Vs Kamal Wahal [Appeal No ITA 4/2013] dt 11-01-2013 [refer paras 9 & 10] has held that:

"9. It thus appears to us that the predominant judicial view, including that of this Court, is that for the purposes of Section 54F, the new residential house need not be purchased by the assessee in his own name nor is it necessary that it should be purchased exclusively in his name. It is moreover to be noted that the assessee in the present case has not purchased the new house in the name of a stranger or somebody who is unconnected with him. He has purchased it only in the name of his wife. There is also no dispute that the entire investment has come out of the sale proceeds and that there was no contribution from the assessee's wife.

10. Having regard to the rule of purposive construction and the object which Section 54F seeks to achieve and respectfully agreeing with the judgment of this Court, we answer the substantial question of law framed by us in the affirmative, in favour of the assessee and against the revenue."

1.9.2] That Hon'ble Madras High Court in the case of CIT Vs V Natarajan as reported in 154 Taxmann399 has held that [refer paras 3.5 and 3.6 of the order]:

"5 In the instant case, the assessee purchased a house at Anna Nagar in the name of his wife Smt. Meera after selling the property at Bangalore. But the same was assessed in the hands of the assessee. Hence, as correctly held by the CIT(A) as well as by the Tribunal that the assessee is entitled for exemption under section 54 of the Act.

3.6 The assassee sold a property at Bangalore and purchased a property at Anna Nagar in the name of his wife is only a question of fact. It is a settled law that the factual findings of the Tribunal cannot be disturbed in exercise of the powers under section 260A of the Act vide M. Janardhana Rao v. Jt. CIT [2005] 273 ITR 501 (SC). Hence, we do not see any question of law much

less, substantial question of law arises for consideration. Accordingly, the first question fails and the same is rejected."

1.9.3] That Hon'ble Jurisdiction High Court in the case of Pr CIT Vs BalmukundMeena [Appeal No ITA 118/ 2016 dt 16-02-2017] has held that refer paras 3 & 4:

" _____ We have heard the counsel for the revenue and gone through the aforesaid impugned order. In our opinion, from the impugned order, no substantial question of law is arising for consideration of this Court as the ITAT while recording a pure finding of fact has dismissed the appeal of the revenue. Undisputedly, in this case the assessee had sold the agricultural land which was being used by him for agricultural purposes. Out of sale proceeds of the said sale, the assessee has purchased other piece of land (land in question) in his name and in the name of his only son, who was bachelor and dependent upon him, for being used for agricultural purposes within the stipulated time. Further, it is not the case of the revenue that from the sale proceeds of the agricultural land earlier owned by the assessee, the land in question was purchased for any other purpose than the agricultural purpose. Undisputedly, the purchased land is being used by the assessee only for agricultural purpose and merely because in the sale deed his only son was also shown as co-owner, the ITAT has rightly come to the conclusion that it does not make any difference because the purchased land is being used by the assessee for agricultural purposes. It is not the case of the revenue that the said land is being used exclusively by his son. In our view, a pure finding of fact has been recorded by the ITAT which does not require any interference in this appeal.

4. No substantial question of law is involved in this appeal.A similar view has been taken by the High Court of Delhi in the case of Commissioner of Income-tax-XII vs. Kamal Wahal, reported in 2013 (30) taxmann.com 34 (Delhi). Paragraph Nos. 8, 9 and 10 of the aforesaid judgment read as under:- â€œ8. This Court in the decision cited alone also noticed the judgment of the Madras High Court (supra) and agreed with the same, observing that though the Madras case was decided in relation to Section 54 of the Act, that Section was in parimateria with Section 54F. The judgment of the Punjab and Haryana High Court in the case of CIT Vs. Gurnam Singh : (2010) 327 ITR 278/[2008] 170 Taxman 160 in which the same view was taken with reference to Section 54F was also noticed by this Court."

1.9.4] That Hon'ble Indore Bench of ITAT in the case of Shri Raja Ram Patidar [Appeal No ITA No 371/ Ind/ 2015 dt 28-09-2018 for the Asst Year 2010-11] has held that:

28. The above provision contemplates that the benefit/exemption is available if an agriculture land is purchased out of the sale consideration of sale of agriculture land. In the instant appeal also the assessee received the sale consideration from sale of agriculture land and applied the same to purchase another piece of agriculture land in the name of self and others in the name of wife and children. The revenue authorities have also accepted the claim and allowed by Ld.CIT(A) made by the assessee for purchase of agriculture land in the name of the assessee as well as his wife. The other two remaining persons are assessee's son and daughter. We do not find any reason that why the

benefit should not be given Raja Ram Patidar ITA No.371/Ind/2015 A.Y. 2010-11 71 for purchase of agriculture land in the name of his son and daughter who are not someone not connected or strangers to the assessee and as held by the Hon'ble High Court that the assessee includes his legal heirs also so as to give the vide and legal interpretation. We therefore are of the view that the Ld.CIT(A) erred in denying the exemptions u/s 54B of the Act to the assessee for investment of sale consideration for purchasing agriculture land in name of his son and daughter at Rs.49,86,085/- and Rs. 12,50,175/- respectively. We accordingly set aside the findings of both the lower authorities and direct the Ld. Assessing Officer to give the benefit of exemption u/s 54B of the Act to the assessee at Rs.62,36,260/- which is over and above the benefit of Rs.91,18,190/- already allowed by Ld.CIT(A) u/s 54B of the Act. In the result the issue No.3 raised by the assessee under Ground No.2 of the appeal is allowed.

1.10]That in view of the above, it is submitted that deduction as claimed under section 54B of the Income Tax Act was legal and proper and the same was rightly allowed by the then assessing offficer at the time of passing of the original assessment order.

2] GROUND No 1 – TREATING THE ASSESSMENT ORDER AS PASSED AS ERRONEOUS AND PREJUDICIAL TO THE INTEREST OF REVENUE

2.1] The appellant had filed his return of total income for this Assessment Year on 28-08-2015 declaring total income at Rs 2,98,060/-.

2.2] The case of the above assessee was selected in scrutiny and notice was issued under section 143(2) of the Act. In compliance to the notices as issued from time to time, detailed submission was filed by the appellant. The same was duly examined by the assessing officer and claimed of deduction under section 54B of the Act was accepted.

2.3] The Pr CIT-2, Indore by issuing notice under section 263 of the Act setting aside the order as passed by the Assessing officer by holding that the same was erroneous and prejudicial to the interest of revenue.

2.4] The appellant had filed complete details before the assessing officer. The Assessing officer after taking into account, details as filed by the appellant passed an order under section 143(3) of the Act duly accepting the claim of the appellant as legal and proper. Hence, the assessment order as passed by the assessing officer was neither erroneous nor prejudicial to the interests of the revenue. The said order was passed after conducting necessary enquiries and after due application of mind.

2.2] It is pertinent to mention the relevant provisions of Section 263 of the Income Tax Act which provides that thePrincipal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it

is prejudicial to the interests of the revenue. Relevant extract of section 263 of the Act is reproduced as under for your kind reference:

(1) The Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

Explanation 2 - For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

2.3.1] That on analysis of provisions of section 263 of the Act, it is clearly evident that Ld CIT can assume jurisdiction under section 263 of the Act when the order passed by the assessing officer is erroneous insofar as it is prejudicial to the interest of the revenue. The order of the assessing officer shall be deemed to be erroneous in so far also prejudicial to the interest of the revenue only on the fulfillment of certain conditions as prescribed.

2.3.2] In pursuant to above, One of the criteria to assume jurisdiction u/s 263 is that if the Ld Commissioner or Pr. Commissioner is of the opinion that the order passed by the assessing officer was without making inquiries or verification which should have been made, said order is deemed to be erroneous and prejudicial to the interest of revenue and consequential proceedings under section 263 could be initiated.

2.4.1] However, in the facts of the present case, the appellant during the course of assessment proceeding filed ample documents so as to justify claim of the assessee under section 54B of the Income Tax Act. Copy of the sale deed of the agricultural land as sold by the assessee along with the copies of registry as executed by the assessee in respect of agricultural land purchased had been provided during the course of assessment proceedings before the assessing officer. The claim of deduction of the appellant was also duly supported with the decisions of Jurisdicitonal Bench and also of Jurisdictional High Court.

2.4.2] The appellant filed following documents in support of Land as purchased by the assessee in the name of his Son and Daughter in law so as to justify the exemption claimed under section 54B of the Act:

S.No.	Description of Papers

1	Copy of registry dated 30-06-2014 for **sale of land** situated Gram BalyaKheda, Indore for consideration of Rs.1,60,65,000/-
2	Copy of registry dated 25-08-2014 in respect of **agriculture land purchased** at Gram Nignoti, Indore for Rs.10,90,855/- in the name of JeetendraPatidar
3	Copy of registry dated 15-05-2014 in respect of **agricultural land purchased** situated at Gram Nignoti, Indore for Rs.17,61,150/- in the name of JeetendraPatidar
4	Copy of registry dated 22-05-2014 in respect of **agricultural land purchased** situated at Gram Nignoti, Indore for Rs.33,76,555/- in the name of NiteshPatidar
5	Copy of registry dated 21-07-2014 in respect of **agricultural land purchased** situated at Gram Nignoti, Indore for Rs.22,60,060/- in the name of NiteshPatidar
6	Copy of registry dated 28-08-2014 in respect of **agricultural land purchased** situated at Gram Nignoti, Indore for Rs.55,30,230/- in the name of DivyaPatidar

2.5.1] That in the view of above, assessing officer has examined all the submissions placed before him and passed the assessment order only after conducting necessary enquiry/investigation and after due application of mind in the facts of the present case. Hence the order passed by the assessing officer was neither erroneous nor prejudicial to the interest of the revenue.

2.5.2] Therefore, in the view of above,the Ld Pr. CIT was not justified in setting aside the assessment order as passed by the assessing officer by invoking the provisions of section 263 of the Act, when the order was passed by the assessing officer under section 143[3] of the Act after conducting necessary enquiries and after due application of mind.

2.6.1] That Hon'ble Supreme Court in the case ofMalabar Industrial Co. Ltd. CIT [2000] 243 ITR 83 (SC) after considering the decisions of Rampyari Devi Saraogi (supra) and Smt. Tara Devi Aggarwal (supra):- [Page No. 52 of the compilation]

"There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer;it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law willsatisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind.
The phrase 'prejudicial to the interests of the revenue 'has to be read in conjunction with an erroneous order passed by the Assessing Officer.
Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the

interests of the revenue - Rampyari Devi Saraogi v. CIT [1968167ITR 84 (SC) and in Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC)".

[Emphasis Supplied]

2.6.2] Hon'ble Delhi High Court in the case of CIT vs. Sun Beam Auto reported in 227 CTR 113 has pointed out a distinction between lack of inquiry and inadequate inquiry. If there is a lack of enquiry, then the assessment order can be branded as erroneous. The following observations of the Hon'ble Delhi High Court are worth to note:-

"12. We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income-tax under section 263 of the Income-tax Act. As noted above, the submission of learned counsel for the revenue was that while passing the assessment order, the Assessing Officer did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the Assessing Officer had not applied his mind on the issue. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry", that such a course of action would be open".

[Emphasis supplied]

2.6.3] Hon'ble Ahmedabad Bench of ITAT in the case of M/s Jay Agriculture Test Vs Pr CIT [Appeal No ITA No 605/ Ahd /2015 dt 01-01-2015 has held that :-

"20. On due consideration of these facts, we are of the view that the AO has examined the issue, though not discussed elaborately in the assessment order. But on record, he has called for information from the assessee and thereafter accepted. It is the prerogative of the AO what to discuss in the assessment order and the assessee cannot force the AO to draft the assessment order in a particular manner. The assessment order cannot be termed erroneous as well as prejudicial to the interest of the Revenue on the ground thatinquirywas not conducted by the AO.

[Emphasis supplied]

2.6.4] Hon'ble Mumbai bench of ITAT in the case of Reliance Money Infrastructure Ltd Vs Pr CIT as reported in 51 CCH 0166 has held that :-

26. In view of the foregoing discussions, we note that the AO has passed the assessment order after obtaining and calling for details/clarifications of all the seven issues raised by the Pr CIT in the revisionary proceedings and thereafter framed the assessment whereas the ldPr.CIT has not specified in his order as to how the order of the AO is erroneous so as to prejudicial to the interest of the revenue. The Pr. CIT has even made roving direction that the AO may examine any other issue which may come to his notice in the set aside proceedings. Thus evidently it is not a case of no inquiry or wrong application of law or wrong assumption of facts and therefore the

revisionary jurisdiction exercised by the PCIT is not proper and as per the provisions of the section itself. We are of the considered opinion that in the present casethe AO has specifically called for explanation from the assessee on all points during the course of assessment proceeding and thereafter has taken a possible view. Moreover, it is not *necessary for the AO to give detailed findings or elaborate in the assessment order on each and every issue which has been examined during the course of scrutiny proceedings. Besides, the case of the assessee is squarely covered by the ratio laid down in the various case laws referred to by the ld AR discussed briefly hereinabove while a series of cases relied upon by the revenue have been carefully perused and are found to be distinguishable on facts and are not applicable. The amendment to section 263 is also prospective. Thus, the reversionary proceedings u/s 263 of the Act are not validly initiated in view of the facts that the issues raked up by the Pr.CIT stand examined by the AO in the assessment proceedings and the ldPrCIT has failed to state as to how the order of AO is erroneous and not in accordance with law or settled legal position. Even on merit, the assessee is entitled to all the deductions/claims as per the provisions of the Act. Considering all these facts in totality and respectfully following the ratio laid down in the various decisions of the Jurisdictional and other High Courts, we are of the considered view that the jurisdiction by the Pr.CIT u/s 263 of the Act was invalidly assumed. Accordingly we set aside the proceedings u/s 263 of the Act as being invalid and also consequent order of PCIT u/s 263 of the Act.*

[Emphasis supplied]

2.6.5] These principles have been re-iterated by the Apex Court in its judgment in Commissioner of Income Tax vs AmitabhBaccahan[2016(3) KLT SN.4 (C.No.3) SC], where the court inter alia held thus:-

"There can be no doubt that so long as the view taken by the Assessing Officer is a possible view the same ought not to be interfered with by the Commissioner under S.263 of the Act merely on the ground that there is another possible view of the matter.Permitting exercise of revisional power in a situation where two views are possible would really amount to conferring some kind of an appellate power in the revisional authority. This is a course of action that must be desisted from."

[Emphasis supplied]

2.6.6] That Hon'ble High Court of Andhra Pradesh in the case of Spectra Shares and Scrips (P) Ltd. Vs Commissioner of Income Tax – III, Hyderabad as reported in 2013 36 Taxmann.com 348 has held that:-

It may be that in the assessment order, the Assessing Officer has not made an elaborate discussion on the issue as to the nature of activity of the assessee i.e. whether it is an investment or whether it is business income and did not refer to his query on the issue to the assessee before passing the order or reply given by the assessee to his query, however, when it is not incumbent on the Assessing Officer to pass a detailed order, merely because the order does not contain reasons as to why he accepted that the assessee is (sic-not) a trading company, his order does not become susceptible for revision.

The Assessing Officer while making an assessment had examined the accounts, made inquiries, applied his mind to the facts and circumstances of the case and determined the income of the assessee. Therefore, it is not open to the Commissioner, on the ground that a different view is possible, to reopen the assessment on the ground that the Assessing Officer did not make an

elaborate discussion in that regard. [Para 34]

2.6.7] That Hon'ble High Court of Madhya Pradesh in the case of Commissioner of Income Tax Vs Ratlam Coal Ash Co. as reported in 1987 34 Taxmann.com 443 has held that :-

It is well settled that where the ITO made the assessment in undue hurry, accepting what the assessee states in the return without making any enquiries in the circumstances of the case, the Commissioner would be justified in holding the order of the ITO to the erroneous. However, in the instant case, the Tribunal had found that the assessee had furnished all the requisite information and that the ITO considering all the facts had completed the assessment. It was further held that in the circumstances of the case it could not be held that the ITO had made assessment without making proper enquiries. Accordingly, the Tribunal was justified in reversing the order passed by the Commissioner.

2.6.8] That Hon'ble High Court of Madhya Pradesh in the case of Bakir Singh Vs Commissioner of Income Tax as reported in 2013 40 Taxmann.com 128 has held that :-

10.1 In the present case the AO during the course of original assessment proceedings made the enquiries relating to cash deposit and even the case was selected for scrutiny on the basis of deposits in the bank account. The assessee furnished the bank statement and source of agricultural income from 184 Bighas agricultural land. The AO examined those documents and on being satisfied, framed the assessment under s. 143(3) of the Act vide order dt. 16th Sept., 2011. Therefore, a possible view was taken by the AO. So it cannot be said that the AO had not examined the issue on the basis of which the learned CIT has held that the assessment order dt. 16th Sept., 2011 passed by the AO was erroneous or prejudicial to the interest of the Revenue. In the present case, it is noticed from the copy of the order sheet of the AO during the assessment proceedings (placed at page No. 14 of the assessee's compilation) that on 7th Sept., 2011 the assessee furnished copy of bank account, evidence for land holding, agricultural income and interest income. Thereafter, on 12th Sept., 2011, the AO asked the assessee to explain the source of deposit amounting to Rs. 15,59,000 on 8th April, 2008 in SBBJ savings account. The AO again noted in the order sheet entry dt. 15th Sept., 2011 that the assessee filed the source of deposit in the bank account. He again asked the assessee to furnish the copy of bank account No. 85940 for further verification and ultimately the AO noted in the order sheet entry dt. 16th Sept., 2011 that the assessee produced the information and the case was discussed with him. From the abovesaid order sheet entries, copy of which is placed at page Nos. 14 and 15 of the assessee' compilation, it is clear that the AO made the proper enquiry relating to the deposit of the Rs. 15,59,000 and only after being satisfied, the assessment was framed under s. 143(3) of the Act.

10.2 On a similar issue, the Hon'ble Supreme Court in the case of Max India Ltd. (supra) has held as under :

"The phrase 'prejudicial to the interests of the Revenue' in s. 263 of the IT Act, 1961, has to be read in conjunction with the expression 'erroneous' order passed by the AO. Every loss of revenue as a consequence of an order of the AO cannot be treated as prejudicial to the interests of the Revenue. For example, when the AO adopts one of two courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the AO has taken one view with which the CIT does not

agree, it cannot be treated as an erroneous order prejudicial to the Revenue, unless the view taken by the AO is unsustainable in law."

11.In the present case also, the AO had made necessary enquiry about the bank transactions and after being satisfied from the assessee's explanation that such transactions were genuine, he passed the order under s. 143(3) of the Act. Therefore, a mere disagreement or dissatisfaction of the learned CIT over the manner of assessment cannot be a basis for revision of the order under s. 263 of the Act. In that view of the matter, we set aside the impugned order passed by the learned CIT and the assessment order framed by the AO under s. 143(3) of the Act vide order dt. 16th Sept., 2011 is restored.

12. In the result, the appeal of the assessee is allowed.

2.7.1] The order as passed by the assessing officer was not erroneous, since, the view as taken by the assessing officer was one of the possible view on the basis of documents as furnished by the assessee. Hence, the order as passed by the assessing officer was not erroneous and prejudicial order.

2.7.2] That Hon'ble Apex Court in the case of CIT Vs Max India Limited as reported in 295 ITR 0282 has held that: -[Page No. 62 of the compilation]

" 2. At this stage we may clarify that under para 10 of the judgment in the case of Malabar Industrial Co. Ltd. (supra) this Court has taken the view that the phrase "prejudicial to the interest of the Revenue" under s. 263 has to be read in conjunction with the expression "erroneous" order passed by the AO. Every loss of revenue as a consequence of an order of the AO cannot be treated as prejudicial to the interest of the Revenue. For example, when the ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the Revenue, unless the view taken by the ITO is unsustainable in law."

[Emphasis supplied]

2.7.3] That Hon'ble Jurisdictional High court in the case of CIT vs Associated Food Products (P) Ltd as reported in 280 ITR 0377 has held that: - [Page No. 59-60 of the compilation]

10. *In view of the aforesaid pronouncement of law and taking into consideration the language employed under s. 263 of the Act, it is clear as crystal that before exercise of powers two requisites are imperative to be present. In the absence of such foundation exercise of asuo motu power is impermissible. It should not be presumed that initiation of power under suo motu revision is merely an administrative act. It is an act of a quasi-judicial authority and based on formation of an opinion with regard to existence of adequate material to satisfy that the decision taken by the AO is erroneous as well as prejudicial to the interests of the Revenue. The concept of "prejudicial to the interests of the Revenue" has to be correctly and soundly understood. It precisely means an order which has not been passed in consonance with the principles of law which has in ultimate eventuate affected realization of lawful revenue either by the State has not been realized or it has gone beyond realization. These two basic ingredients have to be satisfied as sine qua non for exercise of such power. On a perusal of the material brought on record and the order passed by the CIT it is perceptible that the said authority has not kept in view the*

requirement of s. 263 of the Act inasmuch as the order does not reflect any kind of satisfaction. As is manifest the said authority has been governed by a singular factor that the order of the AO is wrong. That may be so but that is not enough. What was the sequitur or consequence of such order qua prejudicial to the interest of the Revenue should have been focused upon. That having not been done, in our considered opinion, exercise of jurisdiction under s. 263 of the Act is totally erroneous and cannot withstand scrutiny. Hence, the Tribunal has correctly unsettled and dislodged the order of the CIT.

[Emphasis supplied]

3] That in view of the above , the Ld. Pr CIT was not justified in passing an order under section 263 of the Act and setting aside the order as passed by the assessing officer in view of provision of section 54B of the Income Tax Act. The order as passed by the Ld Pr CIT under section 263 of the Act therefore requires to be quashed.

4. Ld. counsel for the assessee has also placed reliance on the decision of this Tribunal rendered in the case of Shri Sukhram Mukati vs. ITO in ITANo.409 & 410/Ind/2014 vide order dated 09.08.2017. Ld. counsel for the assessee submitted that the facts are identical. However, the Hon'ble High Court of Rajasthan in the case of *Kalya vs. CIT 251 CTR 174 (Rajasthan)* has held that word 'assessee' used in Income Tax Act needs to be given a legal interpretation and not a liberal interpretation. If the word 'assessee' is given a liberal interpretation, it would be tantamount to giving a free hand to the assessee and his legal heirs and it shall

curtail the revenue of the Government, which the law does not permit. Ld. counsel for the assessee submitted that the facts in the present case are distinguishable as in the present case he sold his ancestral property. No objection was obtained from the assessee in respect of his rights to be transferred by father of the assessee. Ld. counsel for the assessee further submitted that the jurisdictional High Court in the case of the *Principal Commissioner of Income Tax vs. Balmukund Meena* (ITANo.118/2016 dated 16.02.2017 wherein the Hon'ble High Court has held as under:

> *"9. It thus appears to us that the predominant judicial view, including that of this Court, is that for the purposes of section 54F, the new residential house need not be purchased by the assessee in his own name nor is it necessary that it should be purchased exclusively in his name. It is moreover to be noted that the assessee in the present case has not purchased the new house in the name of a stranger or somebody who is unconnected with him. He has purchased it only in the name of his wife. There is also no dispute that the entire investment has come out of the sale proceeds and that there was no contribution from the assessee's wife.*

10. Having regard to the rule of purposive construction and the object which section 54F seeks to achieve and respectfully agreeing with the judgment of this Court, we answer the substantial question of law framed by us in the affirmative, in favour of the assessee and against the revenue. The appeal is accordingly dismissed with no order as to costs. The Tribunal while dismissing the appeal of the Revenue has held that the assessee has purchased the agricultural land and, therefore, the order passed by the Income Tax Appellate Tribunal is just and proper."

5. There is conflicting view of the Hon'ble Rajasthan High Court and the Hon'ble jurisdictional High Court on the issue of deduction u/s 54F of the Act. The Hon'ble jurisdictional High Court after considering the judgment of Hon'ble Punjab and Haryana High Court and Hon'ble Delhi High Court ruled in favour of the assessee. In the Present case the Ld. Pr. CIT had invoked the provisions of section 263 of the Act, on the ground that the assessing officer had not made inquiry regarding the claim of deduction u/s 54F of the Act. The relevant findings of the Ld. Pr. CIT are reproduced as under:

" Therefore, in view of the above discussion, I am of the considered opinion that the order dated 27.03.2017 for A.Y.2015-16 is erroneous in so far as it is also prejudicial to the interest of revenue on account of passing of the order without making required enquiries/investigations in respect of claim of deduction u/s 54B. Accordingly, I am satisfied that provisions of section 263 of I.T. Act 1961 are required to be invoked. Therefore, the assessment for A.Y.2015-16 framed on 27.03.2017 is hereby set aside to the file of AO to reexamine the issue of claim of deduction u/s 54F, indicated in the preceding discussion u/s 263 and passing an order as per the law after making necessary verification, inquiries and investigation. It would be not out of place to mention that the AO shall re-examine only the issues which have been indicated for further investigation in the preceding discussion."

6. It is settled position of law that the provisions of section 263 of the Act can be invoked when twin conditions i.e. the assessment order is erroneous and prejudicial to the interest of Revenue are satisfied. In the present case under the identical facts the Hon'ble jurisdictional High Court has ruled in favour of the assessee regarding availability of deduction u/s 54B of the Act where the investment in new asset is made in the name of son of the assessee. The revenue has not brought to our notice any contrary judgment by the Hon'ble jurisdictional High Court or

Hon'ble Supreme Court as a binding precedence. Therefore, under these facts, it cannot be construed that the order passed by the assessing officer is prejudicial to the interest of the revenue. As the assessment order is in accordance with the ratio laid down by the Hon'ble jurisdictional High Court, thus, we are of the considered view that in the light of the judgment of the Hon'ble jurisdictional High Court, Ld. Pr. CIT was not justified in invoking the provision of section 263 of the Act. The impugned order is, therefore, set aside. The grounds raised in the present appeal are allowed.

7. In result, appeal filed by the assessee is allowed.

Order was pronounced in the open court on 21.10.2020.

Sd/-	Sd/-
(MANISH BORAD)	(KUL BHARAT)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Indore; दिनांक Dated : 21/10/2020

Patel/PS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore