

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**  
**BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER**  
**AND HON'BLE MANISH BORAD, ACCOUNTANT**  
**MEMBER**

ITA.No.633/Ind/2019  
Assessment Year 2009-10

Shri Ram Swaroop Bairagi,  
Vill/Post Siya  
Dist. Dewas  
PAN : AYAPD2587K : Appellant

V/s  
PCIT,  
Ujjain : Revenue

ITA No.636/Ind/2019  
Assessment Year 2009-10

Shri Shriram Vaishnav,  
Vill/Post Siya  
Dist. Dewas  
PAN : AHLPV2369P : Appellant

V/s  
PCIT,  
Ujjain : Revenue

ITA No.639/Ind/2019  
Assessment Year 2009-10

Shri Shailendra Vaishnav (Bairagi)  
Vill/Post Siya  
Dist. Dewas  
PAN : ALBPV8323R : Appellant

V/s  
PCIT,  
Ujjain

: Revenue

Revenue by	Smt. Ashima Gupta, CIT
Assessee by	Shri S.S. Deshpande, CA
Date of Hearing	02.11.2020
Date of Pronouncement	24.11.2020

## **ORDER**

### **PER MANISH BORAD, A.M**

The above captioned appeals filed at the instance of the assessee(s) pertaining to Assessment Year 2009-10 are directed against the orders of Ld. Pr. Commissioner of Income Tax, Ujjain (in short 'Ld.PCIT], Ujjain dated 19.03.2019 u/s 263 of the Act.

2. Assessee(s) have raised following grounds of appeal:-

**Ramswaroop Bairagi**  
**ITA No.633/Ind/2019**  
**Assessment Year 2009-10**

*1. The order passed by the Ld. PCIT is illegal and bad in law and hence be set aside.*

*2.The Ld. PCIT has erred in passing the order u/s 263 on the ground that the order passed by the Ld. A.O. is erroneous and prejudicial to the interest of the revenue.*

*3.It was proved before the Ld. PCIT that the assessment was framed after*

*due scrutiny of facts and after verification of the details. The assessment was reopened on the ground of AIR information that the assessee had deposited in bank the amounts in cash of more than Rs.10,00,000/-. The papers about the agreement to sale along with the family settlement(partition) memorandum were filed. After verification and detailed scrutiny the Ld. A.O framed the assessment and as such the same cannot be treated as erroneous and prejudicial and as such action u/s 263 is bad in law.*

*4. The order passed by the Ld. PCIT be quashed.*

**Shriram Vaishnav**  
**ITA No.636/Ind/2019**  
**Assessment Year 2009-10**

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*4. The order passed by the Ld. PCIT be quashed.*

**Shailendra Vaishnav (Bairagi)**  
**ITA No.639/Ind/2019**  
**Assessment Year 2009-10**

1. *The order passed by the Ld. PCIT is illegal and bad in law and hence be set aside.*

2. *The Ld. PCIT has erred in passing the order u/s 263 on the ground that the order passed by the Ld. A.O. is erroneous and prejudicial to the interest of the revenue.*

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4. *The order passed by the Ld. PCIT be quashed.*

3. As all the issues raised in the instant appeals relates to the same group of assessee(s) and the facts giving arise to the order u/s 263 of the Act are also same therefore these were heard together and been disposed off by this common order for the sake of convenience and brevity.

4. As the issues and facts of these four appeals remain the same, we will take up the facts and issue raised in the case of Shri Ramswaroop Bairagi raised vide ITA No.633/Ind/2019 for the purpose of adjudication which shall be applicable *mutandis mutandis* to other assessee(s) also since the issues raised in other two appeals are same.

5. Brief facts of the case as culled out from the records are that the assessee is an individual deriving income mainly from agriculture and interest income. Since there was no taxable income no return was filed. On the basis of AIR information about the cash deposits in the bank, notice u/s 148 of the Act was issued. In response to notice u/s 148 the return was filed declaring income of Rs.66,650/- being interest from bank. Assessment was completed u/s 143(3)/148 of the Act at Rs.66,650/-. Subsequently Ld. Pr.CIT, Ujjain assuming his jurisdiction u/s 263 of the Act initiated the proceedings u/s 263 of the Act are issued following show cause notice dated 25.02.2019, to the assessee :-

*In this case, notice U/S 148 was issued on 23.03.2016. In compliance, the assessee filed return of income on 27.09.2016 declaring total income of Rs.66,650/-. The assessment was completed u/s*

*143(3)1147 on 12.12.2016 by the AO (ITO-I, Dewas) at the returned income, which is considered erroneous and prejudicial to the interest of revenue for the following reasons :-*

*On perusal and examination of records, it is noticed that the assessee has deposited cash of Rs.19,05,600/- in the saving banks account. However, on going through the record, it is further noticed that \_*

*(1) In respect of cash deposited in the savings bank account, the assessee stated before the Aa that the said amount was received as per family partition deed dated 21.05.2008 prepared by his father Shri Ramcharan Das. His father Shri Ramcharan Das sold agricultural land for a consideration of Rs.1,39,40,000/- as per sale agreement with Shri Santosh Patel dated 05.01.2008. The said amount was distributed amongst seven sons. .*

*(2) No details and documents are found on record which can establish that dates on which the above amount of Rs.19,05,500/- are received by the assessee from his father.*

*(3) The Assessing Officer did not examine on oath the assessee in connection with the veracity of the transactions.*

*In the light of entire facts discussed above, I am of the considered view that the assessment order passed u/s 143 (3)/ 147 on 12.12.2016 for the A. Y. 2009-10 in your case is erroneous as well as prejudicial to the interest of revenue, which requires to be revised u/s 263. However, before I proceed to invoke the powers u/s 263 and pass an appropriate order, I deem it proper to give you an opportunity of being heard in the matter.*

6. The assessee duly replied to the above show cause notice submitting as under:-

The assessee is an individual. He is earning income from bank interest only. The assessee is not engaged in business or profession. The assessee has received Rs. 19,15,000/- from father out of sale proceeds of ancestral agricultural land. He has deposited cash of Rs. 19,05,000/- in bank account out of above receipts. The father of the assessee had expired on 19/02/2016.

2. As regards cash deposits in to saving bank account with Narmada Malwa Gramin Bank, Dewas, it is humbly submitted that the assessee has deposited total Rs.19,05,000/- in such account. He has deposited Rs.9,90,000/- & Rs.9,25,000/- on 22/05/2008 out of amount received in family partition from father. The father of the assessee sold ancestral agricultural land situated at Village Jasodgarh Tehsil and District-Dewas Survey No. 414 admeasuring about 5.66 hectare inherited by him. He has sold land for Rs. 1,39,40,000/- out of which he distributed Rs. 19,15,000/- each amongst his seven sons. As such each the assessee received share in ancestral property at Rs.19,15,000/-.

3. The father of the assessee has executed family settlement (Partition) memorandum on 21/05/2008 which clearly shows the date on which the amount has been distributed at Rs. 19,15,000/- each amongst his seven sons. The assessee has filed copy of family settlement (partition) memorandum along with copy of agreement to sale of agricultural land before the Ld. Assessing Officer which has been seen by him. The Ld. Assessing Officer has accepted after scrutinized the documents. As such the date of

receipts by assessee from deceased father duly mentioned in the memorandum of family settlement.

In view of the above submissions, the assessee has proper sources of cash deposits into bank account the same may please be accepted.

4. As regards, examine of assessee on oath, it is humbly submitted that the explanation of the assessee regarding cash receipts from father is duly supported by the documentary evidence i.e. family settlement memorandum and receipts of father is also supported by the agreement sale ancestral land. The assessee has filed both the documents before the Ld. Assessing Officer. The Ld. Assessing Officer. The Ld. Assessing Officer after seeing the documents has accepted after scrutinized the documents. Mere non examine of assessee on oath doesn't automatically lead to order of the Ld. Assessing Officer as erroneous.

The father of the assessee is no more alive and as such the documents of agreement to sale and the memorandum of family settlement should be treated as conclusive proof

In view of above submission and on the facts and circumstances the order of the Assessing officer is not prejudicial to the interests of the revenue. Also your honour an order cannot be termed as erroneous that the order should have been written more elaborately.

It is humbly submitted your honour that relying on the following decisions of Hon'ble Courts both conditions must co-exist for proceedings under section 263 of Income Tax Act,1961.

Tara Devi Aggarwal (Smt.) vs. CIT 88fTR 323 (SC).

CIT vs. Max India Ltd. 295fTR 282 (SC)

CIT vs. Ratlam Coal Ash Co. 171 fTR 141 (MP).

CIT vs. Shri Govindram Seksariya Charity Trust 166 ITR 580 (MP)

CIT vs. GabrielIndia Ltd. 203ITR 109 (Born).

CIT vs. Smt. Minalben S.Parikh 215 fTR 81 (Guj).

CIT vs. Sohana Woollen Mills 296ITR 238 (P& H).

It is therefore prayed your honour that the proceedings may please be dropped.

7. The submissions made by the assessee were not sufficient to satisfy the Ld. PCIT and and thus held that the assessment order dated 22.12.2016 issued u/s 143(3) of the Act as erroneous and prejudicial to the interest of revenue observing as follows :-

*3.2 In respect of the cash amount received of Rs.19,05,000/- from the father, being the share of the assessee, on sale consideration of agricultural land of Rs.1 ,39,40,000/-, the assessee did not furnish any details and documents except copy of family partition deed, sale agreement dated 05.01.2008 and death certificate of Shri Ramcharan Das. The assessee also did not file copy of registered deed of such agricultural land, after a lapse of nearly 11 years of such sale agreement Therefore, the contention of the assessee is not acceptable. Thus, the assessee has not properly explained the source of cash deposited of Rs.19,05,500/- in the savings bank account. Accordingly, the AO is required to examine this issue in detail in order to ascertain the true state of the facts. In view of the above, the assessment order is erroneous and prejudicial interest of revenue.*

4. The relevant explanation to section 263 is reproduced as below :-

*Explanation 2 ~ "For the purpose 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:"*

*As such the provisions of section 263 are applicable on the issue of the case.*

5. Thus, the order is erroneous and prejudicial to the interest of revenue in respect to the above issue.

6. The order of the AO is, therefore, set aside to the file of the AO with direction to examine the issue, as discussed above, and after affording proper opportunity to the assessee. The order dated 12.12.2016 passed u/s 143(3)/147 is, accordingly, set aside.

8. Now the assessee is in appeal before the Tribunal challenging the jurisdiction of Ld. PCIT assumed u/s 263 of the Act.

9. Ld. Counsel for the assessee on referring to the written submissions filed before Ld. PCIT and also before us submitted that the alleged amount of Rs.19,05,000/- deposited by the assessee in

the bank account was received from his father. The alleged amount was 1/7 part of the total consideration of Rs.1,39,40,000/- received on family partition and the same was distributed by the father amongst his seven sons. The Ld. A.O has duly called for the details relating to alleged cash deposit during the assessment proceedings and the assessee has given specific reply with all the relevant documentary evidence in the form of bank statement, sale agreement and family partition agreement. Ld. Counsel for the assessee has also submitted that the father of the assessee expired on 19.02.2016. Since it was a genuine transaction of the amount received on family partition which has been thoroughly examined by the Ld. A.O conducting sufficient enquiry, Ld. PCIT was not justified in exercising his jurisdiction u/s 263 of the Act and the same deserves to be quashed.

10. Per contra Ld. Departmental Representative vehemently argued supporting the order of Ld. PCIT.

11. We have heard rival contentions and perused the records placed before us and carefully gone through the submissions made by the assessee. In all these appeals the common issue is that of

challenging the order passed by Ld. PCIT u/s 263 of the Act treating the assessment order(s) as erroneous and prejudicial to the interest of revenue. We observe that Ld. PCIT has referred to transaction of cash deposit of Rs.19,05,000/- in the saving bank account by the respective assessee(s). In the show cause notice Ld. PCIT has himself referred to the transaction arising out of family partition. Assessee's father Shri Ramcharan Das received sale consideration from sale of agriculture land at Rs.1,39,40,000/- on 5.1.2008 (copy of sale deed placed at PB pg-22). Family partition deed is dated 21.05.2008. Assessee is having six brothers. Assessee received 1/7 portion. Ld. PCIT while initiating proceedings u/s 263 of the Act mentioned that "*no details and documents are found on record which could establish that the dates on which the above amount of Rs.19,05,000/- was received by the assessee from his father and also the Ld. A.O did not examined the assessee on oath in connection with the veracity of the transaction*".

12. To examine this aspect whether Ld. PCIT has justified in holding the order of Ld. A.O as erroneous and prejudicial to the interest of revenue, we will first go through the relevant provision of

Section 263 of the Act:-

**263.** (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 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—*

- (a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include—*
  - (i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;*
  - (ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under section 120;*
- (b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or Commissioner;*
- (c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or] Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.*

*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) *No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.*
- (3) *Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.*

*Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to [section 129](#) and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.*

13. On a bare perusal of the sub-section (1) would reveal that the powers of revision granted by section 263 to the learned Commissioner have four compartments. In the first place, the learned Commissioner may call for and examine the records of any proceedings under this Act. For calling of the record and examination, the learned Commissioner was not required to show any reason. It is a part of his administrative control to call for the records and examine them. The second feature would come when he will judge an order passed by an Assessing Officer on culmination of any proceedings or during the pendency of those proceedings. On an analysis of the record and of the order passed by the Assessing Officer, he formed an opinion that such an order is erroneous in so far as it is prejudicial to the interests of the Revenue. By this stage the learned Commissioner was not required the assistance of the assessee. Thereafter the third stage would

come. The learned Commissioner would issue a show-cause notice pointing out the reasons for the formation of his belief that action under section 263 is required on a particular order of the Assessing Officer. At this stage the opportunity to the assessee would be given. The learned Commissioner has to conduct an inquiry as he may deem fit. After hearing the assessee, he will pass the order. This is the fourth compartment of this section. The learned Commissioner may annul the order of the Assessing Officer. He may enhance the assessed income by modifying the order.

14. It is well settled law that for invoking the provisions of section 263 of the Act both the conditions that the order must be erroneous and prejudicial to the interest of revenue needs to be satisfied. This ratio stands laid down by various Hon'ble Courts.

15. Hon'ble Jurisdictional High Court of Madhya Pradesh in the case of *H.H. Maharaja Raja Power Dewas (1983) 15 Taxman 363* in para 10 of this order held that *“However, the first argument, viz., that an assessment order without compliance with the procedure laid down in section 144B is erroneous but not prejudicial to the interests of the revenue conferring revisional jurisdiction on the Commissioner under section 263(1), has force. Under section 263(1) two pre-requisites must be present before the*

*Commissioner can exercise the revisional jurisdiction conferred on him. First is that the order passed by the ITO must be erroneous. Second is that the error must be such that it is prejudicial to the interests of the revenue. If the order is erroneous but it is not prejudicial to the interests of the revenue, the Commissioner can not exercise the revisional powers under section 263(1) of the Act. There cannot be any prejudice to the revenue on account of the ITO's failure to follow the procedure prescribed under section 144B, and unless the prejudice to the interests of the revenue is shown, the jurisdiction under section 263(1) cannot be exercised by the Commissioner, even though the order is erroneous. The argument that such an order may possibly be challenged in appeal by the assessee, and for this reason it is prejudicial to the interests of the revenue, has no merit. Section 263(1) clearly contemplates that the order of assessment itself should be prejudicial to the interests of the revenue and this prejudice has to be proved by reference to the assessment order only. It cannot be argued that there is some possibility of the assessment order being challenged or revised in appeal and, therefore, on account of this contingency, the order becomes prejudicial to the interests of the revenue.” [emphasis supplied]*

16. Hon'ble Apex Court in the case of *Malabar Industrial Co. Ltd.* – [2000] 243 ITR 83 – order pronounced on 10.02.2000 – HEAD NOTE – "Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interests of revenue - Assessment year 1983-84 - Whether in order to invoke section 263 Assessing Officer's order must be erroneous and also prejudicial to revenue and if one of them is absent, i.e., if order of Income-tax Officer is erroneous but is not prejudicial to revenue or if it is not erroneous but is prejudicial to revenue, recourse cannot be had to section 263(1) - Held, yes - Whether if due to an erroneous order of ITO, revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to interests of revenue - Held, yes - Assessee-company entered into agreement for sale of estate of rubber plantation - As purchaser could not pay installments as scheduled in agreement, extension of time for payment of installments was given on condition of vendee paying damages for loss of agricultural income and assessee passed resolution to that effect - Assessee showed this receipt as agricultural income - Resolution passed by assessee was not placed before Assessing Officer - Assessing Officer accepted entry in statement of account filed by assessee and accepted same - Commissioner under

*section 263 held that said amount was not connected with agricultural activities and was liable to be taxed under head 'Income from other sources' - Whether, where Assessing Officer had accepted entry in statement of account filed by assessee, in absence of any supporting material without making any enquiry, exercise of jurisdiction by Commissioner under section 263(1) was justified - Held, yes*

17. Hon'ble Gujarat High Court in the case of *Smt. Minalben S. Parikh* – [1995] 215 ITR 81 – order pronounced on 17.10.1994 – Para 12 – “From the aforesaid, it can well be said that the well-settled principle in considering the question as to whether an order is prejudicial to the interests of the revenue or not is to address oneself to the question whether the legitimate revenue due to the exchequer has been realised or not or can be realised or not if his orders under consideration are allowed to stand. For arriving at this conclusion, it becomes necessary and relevant to consider whether the income in respect of which tax is to be realised, has been subjected to tax or not or if it is subjected to tax, whether it has been subjected to tax at a rate at which it could yield the maximum revenue in accordance with law or not. If income in question has been taxed and legitimate

*revenue due in respect of that income had been realised, though as a result of erroneous order having been made in that respect, in our opinion, the Commissioner cannot exercise powers for revising the order under section 263 merely on the basis that the order under consideration is erroneous. If the material in that regard is available on the record of the assessee concerned, the Commissioner cannot exercise his powers by ignoring that material which links the income concerned with the tax realization made thereon. The two questions are inter-linked and the authority exercising powers under section 263 is under an obligation to consider the entire material about the existence of income and the tax which is realizable in accordance with law and further what tax has in fact been realised under the alleged assessment orders.[emphasis supplied]*

18. Hon'ble Karnataka High Court in the case of V. G. Krishnamurthy – [1985] 20 Taxman 65 – order pronounced on 19.03.1984 – Para 10 – “Section 263 can be invoked by the Commissioner only when he prima facie finds that the order made by the ITO was erroneous and was prejudicial to the interests of the revenue. Both these factors must simultaneously exist. An order that is erroneous must also have resulted in loss of revenue or prejudicial

*to the interests of the revenue. Unless both these factors co-exist or exist simultaneously, the Commissioner cannot invoke or resort to section 263. It cannot be exercised to correct every conceivable error committed by an ITO. Before the suomoto power of revision can be exercised, the Commissioner must at least prima facie find both the requirements of section 263, namely, that the order sought to be revised is prima facie erroneous and prejudicial to the interests of the revenue. If one of the other factor was absent, the Commissioner cannot exercise the suomoto power of revision under section 263.”*  
*[emphasis supplied]*

19. At this stage, before considering the multi-fold contentions of the learned representatives, we deem it pertinent to take note of the fundamental tests propounded in various judgments relevant for judging the action of the Commissioner of Income-tax taken under section 263. The Income-tax Appellate Tribunal in the case of *Mrs. Khaiiza S. Oomerbhoy v. ITO [2006] 101 TIJ 1095 (Mum)*, analysed in detail various authoritative pronouncements including the decision of the hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83 (Se)* and has propounded the following

broader principle to judge the action of the Commissioner of Income-tax taken under section 263.

(i) The Commissioner of Income-tax must record satisfaction that the order of the Assessing Officer is erroneous and prejudicial to the interests of the Revenue. Both the conditions must be fulfilled.

(ii) Section 263 cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer and it was only when an order is erroneous that the section will be attracted.

(iii) An incorrect assumption of facts or an incorrect application of law will suffice the requirement of order being erroneous.

(iv) If the order is passed without application of mind, such order will fall under the category of erroneous order.

(v) Every loss of revenue cannot be treated as prejudicial to the interests of the Revenue and if the Assessing Officer has adopted one of the courses permissible under law or where two views are possible and the Assessing Officer has taken one view with which the Commissioner of Income-tax does not agree. It cannot be treated as erroneous order, unless the view taken by the Assessing Officer is unsustainable under law .

(vi) If while making the assessment, the Assessing Officer examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determine the income, the Commissioner of Income-tax, while exercising his power under section 263 is not permitted to substitute his estimate of income in place of the income estimated by the Assessing Officer.

(vii) The Assessing Officer exercises quasi-judicial power vested in him and if he exercises such power in accordance with law and arrive at a conclusion, such conclusion cannot be termed to be erroneous simply because the Commissioner of Income-tax does not feel satisfied with the conclusion.

(viii) The Commissioner of Income-tax, before exercising his jurisdiction under section 263 must have material on record to arrive at a satisfaction.

(ix) If the Assessing Officer has made enquiries during the course assessment proceedings on the relevant issues and the assessee has detailed explanation by a letter in writing and the Assessing allows the claim on being satisfied with the explanation of the assessee, the decision of the Assessing Officer cannot be held to be simply because in his order he does not make an elaborate discussion in that regard.

20. In the light of the above decision and the ratios laid down therein and examining the facts of the case we find that the Ld. A.O vide his notice dated 3.10.2016 issued u/s 143(2) of the Act enclosed a Annexure and through point No.13, the assessee was required to explain the source of cash deposit in his saving bank account. In reply filed on 5.12.2016 the assessee has given complete details of the transaction in Para 13 & 14 in his reply and the same is reproduced below:-

13. As regards cash deposits in to saving bank account with Narmada Malwa Gramir Bank, Dewas, it is humbly submitted that the assessee has deposited Rs.19,05,000/- in such account out of amount received in family partition from father. The father of the assessee sold ancestral agricultural land situated a Village Jasodgarh, Tehsil and District-Dewas Survey No. 414 admeasuring about 5.66 Hectare inherited by him. He has sold land for Rs. 1,39,40,000/- out of which he distributed Rs. 19,15,000/- amongst his seven sons. As such each son received share in ancestral property at Rs.19,15,000/-. The assessee ha: deposited Rs.19,05,000/- in the saving account during the year under assessment We are enclosing herewith copy of family settlement (Partition) memorandum along with copy of sale agreement of agricultural land for your kind perusal.

In view of the above submissions, the assessee has proper sources of cash deposits into bank account the same may please be accepted.

14. The agricultural land sold by the father of the assessee is situated at village Jasodgarh, Tehsil and District-Dewas. The road distance of the

Jasodgarh fret Dewas is about 15 Kilometers. The Limit of Dewas Nagar Palik Nigam is up to Village- Bilawali and the road distance of Bilawali from Dewas is about 5 Kilometers. As such the 'agricultural land is situated beyond 8 Kilometers from the limit of local Municipal Corporation. As such the land is not a capital assets with the provisions of section 2 (14) (iii) of the Income Tax Act,1961. It is also submitted that the sale deed of agricultural land is presently not available with the assessee. The father of 'the assessee had also expired on 19/02/2016. We are enclosing herewith death certificate of father for your kind perusal. The family of the assess is purely an agricultural family and does not engage in any business or profession. It is humbly requested that the sale agreement may please be accepted.

21. Along with this reply the assessee enclosed copy of bank pass book, copy of agreement of sale of agriculture land, copy of memorandum of family settlement and copy of death certificate of father Ramcharan Das. On the basis of above details the explanation of the assessee were accepted by the Ld. A.O and the alleged amount being the amount received on family partition, the transaction was treated as explained by the Ld. A.O.

22. On going through the above details we find that all necessary evidences which could explain the source of cash deposits in the bank account by the respective assessee(s) at Rs.19,05,000/- is established and in the family partition deed the name of three

assessee(s) named S/Shri Ram Swarrop Bairagi, Sriram Vaishnav and Shailendra Vashav who are in appeal before us are appearing. Copy of sale deed dated 05.01.2008 is also available. Family partition agreement is dated 21.05.2008. The financial year in question is 2008-09. Cash is deposited on 22.5.2008, which is a day after the date of family partition agreement. The nexus of cash deposit is proved with copy of sale deed, partition deed and bank pass book. We therefore in the given facts and circumstances of the case are of the considered view that specific information was called by Ld. A.O about the alleged cash deposits and the assessee has satisfied the Ld. A.O with complete details giving the source of cash deposit in the bank account. Therefore it is neither a case of no enquiry or inadequate enquiry. Thus the order of Ld. A.O u/s 143(3) r.w.s. 148 of the Act dated 12.12.2016 framed in the case of S/Shri Ram Swaroop Bairagi, Shriram Vaishnav and Shailendra Vaishnav are neither erroneous nor prejudicial to the interest of revenue. Therefore in our considered view Ld. PCIT has wrongly assumed jurisdiction u/s 263 of the Act and the impugned order deserves to be quashed. We therefore allow respective ground raised in ITA Nos.633, 636 & 639/Ind/2019 and restore the order

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*ITA No.633, 636 & 639/Ind/2019*

of Ld. A.O u/s 143(3) r.w.s. 148 of the Act dated 12.12.2016 in the case of all the three assessee(s).

23. In the result appeals of the assessee(s) are allowed.

The order pronounced in the open Court on 24.11.2020.

Sd/-

( KUL BHARAT)  
JUDICIAL MEMBER

दिनांक /Dated : 24 November, 2020  
/Dev

Sd/-

(MANISH BORAD)  
ACCOUNTANT MEMBER

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)  
concerned/ DR, ITAT, Indore/Guard file.

By Order,

Asstt.Registrar, I.T.A.T., Indore