

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No. 262/Ind/2024**  
**(Assessment Year: 2014-15)**

Shri Premnarayan 31, Somgaon Khurd, Harsud, Khandwa	vs.	PCIT (1) Aaykar Bhawan Indore
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: CJZPP1164J</b>		

**ITA No. 263/Ind/2024**  
**(Assessment Year: 2014-15)**

Smt. Sharda A/45, Naya Harsud, Khandwa	vs.	PCIT (1) Aaykar Bhawan Indore
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: FDXPS2997P</b>		
Assessee by	Shri S.N. Agrawal & Pankaj Mogra, ARs	
Revenue by	Shri Ram Kumar Yadav, CIT-DR	
Date of Hearing	21.08.2024	
Date of Pronouncement	30.08.2024	

**ORDER**

**Per Vijay Pal Rao, JM:**

These two appeals by the two related Assesseees who are co-owners of the land in question are directed against two separate

orders of Pr. Commissioner of Income Tax both dated 04.03.2024 passed u/s 263 of the Act for Assessment Year 2014-15.

2. Since common issues are raised in both appeals arising from the same facts and transactions therefore, both these appeals have been clubbed together for the purpose of hearing and are disposed off by this composite order. The assessee has raised common grounds in these appeals as under:

*“1 That on the facts and in the circumstances of the case and in law, the Ld. Pr. CIT erred in setting- aside the order passed by the Assessing Officer by invoking the provisions of section 263 of the Income-Tax Act, 1961 even when the assessment order was passed after conducting necessary enquiries and after due application of mind and such order was neither erroneous nor prejudicial to the interests of the revenue.*

*2 That on the facts and in the circumstances of the case and in law, the Ld. Pr. CIT erred in setting- aside the order passed by the Assessing Officer by invoking the provisions of section 263 of the Income-Tax Act, 1961 and directing the Assessing Officer to frame the assessment de-novo after examining whether the agricultural land sold by the appellant was a capital asset as per the provisions of section 2(14)(iii) of the Act even when the said issue was duly examined by the Assessing Officer at the time of reassessment proceedings.*

*3 That on the facts and in the circumstances of the case and in law, the appellant purchased an agricultural land against sale of the land in question and thus, in any case, the appellant was eligible claim deduction under section 54B of the Act*

*4.The appellant reserves the right to add, alter and modify the grounds of appeal as taken by him”*

3. For the purpose of recording the facts the appeal in ITANo.262/Ind/2024 is taken as lead case. The assessee is an individual and filed his return of income for the year under consideration on 31.03.2016 declaring total income of Rs.44,940/-

after claiming exemption of Rs.53,57,631/- u/s 2(14)(iii) of the Act. The assessment was reopened by vide notice u/s 148 issued on 27.03.2021 on the issue that the agricultural land sold by the assessee comes under the definition of capital asset. In response to the said notice the assessee filed return of income of Rs.44,940/- as declaring in the original return of income. During the reassessment proceedings the assessee produced a certificate dated 06.08.2021 issued by the Municipal Corporation, Harda certifying that the said land is situated nearly 3 km from the Municipal limits of Harda. The AO after considering the said certificate issued by the Municipal Corporation accepted the claim of the assessee regarding the agricultural land situated beyond 2 km of the Municipal limits and therefore, exempt u/s 2(14)(iii) and consequently completed the assessment u/s 147 r.w.section 144B on 22.03.2022 accepting return income of the assessee. Subsequently on perusal of the assessment record the Pr. CIT observed that the AO passed the order without making required inquiries/investigation which has resulted the assessment order being erroneous in so far as prejudicial to the interest of revenue. The Pr. CIT initiated the proceeding u/s 263 of the Act by issuing show cause notice dated 22.01.2024 on the point that during the course of assessment proceedings the assessee has not furnished any details or explanation on the issue of agricultural land exempt u/s 2(14)(iii) of the Act with relevant documentary evidences and the AO has not at all verified these issues and relevant facts involved therein while

completing assessment without application of mind and without conducting proper inquiries. The assessee filed its reply vide e-mail dated 01.03.2024 and contended that a proper and due inquiry has been made by the AO and due verification has been made on the issue during the course of assessment proceedings. The assessee reiterated that he has furnished copy of certificate in this regard by the office of Municipal Corporation, Harda along with reply in response to the notice u/s 142(1) and was duly considered by the AO and therefore, it is not a case of non-furnishing of the documentary evidences or lack of inquiry on the part of the AO. This reply was not accepted by the Pr. CIT and finally set aside the order of the AO with direction to re-examine the issue and to make denovo assessment and passed an order as per law after making necessary verification, inquiry and investigation. Aggrieved by the impugned order the assessee has filed the present appeal.

4. Before the Tribunal Ld. AR of the assessee has submitted that the assessment was reopened by the AO on the basis of the information gathered during the investigation that the land sold by the assessee along with other co-owners are situated within 2 km from Tahsil & district, Harda and therefore, the assessment was re-opened only on this particular issue to assess the capital gain arising from the sale of land. He has further submitted that the AO has issued notice u/s 142(1) on 18.02.2022 along with questionnaire placed at page no.9 & 10 of the paper book whereby the AO has raised specific question about the land in question

situated within the distance of 2 km from the Tahsil and District Harda and long term capital gain arising from the said transactions is liable to be taxed. The AO asked the assessee to furnish the relevant details and documents. In compliance to the said notice the assessee submitted reply dated 25.02.2022 and submitted that the land is situated at distance of about 3 km from the Municipal limits of Harda and in support of the said claim the assessee also submitted a certificate issued by Municipal Corporation Harda dated 06.08.2021 wherein it is certified that the land in question is situated at distance of 3 km from the municipal limits of Harda. The reply of the assessee to the show cause notice issued u/s 142(1) placed at page 10 & 11 of the paper book along with sale deed. Thus, Ld. AR has submitted that the assessee has filed requisite details along with documentary evidences before the AO to substantiate the facts that agricultural land sold by the assessee was not capital asset as per the provisions of section 2(14)(iii) of the Act and accordingly the assessee was not liable for any capital gain tax in respect of the said sale of land. The AO has duly examined and verified the reply along with supporting evidences and after his satisfaction he accepted the claim of the assessee that the land sold by the assessee is exempt u/s 2(14)(iii) of the Act. Ld. AR has further contended that since it was reassessment framed by the AO in the faceless proceedings and therefore, the order of the AO was also subjected to supervision by the faceless centre and therefore, cannot said to be without proper inquiry or application of mind. In

support of his contention he has relied upon decision of the Jaipur Bench of the Tribunal dated 22.11.2023 in case of Sourabh Sharma vs. PCIT in ITANo.240/JP/2023.

4.1 He has further submitted that an order can be termed as 'erroneous' if the order is not in accordance with the law or if it has been passed by the AO without making any enquiry in undue haste. Further, an order can be termed as 'prejudicial to the interests of the revenue' if it is not in accordance with the law in consequence whereof the lawful revenue due to the State has not been realized or cannot be realized. He has contended that there must be material available on the record called for by the Commissioner to satisfy him prima facie that the aforesaid two requisites are present. The phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the AO. Every loss of revenue as a consequence of an order of the AO cannot be treated as prejudicial to the interests of the revenue, for example, when an AO adopts one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the AO has taken one view with which the 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 AO is unsustainable in law.

4.2 He has contended that the Assessing Officer asked the assessee to furnish the supporting documentary evidences to

substantiate the fact that the agricultural land sold by him was not a capital asset as per the provisions of section 2(14)(iii) of the Act as a consequence of which long-term capital gain arising on sale of such land was also not eligible to tax. Hence, it becomes crystal clear that the Assessing Officer raised detailed and extensive queries during the course of reassessment proceedings itself to examine the amount claimed as exempt by the assessee in his income-tax return for the Assessment Year 2014-15 on account of proceeds realized from sale of the said rural agricultural land. The assessee duly furnished the requisite details along with supporting documentary evidences before the Assessing Officer during the course of reassessment proceedings so as to substantiate the amount claimed as exempt on account of proceeds realized from sale of the said rural agricultural land in his income-tax return for the Assessment Year 2014-15.

4.3 He has pointed out that the assessee is not challenging the distance of the said agricultural land from Harda as computed by the Ld. PCIT/ ITO (Inv.), Bhopal. However, the only factor which needs consideration here is that the Ld. PCIT/ ITO (Inv.), Bhopal computed the aforesaid distance in the year 2019 or thereafter whereas the said agricultural land was sold by the assessee during the Financial Year 2013-14. Moreover, it was stated in the certificate issued by the Office of the Municipal Corporation, Harda itself that the said agricultural land was situated beyond distance of nearly 3 kms from the municipal limits of Harda in the year 2014

and that the agricultural land in question was included in the municipal limits of Harda only after delimitation in the year 2016. Hence, it becomes abundantly clear that the Ld. PCIT/ ITO (Inv.), Bhopal proceeded on a fallacious assumption that the agricultural land sold by the assessee was a capital asset as per the provisions of section 2(14)(iii) of the Act based on the distance of the said agricultural land from Harda as computed by them in the year 2019 or thereafter which was grossly unjustifiable and wholly unwarranted more so when the said agricultural land was sold by the appellant during the Financial Year 2013-14 itself and it was only after delimitation in the year 2016 that the agricultural land in question was included in the municipal limits of Harda. Moreover, even the Ld. PCIT/ ITO (Inv.), Bhopal did not bring anything on record to prove that the said agricultural land was situated within a distance of 2 kms from the municipal limits of Harda during the Financial Year 2013-14. Thus, it is crystal clear that certificate issued by the Office of the Municipal Corporation, Harda was correct and such certificate could not have been disregarded based on the distance of the said agricultural land from Harda as computed in the year 2019 or thereafter.

4.4 In support of his contention he has relied upon decision of Mumbai Benches of the Tribunal in case of Sir Dorabji Tata Trust vs. DCIT, (E) Circle 2(1) Mumbai 188 ITD 38. Ld. AR has also relied upon following decisions:

- (i) *Malabar Industrial Co. Ltd. v. CIT reported in [2000] 243 ITR 83 (SC)*
- (ii) *CIT (Central), Ludhiana v. Max India Ltd. reported in [2008] 166 Taxman 188 (SC)*
- (iii) *CIT v. Nirma Chemicals Works P. Ltd. 182 taxman 183 (Gujarat)*
- (iv) *CIT v. Sunbeam Auto Ltd. reported in [2011] 332 ITR 167 (Delhi)*
- (v) *DIT v. Jyoti Foundation reported in [2013] 357 ITR 388 (Delhi)*

5. On the other hand, Ld. DR has submitted that the AO has not utter a word in the assessment order regarding the inquiry conducted on this issue but the assessment order is a non-speaking order passed by the AO completely silent about the inquiry or examination and verification of any evidences on the issue. Thus, Ld. DR has submitted that it is a case of complete lack of inquiry on the part of the AO while passing the assessment order. It appears that the AO has accepted the submissions of the assessee without ascertaining relevant facts through proper inquiry whether the land in question is situated within distance on or outside the distance of Municipal limits as provided u/s 2(14)(iii) of the Act. The Pr. CIT has specifically pointed out the facts that aerial distance of the land in question from the municipal limits is less than 1 km as verified from the Google map therefore, the order of the AO is erroneous so far as prejudicial to the interest of the revenue for want of inquiry on this point. He has relied upon the impugned order of the Pr. CIT.

6. We have considered the rival submissions as well as relevant material on record. The assessee along with other co-owners sold an

agricultural land bearing Khasra no.104/1 & 104/9 situated at village Khedi, Mahmudabad, Tehsil & Dist. Harda vide sale deed dated 17.09.2013. In the return of income the assessee claimed the said capital gain as exempt in view of the provisions of section 2(14)(iii) of the Act being beyond the distance of 2 km from the Municipal limits of Harda. Thereafter the assessment was reopened by AO vide notice u/s 148 issued on 27.03.2021 by recording the reasons for reopening as under:

*“REASONS FOR ISSUE OF NONDEJAS 148 OF INCOME TAX ACT, 1961*

*The information in this case has been received on 'Insight Portal and is flagged as 'High Risk CRIU/VRU'. This information has been shared by Income Tax Officer (Inv.), Bhopal based on Investigation carried on by him in the case of the assessee vide letter no. F. No. ITO(Inv. /Bpl/ S-10099124/2019-20/ dt. 24.12.2019. ITO(Inv.), Bhopal received certain information in case of Shri Ram Prasad Meena, PAN-BTFPR1986R regarding 21 multiple DDs to purchase insurance policies.*

*2.0 On investigation, it was surfaced before ITO(Inv.), Bhopal that Shri Ram Prasad Meena sold certain land on 23.01.14 to Shri Brijmohan Parashar and Shri Premnarayan Parashar for a consideration of Rs. 29.06.200/- received from each. On further investigation regarding sources of investment made by Shri Brijmohan Parashar and Shri Premnaraya Parashar, it was noticed by ITO(Inv.), Bhopal that Shri Brijmohan Parashar and Shri Premnarayan Parashar jointly sold 2.96 acre land situated at khasra no. 104/1, 104/9, village Knedi. Mahmudabad, Tehsil & Dist. Harda to M/s Abhishek Green Valley Devi Ahilya Bai Ward, ward no. 26, opposite Singaji Bhawan, Harda on 17.09.2013 for a consideration of Rs. 1,05,09,170/-, the market Value of which is Rs. 1,06,09,170/- (each received consideration of Rs. 53,04,585/-). Similarly Smt. Sharda Bai, PAN-FDXPS2997P sold 2.95 acre land situated at khasra no. 104/1, 104/9, village Khedi, Mahmudabad, Tehsil & Dist.*

*Harda to M/s Abhishek Green Valley Devi Ahilya Bai Ward, ward no. 26, opposite Singaji Bhawan, Harda on 17.09.2013 for a consideration of Rs. 1,05,73,330/-, the market value of which is Rs. 1,05,73,330/-.*

*3.0 The land sold by Shri Brijmohan Parashar, Shri Premnarayan Parashar and Smt. Sharda Bai situated within two kilometers from Tehsil & Dist Harda as stated by ITO(Inv.), Bhopal in his report and therefore, liable to long term capital gains*

*4.0 On perusal of return filed by assessee Shri Premnarayan Parashar, it is noticed that he has shown income of Rs. 44,940/- and has claimed Rs. 1,06,09,170/- as exempt income. However Shri Premnarayan Parashar has received only his share @50% i.e. Rs. 53,04,585/- out of total sale consideration of Rs. 1,06,09,170/- as stated by ITO(Inv.), Bhopal, he has claimed exemption on whole consideration of Rs. 1,06,09,170/-. Therefore it is understood that he received full value of consideration of Rs. 1,06,09,170/.*

*5.0 Since land comprises within 2 km. distance from Tehsil & Dist Harda as stated by ITO(Inv.), Bhopal, the assessee is liable to pay long term capital gains on sale of property worth Rs. 1,06,09,170/- which has escaped assessment.*

*6.0 There is tangible material on record to show that the assessee has failed to disclose truly and fully all material facts necessary for his assessment for the year under consideration thereby necessitating reopening u/s 147 of the Act.*

*7.0 In view of the above mentioned discussion, I have reason to believe that the Income to the extent of Rs. 1,06,09,170/- has escaped assessment for the F.Y. 2013- 14 relevant to the A.Y. 2014-15 within the meaning of section 147 of the Income Tax Act, 1961.”*

6.1 Thus, the assessment was reopened in case of assessee on the issue of assessing the capital gain arising from sale of the agricultural land in question by treating the same as situated within the distance of 2 km from Tehsil and District Harda as

stated by ITO, Investigation Bhopal in his report. The AO has completed the assessment u/s 147 r.w.s 144B on 22.03.2022 by accepting the return income. Thereafter the Pr. CIT has invoked the provisions of section 263 by show cause notice u/s 263 dated 22.01.2024 as under:

*“M/s/Mr/Ms*

*Subject: Noice for Hearing in respect of Revision proceedings u/s 263 of the THE INCOME TAX ACT. 1961-Assessment Year 2014-15,*

*In this regard, a hearing in the matter is fixed on 30/01/2024 at 10:30 AM. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the Issues Involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portai using the link: [incometaxindiaefiling.gov.in](http://incometaxindiaefiling.gov.in)*

*Please refer to o the above.*

*2. In this regard, it is stated that you had filed your Income Tax Return (hereinafter referred as "ITR") for A.Y. 2014-15 on 31/03/2016 at income of Rs. 44,940/- after claiming exemption of Rs. 53,57,631/-. Further, the case was reopened u/s 147 and assessment order u/s 147 r.w.s. 1448 was passed by National Faceless Assessment Centre (NFAC) on 22/03/2022 accepting the returned income.*

*3. On perusal of the case records, it is observed that the assessee along with the two other persons (Smt. Sharda Bai and Shri Brijmohan Parashar) sold a land admeasuririg 5.91 acre situated at Khasra No. 104/1 and 104/9, Village/Moja - Khedi Mahmudabad, Tehsil & Distt. Harda (MP) for as sale consideration amounting.to Rs. 2,11,82,500/- on 17/09/2013.*

*As per the registered deed, the assessee was the owner of land admeasuring 1.48 acre out of the total land admeasuring 5.91 acre. The assessee received sale consideration of Rs. 53,57,631/- for the sale of 1.48 acre land. The assessee in her ITR for the relevant year claimed exemption of the said amount of Rs. 53,57,631/-. The assessee claimed the aforesaid exemption on the basis of certificate of municipal corporation that the areal distance of the aforesaid land more than 3 Km from the outer border of the Harda. However, on verification through the google map, the areal distance of the Harda to Village Khedi Malhmudabad is less than 1 Km. In view of the facts mentioned above, it is clear that the amount of Rs.53,57,631/- claimed as exemption, was liable to be added to the total income of the assessee by completing scrutiny assessment proceedings.*

*4. During the course of assessment proceedings, you have neither furnished any details nor explained the issues involved with relevant documentary evidence with regard to issues narrated above. It appears that submission and details available on records was not enough to verify the reasons for reopening of case u/s 147. The Assessing Officer has not at all verified these issues and relevant facts involved therein while completing the assessment without any application of mind, without conducting proper inquiries and due verification. As such, the assessment is erroneous in the sense that it is prejudicial to the interest of revenue. You are therefore, required to show cause why provisions of section 263 be not invoked in your case for the reasons mentioned above as the order of NFAC dated 22/03/2022 for A.Y 2014-15 is erroneous in so far as it is prejudicial to the interest of revenue.*

*5 You are hereby given an opportunity of being heard to explain as to why the proposed revision should not be carried out. For this purpose, your reply should be received on or before 30/01/2024. On the scheduled date, you may either appear in person or get yourself represented by a representative duly authorized by you as per section 288 of the Act. You may also*

*make your written submissions in lieu of personal appearance. If such written submissions are received on or before the scheduled date, the same shall be duly considered for the purpose of the proceedings u/s 263 of the Act.*

*6. Please note that you may also file your reply through mail indore.cit1@incometax.gov.in along with all relevant records and documents. It is not necessary to attend the office for this purpose. In case of non compliance, the matter will be decided on merits of the case and information available on record.”*

6.2 The Pr. Commissioner has observed that the assessee claimed exemption u/s 2(14)(iii) on the basis of the certificate of Municipal Corporation that real distance of the aforesaid land is more than 3 km from outside border of Harda, however, on verification through the Google map an aerial distance of Harda to village –Khedi Mahmudabad is less than 1 km. Based on this verification of Aerial distance on Google map the Pr. CIT has observed that the order passed by the AO is erroneous so far as prejudicial to the interest of the revenue as accepting the claim of the assessee without conducting proper inquiry. Further it is observed by the Pr. CIT that the assessee has not furnished any details or explained issue involved with relevant documentary evidences. It is pertinent to note that the AO has reopened the assessment on the very issue of exemption claimed by the assessee u/s 2(14)(iii) of the Act and thereafter issued a notice u/s 142(1) dated 18.02.2022 with the questionnaire as under:

*“ANNEXURE*

*Please refer to the above.*

*Your case has been reopened on the basis of ITO-(Inv.), Bhopal report dated 24.12.2019. On perusal of the report it was found that you have sold 2.95 acres Land situated at khasra no. 104/1, 104/9, village Khedi, Mahamudabad, Tehshil & Dist-Harda to M/s Abhishek Green Valley Davi Ahilya Bal Ward, Ward No. 26, opposite Singaji Bhawan, Harda on 17.09.2013 for consideration of Rs. 1,05,73,330/-. The such land comprised within. 2 K.M. distance from Tehshil & Districts Harda and you are liable to pay Long Term Capital Gain of Rs. 1,05,73,330/- but the long term capital gain has not been disclosed. Therefore, show-cause why the escaped income of LTCG of Rs. 1,05,73,330/- should not be added/assessed to your taxable income.”*

6.3 Thus, the AO has specifically raised a quarry about the distance of the land sold by the assessee from the municipal corporation limits of Harda. The AO also asked the assessee to furnish computation of income, sale deed of the land sold during the F.Y.2013-14, bank account statement and purchased deed of the land etc. The assessee filed his reply dated 25.02.2022 and 20.03.2022 along with certificate of Municipal Corporation, Harda dated 06.08.2021 placed at page no.11 & 12 as under:

**Premnarayan**

31, Somgaon Khurd, Harsud, Khandwa 450001

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**Date : 25.02.2022**

The Income Tax Officer,  
Ward – 1,  
Khandwa

Dear Sir,

Subject:- Reply of notice u/s 142(1) dated 18.02.2022 and 25.02.2022  
ITBA/AST/F/142(1)/2021-22/1039917109(1)  
ITBA/AST/F/142(1)/2021-22/1040120211(1)  
PAN:- CJZPP1164J

Please refer to notice u/s 142(1) dated 18.02.2022 for the assessment year 2014-15, wherein your good selves stated that 'Your case has been reopened on the basis of ITO-(Inv.), Bhopal report dated 24.12.2019. On perusal of the report it was found that you have sold 2.95 acres Land situated at khasra no. 104/1, 104/9, village Khedi, Mahamudabad, Tehshil & Dist- Harda to M/s Abhishek Green Valley Devi Ahilya Bai Ward, Ward No. 26, opposite Singaji Bhawan, Harda on 17.09.2013 for consideration of Rs. 1,05,73,330/-. The such land comprised within 2 K.M. distance from Tehshil & Districts Harda and you are liable to pay Long Term Capital Gain of Rs.1,05,73,330/- but the long term capital gain has not been disclosed. Therefore, show-cause why the escaped income of LTCG of Rs.1,05,73,330/- should not be added/assessed to your taxable income.' In this regard it is submitted that I have sold agriculture along with Sharda and Shri Brijmohan S/o Chhogalal for Rs.2,11,82,500/- wherein my share was Rs.53,04,585/-, share of Sharda is Rs.1,05,73,330/- and share of Shri Brijmohan S/o Chhogalal is also Rs.53,04,585/-.

**From the perusal of sale deed it is clear that amount of Rs.1,06,09,170/- received by seller no 2 and 3 i.e. myself and Shri Brijmohan S/o Chhogalal. Out of said amount of Rs.1,06,07,170/- my share was half of it which comes to Rs.53,04,585/-.**

**Said land was not a capital asset as the same is out of purview of provisions of section 2(14) of the Income Tax Act, 1961. Said land was situated at a distance nearly 3 Kms. from the municipal limits of Harda in the year 2014. Certificate in this regard issued by Office of the Municipal Corporation, Harda is attached as Annexure – 1.**

Copy of sale deed is attached as Annexure – 2.

Copy of bank passbook is attached as Annexure – 3.

Remaining details shall be filed in a week time.

It is humbly requested to find the above details in order and oblige.

Premnarayan

31, Somgaon Khurd, Harsud, Khandwa 450001

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**Date : 20.03.2022**

Addl/Joint/Deputy/Asst. Commissioner of Income Tax,  
National Faceless Assessment Centre,  
Delhi

Respected Sir,

Subject:- Reply of notice u/s 143(2) dated 04.03.2022  
ITBA/AST/F/143(2)\_5/2021-22/1040337931(1)  
PAN:- CJZPP1164J

Please refer to notice u/s 143(2) dated 04.03.2022 issued along with reasons for reopening of the case u/s 147 for the assessment year 2014-15. From the perusal of the reasons it reveals that the case has been reopened for the reason '*The information in this case has been received on 'Insight Portal' and is flagged as 'High Risk CRIU/VRU'. This information has been shared by Income Tax Officer (Inv.), Bhopal based on investigation carried on by him in the case of the assessee vide letter no. F. No. ITO(Inv. /Bpl/ S-10099124/2019-20/ dt. 24.12.2019. ITO(Inv.), Bhopal received certain information in case of Shri Ram Prasad Meena, PAN- BTFPR1986R regarding 21 multiple DDs to purchase insurance policies.*' In this regard it is submitted that considering the above said reasons it is quite clear that whatever investigation made in my case is on or after 24.12.2019. In para 3.0 of reasons it is mentioned that '*The land sold by Shri Brijmohan Parashar, Shri Premnarayan Parashar and Smt. Sharda Bai situated within two kilometers from Tehsil & Dist Harda as stated by ITO(Inv.), Bhopal in his report and therefore, liable to long term capital gains.*' In this regard it is submitted that the aforesaid land sold on 17.09.2013 and investigations have been made on or after 24.12.2019 and municipal limits of Harda have been changed in between and therefore it is important to note here that the land so sold is situated more than 2 Kms. away from Tehsil & Dist. Harda while the transaction has been executed and thereafter Municipal limits have been revised and the aforesaid land falls within 2 Kms. from the Municipal limits of Tehsil & Dist. Harda.

To support our contention once again we are attaching herewith certificate Certificate in this regard issued by Office of the Municipal Corporation, Harda as Annexure – 1 which has already been furnished in response to reply to notice issued u/s 142(1) wherein it is stated that the subject land was nearly 3 Kms. away from the Municipal limits of Harda in the year 2014 and after change in municipal limits in the year 2016 the said lands falls within the Municipal limits of Harda.

In view of the above I have an objection that proper investigation in this regards have not been made before initiate the proceedings u/s 147 by issuing notice u/s 148.

कार्यालय नगर पालिका परिषद, हरदा जिला (हरदा (म०प्र०))

Cmoharda@mperran.gov.in 07577-225301

क्रमांक/ 3315 /राशिय0/2021

हरदा, दिनांक 8/08/2021



प्रमाण -पत्र

प्रमाणित किया जाता है कि मौजा खेडिमहगुदाबाद खसरा न० 104/1 एवं 104/9 जो वर्ष 2014 में नगरी सीमा क्षेत्र के बजार लगभग 3 किलोमीटर नगरी सीमा क्षेत्र से बहार था।

वर्ष 2016 में खसरा न० 104/1 एवं 104/9 परिसिम्न के बाद नगर पालिका सीमा क्षेत्र में घाई न०51 डा अब्दुल कलाम बार्ड में राजस्व अगिलेख एवं नक्से में दर्ज किया गए हैं।

मुख्य नगर पालिका अधिकारी  
नगर पालिका परिषद हरदा

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6.4 Thus it is clear that it is not a case of complete lack of inquiry on the part of the AO but the AO has duly issued a show cause notice and raised specific quarry on this issue which was replied by the assessee along with certificate issued by the Municipal Corporation, Harda showing that the land in question is situated at 3 km distance from the limits of Municipal Corporation Harda. We further note that in response to notice u/s 143(2) dated 04.03.2022 the assessee filed its reply dated 28.03.2022 placed at page no.47 & 48 as under:

*“Subject: Reply of notice u/s 143(2) dated 04.03.2022  
ITBA/AST/F/143(2)\_5/2021-22/1040337931(1)*

*PAN:- CJZPP1164J*

*Please refer to notice u/s 143(2) dated 04.03.2022 issued along with reasons for reopening of the case u/s 147 for the assessment year 2014-15. From the perusal of the reasons it reveals that the case has been reopened for the reason 'The information in this case has been received on 'Insight Portal' and is flagged as 'High Risk CRIU/VRU'. This information has been shared by Income Tax Officer (Inv.), Bhopal based on investigation carried on by him in the case of the assessee vide letter no. F. No. ITO(Inv. /Bpl/ S-10099124/2019-20/ dt. 24.12.2019. ITO(Inv.), Bhopal received certain information in case of Shri Ram Prasad Meena, PAN- BTFPR1986R regarding 21 multiple DDs to purchase insurance policies. In this regard it is submitted that considering the above said reasons it is quite clear that whatever investigation made in my case is on or after 24.12.2019. Ir. para 3.0 of reasons it is mentioned that 'The land sold by Shri Brijmohan Parashar, Shri Premnarayan Parashar and Smt. Sharda Bai situated within two kilometers from Tehsil & Dist Harda as stated by ITO(Inv.), Bhopal in his report and therefore, liable to long term capital gains.' In this*

*regard it is submitted that the aforesaid land sold on 17.09.2013 and investigations have been made on or after 24.12.2019 and municipal limits of Harda have been changed in between and therefore it is important to note here that the land so sold is situated more than 2 Kms. away from Tehsil & Dist. Harda while the transaction has been executed and thereafter Municipal limits have been revised and the aforesaid land falls within 2 Kms. from the Municipal limits of Tehsil & Dist. Harda.*

*To support our contention once again we are attaching herewith certificate Certificate in this regard issued by Office of the Municipal Corporation, Harda as Annexure -1 which has already been furnished in response to reply to notice issued u/s 142(1) wherein it is stated that the subject land was nearly 3 Kms. away from the Municipal limits of Harda in the year 2014 and after change in municipal limits in the year 2016 the said lands falls within the Municipal limits of Harda.*

*In view of the above I have an objection that proper investigation in this regards have not been made before initiate the proceedings u/s 147 by issuing notice u/s 148.*

*As regards amount of Rs. 1,06,09,170/- it is submitted that amount of Rs.53,04,485/- only received by me against sale of such land. Wrongly whole amount shown as exempt income in return of income filed on the basis of amount appeared in form 26AS. I have received only Rs.53,04,485/- against sale of such land and as whole of the TDS deducted on my PAN and I have claimed such TDS in my return of income offered Rs.53,57,631/- (5304485 + 53046 (106092/2), and claimed as exempt Income as the said land was not a capital asset at the time of sold by me.”*

6.5 Thus, the assessee has repeatedly took a stand that the land in question is situated at distance about 3 km from the Municipal limits of Harda Municipal Corporation. The AO has accepted the claim of the assessee on the basis of reply as well as certificate

issued by Harda Municipal Corporation certifying distance of the land from the Municipal Corporation is about 3 km. The Ld. AR has pointed out a crucial fact that in the year 2016 there is a delimitation of Harda Municipal limits and therefore, the distance from the Municipal limits has to be considered in the year of sale i.e. F.Y.2013-14 and not in the year of reassessment order passed by the AO or at the time of invocation of the provisions of section 263 by the Pr. CIT. Therefore, the distance at which the land in question is situated has to be taken into consideration from the Municipal limits as exist at the time of sale and not at the time of passing assessment order or impugned order u/s 263 of the Act. Further Pr. CIT has proceeded on the basis of verification of distance from the Google map and observed that the aerial distance of the land in question from the municipal limits of the Harda is 1 (one) km. It is pertinent to note that after the delimitation of the Municipal limits in the year 2016 the distance has taken by the Pr. CIT at the time of issuing show cause notice on January 2024 may not have given correct facts about distance of the land from the Municipal limits as exist in the year 2013. We further note that once the assessee has produced certificate issued by the Municipal Corporation to substantiate his claim that the land in question is situated outside the limit as prescribed u/s 2(14)(iii) of the Act then while invoking provisions of section 263 the Pr. CIT ought to have brought some tangible material on record to show that the said certificate issued by Municipal Corporation has not given correct

facts on this point. Merely on the basis of the distance verified from the google map in the year 2024 would not amount to bring a tangible material to show that the alleged aerial distance as shown in the year 2024 was also aerial distance from the municipal limits as exist in the year 2013. Therefore, ignoring this crucial point, the distance taken by Pr. CIT in the year 2024 is certainly not reflecting the actual distance from the Municipal limits in the year 2013 specifically in view of the fact that the Municipal limits were modified/extended subsequently in the year 2016. Therefore, once the AO has conducted an inquiry and accepted the claim based on the documentary evidences filed by the assessee showing the distance of the land in question from the Municipal limits is more than 2 km then the Pr. CIT at the time of exercising jurisdiction u/s 263 ought to have given conclusive finding that the order passed by the AO is unsustainable either in law or facts. The Pr. CIT has finally set aside the impugned order in para 15 as under:

*“ 15. Therefore, in view of the above discussion, I am of the considered opinion that the assessment order dated 22/03/2022 for A.Y. 2014-15 is erroneous in so far as it is also prejudicial to the interest of revenue on account of passing of the assessment order without making required inquiries and verification, which should have been made. Accordingly, I am satisfied that provisions of section 263 of Income Tax Act 1961 are required to be invoked. Therefore, the assessment for A.Y. 2014-15 framed on 22/03/2022 is hereby set-aside to the file of AO to re-examine the issue and to make de-novo assessment, indicated in the preceding discussion, u/s 263 and passing an order as per the law after making necessary verification, inquiries and investigations. It would be not out of place to mention that the AO shall re-examine only the issue which has*

*been indicated for further investigation in the preceding discussion, after according due opportunities of being heard to the assessee.”*

6.6 Thus, the direction to the AO to re-examining the issue itself shows that the Pr. CIT was not sure about the correctness of the claim or view taken by the AO. This find of the Pr. CIT clearly shows that he has set aside the matters to the record of the AO for re-examination of the issue and to make de-novo assessment which means that the commissioner was also not certain about correctness of the claim of the assessee. This course of action on the part of the commissioner is not permissible when the AO has conducted inquiry and has taken view based on the material on record and therefore, the only course available with the Pr. CIT u/s 263 was to give a conclusive finding that the view taken by the AO is not sustainable under the law. The Hon'ble Delhi High Court in case of *CIT vs. Sunbeam Auto Ltd. (supra)* while dealing an issue of lack of inquiry and inadequate inquiry has held in para 12 as under:

*“12. We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income-tax under section 263 of the Income-tax Act. As noted above, the submission of learned counsel for the revenue was that while passing the assessment order, the Assessing Officer did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the Assessing Officer had not applied his mind on the issue. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed*

*reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry", that such a course of action would be open."*

6.7 Similarly in case *DIT vs. Jyoti Foundation (supra)* the Hon'ble Delhi High Court has reiterated its view in para 4 as under:

*"4. Revisionary power under Section 263 of the Act is conferred by the Act on the Commissioner/Director of Income-tax when an order passed by the lower authority is erroneous and prejudicial to the interest of the Revenue. Orders which are passed without inquiry or investigation are treated as erroneous and prejudicial to the interest of the Revenue, but orders which are passed after inquiry/investigation on the question/issue are not per se or normally treated as erroneous and prejudicial to the interest of the Revenue because there visionary authority feels and opines that further inquiry/investigation was required or deeper or further scrutiny should be undertaken."*

6.8 Therefore, as it is evident from record that the AO has conducted an inquiry and was satisfied with the supporting evidences produced by the assessee in response to notice u/s 142(1) then it is not necessary for the AO to give an elaborate finding on the issue. The Pr. CIT while passing revision order cannot remand the matter back to the AO for fresh adjudication simply because he himself was not sure about correctness of the claim of the assessee.

Accordingly in the facts and circumstances of the case when the order passed by the AO is not erroneous for want of inquiry then it is incumbent upon the Pr. CIT to give conclusive finding that the impugned order passed by the AO is not sustainable in law. Hence, following the various judgments on this point as relied upon by the Ld. AR and sited (supra) the impugned order of the Pr. CIT passed u/s 263 is not sustainable and the same is liable to be set aside. We order accordingly.

7. Since identical issues are raised in both the appeals arising from the common/same facts and transactions as well as identical orders passed u/s 263 of the Act therefore, our findings is applicable in case of both the appeals.

6. In the result, appeals of the assessee in ITANo.262 & 263/Ind/2024 are allowed.

Order pronounced in the open court on 30 .08.2024.

**Sd/-**  
**(B.M. BIYANI)**  
Accountant Member

**Sd/-**  
**(VIJAY PAL RAO)**  
Judicial Member

**Indore, 30 .08.2024**

**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*