

same was used for agricultural purpose and said plots were surrounded by agricultural land on both sides. There cannot be any separate usage of these two plots. Further, submitted that the details of agricultural land was submitted before the AO and on examination of whole sketch of agricultural land and satisfied, thereby exempted the entire profit on sale of land U/Sec. 54B of the Act. The assessee also contended that the said 3000 sq.ft single storied tin shed was used as godown for storing agricultural produce, i.e. fertilizer etc. It has no fixed roof and it can be termed as temporary shed as it does not contain other facilities i.e. rooms, electricity, water etc.

3. Considering the above submissions the CIT has opined that the issue raised in the show cause notice requires enquiries regarding nature and use of Bastu land, and, therefore, directed the AO to initiate fresh assessment proceedings and to carry out necessary enquiries and verification and pass a fresh order in accordance with law. Relevant findings of CIT given at paras 5 & 6 are reproduced herein below:-

5. *The power of revision by the CIT u/s 263 of the Act is very wide and it is in the nature of supervisory jurisdiction. The power u/s 263 can be exercised even in cases where the issue is debatable and such power is not comparable with the power of rectification of mistake u/s 154 of the Income Tax Act. It is well settled that incorrect assumption of facts or application of law satisfies the requirement of law i.e. order being erroneous & prejudicial to the interest of revenue. The order passed by the A.O. without application of mind or order showing apparent error of reasoning or the order where the A.O. simply accepts where the assessee stated in his return of income and fails to make the enquiries which are called for in the facts and circumstances of the case will also call for intervention u/s 263 of the Act by the CIT/Pr. CIT. It is a trite law that the disclosure of facts by the assessee in the return of income and for in the course of assessment proceedings cannot give immunity from revisional jurisdiction of the CIT/Pr. CIT u/s 263. The above position of the law has been reiterated by the Hon 'ble Supreme Court in various decisions including that of Rampyari Devi Saraogi Vs. CIT (1968) 67 ITR 84 (SC), Tara Devi Agarwal vs. CIT (1973) 88 ITR 323 (SC), Malabar Industries Co.Ltd vs. CIT (1991) 198 ITR 611 (Kerala) which was affirmed by Supreme Court in 243 ITR 83.*

6. *I have carefully considered the submission made on behalf of the assessee and perused the material on record. The supporting evidences have also been examined. After having considered the position of law and facts and circumstances of the instant case, the assessment order passed by the A.O is found to be erroneous and prejudicial to the interest of revenue and hence the assessment order passed by the AO is set aside in respect of the point stated in Para-2 above. I am of the considered view that the issue requires a thorough and comprehensive physical enquiry regarding the nature of use of the 'Bastu' plots. The AO is accordingly directed to initiate fresh assessment proceedings and carry out necessary enquiries/verification and thereafter a fresh assessment order is to be passed in accordance with the relevant provisions of law."*

4. Aggrieved, the assessee is in appeal before us.

5. The Id.AR submits that the AO examined all the details carefully regarding the sale consideration and classification of land therein and

found that the claim of the assessee is acceptable and accordingly, granted allowance of exemption u/s. 54B of the Act. The CIT did not decide the issue on merits and treated that the order of the AO is erroneous and prejudicial to the interest of the revenue is bad under law. The CIT simply directed the AO to conduct thorough and comprehensive physical enquiry, which is not in accordance with the law. The Id.AR reiterated his same submissions as made before the CIT in response to show cause notice issued and referred to adopt the same in support of grounds raised by the assessee before this Tribunal. The Id.AR of the assessee also referred to page 10 of the Paper book and argued that the AO during the course of assessment proceedings issued notice dt. 25-06-2014 requiring all the details and accordingly, the assessee submitted the same and in respect of details of agricultural income at S.No. 7 of the said notice and considering the same, the AO allowed exemption U/Sec. 54B of the Act, which cannot be held as erroneous and prejudicial to the interest of the revenue.

6. The Id. DR submits that the AO did not look into the concerned issue raised by the CIT and the order passed by the AO does not contain anything in this regard. The Id.DR also submits that the AO did not bring on record anything regarding enquiries made in respect of nature of land and simply granted allowance of exemption u/s. 54B of the Act, which is not at all permissible in view of the facts and circumstances decided by the CIT. The assessee did not explain the said issue before the AO and the AO conducted no enquiry, which is clear from the order of the AO and there cannot be any presumption that the assessee submitted the details and AO conducted proper enquiry. The CIT while examining the assessment records along with inspector's report found that the AO did not examine the issue and granted allowance basing on the assessee's contention without any enquiry. In support of his contention, he relied on the order of the AO.

7. Heard rival submissions and perused the material available on record. We find that the Id.DR has rightly pointed out that there was no discussion at all by the AO in respect of granting of exemption u/s. 54 B of the Act. But, however, it is observed that the AO sought information regarding 7 items mentioned in the said notice, which is placed in the paper book. On perusal of the same, it is clear that the AO sought details of agricultural income. In response to which, the assessee submitted a letter dt. 14-07-2014 stating that the said documents have already been submitted on 22-11-2013 and accordingly requested the AO to refer the same. Admittedly, the said details were submitted prior to the issuance of notice dt. 25-06-2014 u/s. 142(1) of the Act and it clearly raises a doubt whether the assessee submitted the same in respect of agricultural income or not. It is also noticed that the Income-tax Inspector's Report dt. 21-01-2015 was submitted prior to the assessment order passed u/s. 143(3) of the Act i.e on 26-02-2015. But, however, we could not find any reference to the said Inspector's report regarding nature of plot bearing nos. 138 & 139 are 'Bastu land' in A.O's order. It appears that the AO did not look into at all the said report of the income-tax inspector, which was made available before the AO prior to the date of the assessment order. Impugned finding of the CIT in directing the AO is correct in initiating fresh assessment proceeding and to carry out necessary enquiries in this regard.

8. Further, We are of the view that, exercise of Jurisdiction u/s 263 of the Act was fully justified. The decision of the Hon'ble High Court of Calcutta in the case of CIT Vs. Maithen International 375 ITR 123 (Cal), ITA No. 445/Kol/2015 dt. 26-08-2016

"dealt with this aspect of lack of enquiry with even more stringent conditions. The assessee in that case obtained loans aggregating to Rs.1.60 crore from six private limited companies ranging between Rs.7 lac to Rs.1.10 crore. These companies have filed their returns with nominal income. The AO mentioned in the assessment order that the Inspector was deputed to verify the fresh loans received during the years, who verified such loans and gave a positive report. Keeping such report on record, the AO accepted the genuineness of the transactions. The CIT invoked the powers u/s 263 in which it was observed that the report given by the Inspector was very elementary and simply mentioned that he had verified bank passbooks, profit & loss account and balance sheets of these companies. In none of the reports he had commented on the issue of credit worthiness of the parties. The CIT opined that the AO was required to make proper investigation to determine whether the loan was really made by the third party or it had come out of the resources of the assessee himself. When the matter came up

before the Tribunal, the order u/s 263 was set aside by observing that the AO did conduct enquiry and: "if there is an enquiry, even inadequate, that would not by itself give occasion to the Id. CIT to pass order u/s 263 of the Act." Setting aside the order passed by the Tribunal, the Hon'ble jurisdictional High Court has laid down that : "CIT had reasons to hold that credit worthiness of the alleged lenders was not enquired into." It further went on to hold that a mere examination of the bank passbook, profit & loss account and balance sheet is not enough. When the requisite enquiry was not made, the Hon'ble High Court held that the order was to be considered as erroneous and prejudicial to the interests of the Revenue. It set aside the view of the Tribunal on inadequate enquiry by holding that: "If the relevant enquiry was not made, it may in appropriate cases amount to no enquiry and may also be a case of non-application of mind." It further observed that the question of inadequate enquiry should be understood in its proper perspective and: "if it can be shown that the inadequate enquiry led the AO or may have led into assumption of incorrect facts, that could make the order erroneous and prejudicial to the interests of the revenue." Setting a bad trend is also prejudicial to the Revenue".

9. The Hon'ble High Court of Calcutta in the case of *supra* held if it can be shown that the inadequate enquiry led the AO or may have led into assumption of incorrect facts, that could make the order erroneous and prejudicial to the interests of the revenue. In view of the same, we find no irregularity in the impugned order passed by the CIT and it does not require any interference from this Tribunal, accordingly, the appeal filed by the Assessee fails and therefore, grounds raised thereon in support of the appeal are dismissed.

10. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 13-12-2017

Sd/-
P.M.Jagtap
Accountant Member

Sd/-
S.S. Viswanethra Ravi
Judicial Member

Dated :13-12-2017

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Assessee: Yashwant Kanoria 105 Park Street, Flat No. 37, Kohinoor Building, Kolkata-16.
 2. Respondent – The ITO, Ward 32(2), Kol. 10B Middleton Row, Kolkata-71.
 3. The CIT(A), Kolkata
 4. CIT , Kolkata
 5. DR, Kolkata Benches, Kolkata
- True Copy By Order Senior P.S

Head of Office, ITAT Kolkata