

आयकरअपीलीयअधिकरण,इंदौरन्यायपीठ,इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRIB.M. BIYANI, ACCOUNTANT MEMBER

ITA No.19/Ind/2022
Assessment Year: 2017-18

Shabana Bee, 786, Vishwas NagarBanzari, Pithampur	<u>बनम/</u> Vs.	PCIT-1, Indore
(Appellant / Assessee)		(Respondent / Revenue)
PAN: ASFPB 7940 R		
Assessee by	Shri Subhash Chandra Jain, AR	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing	10.11.2022	
Date of Pronouncement	20.01.2023	

आदेश/O R D E R

Per B.M.Biyani, A.M.:

Feeling aggrieved by revision-order dated 27.01.2022 passed by learned Pr. Commissioner of Income-Tax-1, Indore["**Ld. PCIT**"]u/s 263 of Income-tax Act, 1961 ["**the Act**"], which in turn arises out of assessment-order dated 23.12.2019 passed by learned ITO-5(3), Indore["**Ld. AO**"]u/s 143(3) for Assessment-Year ["**AY**"] 2017-18, the assessee has filed this appeal on the grounds raised in the Appeal-Memo.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Briefly stated the facts are such that the assessee, earning income from the business of milk-selling and agricultural activities, filed return of income of relevant AY 2017-18 declaring a total income of Rs. 9,55,800/- and agricultural income of Rs. 76,35,700/-, which was subjected to scrutiny-assessment by issuing statutory notices u/s 143(2)/142(1). Finally, the Ld. AO completed assessment u/s 143(3) accepting the returned-income. Subsequently, the Ld. PCIT examined the record of assessment-proceeding and viewed that the assessment-order passed by Ld. AO is erroneous in so far it is prejudicial to the interest of revenue, which attracts revisionary-jurisdiction u/s 263. The reason of framing such a view, as mentioned by Ld. PCIT in the show-cause notice dated 23.12.2021, is that the assessee declared an agricultural income of Rs. 76,35,700/- which was accepted by Ld. AO without making enquiries.

4. By the aforesaid show-cause notice, the assessee was asked to explain as to why the assessment-order may not be revised. In response thereto, the assessee made a detailed submission to Ld. PCIT, which is re-produced in Para No. 3 of the revision-order.

5. However, none of those submissions impressed the Ld. PCIT. The Ld. PCIT further observed that since the section 263 has been amended and Explanation 2, as reproduced below, had been introduced therein, the assessment-order is deemed to be erroneous-cum-prejudicial to the interest of revenue if the same had been passed without inquiries or verification which should have been made:

“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 interest of 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)*

(d) ...”

6. Finally, the Ld. PCIT concluded that the Ld. AO has not carried out the inquiry/verification which he should have done and hence the assessment-order is erroneous in so far as it is prejudicial to the interest of revenue. Accordingly, the Ld. PCIT passed revision-order u/s 263 whereby the assessment-order was set aside to the file of Ld. AO with a direction to frame assessment de novo.

7. Aggrieved by such revision-order, the assessee has filed this appeal.

8. By means of various grounds raised in the Appeal Memo which are not being reproduced for the sake of brevity, the appellant-assessee requires us to adjudicate whether or not the revision-order passed by Ld. PCIT u/s 263 is valid in the eyes of law?

Submission of Ld. AR:

9. Ld. AR representing the assessee has filed voluminous material consisting of a “Paper-Book” running over 1065 pages (which includes several judicial decisions as well) and another set titled “Compilation of Case Laws” running over 313 Pages. Drawing our attention to a few pages, Ld. AR submitted that during the course of assessment-proceeding, the Ld. AO has, on multiple occasions, made specific queries to assessee *quathe* issue of agricultural income raised by Ld. PCIT in the show-cause notice u/s 263 and the assessee has also filed enough details/documents in response thereto, which is very much evident from the following details/documents forming part of assessment-record available with the department:

(i) Paper Book Page No. 25 to 27 – Vide Point No. 4 of the notice dated 30.07.2019 u/s 142(1), the Ld. AO raised following query to assessee:

“4. Please explain large agriculture income shown by you alongwith documentary evidences for verification such as copies of KhasraNakals in B-1 and P-II, details of agriculture lands owned by you, details of

expenses incurred and claimed on agriculture activities, otherwise, it shall be treated as your income chargeable to tax disallowed for A.Y. 2017-18.”

In response, the assessee filed following reply vide Point No. 4 of the reply-letter dated 09.08.2019 (Paper Book Page No. 32 to 34):

“4.Documentary evidence for verification of land owned by me details of expenses incurred and claimed for the A.Y.2017-18:

I am holding agricultural land of 10.78 acres(4.313 hectare) in my name and also taken land on adhaibatai arrangement from Shakila Bee(Banzari) measuring area of 3.088 acre(1.235 hectare), from Rafique(Banzari) measuring are of 3.53 acre(1.411 hectare) from Sanbar Bee (Anaradh) measuring area of 7.68 acre (2.529 hectare), thus assessee has cultivated area totalling 31.40 acre(12.561 hectare) as verified from the enclosed copy of B1 and P-II of the agricultural land owner. Further the agricultural income offered by me is net of expenses. Thus we earned gross Rs.99,75,900/- agricultural income out of which I had incurred expenses of Rs.23,40,200/- towards agricultural activities and net income of Rs.76,35,700/- as disclosed in my return of income.

Further I am also enclosing details of yield with its sales realization. I also inform your goodself that my whole agriculture land is irrigated land hence I obtained the yield of four season crop which is duly reflected in the sheet enclosed.

Moreover I hereby also inform that earlier I was given my said land on adhaibatai system. Now I hope that your good self would be satisfied with the agriculture income as declared in my return of income.”

- (ii) Paper Book Page No. 35 to 38 – Vide “Annexure” to the notice dated 19.11.2019 u/s 142(1), the Ld. AO raised extensive queries to assessee. The “Annexure” is scanned below:

ASFPB7940R- SHABANA BEE
A.Y. 2017-18
ITBA/AST/F/142(1)/2019-20/1020691347(1)

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ANNEXURE

In connection with the Assessment Proceedings in your case for the Assessment Year 2017-18, you are required to produce or cause to be produced before me at my office at at "Room No-211 "Aayakar bhawan" (Main Building) Opposite White Church, Indore (M.P.)" on or before **29/11/2019 at 11:00 AM** the books of account, documents and explanation on queries enumerated as below:-

- 1..Please furnish Copy of (i)-Khatauni (Form-B-1) (ii)-Khasra (Form-P-2) (iii)-Bhu-Adhikar & Rin Pustika of your agricultural land for F.Y. 2016-17 (i.e. A.Y.2017-18) . &also for F.Y.2015-16, F.Y.2014-15.
- 2..Please furnish copy of (i)-Khatauni (Form-B-1) (ii)-Khasra (Form-P-2) (iii)-Bhu-Adhikar & Rin Pustika of agricultural land of (i)- Shakila Bee (ii)- Rafique (iii)-Sanabar Bee (iv)-Mohammad Akhtar, for F.Y. 2016-17 (i.e. A.Y.2017-18) .
- 3.. You have stated that you have taken Land from (i)- Shakila Bee (ii)- Rafique (iii)-Sanabar Bee (iv)-Mohammad Akhtar, on "AdhaiBatai Arrangement" .

In this connection, you are requested to furnish the following information- -

(i)- Please furnish details of Terms & Conditions of such "AdhaiBatai Arrangement", between you and above said persons

(ii)- Please furnish completed details of Address and Mobile Number of (i)- Shakila Bee (ii)- Rafique (iii)-Sanabar Bee (iv)-Mohammad Akhtar..

(iii)- Please produce the above said persons i.e. (i)- Shakila Bee (ii)- Rafique (iii)-Sanabar Bee

(iv)-Mohammad Akhtar, before the undersigned for examination.

(iv)- In you submission, you have enclosed a hand-written paper, namely, "AapasiSamjauta" showing that you have made 'agreement' with each of (i)- Shakila Bee (ii)- Rafique (iii)-Sanabar Bee (iv)-Mohammad Akhtar..and you will have to pay (i) Rs.2,50,000/- to Shakila Bee (ii)Rs.2,50,000/- to Rafique (iii)- Rs. 3,00,000/- to Sanabar Bee (iv) Rs.50,000/- to Mohammade Akhtar.

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Looking to the facts narrated in the said "AapasiSamjauta", please state why the above said transactions/deal/agreement, should not be treated as 'Lease Agreement' instead of "AdhaiBatai Arrangement" between you and land-owner. Please also furnish date and mode of payment made to above said persons (Land-Owners).

3.. In your submission, you have stated that you have grown and sold out following 'Agricultural Yields' (Krishi-Upaj) during F.Y.2016-17..

(i)- Session -1

Dhaniya, American Corn, Hari Mirch, Begun

(ii)- Session -2

Phool, Hari Mirch, Kadduu, Ground Nut

(iii)- Session -3

Mutter, Potato, Carrot, Phool,

(iv)-Session-4

Onion, Phool, Potato, Mutter, Dhaniya

In this connection, you are requested to please furnish the following information—

(i)- Please furnish complete 'Sale-Bills' of sale of above said 'agricultural yield' shown by you.

(ii)- Please furnish Name & complete address of the persons, in the following format, who had made purchase of above said 'agricultural yield' from you.

S. No	Session/ Month	Name of 'agricultural yield'	Crop/Name & Complete Address of Purchaser	Quantity of	Rate	Total Value	Date of sale	of 'agricultural yield' & Mode of Payment
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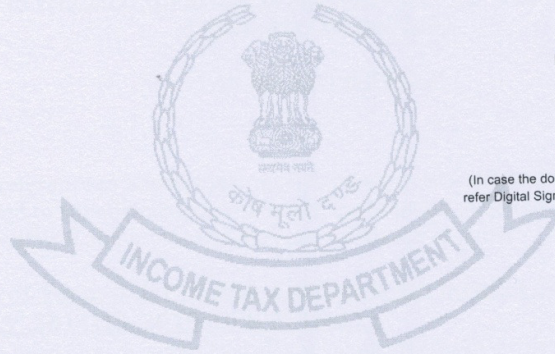
4.. Please furnish complete Purchase-Bills of Seeds. Please also furnish complete name & Address of the person/shop from where you have made purchase of Seeds.

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- 5- You have made payment of expenses 'Labour' amounting to Rs. 5,96,000/- Please furnish the name & Persons to whom you have made payment of expenses 'Labour'.
6. You have made payment expenses 'GobarKhad' amounting to Rs. 7,45,000/- Please furnish the name & Persons to whom you have made payment of expenses 'GobarKhad'.
7. Please furnish 'Bills' and complete name & Address of the person/shop from where you have made purchase of 'Medicine'.
- 8.. Please furnish details of all the bank accounts in your name with bank statement for F.Y. 2016-17.
9. Please furnish name & details of 'Phool' grown and sold by you.

RAM GOPAL PRAJAPATI
ITO 5(3), IND



(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

In response, the assessee filed a very detailed reply dated 25.22.2019
(Paper Book Page No. 39 to 43) which is scanned below:

(9) (39)

Shabana Bee
786, Vishwas Nagar Banzari
Pithampur
452001 (M.P.)

Date: 25.11.2019

To
The Income Tax Officer
Ward 5(3)
Aayakar Bhawan
Indore (M.P)

Reg : Income tax assessment proceeding u/s 142(1) of the Income Tax Act for the assessment year 2017-18 in case of Shabana Bee, 786, Vishwas Nagar Banzari, Pithampur (M.P.) 452001

PAN No. ASFPB-7940-R

Respected Sir,

With reference to above, I just received your notice and your good self has further directed to submit various details and explanation in connection of re-assessment proceeding of above assessment year, which are as under:

1. Copy of Form-B-1, P-2, Bhū-Adhikar & Rin Pustika of agricultural land for F.Y. 2014-15, 2015-16 & 2016-17 :-

I have been already submitted all above documents in earlier hearing but however I am again furnishing following documents as required by you for your ready reference:-

- i) Khatauni (Form-B-1).
- ii) Khasra (Form-P-2).
- iii) Bhū-Adhikar & Rin Pustika.

1. Copy of Form-B-1 & P-2 and Bhū-Adhikar & Rin Pustika of agricultural land of Shakila Bee, Rafique, Sanabar Bee and Mohammad Akhtar for F.Y. 2016-17:

I am holding my own agricultural land as well as also land taken on adhai batai (lease) from above pointed out person thus I am enclosing herewith copy of B-I, P-II and Rin Pustika of me as well as above mentioned persons for your kind verification.

12/11/19

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2. i) Terms & Condition of AdhaiBatai Agreement:

I have been made adhai batai agreement with the person noted in serial no. 2 thus I have been made the agreement as mention in adhai Batai arrangement enclosed here with.

ii) Details regarding address and mobile no. of mentioned persons:

I have been entered into adhai batai agreement of under noted persons whose address and other details are as under

Sr. No.	Name	Address	Contact Details
1.	Shakila Bee	W/o Noor Mohammad, Gram Banzari, Mhow, Indore	Over Aged people , hence they do not have mobile phones
2.	Rafique	Gram Banzari, Mhow, Indore	----do----
3.	Sanabar Bee	Gram Banzari, Mhow, Indore	----do----
4.	Mohammad Akhtar	Gram Banzari, Mhow, Indore	----do----

iii) Produce the mentioned persons in personal:

I am producing to the said persons with whom adhai Batai has been done for your personal verification

iv) Clarification regarding AapsiSamjauta agreement be treated a Lease Agreement instead of AadhaiBataiArrangement :

I have been taken the agricultural land of shakila bee, Rafique, Sanabar Bee, and Mohammad Akhtar on adhai batai but being illiterate they prepared said agreement in their language hence please be ignore to the heading of agreement but be consider said agreement as aadhai batia instead of other as your goodself observed.

2. (i) Copy of Sale-Bills of agricultural yield (Krishi Upaj) & any other agricultural yield (Krishi Upaj) sold during F.Y.2016-17:-

I have been already submitted online as well as in physically to the said all sales invoice issued by me to the customer for sale of crop to them however

(41)

I am again enclosing all sales bills of all agricultural yields during F.Y. 2016-17 for your ready reference.

ii) Name & complete address of the persons, who had made purchase of said 'agricultural yield'.

I had been sold my agricultural yield in cash to various local people who come my farm house situated adjoining to the Pithampur Industrial Area and other near wise villages. Since I had been sold my agriculture yield in cash after issuing cash memo hence there is no need to mention buyer name and address as also evident from the copy of cash memo uploaded on site earlier hence there is no need to enclose such detail. However other details are as under.

Sr. No.	Session/ Month	Name of Crop/ agricultural Yield	Name & Complete Address of Purchaser	Quantity	Rate	Total Value	Date of sale of crop/ agricultural yield & Mode of Payment
1	APRIL TO JUNE	Dhaniya, American Corn, Hari Mirch, Begun.	Issue of cash memo hence not require to mention such details	As per enclosure			Issue of cash memo hence not require to mention such details
2	JULY TO SEPTEMBER	Phool, Hari Mirch, Kaddu, Ground Nut.	Issue of cash memo hence not require to mention such details	As per enclosure			Issue of cash memo hence not require to mention such details
3	OCTOBER TO DECEMBER	Mutter, Potato, Carrot, Phool.	Issue of cash memo hence not require to mention such details	As per enclosure			Issue of cash memo hence not require to mention such details
4	JANUARY TO MARCH	Onion, Phool, Potato, Mutter, Dhaniya	Issue of cash memo hence not require to mention such details	As per enclosure			Issue of cash memo hence not require to mention such details

(42)

3. Copy of Purchase-Bills of Seeds of agricultural yield sold during F.Y.2016-17 along with Name & Address of the person/shop from where made purchase of Seeds.

I am providing you all purchase bills of seeds related to agricultural yield sold during F.Y. 2016-17 in which Name and Address of such supplier of seed is mentioned on their bills. Copy of all said purchase bills is enclosed for your kind verification.

4. Details of Payment of Labour expenses amounting to Rs. 5,96,000/- alongwith their name :

I had been incurred Rs. 5,96,000/- towards labour for growing crop in all four seasons whose details of payment as well as other labour payment sheet of all such payments made to labour are also enclosed for your ready reference.

5. Details of Payment expenses regarding Gobar Khad amounting to Rs. 7,45,000/- alongwith name of persons to whom such payment is made :

I had been incurred Rs. 7,45,000/- on purchase of Gobarkhad from local person who are farmers and keeps cattle for creation of Gobarkhad since all such person is illiterate person hence they have issued any hand made invoice/bills to sell Gobarkhad.

6. Details of purchase of medicine along with their bills, name and address:

I have been purchased medicines i.e. pesticide and insecticides for our crops. A copy of purchase bills is enclosed for your kind verification with name and address of seller mentioned on them.

7. Details of all bank accounts alongwith bank statement :

I am only maintaining one bank account with following bank in during the F. 2016-17 whose details are as under:-

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Sr. No.	Bank Name	Account No.
1	Bank of India	981610110002447

A copy of bank statement of above mentioned bank is enclosed for your kind verification.

8. Details of sale of Phool grown :

I had been also grown flower (phool) of Genda which were also sold to local resident & mali to whom I have been issued cash memo whose copies was also submitted in earlier hearing however I am again enclosing herewith the same for your kind consideration.

Moreover I hereby also inform that earlier I am doing dealing of same since earlier years.

Now I hope that your good self would be satisfied with the agriculture income as declared in my return of income.

Please be accepted my return income and oblige.

Thanking you,

Yours Sincerely

Shabana Bee

Encl: - As above.

- (iii) Paper Book Page No. 44 to 45 – Vide “Annexure” to the notice dated 04.12.2019 u/s 142(1), the Ld. AO again raised queries to assessee. The “Annexure” is scanned below:

ANNEXURE

In connection with the assessment proceedings in your case for the Assessment Year 2017-18, you are required to produce/furnish of cause to be produced/ furnished before me on e-filing website of Income Tax Department on or before 09.12.2019 at 11:00 A.M. the scanned copies of information/documents/evidences/explanation(s), duly verified as per Rule 14 of The Income Tax Rules, as under:-

1. Please refer to details of agriculture produce sale details, wherein you have claimed to have sold various crops such as American Corn, Dhaniya, Bhindi, Kaddu, Phool, Hari Mirch, Begun, Potato, Carrot, Mutter etc., whereas as per KhasraNakals in Form No.P-II (relating to F.Y.2018-19) there is no crop has been shown and it is also, evident that the KhasraNakals are in the name of various persons from whom you have claimed to have taken lands on lease, but, you have not filed any evidences in this regard which proves that you have actually taken such lands on lease from such persons. In such a situation agriculture income shown by you cannot be accepted as justified and accepted fully as agriculture income. Show cause as to why the same may not be treated as income from some undisclosed sources and suitable addition in your hands may not be made on that account as per law.
2. Please file your family tree by including your In-laws, family of your husband's brothers/sisters and family of your sons/daughters and details of agriculture lands hold by them with documentary evidences such copies of Bhu-Adhikarpustika and KhasraNakals in Form No.B-I and P-II.
3. Please produce all the bills / vouchers of expenses and sale bills for receipts of agriculture income shown by you for verification.

You are requested to furnish information/documentary evidences as per issued questionnaire chronologically. Please note that noncompliance/incomplete reply shall attract imposition of penalty of Rs.10,000/- u/s 272A(1)(d) of IT Act, 1961.

RAM GOPAL PRAJAPATI
ITO 5(3), IND

In response, the assessee filed a detailed reply dated 09.12.2019

(Paper Book Page No. 47 to 49) which is scanned below:

(47)

SHABANA BEE
Village Banzari, Post Bhatkhedi, Teh. Mhow
Banzari (Mhow), (M.P.)
453441

DATE : 09.12.2019

To
The Income Tax Officer
Ward 5(3)
Aayakar Bhawan
Indore (M.P)

Reg :Income tax assessment proceeding u/s 142(1) of the income tax act for the assessment year 2017-18 in case of Shabana Bee, Village Banzari, Post Bhatkhedi, Teh. Mhow Banzari (Mhow), (M.P.)453441

PAN NO. ASFPB-7940-R

Respected Sir,

With reference to above, I just received your notice and your good self has further directed to submit various details and explanation in connection of Assessment proceeding of above assessment year, which are as under:

1. Show cause to treat agriculture income as other sources of income:-

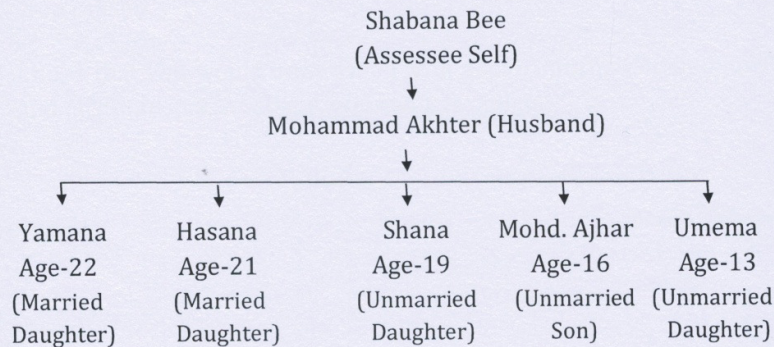
I have been already submitted all agricultural Income details in earlier hearings with details of agricultural Land that I am holding 10.77 acres (4.313 hectares) of irrigated land along with 9.60 hectare (22.91 acres) on Aadhai Batai system at Mhow and Dhar Tehsil and out of same I have earned Rs.76,35,700/- {net of expenses Rs. 23,40,200/- (including adhai batai payment)} as agricultural income growing from American Corn, Dhaniya, Bindi, Kadu, Phool, HariMirch, Begun, Potato, Carrot & Mutter in four seasons but your goodself has pointed out that no crop has been shown in khasra and nakal of such person alongwith land in my name but your such observations has been pointed out by oversight hence I am again enclosing my B-I and P-II to substantiate my land holdings and sale bills by way of cash memo issued to customer along with summarized sheet to show my agricultural receipts.

(48)

Your contention to treat my agriculture income as undisclosed income is not valid in law as I had been already submitted all evidences to prove my agriculture income along with supporting evidences in earlier hearing before you to prove the contrary. Hence I request your goodself to consider documents already submitted in hard copy before you in earlier hearing and be accepted as genuine agricultural income instead of other source of income as accepted by the department in past in assesses case.

2. Details regarding family tree and agricultural land held by them along with Bhu-Rin Pustika and Adhikarpustika :

I am separate from my parents hence I am having my following family members:-



All above family members is not having any agriculture land except my husband who is having 38.63 acres (13.051 hectare) on irrigated land who's B-I and P-II was already submitted in earlier hearing.

Details of my own agricultural land held by family members are as under:-

Sr. No.	Name	Land owned
1.	Shabana Bee	10.77 acres (4.313 hectares)

A copy of Bhu-Rin Pustika and Khasra Nakalas in Form B-I and P-II of all above persons was already submitted in earlier hearing for your kind verification.

Further my two daughters are married and they are also not holding any land in their names. Hence the details regarding their land holding is not furnished.

3. Copy of Bills/vouchers of expenses and sale bills :

(49)

I have already submitted all details regarding expenses relating to Seed, Khad and Medicine by way of producing their purchase bills in earlier hearings. Further all sale bills are already submitted to your good office. However copies of same are again enclosed for your kind verification.

Moreover Sale of Goods Act prescribes that the sells invoice always issued by the seller of goods hence I have been issued cash memo to the buyer of product because I have been sold all the produce in cash hence as per the sale of good act it is not necessary to mention the name and address of the buyer. And accordingly said cash memo were also uploaded on Income Tax e-portal hence kindly be accepted to the genuine sale proceed of my four crop season.

I hope that you would be satisfied with above information and justification and facilitate in assessment proceedings oblige.

Thanking you

Yours Faithfully

Encl: - As above.

(SHABANA BEE)

10. Then, the Ld. AR argued that all these details / documents as filed by assessee were duly examined and considered by Ld. AO and having done so, the Ld. AO completed assessment of assessee, which is very much clear from a bare reading of Para No. 3 to 5 of assessment-order extracted below:

“3.Accordingly, notice u/s 143(2) dated 24.08.2018 was issued and duly served to the assessee through E-mail. Notices u/s 142(1) of I.T. Act along with questionnaire were issued on 26.06.2019, 30.07.2019, 19.11.2019 and 04.12.2019 which were properly served to assessee through E-mail.

4. With reference to above notices the assessee filed online written submission on ITBA with reference to queries raised through above said notices, which are placed on record.

5. As regard the above it is mentioned that the assessee is engaged in agricultural activities and selling milk having his own cattle. The assessee has also income from agriculture and rental income from letting out his own plot. The assessee has irrigated land therefore he obtained the yield of four season crop. In this connection, the assessee filed detailed reply and supporting papers to substantiate it case. The assessee has produced books of account, Bhu-Adhikar & Rin-Pushtika of Agricultural land, bank accounts which are examined. The submission made by the assessee is also examined.”

11. Clearly therefore, the Ld. AR contended, the assessee had filed all details / documents during the course of assessment. Therefore, this is not a case of “no enquiry” as understood by Ld. PCIT. Still the Ld. PCIT is trying to treat the assessment-order as erroneous-cum-prejudicial on the set of his own thinking, or, in other words to substitute his own thinking in place of Ld. AO’s conclusion. Ld. AR submitted that such an approach of Ld. PCIT is not permissible u/s 263, therefore the order passed by Ld. PCIT is not in accordance with the law of section 263 and liable to be quashed.

Submission of Ld. DR:

12. Per contra, Ld. DR supported the revision-order. He submitted that the agricultural income declared by assessee is very high. Ld. DR also placed a heavy reliance on the following paragraph noted by Ld. PCIT:

“4.2 It is further observed that, claim of exempt agricultural income has sky-rocketed over the years, although other income more or less have been stable, hardly showing any upward movement. In the preceding assessment year i.e. AY 2016-17 the agricultural income shown in the return was Rs. 28,95,000/- and in the year under consideration it is 76,35,700/-. Also in the subsequent assessment-year i.e. in A.Y. 2018-19 the agricultural income show is Rs. 85,50,750/-. It is also noticed that during the preceding assessment-year- the AO restricted the agricultural income of Rs. 3,00,000/- and added back the balance amount. In the subsequent assessment year i.e. in AY 2018-19 the entire agricultural income was treated as ingenuine and was added under the head income from undisclosed sources u/s 69A of the IT Act and was taxed at the special rate of taxation u/s 115BBE of the I.T. Act.”.

13. Ld. DR further contended that the Ld. AO has written his findings on agricultural income in a small para in assessment-order which clearly demonstrates that the assessment-order is cryptic and the Ld. AO has not made enquiries as required and hence the Ld. PCIT was constrained to conduct revision-proceeding.

14. With these submissions, Ld. DR strongly opposed the contentions of assessee and argued that the revision-order is quite valid and must be upheld.

Re-joinder by Ld. AR:

15. In Re-joinder, Ld. AR submitted that the assessment of assessee for AY 2020-21 had also been finalised by way of “Complete Scrutiny” through order dated 14.04.2021 and the assessing authority has accepted the agricultural income declared by assessee.

16. Ld. AR also placed reliance on the decision of **Hon’ble ITAT, Bangalore Bench in Infosys Technologies Ltd. Vs. JCIT 103 ITD 399** where it was held thus:

“It is settled law that once the matter has been examined and considered but not mentioned in the assessment order, does not render the assessment order erroneous in so far as prejudicial to the

interest of the revenue. If the AO has failed to conduct an enquiry, which he should conduct, makes an order erroneous. However, having satisfied himself after proper enquiry, not only once but twice, it cannot be said that the AO has allowed the claim without verifying the claim in accordance with law.”

Our analysis:

17. We have heard the rival contentions, perused the material on record and duly considered the facts of the case in the light of applicable legal positions. On a careful consideration of various documents placed in the Paper-Book, as noted in the foregoing discussion, we find that during the course of assessment-proceeding, there were specific queries raised by Ld. AO with regard to the issue of agricultural income contemplated by Ld. PCIT and the assessee too made detailed replies / submissions. Clearly, therefore, it is discernible that the Ld. AO has considered those replies / submissions and thereafter taken a plausible view. Further, the action of Ld. AO in accepting the replies / submissions of assessee does not lack bonafides and cannot be said to be faulty. Thus, everything hinges on the point as to whether the assessment-order can be said to be erroneous-cum-prejudicial to the interest of revenue merely for the reason that the Ld. AO has not discussed those issues in the assessment-order in much detail as a perfectionist. In our considered view, the writing of assessment-order is a task of AO and the same is neither controlled nor helped by the assessee. In fact, the assessee has no hand or mind in writing the assessment-order. Being so, we are afraid to accept the pleading of Ld. DR that the assessment-order could be said to be erroneous-cum-prejudicial for that reason. We are consciously aware of the decision taken by Hon'ble ITAT, Mumbai in **Reliance Payment Solutions Ltd. Vs. Pr. CIT (2022) 136 taxmann.com 277** where the same view was upheld:

“9. Clearly, therefore, as long as the action of the Assessing Officer cannot be said to be lacking bonafides, his action in accepting an explanation of the assessee cannot be faulted merely because it could have been lawful to make mere detailed inquiries or because he did not

*write specific reasons of accepting the explanation. As for learned PCIT's observations regarding accepting the explanation "without appropriate evidence", there is nothing to question the bonafides of the Assessing Officer or to elaborate as to what should have been 'appropriate' evidence. **The fact remains that the specific issue raised, in the revision order was specifically looked into, detailed submissions were made and these submissions were duly accepted by the Assessing Officer. Merely because the Assessing Officer did not write specific reasons for accepting the explanation of the assessee cannot be reason enough to invoke powers under section 263, and non-mentioning of these reasons do not render the assessment order "erroneous and prejudicial to the interest of the revenue"**.*

[Emphasis supplied]

18. Regarding introduction of Explanation 2 to section 263, as claimed by Ld. PCIT in his order, we only need to mention that it is loudly held in several decisions that the said Explanation does not give unfettered power to the PCIT to assume revisional-jurisdiction to revise every order of the Assessing Officer to re-examine the issues already examined during assessment-proceeding. It is judicially interpreted in several decisions that the intention of legislature behind introduction of Explanation 2 could not have been to enable the PCIT to find fault with each and every assessment-order in unlimited terms, since such an interpretation would lead to unending litigation and there would not be any point of finality of assessment-proceeding done by Ld. AO.

19. Hon'ble **ITAT, Rajkot** in **M/s Pramukh Realty, Junagadh, ITA No. 93/Rjt/2022 dated 30.06.2022**, has extensively dealt a case where the AO raised queries during assessment-proceeding and the assessee filed details / documents. After a thorough analysis, the Hon'ble Bench has held that in such circumstances, revision u/s 263 cannot be done. The relevant paragraphs of the decision are reproduced below:

"5. The learned AR before us filed a paper book running from pages 1 to 157 and contended that all the necessary details about the advances received from the parties, sales shown in the financial statement and details of the service tax returns were filed during the assessment proceedings. The learned AR

further contended that the assessment was framed by the AO after considering the necessary details and verification and application of mind. The learned AR in support of his contention drew our attention on pages 151 to 153 of the paper book where the copy of the notice under section 142(1) of the Act was placed. Likewise, the learned AR also drew our attention on pages 154 to 157 of the paper book where the reply of the assessee in response to the notice issued under section 142(1) of the Act was placed. Thus, the learned AR contended that there cannot be said that the assessment order is erroneous and causing prejudice to the interest of Revenue in the given facts and circumstances on account non-verification.

6. On the contrary, the learned DR before us contended that reconciliation of the amount shown in the service tax return and financial statement was not available before the AO during the assessment proceedings. Accordingly the learned DR vehemently supported the order of the learned PCIT.

7. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the present case relates whether the assessment order has been passed by AO without making inquiries or verification with respect to the difference in the figures as discussed above and hence the assessment is erroneous insofar prejudicial to the interest of the Revenue. Thus, requiring revision by Pr. CIT u/s 263 of the Act.

7.1 An inquiry made by the Assessing Officer, considered inadequate by the Commissioner of Income Tax, cannot make the order of the Assessing Officer erroneous. In our view, the order can be erroneous if the Assessing Officer fails to apply the law rightly on the facts of the case. As far as adequacy of inquiry is considered, there is no law which provides the extent of inquiries to be made by the Assessing Officer. It is Assessing Officer's prerogative to make inquiry to the extent he feels proper. The Commissioner of Income Tax by invoking revisionary powers under section 263 of the Act cannot impose his own understanding of the extent of inquiry. There were a number of judgments by various Hon'ble High Courts in this regard.

7.2 Delhi High Court in the case of CIT Vs. Sunbeam Auto 332 ITR 167 (Del.), made a distinction between lack of inquiry and inadequate inquiry. The Hon'ble court held that where the AO has made inquiry prior to the completion of assessment, the same cannot be set aside u/s 263 of the Act on the ground of inadequate inquiry. The relevant observation of Hon'ble Delhi High Court reads as under:

“12. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between “lack of inquiry” and “inadequate inquiry”. If there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has

different opinion in the matter. It is only in cases of “lack of inquiry”, that such a course of action would be open. ———

From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed.

15. Thus, even the Commissioner conceded the position that the Assessing Officer made the inquiries, elicited replies and thereafter passed the assessment order. The grievance of the Commissioner was that the Assessing Officer should have made further inquiries rather than accepting the explanation. Therefore, it cannot be said that it is a case of ‘lack of inquiry’.

7.3 The Hon’ble Bombay High Court in case of Gabriel India Ltd. [1993] 203 ITR 108 (Bom), discussed the law on this aspect in length in the following manner: “The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue, must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time

must induce repose in and set at rest judicial and quasijudicial controversies as it must in other spheres of human activity.

7.4 The Mumbai ITAT in the case of *Sh. Narayan Tatu Rane Vs. ITO, I.T.A. No. 2690/2691/Mum/2016*, dt. 06.05.2016 examined the scope of enquiry under Explanation 2(a) to section 263 in the following words:-

“20. Further clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the AO vis-à-vis its reasonableness in the facts and circumstances of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquiries or verification that would have been carried out by a prudent officer. Hence, in our view, the question as to whether the amendment brought in by way of Explanation 2(a) shall have retrospective or prospective application shall not be relevant.”

7.5 The Hon’ble Supreme Court in recent case of *Principal Commissioner of Income-tax 2 v. Shree Gayatri Associates*[2019] 106 taxmann.com 31 (SC)*, held that where Pr. CIT passed a revised order after making addition to assessee's income under section 69A in respect of on-money receipts, however, said order was set aside by Tribunal holding that AO had made detailed enquiries in respect of such on-money receipts and said view was also confirmed by High Court, SLP filed against decision of High Court was liable to be dismissed. The facts of this case were that pursuant to search proceedings, assessee filed its return declaring certain unaccounted income. The Assessing Officer completed assessment by making addition of said amount to assessee's income. The Principal Commissioner passed a revised order under section 263 on ground that Assessing Officer had failed to carry out proper inquiries with respect to assessee's on money receipt. In appeal, the Tribunal took a view that Assessing Officer had carried out detailed inquiries which included assessee's on-money transactions and Tribunal, thus, set aside the revised order passed by Commissioner. The Hon’ble High Court upheld Tribunal's order. The Hon’ble Supreme Court while dismissing the SLP filed by the Department held as under:-

“We have heard learned counsel for the Revenue and perused the documents on record. In particular, the Tribunal has in the impugned

judgment referred to the detailed correspondence between Assessing Officer and the assessee during the course of assessment proceedings to come to a conclusion that the Assessing Officer had carried out detailed inquiries which includes assessee's on-money transactions. It was on account of these findings that the Tribunal was prompted to reverse the order of revision. No question of law arises. Tax Appeal is dismissed”.

7.6 The Supreme Court in the another recent case of Principal Commissioner of Income-tax-2, Meerut v. Canara Bank Securities Ltd[2020] 114 taxmann.com 545 (SC), dismissed the Revenue's SLP holding that 263 proceedings are invalid when AO had made enquiries and taken a plausible view in law, with the following observations: “Having heard learned counsel for the parties and having perused the documents on record, we see no reason to interfere with the view of the Tribunal. The question whether the income should be taxed as business income or as arising from the other source was a debatable issue. The Assessing Officer has taken a plausible view. More importantly, if the Commissioner was of the opinion that on the available facts from record it could be conclusively held that income arose from other sources, he could and ought to have so held in the order of revision. There was simply no necessity to remand the proceedings to the Assessing Officer when no further inquiries were called for or directed”

7.7 From an analysis of the above judicial precedents, the principle which emerges is that 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 Assessing Officer adopts one of the course permissible in law and it has resulted in loss of revenue; 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 an erroneous order causing prejudice to the interests of the Revenue unless the view taken by the Assessing Officer is unsustainable in law, or the AO has completely omitted to make any enquiry altogether or the order demonstrates non-application of mind.

7.8 Now in the facts before us, in the case of the assessee the AO during the course of assessment proceedings, made enquiries on this issue and after consideration of written submissions filed by the assessee and documents / evidence placed on record, framed the assessment under section 143(3) of the Act without making the addition of the amount as note above. This fact can be verified from the notice under section 142(1) of the Act by the AO and submission in reply of the assessee against such notice.

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7.9 From the above it is revealed that it is not the case that the AO has not made any enquiry. Indeed the Pr. CIT initiated proceedings under section 263 of the Act on the ground that the AO has not made enquiries or verification which should have been made in respect of cash deposited during the

demonization period. It is not the case of the Pr. CIT that the Ld. AO did not apply his mind to the issue on hand or he had omitted to make enquiries altogether. In the instant set of facts, the AO had made enquiries and after consideration of materials placed on record accepted the genuineness of the claim of the assessee.

7.10 At this juncture, it is also important to note that the learned PCIT in his order passed under section 263 of the Act has made reference to the explanation 2 of section 263 of the Act. It was attempted by the learned PCIT to hold that there were certain necessary enquiries which should have been made by the AO during the assessment proceedings but not conducted by him. Therefore, on this reasoning the order of the AO is also erroneous insofar prejudicial to the interest of revenue. In this regard, we make our observation that the learned PCIT has also not specified the nature and the manner in which the enquiries which should have been conducted by the AO in the assessment proceedings. Thus, in the absence of any specific finding of the learned PCIT with respect to the enquiries which should have been made, we are not convinced by his order passed under section 263 of the Act.”

20. In view of above discussion and for the reasons stated therein, we are persuaded to hold that the facts of the present case do not warrant application of section 263. Therefore, the revision-order passed by Ld. PCIT is not a valid order. We, thus, quash the revision-order and restore the original assessment-order passed by Ld. AO. The assessee succeeds in this appeal.

21. Resultantly, this appeal of assessee is allowed.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 20/01/2023
Order pronounced in the open court on/...../2023

Sd/-

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक/Dated : 20.01.2023

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore

1.	Date of taking dictation	17.1.23
2.	Date of typing & draft order placed before the Dictating Member	17.1.23
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	17.1.23
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	