आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL, INDORE BENCH, INDORE

BEFORE HON'BLE MANISH BORAD, ACCOUNTANT MEMBER AND
HON'BLE MADHUMITA ROY, JUDICIAL MEMBER

ITA No.870/Ind/2019
Assessment Year 2009-10

Shri Kamal Kishore Mukati	: Appellant
83, Kabir Khedi,	
Sukhliya, Indore	
PAN : BXCPM1716K	
V/s	
PCIT-1,	
Indore	: Respondent

ITA No.871/Ind/2019
Assessment Year 2009-10

Shri Dilip Mukati	: Appellant
83, Kabir Khedi,	
Sukhliya, Indore	
PAN : CBIPN5886P	
V/s	
PCIT-1,	
Indore	: Respondent

ITA No.872/Ind/2019
Assessment Year 2009-10

Shri Vishnu Mukati : Appellant
83, Kabir Khedi,
Sukhliya, Indore
PAN : CDSPP6294A
V/s
PCIT-1,
Indore : Respondent

ITA No.873/Ind/2019
Assessment Year 2009-10

Shri Ashok Mukati : Appellant
83, Kabir Khedi,
Sukhliya, Indore
PAN : BUAPM6383D
V/s
PCIT-1,
Indorel : Respondent

ITA No.874/Ind/2019
Assessment Year 2009-10

Shri Akash Mukati : Appellant
83, Kabir Khedi,
Sukhliya, Indore
PAN : AKKPM9275F
V/s
PCIT-1,
Indore : Respondent

Revenue by	Shri S.B. Prasad, CIT

Assessee by	Shri Pankaj Shah, CA

ITA No.433/Ind/2018
Assessment Year 2009-10

Shri Shankarlal Mukati : Appellant
Village: Kabir Khedi,
Indore
PAN : BECPM4857E
V/s

PCIT-1,
Indore : Respondent

ITA No.434/Ind/2018
Assessment Year 2009-10

Shri Babulal Mukati : Appellant
Village: Kabir Khedi,
Indore
PAN : BECPM4845M

V/s

PCIT-1,
Indore : Respondent

ITA No.436/Ind/2018
Assessment Year 2009-10

Shri Kailash Chandra
Shivaji Mukati : Appellant
Village: Kabir Khedi,

Indore
PAN : BECPM4856F
V/s

PCIT-1,
Indore : Respondent

ITA No.442/Ind/2018
Assessment Year 2009-10

Smt. Tulsi Bai Mukati : Appellant
Village: Kabir Khedi,
Indore
PAN : BASPB9386H

V/s

PCIT-1,
Indore : Respondent

ITA No.435/Ind/2018
Assessment Year 2009-10

Shri Radheshyam Muketi : Appellant
Village: Kabir Khedi,
Indore
PAN : CAXPM2522E
V/s
PCIT-1,
Indore : Respondent

ITA No.437/Ind/2018

Assessment Year 2009-10

Shri Motilal Mukati : Appellant
Village: Kabir Khedi,
Indore
PAN : BGLPM2251H
V/s

PCIT-1,
Indore : Respondent

ITA No.438/Ind/2018
Assessment Year 2009-10

Shri Motilal Mukati
(L/H Ramchandra) : Appellant
Village: Kabir Khedi,
Indore
PAN : BMHPR7699A
V/s
PCIT-1,
Indore : Respondent

ITA No.425/Ind/2018
Assessment Year 2009-10

Shri Subhash Mukati
(L/H Badrilal Govindji Mukati) : Appellant
Village: Kabir Khedi,
Indore
PAN : BPBPB9231H

V/s

PCIT-1,
Indore : Respondent

Revenue by	Shri S.B. Prasad, CIT
Assessee by	Shri S.N. Agrawal, CA
Date of Hearing	08.04.2021
Date of Pronouncement	28.06.2021

O R D E R

PER BENCH:

The above captioned appeals filed at the instance of the assessee(s) for Assessment Year 2009-10 are directed against the separate orders of Ld. Pr. Commissioner of Income Tax(Appeals)-I (in short 'Ld. PCIT], Indore dated 15.03.2018 and 27.02.2019.

2. Registry has informed that there is a delay of 122 days in filing of the appeals in ITANos.870 to 874/Ind/2019 and delay of 54 days in the remaining appeals captioned above. Respective assessee(s) have filed an affidavit for condonation of delay. All the assessee(s) in instant appeals are relatives and are engaged in agricultural activities. In the condonation applications common reason is death of one of the family members and lack

of necessary advice to file the appeals and time limit. We have given thoughtful consideration and in the larger interest of justice and the reasons mentioned by the respective assessees, condone the delay in filing of instant appeals and admit them for adjudication.

3. Assessee(s) has raised following common grounds of appeal in ITANos.870 to 874/Ind/2019:-

GROUND I:

1.On the facts and circumstances of the case and in law, the Learned Principal Commissioner of Income tax -I, Indore ["the PCIT"] erred in invoking provisions of section 263 of the Income Tax Act, 1961 ("the Act") and directing revision of the assessment order passed u/s. 143 (3)/147 of the Act by the Income Tax Officer-1(4), Indore ("the AO") for examination of capital gains and deductions on the alleged ground that the assessment order was erroneous and prejudicial to the interest of the revenue.

2.The Appellant prays that since the assessment order passed by the AO was after making specific and full enquiries therefore the assessment order cannot be regarded as erroneous and accordingly the action of the CIT in invoking provisions of section 263 and revising assessment order be held ab-initio and / or otherwise void and bad- in-law.

3. He further failed to appreciate that no revision can be made when two views exist on a debatable issue.

4. The Appellant further prays that order passed u/s. 263 of the Act ought to be, in the facts and circumstances, struck down as null and void ab initio.

GROUND II:

Without prejudice to Ground I:

1.On the facts and circumstances of the case and in law, the CIT erred in observing that the conditions of section 54B and section 54F are not satisfied in respect of claim allowed by the AO.

2.The Appellant prays that the order passed u/s. 263 of the Act be struck down as null and void and assessment order of the AO be restored and it be held that on the facts and circumstances, no revision or interference is called for.

GROUND III:

The Appellant craves leave to add, amend, alter and/or delete any/all of the above grounds of appeal.

Assessee(s) has raised following common grounds of appeal in ITANos.433,434,436 & 442/Ind/2018:-

1.1 That on the facts and in the circumstances of the case and in law the Ld. CIT erred in set aside the order as passed by the assessing officer u/s 143(3) r.w.s. 147 of the Act by invoking the provision of section 263 of the Act even when the order as passed by the assessing officer was neither erroneous prejudicial to the interest of the revenue.

1.2 That on the facts and in the circumstances of the case and in law the Ld. CIT erred in set aside the order as passed by the assessing officer by invoking the provision of section 263 of the Act even when the order was passed by the assessing officer u/s 143(3) r.w.s. 147 of the Act after full application of mind.

2. That on the facts and in the circumstances of the case and in law the Ld. CIT erred in set aside the order as passed by the assessing officer by invoking the provision of section 263 of the Act merely for applying the sale consideration as per provision of section 50C of the Income Tax Act even when consideration was received by the assessee in previous years as per guidelines as applicable in that year.

3. That the appellant reserves its right to add, alter and modify the grounds of appeal as taken.

Assessee(s) has raised following common grounds of appeal in ITANos.435,437 & 438/Ind/2018:-

1.1 That on the facts and in the circumstances of the case and in law the Ld. CIT erred in set aside the order as passed by the assessing officer u/s 143(3) r.w.s. 147 of the Act by invoking the provision of section 263 of the Act even when the order as passed by the assessing officer was neither erroneous prejudicial to the interest of the revenue.

1.2 That on the facts and in the circumstances of the case and in law the Ld. CIT erred in set aside the order as passed by the assessing officer by invoking the provision of section 263 of the Act even when the order was passed by the assessing officer u/s 143(3) r.w.s. 147 of the Act after full application of mind.

2. That on the facts and in the circumstances of the case and in law the Ld. CIT erred in set aside the order as passed by the assessing officer by invoking the provision of section 263 of the Act merely for applying the sale consideration as per provision of section 50C of the Income Tax Act even when consideration was received by the assessee in previous years as per guidelines as applicable in that year.

3. That the appellant reserves its right to add, alter and modify the grounds of appeal as taken.

Assessee(s) has raised following common grounds of appeal in ITANo.425/Ind/2018:-

1.1 That on the facts and in the circumstances of the case and in law the Ld. CIT erred in set aside the order as passed by the assessing officer u/s 143(3) r.w.s. 147 of the Act by invoking the provision of section 263 of the Act even when the order as passed

by the assessing officer was neither erroneous prejudicial to the interest of the revenue.

1.2 That on the facts and in the circumstances of the case and in law the Ld. CIT erred in set aside the order as passed by the assessing officer by invoking the provision of section 263 of the Act even when the order was passed by the assessing officer u/s 143(3) r.w.s. 147 of the Act after full application of mind.

2. That on the facts and in the circumstances of the case and in law the Ld. CIT erred in set aside the order as passed by the assessing officer by invoking the provision of section 263 of the Act merely for applying the sale consideration as per provision of section 50C of the Income Tax Act even when consideration was received by the assessee in previous years as per guidelines as applicable in that year.

3. That the appellant reserves its right to add, alter and modify the grounds of appeal as taken.

4. From perusal of the above grounds we find that most of issues raised are common, therefore as accepted by all the parties concerned, we have taken up all these appeals together for adjudication and the same are being disposed of by way of this common order for sake of convenience and brevity.

5. In all these instant appeals assessees have challenged the action of Ld. Pr. CIT-1 Indore, invoking the provisions of section 263 of the Act and directing for the revision of the assessment orders passed u/s 143(3) r.w.s.147 of the Act. The grounds of

appeals further indicate that following three issues are involved in the impugned order framed u/s 263 of the Act:-

a. Value of sale consideration to be adopted for computing the capital gain

b. Allowability of deduction u/s 54B of the Act

c. Allowability of deduction u/s 54F of the Act.

For adjudication of these common issues as a lead case we are taking the facts of the case of Kamal Kishore Mukati ITANo.870/Ind/2019 to which consent was given by Ld. Counsel(s) for the assessee and the Ld. Departmental Representative(DR).

6. Brief facts of the case are that the assessee is an individual and source of income is from agricultural operation, capital gain and income from other sources. The assessee along with family members entered into an understanding for sale of his agricultural land admeasuring 3.522 hectares with Shri Vijay Mirchandani Ji who acted on behalf of M/s Global Developers for sale consideration of Rs.1,91,48,000/- out of which Mr. Kamal Kishore Mukati had to received 1/5th share i.e. Rs.38,29,600/-. This sale agreement was executed on

31.03.2016 and the consideration was received through banking channels in the respective bank accounts of the sellers on different dates soon after entering the agreement. The sale deed was finally registered on 02.04.2008 between the assessee and M/s. Global Developers. Through annual information return Ld. AO received information about the transaction of sale of immovable property registered on 02.04.2008. In order to initiate the assessment proceedings u/s 147 of the Act, notice u/s 148 of the Act was duly served upon the assessee and in compliance thereto return of income for A.Y.2009-10 was filed on 18.04.2016, showing income at Rs.1,72,999/- and agricultural income of Rs.1,37,500/-. Detailed computation of income along with calculations of capital gain and the claim of deduction u/s 54 were filed by the assessee as required by the Assessing Officer. Ld. AO made addition of Rs.25,000/- and assessed the income at Rs.1,98,000/- and agricultural income at Rs.1,37,500/-.

7. Similar type of proceedings were also carried out in the case of remaining assessees wherein also immovable property was

sold by the members of Mukati family and agreements were entered with Vijay Mirchandani on behalf of the M/s Global Developers. The sale consideration mentioned in the sale agreements were more than the value as per the Stamp Valuation Authority provided u/s 50C of the Act. Payments were received through banking channels much before the final date of entering to the registered sale deed during the assessment year 2009-10. The sale considerations were received by the respective assessees as per their shares in the immovable property. All the assessments were filed u/s 147 r.w.s. 143(3) of the Act on receiving specific information on the basis of AIR. Assessee wise details of appeals, share of sale consideration, registry value and date of assessment u/s 143(3) r.w.s. 147 of the Act are provided in the chart below:

Name of the assessee	ITA No.	Share of Sale consideration	Registry value	Assessment u/s 143(3) r.w.s. 147 date
Kamal Kishore Mukati	870/Ind/ 2019	38,29,600/-	1,91,48,000/ 5	19.04.2016
Dilip Mukati	871/Ind/ 2019	38,29,600/-	1,91,48,000/ 5	19.04.2016
Vishnu Mukati	872/Ind/ 2019	38,29,600/-	1,91,48,000/ 5	19.04.2016
Ashok Mukati	873/Ind/ 2019	38,29,600/-	1,91,48,000/ 5	19.04.2016

Akash Mukati	870/Ind/ 2019	38,29,600/-	1,91,48,000/ 5	19.04.2016
Shankarlal Mukati	433/Ind/ 2018	24,81,500/-	99,26,000/ 4	19.01.2016
Babulal Mukati	434/Ind/ 2018	24,81,500/-	99,26,000/ 4	19.01.2016
Kailash chandra Mukati	436/Ind/ 2018	24,81,500/-	99,26,000/ 4	19.01.2016
Tulsi Bai Mukati	442/Ind/ 2018	24,81,500/-	99,26,000/ 4	19.01.2016
Radheyshyam Mukati	435/Ind/ 2018	28,60,000/-	85,80,000/3	19.01.2016
Motilal Mukati	437/Ind/ 2018	28,60,000/-	85,80,000/3	19.01.2016
Motilal Mukati (L/H Ramchandra Mukati)	438/Ind/ 2018	28,60,000/-	85,80,000/3	19.01.2016
Subhash Mukati (L/H Badrilal Mukati)	425/Ind/ 2018	99,26,000/-	99,26,000/-	19.01.2016

8. Subsequently, Ld. Pr. CIT invoked the provisions of section 263 of the Act in case of all the assessee(s) in the instant appeals and issued show cause notice u/s 263 of the Act. Since content of most of the notices issued are common depending on the value of sale consideration and the share of sale consideration and deduction claimed u/s 54of the Act by the respective assessees, we are reproducing below the show cause notice issued in the case of Kamal Kishore Mukati ITANo.870/Ind/2019, Shankarlal Mukati ITANo.433/Ind/2018,

Radheshyam Mukati ITATNo.435/Ind/2018 & Subhash Mukati

L/H Shri Badrilal Mukati ITANo.425/Ind/2018:

Kamal Kishore Mukati

2.1 The relevant portion of the show cause notice u/s 263 is reproduced as under:-

(i) It is observed that your case was reopen on the basis of AIR information relating to the A. Y. 2009-10 on account sale of immovable property. As per records you had sold joint agricultural land for a stated consideration of Rs. 1,91,48,000/- vide sale deed dated 02/04/2008 and shown share in the sale consideration was Rs. 38,29,600/- (1,91,48,000/5) Whereas the market value of the land was assessed by the Sub registrar at Rs. 3,60, 00,000/-. Further, the AD had also taken sales consideration at Rs 38,29,600/-[i.e. 1/5 of 1,91,48,000) and accordingly calculated Long Term Capital Gain while completing the reassessment u/s 147/143(3) of the Income Tax Act /961. However, in view of section 50C, the sale value o] the land was required to be taken at Rs. 72,00,000/- (3,60,00,000/5) instead of Rs. 38,29,600/-.

(ii) From the perusal 0.[case records if is seen that conditions of section 54B are not satisfied in respect claim of Rs.1,03,450/- allowed by the AO The land has been purchased prior to registered sale of land by the assessee.

(iii) The condition of section 54F are not satisfied in respect of Rs.20,56,335/- allowed by the AO as valuation is based on Fair Market Price as on 22.03.2016 while assessment pertains to A. Y. 2009-10. The claim of deduction u/s 54F has not been properly examined by AO So the same is construed cost has been considered to be erroneous as well as prejudicial to interest of revenue. "

Shankarlal Mukati

2. The relevant portion of the show cause notice u/s 263 is reproduced as under:-

It is observed that your case was reopen on the basis of AIR information relating

to the A.Y. 2009-10 on account sale of immovable property. As- per records you had sold joint agricultural land for a stated consideration of Rs.99,26,000/- vide sale deed dated 11.4.2008 and shown share in the sale consideration was Rs.24,81,500/- (9926000/4). Whereas the market value of the land was assessed by the Sub registrar at Rs. 2,07,61,000/-. Further, the AO had also taken sales consideration at Rs 24,81,500/- [i.e. ¼ of 99,26,OOO/- and accordingly calculated Long Term Capital Gain 'while completing the reassessment u/s 147/143(3) of the Income Tax Act. 1961.Hocuever, in view of section sac the sale value of the land was required to be taken at Rs. 51,90,250/- (2,07,61,00014) instead of Rs. 24,81/500/-

Radheyshyam Mukati

2.1 The relevant portion of the show cause notice u/s 263 is reproduced as under.-

It is observed that your case was reopen -on the basis of AIR information relating to the A. Y. 2009-10 on account sale of immovable property. As per records you had sold joint agricultural land for a stated consideration of Rs. 85,80,000/- vide sale deed dated 11/04/2008 and shown share in the sale consideration was Rs. 28,60,000/- (85,80,00013). Whereas the market value of the land was assessed by the Sub registrar at Rs. 1,85,02,000/-. Further, the AO had also taken sales consideration at Rs 28,60,000/-[i.e.1/3 of 85,80,OOO] and accordingly calculated Long Term Capital Gain while completing the reassessment u/s 147/143(3) of the Income Tax Act. 1961.However, in view of section 50C, the sale value of the land was required to be taken at Rs. 61,67,333/- (1,85,02,000/3) instead of Rs.28,60,000/-.

Subhash Mukati

It is observed that your case was reopen -on the basis of AIR information relating to the A. Y. 2009-10 on account sale of immovable property. As per records you had sold joint agricultural land for a stated consideration of Rs. 99,26,000/- vide sale deed dated 11/04/2008 and shown share in the sale consideration was Rs. 28,60,000/- (85,80,00013). Whereas the market value of the land was assessed by the Sub registrar at Rs. 2,07,61,000/-. Further, the AO had also taken sales consideration at Rs 99,26,000 and accordingly calculated Long Term Capital Gain while completing the reassessment u/s 147/143(3) of the Income Tax Act. 1961.However, in view of section 50C, the sale value of the land was required to be taken at Rs. 2,07,61,000/- (instead of Rs. 99,26,000/-.

9. Since we are dealing with the common issues on the basis of facts of the assessee naely Kamal Kishore Mukati, we observe that detailed submission was filed by the assessee before Ld. Pr. CIT submitting that Ld. AO has carried out detailed enquiry about the transaction of sale of immovable property and specific notice was issued u/s 148 of the Act to which the details information were filed and the view adopted by the ld. Assessing Officer is one of the legally permissible view as held by Hon'ble Courts and Hon'ble Tribunals. All information were provided to the Ld. AO and after due application of mind he has accepted the submissions and have also made the additions as and where needed. It was also submitted that copies of agreement of sale and the registered sale deed were placed before Ld. AO and before Ld. Pr. CIT. The sale consideration was received much before the date of registering sale deed during the A.Y. 2009-10. However, Ld. Pr. CIT was not convinced and considered the assessment order as erroneous and prejudicial to the interest of revenue and set aside to the file of the Ld. AO for passing a fresh

order, taking into consideration various observations holding as follows:

> *4. I have carefully examined the records of the assessment proceedings and explanations submitted by the assessee, keeping in view the relevant provisions of law and judicial precedents.*
>
> *4.1 As regarding the assessee's claim of deduction uls 50C of the IT Act following facts are relevant:*
>
> *4.1.1 It is a fact that although the immovable property was jointly sold by the assessee for a stated consideration of Rs.l ,91 ,48,000/- vide sale deed dated 11.04.2008, Market Value of the property was assessed by the Sub Registrar at RsJ,60,00,0001-. Therefore, the provisions of section SOC are attracted in this case.*
>
> *4.l.2 As regards tire plea of the assessee that he had entered into an agreement with the purchases on 31.03.2006 and received part consideration through cheque, as per the sale deed dated 11.04.2008, the seller had reserved the right on the property till the date of sale deed, hence transfer did not take place till the execution of the sale deed. Perusal of the said deed further reveals that-*
>
> *4.1.3 Thus, it is apparent from the sale deed itself, that the assessee had not handed over possession of the property in questioned till the date of execution of sale deed 11.04.2008. Thus even though the assessee may have entered into an agreement on 31.03.2006 for sale of the property in question and may have received part consideration, possession was not handed over till execution of the deed of 11.04.2008. therefore, the claim of the assessee that the land had been sold as per agreement dated 31.03.2006 is not correct.*
>
> *4.1.4 Moreover, it is also observed agreement dated 31.03.2006 was entered into by the assessee and other Co-owners with Mis Global Developers, 210, Shalimar Corporate Centre, 8- B, South Tukoganj, Indore, whereas the land was ultimately sold by them on 11.04.2008 to Mis Coral Infrastructures Private Limited, 505-506, Shalimar Maurya Park, New Link Road, Andheri (E), Mumbai. Therefore, the plea of the assessee that the property had already been transferred (to Mis Global Developers, Indore) in pursuance of agreement dated 31.03.2006 is not correct as the same land cannot again be transferred to a, different entity (Mis Coral*

Infrastructures Private Limited) vide sale deed dated 11.04.2008.

In this regard assessee has contended that sale was made to Shri Vijay Mirchandani who was person concerned in both Mis Global Developers and Mis Coral Infrastructure P. Ltd. However both above entities are different legal entities and Mis Coral Infrastructure P. Ltd is a company where Shri Vijay Mirchandani is director. So sale cann't be treated to the same person by sale agreement and registered sale deed.

4.1.5 As regarding the assessee's contention that it was due to ignorance of law on part of assessee, it may be mentioned that it is out of context as the Assessing Officer was required to adopt the sale consideration of the land as per provisions of section 50C of the IT Act based on the registered sale deed dated 11.04.2008 which has not been done.

4.1.6 It may also be mentioned that assessee has claimed the indexation of cost of land based on date of transfer being 11.04.2008 which is the date of registered deed. In above circumstances, it is clear that actual sale took place on above date to M/s Coral Infrastructure P. Ltd.

From above it is clear that the said property was not transferred as on 31.03.2006 and actual transfer took place as per the sale deed dated 11.04.2008 when the said property was regist -; d of Rs.3,60,00,0001- and assessee's 1/5th share was Rs.72,00,0001- which was liable to be taxed uls soc of the I.T. Act which has not been done by the A.O .. Thus the order of the AO is erroneous and prejudicial to the interest of the revenue.

4.2 As regarding the assessee's claim of deduction uls 54B, the assessee has purchased the agricultural land on 16.05.2007 and claim deduction ofRs.5,73,025/- uls 54B. However, the sale deed was registered on 11.04.2008. As the purchase of agriculture land is before the sale of capital asset, the deduction uls 54B is not allowable. The AO was required to examine whether the various conditions for satisfying the claim of deduction uls 54B are satisfied which has not been done correctly & properly. Thus the order of the AO is erroneous and prejudicial to the interest of the revenue.

4.3 As regarding the assessee's claim of deduction uls 54F, the assessee has filed the copy of valuation report for the construction of the house which is dated 22.03.2016 and it is mentioned therein that valuation ofRs.48,99,0001- is based on Fair Market Price as on 22.03.2016. The AO has allowed the deduction of Rs.17 ,36,091/- uls 54F on investment of Rs.28, 19,0001- without examining how much of the amount was

invested in the construction of the house as per the sale deed dated 11.04.2008 as per the prescribed conditions uls 54F of the IT Act. Apparently, the AO has not allowed the deduction after examining the issue correctly. Accordingly, the order of the AO is erroneous and prejudicial to the interest of the revenue.

4.4 An order can be erroneous & prejudicial to interest of revenue on the ground that in the circumstances of the casethe Assessing Officer should have made further inquiries. It is duty of the Assessing Officer to ascertain the truth of the facts stated by the assessee. It is incumbent on the Assessing Officer to investigate the facts stated when circumstances would make such an inquiry prudent.

5. As per provisions of section 263, the Pro commissioner of Income tax may call for and examine the record of any proceedings and if he considers that any order passed therein by the assessing officer is erroneous in so far as it is prejudicial to the interest of the revenue, he may after giving the assessee an opportunity of being hear 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.

6. It- may be mentioned that Explanation-2 to section 263 has been introduced w.e.f. 01-06- 2016 in the section 263 of the IT Act which states as under:-

"Explanation-Z- For the purposes of this section, it is hereby declared than an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, if, in the opinion of the Principal Commissioner or Commissioner:-

The order is passed without making inquiries or verification which should have been made.

The order is passed allowing any relief without inquiring into the claim;

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

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

Reference may be made to the decision of jurisdictional High Court in the case of CIT vs. r mar Garg, 299 ITR 435. Reference may also be made to the observation of the court in the case of mt. Zubi Kochar vs. ACIT 112 TTl 297, ITAT Delhi - E Bench reproduced below:

> *" 12. A perusal of the notice issued by the learned CIT under s. 263 on 27th Jan., 2004 clearly shows that it was not a case where the view taken by the AO on any issue was held to be erroneous by the learned CIT on merits for assuming jurisdiction under s. 263 in order to substitute the same with his own view by exercising the powers conferred on him under s. 263. On the other hand, the assessment made by the AO was held to be erroneous as' well as prejudicial to the interest of the Revenue by him for the reason that no proper enquiries as required in the facts and circumstances of the case were made by the AO while completing the assessment and even such proper enquiries which the AO ought to have made were also precisely identified by him in the said notice. In the cases of Smt. Tara Devi Aggarwal vs. CIT 1973 CTR (SC) 107 .' (1973)* ***88 ITR 323*** *(SC) and Rampyari Devi Saraogi vs. CIT (1968)* ***67 ITR 84*** *(SC), it was held by the Hon'ble Supreme Court that the CIT can regard the order of the AO as erroneous on the ground that in the facts and circumstances of the case, the ITO should have made further enquiries before accepting the statements made by the assessee in his return. Following these two decisions of Hon'ble Supreme Court, Hon'ble Allahabad High Court has held in the case of Smt. Lajja Wati Singhal vs. CIT (1997) 138 CTR (All) 320 : (1997)* ***226 ITR 527*** *(All) that, an assessment made on income surrendered by the assessee without making any enquiry whether the same was in fact taxable in his hands was erroneous and prejudicial to the interest of the Revenue. Further, as held by Hon'ble Delhi High Court in the cases of Gee Vee Enterprises vs. Addl. CIT 1975 CTR (Del) 61 : (1975)* ***99ITR 375*** *(Del), Duggal & Co. vs. CIT (1994) 122 CTR (Del) 171 ; (1996)* ***220 ITR 456*** *(Del), it is incumbent on the AO to further investigate the facts stated in the retum when circumstances would make such an enquiry prudent and his order becomes erroneous if such an enquiry has not been made. Moreover, as held by Hon'ble Gujarat High Court in the case of Addl. CIT us. Mukur Corporation (1978)* ***111ITR 312****(Guj), an order of assessment passed by the AO without making necessary enquiries on certain important points connected with tne assessment would be erroneous and prejudicial to the interest of the Revenue. To the similar effect is the decision of Hon'ble Calcutta High Court in the case of CWT vs. Ramnarayan Bhojnagarwala (1992) 104 CTR (Cal) 50 .' (1992)* ***194 ITR 489***

(Cal), wherein it was held that whenever a question arises as to whether a correct and proper assessment has been made upon due enquiry and it is found that no such enquiry was made, the CIT has jurisdiction in such a case to set aside the assessment by invoking the powers conferred upon him under s. 263. In the case of 1alabar Industrial Co. Ltd. relied upon by both the sides at the time of hearing before us, Hon'ble Supreme Court has held that the phrase "prejudicial to the interest of the Revenue" is not an expression of art and is not defined in the Act. Explaining further) I: was observed by the Hon'ble Supreme Court that understood in its ordinary meaning, the said expression is of wide import and is not confined to loss of tax.

13. A resume of the aforesaid judicial pronouncements clearly shows that the very fact that assessment was made by the AO without proper and sufficient enquiries, as warranted in the facts and circumstances of the case, makes it erroneous as well as prejudicial to the interest of the Revenue giving jurisdiction to the learned CIT under s. 263 at that stage and even if it is ultimately found on merits after conducting such enquiries that there was in fact no loss to the Revenue, the same would not have any bearing on the jurisdiction of the learned CIT which was otherwise validly assumed at the time of initiating the proceedings under s. 263. As such, keeping in view all the facts of the case as well as the legal position emanating from the various judicial pronouncements discussed above, we are of the view that the assumption of jurisdiction by the learned CIT by issuance of notice on 27th Jan., 2004 was in accordance with law and there was no legal infirmity in the impugned order passed by him on this count as alleged by the learned counsel for the assessee. We, therefore, find no merits in the contentions raised by him on this issue and reject the same."

8. Considering the facts of the case the order is considered to be erroneous and prejudicial to interest of the revenue.
9. The order of the AO is therefore set aside to the file of the AO with the direction that he should examine the issues of capital gains and deductions thereon in the light of the observations made and after ascertaining all the facts and affording proper opportunity to the assessee take decision as per law. The order dated 19.04.2016 passed U/S 143(3)/147 is therefore set aside to above extent on the above issues with the direction to the AO for passing a fresh order taking into consideration the observations noted above as per law

10. Now the assessee is in appeal before the Tribunal. Ld. Counsel for the assessee vehemently argued referring to the following written submissions and various decisions referred therein contended that the Ld. Pr. CIT erred in assuming jurisdiction u/s 263 of the Act since there a detailed enquiry was conducted by the Ld. AO with regard to the transaction in question by way of calling of various documentary evidences which were duly filed and the same were going through before completing the assessment proceedings u/s 147 of the Act. Thus, this is neither a case of 'no' enquiry nor incomplete enquiry. Written synopsis filed by the Ld. counsel for the assessee is reproduced below:

1.1] The present appeal is filed against the order as passed under section 263 of the Income Tax act dated27-02-2019.

1.2] The Ld Pr CIT issued show cause notice under section 263 of the Income Tax Act on the following two points:

	To adopt the sale value as per section 50C of Rs72,00,000/- in place of actual sale consideration of Rs3829600/-
	Allegedly for the reason that condition for allowability of deduction under section 54B of the Act in respect of Rs5,73,025/- was not fulfilled. Since, the land was purchased prior to the sale of land by the assessee
	Allegedly for the reason that condition of Section 54F are not satisfied in

	respect of Rs. 17,36,091 allowed as deduction

1.3.1] The assessee alongwith family members entered into an understanding for sale of his agricultural land admeasuring 3.522 hectares with Shri Vijay Mirchandaniji on behalf of M/s Global Developers at Rs.19148000/- out of which the Appellant had one fifth share. Copy of sauda chithi as executed is already on record.

1.3.2] Sale agreement in respect of Agricultural land was executed on 31-03-2016 with the assessee and also with the other family members of the assessee. Copy of sale agreement as executed is enclosed. The appellant with the sale agreement received payment through banking channels which were duly credited in his bank account.

1.3.3] The amount as received by the assessee from the buyer on different dates and credited in his bank account is already on record.

1.4.1] The Ld Pr CIT has held that the sale agreement was executed by the assessee with Shri Vijay Mirchandani on behalf of M/s Global Developers but registry was executed in the name of M/s Coral Infrastructure P Limited through its director Shri Vijay Mirchandani. Hence, he was of the opinion that the guideline rate as applicable at the time of registry is applicable in the case of the appellant.

1.4.2] The assessee has entered into an agreement for sale of his land with Shri Vijay Mirchdani on behalf of M/s Global Developers. The sale consideration was fixed for his land at Rs3829600/-. In Para 5 of the sale agreement it was clearly mentioned that the seller is bound to executed registry either in favour of the buyer or in the name of any other persons as suggested by the buyer.

1.4.3] The sale agreement as executed was never cancelled. The amount as received by the assessee was quoted in the sale registry as executed. The assessee has never entered into an agreement for sale

of his land with M/s Coral Infrastructure P Limited. Since, the assessee had received advance against the sale of land in term of sale agreement as executed on 31-03-2006 and therefore he has executed registry in the name of M/s Coral Infrastructure P Limited as directed by the buyer. It is pertinent to mentioned that Shri Vijay Mirchandani entered into an agreement with the assessee on behalf of his firm M/s Global Developers and finally registry was also executed with Shri Vijay Mirchandani as a director of M/s Coral Infrastructure P Limited. The amount as received by the assessee in the year 2005-06 and in 2006-07 was adjusted in the registry as executed.

1.5] That in view of the above facts, the Pr CIT was not justified in adopting the guideline as applicable in the year in which final registry was executed.

1.6] The Ld Pr CIT rejected the submission merely for the reason that sale agreement was executed by the assessee with another firm and registry was executed in the name of another firm. The Ld Pr CIT failed to appreciate that in the sale agreement itself in Para 5 on inner Page No 6 [Page no 8 of the Compilation] it was stated that the seller is bound to execute registry in the name of buyer or in the name of any other person as instructed by the buyer. Hence, conclusion as drawn by the Ld Pr CIT was neither legal nor proper.

1.7.1] That in the following decisions it was held that the date of agreement of sale is to be considered for determination of value as per section 50C of the Income Tax Act:

S.No	*Citation*	*Reference*
1	*ACIT vs M/s Balmer Lawrie Van Leer Ltd*	*ITA No 4361/Mum/2016 dt 20-11-2018 for the Asst Year 2010-11*
2	*Rajaram Patidar*	*ITA No 371/ Ind/ 2015dt 28-09-2018 for the Asst Year*

		2010-11
3	*DCIT vs Venkat Reddy*	*(2013) 57 SOT 117 (Hyd Bench)*
4	*Lahiri Promoters vs ACIT*	*ITA No 12/Vizag/ 2009 dt 22-06-2010*
5	*Sanjeev Lal & Anr Vs CIT & Anr*	*(2014) 365 ITR 389 (SC)*
6	*Shri Mohd Imran Baig, Hyderabad & Others*	*ITA Nos 1942-1954/ Hyd/ 2014 dt 27-11-2015*
7	*Bharathi Dev Anandanivs ACIT*	*ITA No 882/ Bang/ 2014 dt 12-02-2016*
8	*CIT vs Shimbhu Mehra*	*ITA No 373 of 2010 dt 12-10-2015 [236 Taxman 561(All)*
9	*ITO vs Modipon Ltd*	*168 TTJ 480 (Del)*
10	*Hari Mohan Das Tandon (HUF) vs PCIT*	*169 ITD 639 (All)*
11	*Kundaben Ambhai Shah v. ITO*	*ITA No 3354/ Ahd/ 2014 dt 30-11-2017*
12	*Dharamhi Bhai Sonani V.ACIT*	*161 ITD 627 [Ahd]*

1.8.2] Hon'ble ITAT, Indore Bench in the case of Shri Raja Ram Patidar Vs ITO 1(2), Bhopal [Appeal No ITA No 371/Ind/ 2015 dt 28-09-2018 for the Asst Year 2010-11] has held that:

" We therefore allow this issue in favour of the assessee and direct the revenue authorities to calculate the Long Term Capital Gain by taking the sale consideration of impugned agriculture land at Rs.1,68,90,500/- as against the sale consideration confirmed by the Ld.CIT(A) at Rs.3,83,79,019/-. Accordingly issue No. 1 & 2 mentioned by us in para 11 above which are at Ground No.1, 1.1, 1.2 and 1.3 are decided in favour of the assessee.

1.8.3] That Hon'ble Allahabad high Court in the case of CIT V. ShimbhuMehra as reported in [2016] 65 taxmann.com 142 (Allahabad) has held that:-

12. Sub-clause (ii) of Section 2(47) of the Act states that the transfer, in relation to a capital asset, includes the extinguishment of any rights therein. In SanjeevLal v. CIT [2014] 365 ITR 389/225 Taxman 239/46 taxmann.com 300 (SC), the Supreme Court considered the question as to whether the date on which the agreement for sale was executed could be considered the date on which the property was transferred. The Supreme Court held that when an agreement to sell in respect of immovable property is executed, a right in person am is created in favour of the vendee and when such a right is created in favour of the vendee, the vendor is restrained from selling the said property to someone else because the vendee gets a legitimate right to enforce a specific performance of the agreement. The Supreme Court, while considering the provisions of Section 2 (47) (ii) of the Act held that if a right in respect of any capital asset is extinguished and that right is transferred to someone else, it would amount to transfer of a capital asset. The Supreme Court held that once an agreement to sell is executed in favour of some person, the said person gets a right to get the property transferred in his favour and, consequently, some right of the vendor is extinguished.

13. Explanation 2 to Section 2(47) of the Act was added by Finance Act, 2012 with retrospective effect on 1.4.1962 and, consequently, the said provision would be applicable. The said explanation clearly provides that transfer of an asset includes disposing of or parting with an asset by way of an agreement.

14. In the light of the aforesaid provision, it is apparently clear that the moment an agreement to sell is executed between the parties and part

consideration is received, the transfer for the purpose of Section 50C of the Act takes places and computation under Section 48 of the Act will start accordingly, for the purpose of calculating the capital gains under Section 45 of the Act. From the aforesaid, it is apparently clear that the transfer of the property took place in the year 2001 when the provision of Section 50C of the Act was not in existence. Consequently, the Assessing Officer was not justified in making the reassessment and computing the capital gains by invoking the provision of Section 50C of the Act, which was clearly not applicable in the assessees' case.

15. Consequently, for the reasons stated aforesaid, the appeals fail and are dismissed. The question of law is answered in favour of the assessees and against the Department.

[Emphasis supplied]

1.9.1] That as per first and second proviso to section 50C(1) of the Income Tax Act as inserted as inserted by the Finance Act, 2016 w.e.f 01-04-2017 read as under:

Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account [59][or through such other electronic mode as may be prescribed], on or before the date of the agreement for transfer:

1.9.2] That though the first and second proviso to section 50C(1) of the Income Tax Act was inserted w.e.f 01-04-2017 but these proviso was inserted to explain date of valuation as applicable as on the date of agreement and not on the date on which registry was actually executed. Hence, both these proviso having retrospective effect from the date on which provision of section 50C of the Income Tax act inserted in the Act i.e. w.e.f 01-04-2003. Similar view was expressed in the following decisions:-

S.No	Citation	Reference
1	Ms ZubeidaShahanshah	ITA No 519/ Lkw/2017 dt 31-01-2019
2	DharmshibhiSonaniVs ACIT, Surat	[2016] 75 Taxmann.Com 141 [Ahmedabad Bench] 161 ITD 627 (Ahd)
3	Hari Mohan Das Tandon (HUF)	169 ITD 639 (All)
4	M/s Jai Laxmi Developers (P) Ltd Vs DCIT	ITA No 5578/ Del/ 2014 dt
5	SmtKundanbenAmbhai Shah V. ITO	ITA No 3354/ Ahd/ 2014 dt 30-11-2017

1.9.3.1] Hon'bleLucknow Bench of ITAT in the case of Ms. Zubeida Shahanshah[Appeal No ITA No 519/ LKW/ 2017 dt 31-01-2019] has held that:

" 4.2 In view of the above facts and judicial precedents, we hold that the amendment to section 50C by the Finance Act 2016 has to be applied retrospectively as the amendment is curative in nature therefore, collector's rate prevalent at the time of entering agreement has to be taken as deemed consideration. Therefore, ground No. 2 is dismissed."

1.9.3.2] That Hon'ble Ahmedabad Bench of ITAT in the case of Dharamshi Bhai Sonani[ITA No 1237/ Ahd/ 2013 dt 30-09-2016] has held that:

[9] So far as the amendment to Section 50C being retrospective in effect is concerned, there is no doubt about the legal position. I hold the provisos to Section 50C being effective from 1st April 2003. This is precisely what the learned counsel has prayed for. In his detailed written submissions, he has made out of a strong case for the amendment to Section 50C being treated as retrospective and with effect from 1st April 2003. The plea of the assessee is indeed well taken and deserves acceptance.

1.10] That in view of the above settled position of law, the assessee had sold his Agricultural land at Rs 54,27,000/- per hectare more so when the guideline rate was of Rs 34,00,000/- per Hectare. Hence, the Ld Pr CIT was not justified in directing to adopt the higher rate as applicable as on the date of registry of land.

AS REGARDS DEDUCTION U/S 54B OF THE ACT

2.1] The Ld Pr CIT vide his order dt 15-03-2018 has denied the claim of deduction under section 54B of the Income Tax Act merely for the reason that the payment towards purchase of land was made by the assessee prior to the execution of the sale deed but in case of deduction under section 54B of the Act, amount paid after the date of registry is only eligible to claim deduction under section 54B of the Act.

2.2] That in the present case in hand the appellant entered into an agreement for sale of Agricultural land on 31-03-2006 but final registry was executed on 11-04-2008. The assessee had claimed deduction under section 54B of the Act in respect of Agricultural land as purchased by the assessee by making the payment on the various dates as referred by the LdPr CIT

2.3] Copy of Bank account of the assessee is already on record. On perusal of the same it is clear that entire credit represent sale consideration as received by the appellant against the sale of Agricultural land.

2.4] That in the present case in hand, the agreement for sale of Agricultural land of the assessee was executed on 31-03-2006 and the assessee received amount towards sale consideration from the year 2005-06 to till the date on which registry was actually executed.

2.5] The amount as paid by the assessee was actually realized by him against the sale of his Agricultural land. The amount so realized was utilized by the assessee towards purchase of new Agricultural land. Hence, deduction as claimed under section 54B of the Act was legal and proper.

2.6] The appellant first entered into an agreement for sale of Agricultural land on 31-03-2006 and in pursuance to that sale agreement, registry was executed on 11-04-2018. The consideration as received by the appellant was utilized towards purchase of new Agricultural land. Hence, the Ld Assessing officer rightly allowed deduction under section 54B of the Income Tax Act.

2.7] That Hon'ble Jaipur Bench of ITAT in the case of SmtRukmani Devi AgrawalVs ITO [Appeal No ITA No 557/ JP/ 2018 dt 18-09-2018 for the Asst Year 2013-14] had an occasion to discuss the similar issue and held that [Refer Para 6.2 of the order]:

"6.2 The requirement for availing the benefit of Section 54B is to use the capital gain for purchase of new agricultural land and if the assessee does not receive the sale consideration then the question of purchasing new agricultural land does not arise and the very object of Section 54B of the Act would be defeated. Hence the receipt of compensation and payment of consideration for purchase of new asset

are the relevant dates for determining the conditions of Section 54B of the Act are satisfied. In the case in hand, when the assessee has received the compensation prior to the payment of the purchase consideration for acquisition of new agricultural land then the transaction has to be looked into in the overall facts and surrounding circumstances in which the assessee sold existing agricultural land and purchased new agricultural land. If the intent of the assessee is manifest from the facts and circumstances that the assessee purchased the fresh agricultural land in lieu of the existing agricultural land then the conditions as envisaged in Section 54B of the Act are satisfied. We have already discussed the facts that the assessee received the purchase consideration through post datedcheques which were encashed in part prior to the payment of the purchase consideration through post datedcheques. As discussed above, both the receipts of sale consideration and purchase consideration are through post datedcheques as evident from the record and none of the cheques was encashed on the date of execution of ITA 557/JP/2018_ Rukmani Devi AgarwalVs ITO 14 the sale deed but the receipt of sale consideration is after the agreement to sell dated 22/11/2012 and much prior to the sale deed dated 28/01/2013 whereas the entire purchase consideration was paid out from the bank account of the assessee only after the sale deed dated 29/11/2012. These facts clearly established that the receipt as well as payment are through post datedcheques and therefore, the assessee has established the existence of the agreement to sell dated 22/11/2012 under which the purchase consideration was received by the assessee. The subsequent documents consist of correction deed as well as the affidavit of the purchaser has supported the fact that the consideration for sale of the existing land was received at the time of the agreement to sell dated 22/11/2012 and possession was also handed over on the said date of

agreement. Hence when the agreement was subsequently acted upon and in performance of the said agreement, the parties have finally executed the sale deed then the transaction will be considered as transferred as on the date of the agreement."

2.8] That in view of the above, the Ld Pr CIT was not justified in setting aside the order as passed by the assessing officer.

AS REGARDS DEDUCTION U/S 54F OF THE ACT

3.1] The Appellant had also claimed a deduction of Rs. 1736091 for construction of residential house from the sale proceeds of the sale of impugned immovable property. The claim for deduction was allowed by the learned AO based on various documentary evidences and submissions of the Appellant such as Affidavit in support of construction of new house, withdrawal of amount from bank for construction activity, Physical existence of new residential house which was also confirmed by the Valuation report by chartered engineer. Further as desired by the learned AO the valuation of the residential house was also obtained and submitted to the learned AO which was found to be much higher than the deduction claimed. Also the construction of new house has not been doubted by any of the authority. Based on such evidences and enquiries made the AO was satisfied about the construction of the new residential house and the fact that the claim was commensurate to the construction cost incurred and amount withdrawn from bank account for payment of construction cost during such period. Accordingly the learned AO allowed the claim of deduction.

3.2] The PCIT raised the issue that the valuation report is dated 22-03-2016 and therefore the however the construction was done in 2008. Based on this isolated fact the PCIT observed that the claim of deduction has been allowed erroneously by the ld. AO.

3.3] In this regards it is submitted that the satisfaction of AO to allow the deduction u/s54F of the Act for construction of new residential house property was not merely based on Valuation report which was in fact submitted at the insistence of the learned AO to verify the physical existence of the property and the overall value of investment made. The learned AO satisfied himself about the deduction under Section 54F of the Act based on verification of physical existence of new property, Affidavit of the Assessee in respect of such construction of new residential house, enquiries made during the course of assessment proceedings, payment made for construction of house which was correspondingly withdrawn from bank during the relevant period and various other facts substantiating the claim of deduction under Section 54F of the Act. Since the deduction u/s 54F was not allowed merely on the basis of Valuation report which was infact obtained on the insistence of the AO during the assessment proceedings and especially the fact that the amount of deduction is considerably lower than the value reported by the Chartered engineer in 2016 it is established that the action of AO was not erroneous and prejudicial to the interest of revenue.

Accordingly it is prayed that the revision action on this issue deserves to be quashed.

LEGAL SUBMISSIONS ON S.263

4.1] The assessment order as passed by the assessing officer was neither erroneous nor prejudicial to the interest of revenue. Hence, the Ld Pr CIT was not justified in setting aside the order as passed by the assessing officer.

4.2] That in this case originally notice under section 148 of the Income Tax Act was issued to taxed the fair market value of sale of immovable properties as per provision of section 50C of the Income Tax Act.

We have already reply this point in our previous reply as per this land which is matter of scrutiny is sold as per agreement basis which is made on 31.03.2016. We have also produce copy of agreement of sale is made by Rs.99,26,000/- with Shri Badrilal Mukati and all payment of this transaction has been received through cheques, therefore we have been calculated our capital gain on actual sales receipt basis and documentary evidences already submitted before you for perusal.. Further expenses on sale we claim for is payment of brokerage as per usual market trend, we have been paid brokerage to broker and copy of saudachitti dated 20.03.2006 is attaching herewith for your perusal. We have been calculated cost of property Rs.60,53,614/- on the basis of index value from the FY 1980-81, because this is our ancestral property which is received us from our fore-parents, hence we considered market value of agriculture land which around kabirkhedi in 1980-81 was around 1,50,000/- par bigha in 1980-81, as per your requirement we have been taken cost of registrar office and as per index cost value were calculate about 92,000/- per bigha, here we are requesting you to consider value of Rs. 1,50,000/- per bigha because land which is subjected to scrutiny is close to indore city as compared land of ShriSarabdinn S/o sarjuji which was mentioned in index, further value of land which is subject matter is a irrigated agriculture land which is reflecting from registry documents itself. We are claiming deduction of section 54 for residential house property which we have been constructed for use of our resident out of consideration received from sale of land, being assessee is a agriculturist and not having awareness and understanding of the law and also usually rural resident neither collecting bill etc. nor keeping any records, hence we are nor having bill of any material etc. which is use in construction, plot of land on which we have constructed our house property which also our ancestral land and we have not claim

any amount in regard to land in our deduction claim, for proof of ownership we are producing herewith copy of electricity bill/ bhurinpustika for your perusal. We have been committed cost of construction of this house is Rs. 30,00,000/- what we are claim for deduction and also claimed deduction 54B for purchase land for agriculture activity of Rs. 33,45,350/-."

4.4] That in view of the above, the assessing officer has duly examined the issue of taxability of sales as per provision of section 50C of the Act. The sale value as offered by the assessee as per sale agreement was higher than the guideline as prevailed as on the date off execution of sale agreement. Hence, the order as passed by the Ld Assessing officer was neither erroneous nor prejudicial to the interest of revenue. Since, the same was passed after due consideration of the provision as prevailed as on the date of passing of the assessment order. Thus, the re-assessment order as passed by the assessing officer was after due application of mind and after considering the law prevail as on the date of passing of the order.

11. Per contra Ld. DR vehemently argued supporting the orders of Ld. Pr. CIT, contending that the Ld. Pr. CIT has rightly assumed the jurisdiction u/s 263 of the Act and set aside the assessment orders framed u/s 147 r.w.s. 143(3) of the Act to be framed a fresh in light of observations made in the impugned order.

12. We have heard rival contentions and perused the records placed before us and carefully gone through the paper book and written synopsis filed in the case of all the assessees in the instant appeals, impugned orders by the Ld. Pr. CIT, assessment orders framed u/s 147 r.w. 143(3) of the Act and various documentary evidences filed during the course of reassessment proceedings, proceedings u/s 263 of the Act and the documents filed before us. Common grievance in all these appeals made by the assessee is that Ld. Pr. CIT erred in assuming jurisdiction u/s 263 of the Act, using the revisionary powers and also erred in holding that the orders of Ld. AO framed u/s 143(3) r.w.s. 147 of the Act are erroneous and so far as prejudicial to the interest of revenue.

13. Before going into facts of the case we will like to go through provisions of section 263 of the Act and some settled judicial precedence.

Section 263:

> "*263. Revision of orders prejudicial to revenue.--(1) The 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 interest 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.--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 144-A;

(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 Chief Commissioner or Director General 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 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 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.

(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."

14. Hon'ble Court in the case of *Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC)* has laid down following ratio with regard to provisions of section 263 of the Act:

"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]

15. Hon'ble Apex Court in the case of *CIT Vs Max India Limited as reported in 295 ITR 0282* has held that:

" 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]

16. 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:

> *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 a suomotu power is impermissible. It should not be presumed that initiation of power under suomotu 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]*

17. In the light of the provisions of section 263 of the Act and a settled position of law, powers u/s 263 of the Act can be exercised by the Pr. Commissioner/Commissioner on satisfaction of twin conditions, i.e., the assessment order should be erroneous and also prejudicial to the interest of the Revenue. By 'erroneous' is meant contrary to law. Thus, this power cannot be exercised unless the Commissioner is able to establish that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Thus, where there are two possible views and the Assessing Officer has taken one of the possible views, no action to exercise powers of revision can arise, nor can revisional power be exercised for directing a fuller enquiry to find out if the view taken is erroneous. This power of revision can be exercised only where no enquiry, as required under the law, is done. It is not open to enquire in case of inadequate inquiry. Our view is fortified by the judgment of *Hon'ble High Court of Bombay*

in the case of CIT vs. Nirav Modi, [2016] 71 taxmann.com 272 (Bombay).

18. This view is further supported by the decision of the *Hon'ble Gujarat High Court in the case of Shri Prakash Bhagchand Khatri in Tax Appeal No. 177 with Tax Appeal No.178 of 2016,* wherein the Hon'ble Gujarat High Court was seized with the following substantial question of law:-

> *"Whether the Tribunal is right in law and on facts in upholding the order passed by the CIT under section 263 of the Act on merits and still storing the issue of allowability of deduction under section 54 of the Act to the file of Assessing Officer even though the working of allowability of deduction under section 54F is available in the order under section 263 which is not disputed by the assessee before ITAT."*

19. We find the Hon'ble Delhi High Court in the case of *CIT Vs. Anil Kumar reported in 335 ITR 83* has held that where it was discernible from record that the A.O has applied his mind to the issue in question, the ld. CIT cannot invoke section 263 of the Act merely because he has different opinion. Relevant observation of the High Court reads as under:

"63. We find the Hon'ble Delhi High Court in the case of Vikas Polymer reported in 341 ITR 537 has held as under:

"We are thus of the opinion that the provisions of s. 263 of the Act, when read as a composite whole make it incumbent upon the CIT before exercising revisional powers to : (i) call for and examine the record, and (ii) give the assessee an opportunity of being heard and thereafter to make or cause to be made such enquiry as he deems necessary. It is only on fulfilment of these twin conditions that the CIT may pass an order exercising his power of revision. Minutely examined, the provisions of the section envisage that the CIT may call for the records and if he prima facie considers that any order passed therein by the AO is erroneous insofar as it is prejudicial to the interest of the Revenue, he may after giving the assessee an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify. The twin requirements of the section are manifestly for a purpose. Merely because the CIT considers on examination of the record that the order has been erroneously passed so as to prejudice the interest of the Revenue will not suffice. The assessee must be called, his explanation sought for and examined by the CIT and thereafter if the CIT still feels that the order is erroneous and prejudicial to the interest of the Revenue, the CIT may pass revisional orders. If, on the other hand, the CIT is satisfied, after hearing the assessee, that the orders are not erroneous and prejudicial to the interest of the Revenue, he may choose not to exercise his power of revision. This is for the reason that if a query is raised during the course of scrutiny by the AO, which was answered to the satisfaction of the AO, but neither the query nor the answer were reflected in the assessment order, this would not by itself lead to the conclusion that

the order of the AO called for interference and revision. In the instant case, for example, the CIT has observed in the order passed by him that the assessee has not filed certain documents on the record at the time of assessment. Assuming it to be so, in our opinion, this does not justify the conclusion arrived at by the CIT that the AO had shirked his responsibility of examining and investigating the case. More so, in view of the fact that the assessee explained that the capital investment made by the partners, which had been called into question by the CIT was duly reflected in the respective assessments of the partners who were I.T. assessees and the unsecured loan taken from M/s Stutee Chit & Finance (P) Ltd. was duly reflected in the assessment order of the said chit fund which was also an assessee."

64. Since in the instant case the A.O after considering the various submissions made by the assessee from time to time and has taken a possible view, therefore, merely because the DIT does not agree with the opinion of the A.O, he cannot invoke the provisions of section 263 to substitute his own opinion. It has further been held in several decisions that when the A.O has made enquiry to his satisfaction and it is not a case of no enquiry and the DIT/CIT wants that the case could have been investigated/ probed in a particular manner, he cannot assume jurisdiction u/s 263 of the Act. In view of the above discussion, we hold that the assumption of jurisdiction by the DIT u/s 263 of the Act is not in accordance with law. We, therefore, quash the same and grounds raised by the assessee are allowed."

20. Now examining the facts of the instant case in the light of the above judgments and discussions made herein above we note that in the instant cases the agreement to sale was

executed on 31.03.2006 with Mr. Vijay Mirchandani acting on behalf of M/s Global Developers. All payments against the sale consideration were received through banking channels. Subsequently on the request of the original buyer M/s Global Developers and as per the conditions mentioned in the agreement to sale, final registry was done in favour of M/s. Coral Infrastructure (through its director Mr. Vijay Mirchandani). Sale deed was finally registered during April, 2008 between the same parties (assessee(s) and Vijay Mirchandani) and the sale consideration mentioned was the same as was mentioned in the agreement to sale entered during March, 2006. Agreement to sale was never cancelled. Mr. Mirchandani is a director of M/s Coral Infrastructure Pvt. Ltd. During the revisionary proceedings Ld. Pr. CIT has observed that Ld. AO was not justified in adopting the sale consideration as on the date of agreement to sale and he ought to have applied the value of property u/s 50C of the Act as on the date of registered sale deed.

21. We further note that all the above said information were called by the Ld. AO after issuing notice u/s 148 of the Act on

receiving specific information from AIR about the transaction of sale of immovable property. All documents pertaining to agreement to sale, registered sale deed and other documents in support of the transaction and deduction u/s 54 of the Act were called for and duly filed by the assessee. It is not in dispute that the sale consideration mentioned in the agreement to sale was received through banking channels much prior to the date of entering the registered sale deed. It has been consistently held by various coordinate benches that under the given facts and circumstances, date of agreement for sale (and not the date of registered sale deed) is to be considered for determination of value as per section 50C of the Income Tax Act. Few of such decisions are mentioned below:

S.No	*Citation*	*Reference*
1	*ACIT vs M/s Balmer Lawrie Van Leer Ltd*	*ITA No 4361/Mum/2016 dt 20-11-2018 for the Asst Year 2010-11*
2	*Rajaram Patidar*	*ITA No 371/ Ind/ 2015dt 28-09-2018 for the Asst Year 2010-11*
3	*DCIT vs Venkat Reddy*	*(2013) 57 SOT 117 (Hyd Bench)*
4	*Lahiri Promoters vs ACIT*	*ITA No 12/Vizag/ 2009 dt 22-06-2010*
5	*Sanjeev Lal & Anr Vs CIT & Anr*	*(2014) 365 ITR 389 (SC)*

6	*Shri Mohd Imran Baig, Hyderabad & Others*	*ITA Nos 1942-1954/ Hyd/ 2014 dt 27-11-2015*
7	*Bharathi Dev Anandanivs ACIT*	*ITA No 882/ Bang/ 2014 dt 12-02-2016*
8	*CIT vs Shimbhu Mehra*	*ITA No 373 of 2010 dt 12-10-2015 [236 Taxman 561(All)*
9	*ITO vs Modipon Ltd*	*168 TTJ 480 (Del)*
10	*Hari Mohan Das Tandon (HUF) vs PCIT*	*169 ITD 639 (All)*
11	*Kundaben Ambhai Shah v. ITO*	*ITA No 3354/ Ahd/ 2014 dt 30-11-2017*
12	*Dharamhi Bhai Sonani V.ACIT*	*161 ITD 627 [Ahd]*

22. Further first and second proviso to section 50C(1) of the Income Tax Act as inserted as inserted by the Finance Act, 2016 w.e.f 01-04-2017 read as under:

> *Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:*
>
> *Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account [59][or through such other electronic mode as may be prescribed], on or before the date of the agreement for transfer:*

23. Further though the first and second proviso to section 50C(1) of the Income Tax Act was inserted w.e.f 01-04-2017 but these proviso were inserted to explain date of valuation as applicable as on the date of agreement and not on the date on which registry was actually executed. Hence, both these proviso having retrospective effect from the date on which provision of section 50C of the Income Tax act inserted in the Act i.e. w.e.f 01-04-2003. Similar view was expressed in the following decisions:-

S.No	*Citation*	*Reference*
1	*Ms ZubeidaShahanshah*	*ITA No 519/ Lkw/2017 dt 31-01-2019*
2	*DharmshibhiSonaniVs ACIT, Surat*	*[2016] 75 Taxmann.Com 141 [Ahmedabad Bench] 161 ITD 627 (Ahd)*
3	*Hari Mohan Das Tandon (HUF)*	*169 ITD 639 (All)*
4	*M/s Jai Laxmi Developers (P) Ltd Vs DCIT*	*ITA No 5578/ Del/ 2014 dt*
5	*SmtKundanbenAmbhai Shah V. ITO*	*ITA No 3354/ Ahd/ 2014 dt 30-11-2017*

24. In the light of the above settled judicial precedence and the facts of the case, it is clearly discernable that in the instant case where the payment for sale consideration mentioned in the

agreement to sale has been duly received through banking channels prior to entering registered sale deed, the value of sale consideration to be adopted in these cases has to be valued as per the Stamp Valuation Authority provided u/s 50C of the Act as on the date of entering the agreement of sale or consideration mentioned in the agreement to sale whichever amount is higher.

25. In view of the above decisions and the facts of the instant appeal we note that Ld. AO after making necessary enquiry has adopted one of the permissible view by accepting the claim of the assessee of computing the capital gain by taking sale consideration as on the date of agreement to sale which thus leaves no room for Ld. Pr. CIT to assume jurisdiction on this particular issue. This common issue covers appeals in the case of *Shankarlal Mukati, Babulal Mukati, Kailash chandra Mukati, Tulsi Bai Mukati, Radheyshyam Mukati, Motilal Mukati & Motilal Mukati (L/H Ramchandra Mukati) w*herein Ld. Pr. CIT assumed the jurisdiction only on this particular issue. Since in view of our above discussions we have held that Ld. AO has conducted necessary enquiry on this particular issue and have also taken

one of the permissible view judicially accepted, there was no justification on the part of the Ld. Pr. CIT to invoke the provision of section u/s 263 of the Act. We, therefore, quash the proceedings carried out u/s 263 of the Act and restore the assessment order originally framed u/s 143(3) r.w.s. 147 of the Act in the case of all these seven assessees and allow their respective appeals.

26. As regards remaining appeals there were two more issues which were considered by Ld. Pr. CIT while setting aside the assessment order for afresh adjudication which firstly included deduction u/s 54B of the Act and secondly for deduction u/s 54F of the Act.

As regards deduction u/s 54B of the Act

27. The facts in brief are that the assessee entered into an agreement in March 2006 for sale of agricultural land used for agricultural purpose. He received sale consideration in parts through banking channels. Sale deed was finally registered between March 2006 and April 2008. Before registering the sale deed assessee purchased other agricultural land from the sale

consideration so received and claimed it as deduction u/s 54B of the Act against the capital gain earned from transferring of the capital asset being land used for agricultural purpose in two years immediately preceding the dates on which the transfer took the place.

28. Ld. AO allowed the claim during the assessment proceedings. Ld. Pr. CIT during the course of proceedings u/s 263 of the Act observed that the assessee had not complied with the provision of section 54B of the Act since this benefit was available only if the assessee had made the investments in other agricultural land after the date registered sale deed. As per the Ld. Pr. CIT this aspect was not examined by the Ld. AO and thus needed to be set aside for reexamining the issue of computing capital gain at the end of ld. AO.

29. We, however, note that the agreement for sale of agricultural land was made on 31.03.2006 but finaly registry was executed on 11.04.2008. Respective assessees received their shares of sale consideration through banking channels within few months of entering the sale agreement. The amount so released was

utilized by the assessee towards purchase of new agricultural land. Though the sale agreement was registered on 11.04.2008 but the nexus of investment in new agricultural land is from the sale consideration received from sale of land. Under similar set of facts Coordinate Bench, Jaipur in the case of *Smt. Rukmani Devi Agrawal vs. ITO [ITANo.557/JP/2018]* dated 18.09.2018 observing as follows:

> *"6.2 The requirement for availing the benefit of Section 54B is to use the capital gain for purchase of new agricultural land and if the assessee does not receive the sale consideration then the question of purchasing new agricultural land does not arise and the very object of Section 54B of the Act would be defeated. Hence the receipt of compensation and payment of consideration for purchase of new asset are the relevant dates for determining the conditions of Section 54B of the Act are satisfied. In the case in hand, when the assessee has received the compensation prior to the payment of the purchase consideration for acquisition of new agricultural land then the transaction has to be looked into in the overall facts and surrounding circumstances in which the assessee sold existing agricultural land and purchased new agricultural land. If the intent of the assessee is manifest from the facts and circumstances that the assessee purchased the fresh agricultural land in lieu of the existing agricultural land then the conditions as envisaged in Section 54B of the Act are satisfied. We have already discussed the facts that the assessee received the purchase consideration through post datedcheques which*

were encashed in part prior to the payment of the purchase consideration through post datedcheques. As discussed above, both the receipts of sale consideration and purchase consideration are through post datedcheques as evident from the record and none of the cheques was encashed on the date of execution of the sale deed but the receipt of sale consideration is after the agreement to sell dated 22/11/2012 and much prior to the sale deed dated 28/01/2013 whereas the entire purchase consideration was paid out from the bank account of the assessee only after the sale deed dated 29/11/2012. These facts clearly established that the receipt as well as payment are through post datedcheques and therefore, the assessee has established the existence of the agreement to sell dated 22/11/2012 under which the purchase consideration was received by the assessee. The subsequent documents consist of correction deed as well as the affidavit of the purchaser has supported the fact that the consideration for sale of the existing land was received at the time of the agreement to sell dated 22/11/2012 and possession was also handed over on the said date of agreement. Hence when the agreement was subsequently acted upon and in performance of the said agreement, the parties have finally executed the sale deed then the transaction will be considered as transferred as on the date of the agreement."

30. In light of the above decisions we observe that in the instant case also the agreement to sale was not cancelled and the same was acted upon on at the same sale consideration and finally executed the registered sale deed with the same person though

acting on behalf of the company as its director and since the assessee has utilized the same sale consideration for purchasing new agricultural land he should be allowed the benefit of section 54F of the Act, so as to fulfill the very object of section 54B of the Act for which it has been created in the act. This view was adopted by the Ld. AO to allow the deduction u/s 54B of the Act which is legally permissible view and thus, cannot be taken as a basis to assume jurisdiction u/s 263 of the Act and holding the orders of Ld. AO as erronous. In view of this the grounds of appeal raised in the case of Subhash Mukati (ITANo.425/Ind/2018) also deserves to be allowed and proceedings u/s 263 of the Act are directed to be quashed.

31. As regards the remaining 5 appeals in ITANo.870 to 874 apart from the two common issues adjudicate above which gave rise to the proceedings u/s 263 of the Act there was one issue which pertained to the allowability of deduction u/s 54F of the Act. This deduction was claimed by the assessee towards amount utilized for construction of residential house from the sale proceeds of impugned immovable property. Records shows

that the assessee(s) have filed necessary documentary evidences such an affidavit in support of construction of new house, withdrawal of amount from bank for construction purpose, physical existence of new residential house which were also confirmed by the valuation report of Chartered Engineer. Further, as required by the Ld. AO the valuation of residential house was also obtained and submitted to the Ld. AO which was found to be much higher than the deduction claimed. Based on all such evidences and enquiry Ld. AO was satisfied about the investment in construction of new residential house and the claim of deduction u/s 54 F of the Act. It shows that there was a detailed enquiry of the Ld. AO to verify deduction u/s 54 F of the Act. However, Ld. Pr. CIT in the preceding u/s 263 of the Act alleged that the valuation report is dated 22.03.2016 but the construction was done in 2008.

32. We, however, note that this valuation was carried at the insistence of the ld. AO to verify the physical existence of the property and overall value of investment. It is not a case of 'no' enquiry nor incomplete enquiry rather the Ld. AO to the best of

his ability had made detailed enquiry and made proper application of mind and had examined this issue of deduction u/s 54F of the Act.

33. In the given facts and circumstances invoking provisions of section 263 of the Act on this issue so as to give direction to revise the assessment order was unjustified and uncalled for. Therefore, since the assessment orders in question are neither erroneous nor prejudicial to the interest of revenue, Ld. Pr. CIT erred in assuming jurisdiction u/s 263 of the Act and was thus not justified in setting aside the order passed by the Ld. AO u/s 143(3) r.w.s. 147 of the Act. Thus, grounds of appeals raised in five appeal in ITANos.870 to 874/Ind/2019 also stands allowed.

34. Thus, all the grounds raised in the instant appeals are allowed, impugned order u/s 263 of the Act are hereby quashed and the respective assessment orders u/s 143(3) r.w.s. 147 are restored.

35. In the result, all these appeals raised by the assessees namely Kamal Kishore Mukati, Dilip Mukati, Vishnu Mukati, Ashok Mukati, Akash Mukati, Shankarlal Mukati, Babulal

Mukati, Kailash chandra Mukati , Tulsi Bai Mukati, Radheyshyam Mukati, Motilal Mukati, Motilal Mukati (L/H Ramchandra Mukati), Subhash Mukati (L/H Badrilal Mukati) vide ITANo.870/Ind/2019, 871/Ind/2019, 872/Ind/2019, 873/Ind/2019, 870/Ind/2019, 433/Ind/2018, 434/Ind/2018, 436/Ind/2018, 442/Ind/2018, 435/Ind/2018, 437/Ind/2018, 438/Ind/2018, 425/Ind/2018 respectively are allowed.

Order pronounced as per Rule 34 of the I.T.A.T. Rules 1963 on 28.06.2021.

Sd/-	Sd/-
(MADHUMITA ROY)	(MANISH BORAD)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

दिनांक /Dated : 28.06.2021
Patel/PS

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

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