

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.418/RPR/2024  
CO No.16/RPR/2024  
निर्धारण वर्ष / Assessment Year : 2013-14

The Income Tax Officer-4(1),  
Raipur (C.G.)

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Shri Sandeep Jhabak  
M/s. Allied Traders, Jhabak Bada,  
Near Tatyapara,  
Kamasipara (C.G.)-492 001  
PAN: ADNPJ2221L

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhilesh Begani, Advocate  
Revenue by : Shri S.L Anuragi, CIT-DR

सुनवाई की तारीख / Date of Hearing : 29.01.2025

घोषणा की तारीख / Date of Pronouncement : 19.02.2025

**आदेश / ORDER****PER BENCH:**

The captioned appeal filed by the revenue is directed against the order passed by the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), dated 29.07.2024, which in turn arises from the order passed by the A.O under Sec.143(3) r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act'), dated 16.12.2019 for A.Y. 2013-14. The revenue has assailed the impugned order on the following grounds of appeal before us:

“1. “Whether on the facts and in the circumstance of the case Id. CIT(A) was justified in deleting the addition of Rs.4,76,32,950/- made by the AO by disallowing the exemption claimed u/s.54B of the Income Tax Act, 1961?”

2. "Whether on the facts and in the circumstance of the case Id. CIT(A) was justified in deleting the addition of Rs. 4,76,32,950/- made by the AO by disallowing the exemption claimed u/s.54B of the Act by ignoring the facts brought on record by the AO that the assessee didn't put to use the said land for agricultural purpose in the immediately preceding 2 years for claiming exemption u/s.54B of the Income Tax Act, 1961?"

3. "Whether on the facts and in the circumstance of the case Id. CIT(A) was justified in deleting the addition of Rs. 4,76,32,950/- made by the AO by not considering the images of Google Earth for the period from 28.11.2005 to 01.10.2018?"

4. "Whether on the facts and in the circumstance of the case Id. CIT(A) was justified in deleting the addition of Rs. 4,76,32,950/- made by the AO by ignoring the report of Patwari, Labhandi dated 28.08.2019?"

5. "Whether on the facts and in the circumstance of the case Id. CIT(A) was justified in ignoring the report of National Remote

Sensing Centre, Department of Space, Hyderabad terming the impugned land as 'Follow Land' ?"

6. "Whether on the facts and in the circumstance of the case Id. CIT(A) was justified in deleting the addition of Rs.4,76,32,950/- by ignoring the ratio of the judgement of Hon'ble Supreme Court of India in the case of Commissioner of Income Tax, Calcutta Vs. Raja Benoy Kumar Sahas Roy, wherein it has been held that whatever may be reason for the exemption, we think that the exemption is connected with the user of land for a purpose which must be agriculture?"

7. "Whether on the facts and in the circumstance of the case Id. CIT(A) was justified in not calling the remand report from AO on the written submission of assessee, as the assessee has not submitted this reply of the SCN dated 14.12.2019 issued during the assessment proceedings.

8. The order of the CIT(A) is erroneous both in law and on facts.

9. Any other ground which may be adduced at the time of hearing."

On the other hand, the assessee as a cross-objector had objected to the order of the CIT(Appeals) on the following grounds:

"1. That the Learned Commissioner of Income Tax (Appeals) - National Faceless Assessment Centre ["the Ld.CIT(A)."] has grossly erred in not quashing & annulling the Re-assessment Order passed by the Learned Income Tax Officer, Ward-4(3), Raipur ['the Ld.A.O'] under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 ['the Act'] on 16<sup>th</sup> December, 2019 since, the same suffers from legal infirmities, is bad in law, void ab initio, nullity in the eyes or law, in serious transgression of the principles of natural justice and not in accordance with the provisions of law. The Ld.CIT(A) has failed to appreciate that –

(i) the Reassessment Notice has been issued without satisfying the mandatory conditions prescribed under the provisions of first proviso to section 147 since the been done beyond a period of four years from the end of assessment year;

(ii) the reopening of the completed assessment suffers from the vice of change of opinion without there being any new tangible material in possession justifying such reopening;

(iii) the reopening of the completed assessment has been done without satisfying the jurisdictional requirement of reason to believe since, the reasons are not definite in conclusions, vague, scanty, hypothetical and hence, unsustainable in the eyes of law;

(iv) the addition made on the issue of denial of deduction u/s.54B never featured in the reasons recorded in the reopening notice u/s.148 hence, without making additions on all the issues specified in the reasons recorded, addition on the said issue does not satisfy the test of law contemplated in Explanation 3 to section 147 of the Act;

(v) the reopening of the completed assessment appears to be purportedly done at the behest of the Audit Party without any independent application of mind by the Ld.AO hence, the present reassessment proceedings were initiated as a result of borrowed satisfaction which is impermissible and unsustainable in the eyes of law.

Hence, the re-assessment order passed by-the Ld.AO under the provisions of section 143(3) r.w.s. 147 of the Act ought to have been quashed as bad in law, highly illegal, suffering from legal infirmities, arbitrary and nullity in the eyes of law and hence, it is requested that the re-assessment order may please be quashed and set aside.

2. That the Ld.CIT(A) has grossly erred in not quashing & annulling the re-assessment order passed by the Ld.AO u/s.143(3) r.w.s. 147 of the Act on 16th December, 2019 as the Ld.AO was not vested with the requisite jurisdiction (income of the cross objector exceeding Rs.10 Lakhs) under Instruction No.1/2011 dated 31/01/2011 issued by Hon'ble CBDT hence, the framing of re-assessment by the Ld.AO is wholly without jurisdiction, void ab initio, highly illegal, bad in law and not in accordance with the binding instructions/circulars. Hence, it is earnestly prayed that the re-assessment order dated 16/12/2019 may please be quashed and cancelled on this ground alone.

3. That the Ld.CIT(A) has grossly erred in not quashing & annulling the re-assessment order passed by the Ld.AO u/s.143(3) r.w.s. 147 of the Act on 16th December, 2019 as the impugned re-assessment order does not bear the Document Identification Number (DIN) in the body nor contains the said fact

in the specific format nor specifies the exceptional circumstances thereby violating the directives laid down in Circular No.19/2019 dated 14.08.2019 issued by Hon'ble CBDT hence, the framing of re-assessment by the Ld.AO is highly illegal, void ab initio, bad in law and not in accordance with the binding instructions /circulars. Hence, it is earnestly prayed that the re-assessment order dated 16/12/2019 may please be quashed and cancelled on this ground alone.

4. That the cross objector craves leave to add, amend, alter or delete all or any of the grounds of cross objection at the time of hearing of the appeal.”

2. Succinctly stated, the assessee had filed his return of income for A.Y.2013-14 on 31.10.2013 declaring an income of Rs.2,89,88,040/-. The original assessment was framed by the A.O vide his order passed u/s. 143(3) of the Act, dated 22.03.2016, wherein the returned income of the assessee was accepted as such.

3. Thereafter, the A.O based on certain information that the income of the assessee chargeable to tax had escaped assessment, reopened the concluded assessment of the assessee u/s.147 of the Act for multi-facet reasons, viz. (i) disallowance u/s.14A r.w.Rule 8D of the expenses pertaining to investment made by the A.O in exempt income yielding assets: Rs.10,70,090/-; (ii) disallowance of the interest paid by the assessee on loan raised from Shri Sampatlal Jhabak, HUF : Rs.4,80,000/-; (iii) cash deposits made in the assessee's bank account with HDFC bank had remained omitted to be examined : Rs.3,00,000/-; and (iv) shop rent was wrongly assessed under the head "Income from house property".

4. During the course of reassessment proceedings, the A.O observed that the assessee along with 8 other co-owners (family members) had sold agricultural land situated at Village : Labhandi, Tehsil & District : Raipur, admeasuring 5.839 acre, vide a registered sale deed dated 21.08.2012 for an aggregate sale consideration of Rs.63,76,44,328/- (assessee's 1/9<sup>th</sup> shares being Rs.7,08,49,370/-). The A.O observed that the Long term capital gain (LTCG) on the sale of the aforesaid land amounted to Rs.6,98,15,050/-. It was further observed by him that the assessee had, inter alia, raised a claim for deduction u/s.54B of the Act of Rs.4,76,32,950/-. The A.O while framing the reassessment observed that the subject land sold by the assessee along with 8 other co-owners in the two years immediately preceding the date of its transfer was not being used for agricultural purposes. Accordingly, the A.O held a firm conviction that the pre-condition for claim of deduction u/s. 54B of the Act was not satisfied by the assessee. The A.O in order to verify as to whether or not the subject agricultural land was in the two years immediately preceding the date on which the same was sold used for agricultural purpose had consulted Google Earth Imagery on certain specific dates, i.e. 17.05.2012, 01.10.2018, 28.11.2005, 26.11.2007, 11.04.2009, 29.01.2010, 17.05.2012, 04.04.2013, 13.04.2013, 15.11.2013, 17.02.2014, 31.12.2013, 30.01.2015, 02.02.2015 and 01.10.2015, i.e. the period falling between 28.11.2005 to 01.10.2018, and gathered that the subject

land during the aforementioned period was not used for agricultural purposes. Also, the A.O to verify the factual position issued notice u/s.133(6) of the Act to the Patwari of the Village : Labhandi, Chandkhuri and the Sub-Registrar, Collectorate Compound, Raipur (C.G.) who were, inter alia, directed to intimate activities that were being performed on the land sold by the assessee. In reply, the Village Patwari, Ph. No.6, Village: Labhandi, filed with the A.O his written reply dated 03.09.2019 a/w. certified "Khasra Panchsala" of the subject land for the period 2009-10 to 2012-13, and further certified that no agricultural activity was conducted on the said land during F.Y.2009-10, F.Y 2010-11, F.Y 2012-13 and agricultural activity was conducted only in the F.Y 2011-12.

5. Apart from that, the A.O observed that a perusal of the "first schedule" of the registered sale deed, dated 21.08.2012 revealed that the subject land sold by the assessee was described as "piece or parcel of agricultural land or ground". Also, the A.O observed that commercial properties i.e. hotels, restaurants etc. were situated in the immediate vicinity of the subject land. Further, the A.O observed that the panchshala khasra attached with the registered deed clearly described the land khasra No.246/3 and 246/127 as "padath land" for more than 5 years. Also, the A.O observed that considering the stamp valuation rate that was adopted by the stamp valuation authority revealed that the latter had treated the

subject land as non-agricultural land. Accordingly, the A.O based on the information received from the Village: Patwari and Google Earth Imagery, therein, called upon the assessee to produce evidence to support his claim that the subject land in the two years immediately preceding the date on which the same was transferred was being used for agricultural purposes. Although, the assessee was allowed multiple opportunities but he had failed to avail the same. Accordingly, the A.O after taking cognizance of the multi-facet aspects regarding the usage of the subject land, viz. (i) purpose of sale of land; (ii) details of purchasers of the land; (iii) the environment and situation of the land; (iv) intention of the assessee at the time of purchase; (v) nature and character of the land; (vi) previous, present and future use to which the land is put; and (vii) potential value of the land etc., therein called upon the assessee to furnish requisite details and an explanation as to why his claim for deduction of Rs.4.70 crore (approx.) u/s. 54B of the Act may not be declined. Also, the A.O obtained a report of the Income-tax Inspector, dated 07.02.2019, wherein it was reported by him that the subject land was not used for agricultural purposes for more than 5 to 10 years. Further, the A.O to verify as to whether the assessee was a genuine farmer or agriculturist, analyzed the data based on the income tax returns for the last five assessment years. The A.O on a perusal of the aforesaid details gathered from the income tax returns of the assessee, observed that the assessee had declared agricultural income only

in the A.Y 2012-13 and A.Y.2013-14, and that too of a negligible amount as in comparison to his gross total income for the various years. Also, the A.O observed that the assessee could not be treated as a genuine farmer or agriculturist who was compelled to sell his agricultural land due to some hardship and relocate his agricultural operations at some other place. It was observed by him that the subject land was not used for kharif (Paddy-Dhaan) seasons immediately preceding the date of its sale i.e. in A.Y.2013-14. Further, it was observed by him that the assessee had not shown any agricultural income for A.Y.2011-12. Accordingly, the A.O observed that as the subject land in the two years immediately preceding the date of its transfer was not being used for agricultural purposes, therefore, the assessee's claim for deduction u/s.54B was liable to be declined. The A.O while so concluding observed that the assessee had failed to produce documentary evidence which would evidence that agricultural activities on the subject land were carried out in the two years immediately preceding the date of its transfer. Thereafter, the A.O relying on a host of judicial pronouncements declined the assessee's claim for deduction u/s. 54B of the Act.


6. The A.O, thereafter, vide his reassessment order u/s. 143(3) r.w.s. 147 of the Act, dated 16.12.2019 determined the income of the assessee at Rs.7,73,67,990/- after, inter alia, making certain additions/disallowances,

viz. (i) disallowance of the assessee's claim for deduction of interest on loans : Rs.4,80,000/-; (ii) addition u/s. 68 of the Act on account of unexplained cash deposits in his bank account with HDFC Bank : Rs.3 lacs; and (iii) declining of the assessee's claim for deduction u/s. 54B of the Act : Rs.4,76,32,950/-.

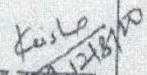
7. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals), who after deliberating on the facts of the case in the backdrop of the documents/material that was filed by the assessee to substantiate his claim that the subject land in the two years immediately preceding the date on which the same was transferred, was being used for agricultural purposes, found favour with the same and vacated the declining of the assessee's claim for deduction u/s.54B of the Act of Rs.4.76 crore (supra) by the A.O. For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:


“7.6 To decide the controversy in the present *lis* as to whether the 'lands' sold by appellant & 8 other co-owners are agricultural in nature or not; and whether agricultural operations were actually carried out on the said 'lands' sold by appellant & 8 other co-owners in the prescribed period viz. two years immediately preceding the date on which the transfer of land took place as stipulated under section 54B of the Act entitling the assesseees to claim deduction under the said section, it is imperative to deliberate upon the written submissions on the touchstone of documentary evidences tendered by the appellant vis-a-vis the findings & reasoning of the AO to appreciate the factual controversy involved in the present case.

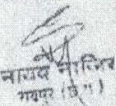
Firstly, the appellant has vehemently relied upon the Order of the Additional Tehsildar, Raipur dated 12.03.2020 in the case of Gautam Chand Jhabak & Others vs. State of Chhattisgarh in Revenue Case No.B-121/Year 2019-20, the contents whereof are reproduced herein under for the sake of completeness :

XX(a)A-89 Rev Hindi	राजस्व आदेश अनुकृति एवं स.प्र.क्र. / व-121/2019-20
पदाकार- श्री गौतमचंद झाबक वगैरह विरुद्ध छ.ग.शासन, ग्राम-लामाण्डी, प.इ.नं. 65	
12.03.2020	प्रकरण पेश। प्रकरण का अवलोकन किया गया।
 रजस्व प्रशासन रायपुर (छ.ग.)	<p>2. प्रकरण का संक्षिप्त विवरण यह है कि आवेदकगण गौतमचंद झाबक, सम्पतलाल झाबक, कमलेश कुमार झाबक तीनो पिता स्व. मोतीलाल झाबक, संकेत झाबक, संजोग झाबक दोनो पिता गौतमचंद झाबक, संदीप झाबक पिता सम्पतलाल झाबक, श्रीमती सुशीला देवी झाबक पति गौतमचंद झाबक, तिलोत्तमा देवी झाबक पति सम्पतलाल झाबक, श्रीमती पुष्पा देवी झाबक पति कमलेश कुमार झाबक सभी निवासी झाबक बाडा रायपुर, तहसील व जिला रायपुर द्वारा आवेदन प्रस्तुत किया है कि ग्राम लामाण्डी, प.इ. नं. 113/65, तहसील व जिला रायपुर स्थित भूमि खसरा नंबर 246/3, 247/3 रकबा 0.706हे. खसरा नंबर 246/129, 247/126 रकबा 0.786हे. खसरा नंबर 246/129, 247/129 रकबा 0.577हे. खसरा नंबर 246/160, 247/160, 248/118 रकबा 0.214हे. खसरा नंबर 246/121, 247/121 रकबा 0.146हे. खसरा नंबर 246/120, 247/120 रकबा 0.293हे. खसरा नंबर 246/127, 247/127 रकबा 0.182हे. खसरा नंबर 246/122, 247/122 रकबा 0.786हे. भूमि वर्ष 2010-11 में धनहा सिंचित था जिसका इन्द्राज ताल्कालीन हल्का पटवारी द्वारा प्रदत्त कम्प्यूटर खसरा वर्ष 2010-11 में है तथा मैनुअल खसरा वर्ष 2010-11 में धनहा कृषि भूमि सिंचित होने का उल्लेख नुटिवश दर्ज नहीं होने से मैनुअल खसरा वर्ष 2010-11 में धनहा सिंचित भूमि दर्ज किये जाने बाबत आवेदन प्रस्तुत किया है।</p> <p>3. प्रकरण पंजीबद्ध किया गया।</p> <p>4. हल्का पटवारी से प्रतिवेदन लिया गया। हल्का पटवारी के प्रतिवेदन अनुसार ग्राम लामाण्डी, प.इ.नं. 65 स्थित भूमि कम्प्यूटरीकृत खसरा वर्ष 2010-11 में आवेदित भूमि फसल प्रविष्टी कॉलम में धनहा सिंचित भूमि दर्ज है। आवेदक द्वारा खसरा पांचसाला वर्ष 2009-09 से 2012-13 की प्रमाणित प्रतिलिपि अनुसार वर्ष 2010-11 में आवेदित भूमि पड़ल भूमि दर्ज है। गुगल मैप दिनांक 05.12.2010 कि प्रति अनुसार आवेदित भूमि में फसल कटाई परघात कि स्थिति दिखार्ड पड़ रही है किन्तु मैनुअल खसरा पांचसाला वर्ष 2010-11 के फसल कॉलम में नुटिवश ताल्कालीन अभिलेख कॉलम में सक्षी इन्द्राज नहीं हो पाया है। उक्त गुगल मैप के अनुसार वर्ष 2010-11 में फसल लिया गया था। आवेदकगणों द्वारा भारित संयुक्त भूमि में से गुगल मैप के अनुसार लगभग 2.000हे. भूमि पर वर्ष 2010-11 में फसल लिया जाना, प्रतिवेदित किया है।</p> <p>5. आवेदक संदीप झाबक पिता श्री सम्पतलाल झाबक निवासी झाबक बाडा कमारती पारा रायपुर, तह. व. जिला रायपुर (छ.ग.) द्वारा आदेश-18 नियम-4 व्यवहार प्रक्रिया संहिता के अंतर्गत शपथ कथन प्रस्तुत किया गया है, जो प्रकरण में पृथक से संलग्न है।</p> <p>6. इस प्रकार आवेदकगण द्वारा प्रस्तुत आवेदन, दस्तावेज, पटवारी प्रतिवेदन, आवेदक द्वारा प्रस्तुत आदेश 18 नियम 04 व्यवहार प्रक्रिया संहिता के तहत शपथ पूर्वक कथन का अवलोकन एवं परिशीलन से यह स्पष्ट है कि, ग्राम लामाण्डी, प.इ.नं. 113/65.</p>
P. 198	Kishor P. 12/3/20 रायपुर (छ.ग.)

तहसील व जिला रायपुर स्थित भूमि खसरा नंबर 248/3, 247/3 रकबा 0.786हे. खसरा नंबर 246/128, 247/128 रकबा 0.786हे. खसरा नंबर 246/129, 247/129 रकबा 0.577हे. खसरा नंबर 246/180, 247/180, 248/118 रकबा 0.214हे. खसरा नंबर 246/121, 247/121 रकबा 0.146हे. खसरा नंबर 246/120, 247/120 रकबा 0.283हे. खसरा नंबर 246/127, 247/127 रकबा 0.182हे. खसरा नंबर 246/122, 247/122 रकबा 0.786हे. भूमि वर्ष 2010-11 में आवेदकगण को शामिल नाम तथा पृथक-पृथक नाम से दर्ज था। तात्कालीन इल्का पटवारी द्वारा प्रदत्त कम्प्यूटरीकृत खसरा वर्ष 2010-11 में आवेदित भूमि फसल प्रविष्टि कॉलम में धनहा सिंचित भूमि दर्ज है किन्तु मैन्युअल खसरा पांचसाला वर्ष 2010-11 में तात्कालीन इल्का पटवारी द्वारा फसल प्रविष्टि कॉलम में धनहा सिंचित भूमि का भुलवश/त्रुटिवश इन्तजाज नहीं हो पाया है। अतः आवेदक कथन, पटवारी प्रतिवेदन, तात्कालीन पटवारी द्वारा प्रदत्त कम्प्यूटरीकृत खसरा वर्ष 2010-11 एवं संलग्न दस्तावेज के आधार पर आवेदकगण द्वारा संयुक्त रूप से वर्ष 2010-11 में धारित आवेदित भूमि में से रकबा 2.000हे. भूमि धनहा सिंचित भूमि होना तथा फसल लिया जाना प्रतीत होता है। किन्तु उक्त प्रविष्टि मैन्युअल खसरा पांचसाला वर्ष 2010-11 में दर्ज नहीं हो पाया है तथा खसरा पांचसाला वर्ष 2010-11 में उक्त भूमि में पुराना प्रविष्टि किये जाने का कोई प्रावधान नहीं होने से प्रकरण नस्तीबद्ध कर दाखिल दफ्तर किया जावें।

  
 नायब तहसीलदार  
 रायपुर (छ.प्र.)



सत्य भ्रांतालिंगी  
  
 नायब तहसीलदार  
 रायपुर (छ.प्र.)

प्रति,

श्रीमान् नाथब तहसीलदार,  
रायपुर, (छ.ग.)

विषय :- अभिलेख दुच्छती बाबत् प्रतिवेदन ।

संदर्भ :- आपके आदेश दिनांक 25.02.2020

—00—

महोदय,

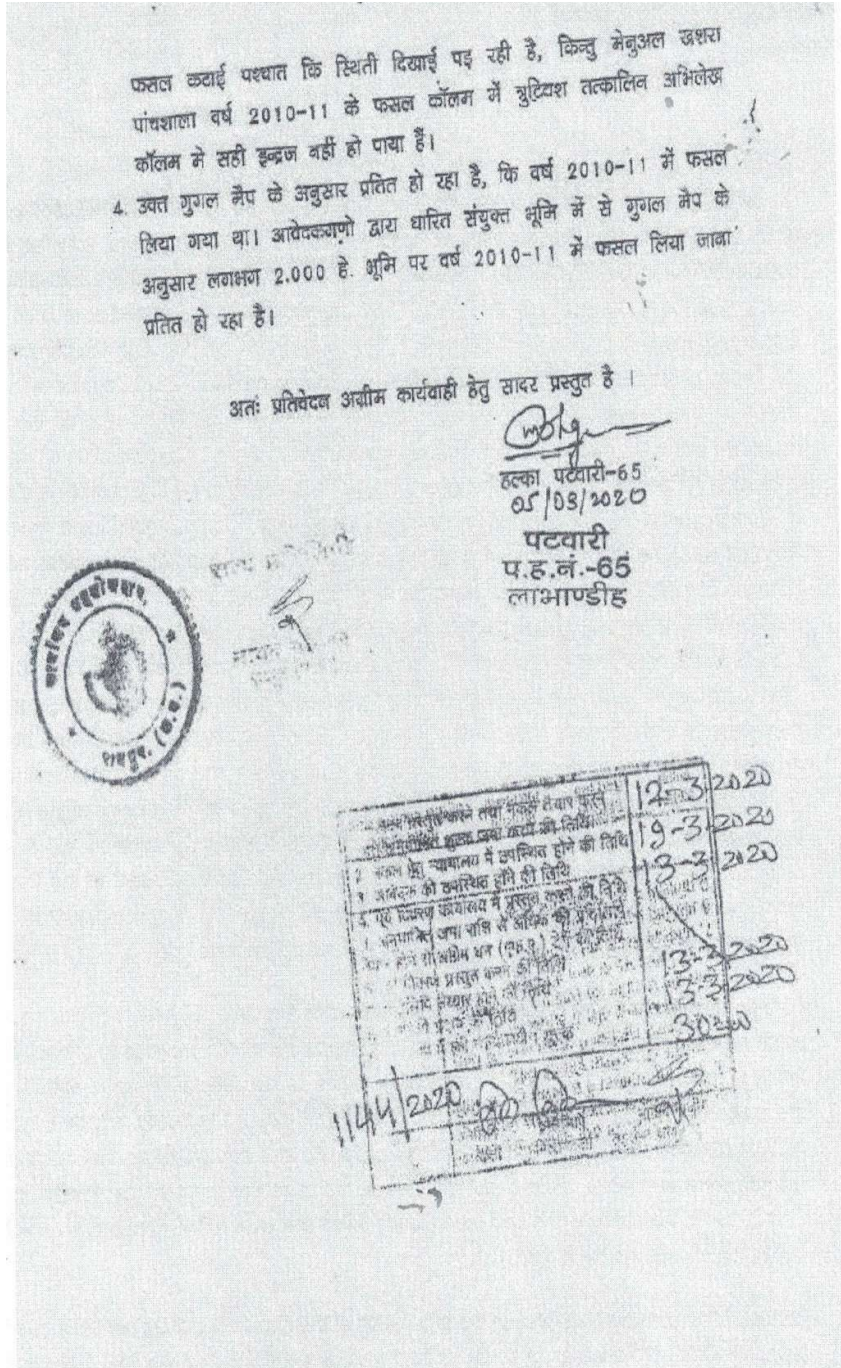
उपरोक्त संदर्भित विषयांतर्गत लेख है, कि -

आवेदकगण गौतमचंद झाबक, सम्पतलाल झाबक, कमलेश कुमार झाबक, तीनो पिता स्व. मोतीलाल झाबक, संकेत झाबक, संजोग झाबक दोनो पिता श्री गौतमचंद झाबक, संदीप झाबक पिता सम्पतलाल झाबक, श्रीमति सुशीला देवी झाबक पति गौतमचंद झाबक, तिलोतमा देवी झाबक पति सम्पतलाल झाबक, श्रीमति पुष्पा देवी झाबक पति कमलेश कुमार झाबक सभी निवासी झाबक बाड़ा रायपुर तहसील व जिला रायपुर द्वारा ग्राम लामाण्डी प.इ.नं. 113/65 तहसील व जिला रायपुर स्थित भूमि खसरा नंबर 246/3, 247/3 रकबा 0.786 हे०, खसरा नंबर 246/128, 247/128 रकबा 0.786 हे०, खसरा नंबर 246/129, 247/129 रकबा 0.577 हे०, खसरा नंबर 246/160, 247/160, 248/118 रकबा 0.214 हे०, खसरा नंबर 246/121, 247/121 रकबा 0.146 हे०, खसरा नंबर 246/120, 247/120 रकबा 0.283 हे०, खसरा नंबर 246/127, 247/127 रकबा 0.182 हे०, खसरा नंबर 246/122, 247/122 रकबा 0.786 हे०, भूमि वर्ष 2010-11 में धनहा, सिंचित, या जिसका इन्दाज कम्प्यूटर खसरा, वर्ष 2010-11 में होने तथा मेनुअल खसरा वर्ष 2010-11 में उक्त इन्दाज नहीं होने से मेनुअल खसरा वर्ष 2010-11 में धनहा, सिंचित भूमि दर्ज किये जाने बाबत् आवेदन पत्र आप श्रीमान् के समक्ष आवेदन प्रस्तुत किया गया है। जिसके संबंध में जानकारी निम्नानुसार है :-

1. आवेदक द्वारा प्रस्तुत कम्प्यूटरीकृत खसरा वर्ष 2010-11 में आवेदित भूमि फसल प्रविष्ट कॉलन में धनहा, सिंचित भूमि दर्ज है।
2. आवेदक द्वारा खसरा पांचसाला वर्ष 2008-09 से 2012-13 का प्रमाणित प्रतिलिपि प्रस्तुत किया गया है, जिसमें वर्ष 2010-11 में आवेदित भूमि पड़त भूमि दर्ज है।
3. अपने कथन के पुष्टी हेतु गुगल मैप दिनांक 05.12.2010 कि प्रति प्रस्तुत किया गया है, जो सुगतः संलग्न है, जिसके अनुसार आवेदित भूमि ने में

सत्य प्रमाणित

नाथब तहसीलदार  
रायपुर (छ.ग.)



On carefully perusing the contents of the response tendered by the Patwari Incharge 03.09.2019, it is noticed that the Patwari Incharge has stated that agricultural activities were not carried out in the F.Yr.2010-11 however, he duly

acknowledges that the cultivation paddy was being carried out in F.Yr.2011-12 hence, so far as revenue records a concerned, the only dispute is confined to F.Yr.2010-11. On going through the contents the Order passed by the Addl. Nayab Tehsildar, Raipur on 12.03.2020 coupled with the Report of the Patwari Incharge annexed thereto, I find that the Order records that the impugned lands at Village Labhandi, Raipur were cultivated since long (cultivation of 'Paddy appearing in Patwari Records for the Year 2011-12 as per reply to s.133(6) notice) and after deliberating upon the Patwari's Report annexed, statements, 'Computerized Land Revenue Records' etc., he has concluded that the impugned lands were of agricultural nature (Dhanha Sinchit Bhumi) and which were deployed for cultivation of Paddy in the F.Yr.2010- 2011 and he accordingly records that there are inadvertent errors/mistakes in 'manual' records in not recording the factum of agricultural operations in respect of F.Yr.2010-11 . That is to say, the Addl.Nayab Tehsildar unmistakably in his Order passed under the provisions of Chhattisgarh Land Revenue Code, 1959 holds that the lands sold by the appellant (the lands in question) were 'agricultural' in nature and on which cultivation of 'Paddy' was being carried out in the F.Yr.2010-11 thereby repelling the reliance of the AO on the response of the Patwari Incharge Dated 03.09.2019 based on antiquated, old & stale records and further, the Addl.Tehsildar attaches precedence to the Report of the Patwari Incharge annexed thereto, Google Map Image of 05.12.2010 & the computerized land records furnished before the AO in original assessment proceedings.

Further, the Report of the Patwari Incharge annexed to the Order of Addl. Tehsildar is also worth noticing wherein he records that the Computerized Records provided to the appellant family in respect of the F.Yr.2010-11 reflects the lands as 'agricultural' (Dhanha Sinchit) and the image from Google Earth drawn on 05.12.2010 (F.Yr.2010-11) clearly reflects the post-harvest situation after cutting off the crop of 'Paddy'. He also acknowledges that the manual records were erroneous, stale & not updated so as to record the crop as 'Paddy' in the F.Yr.2010-11. Accordingly, the said report lends much credence to the appellant's version of cultivation of paddy in the F.Yr.2010-11.

Further, I find considerable force in the arguments of the appellant that as per Land revenue laws, the Order of Tahsildar, in so far as land records are concerned, as final &

absolute in that regard. Hence. AO's heavy reliance on Patwari Report Dated 03.09.2019 was not correct.

7.7 Secondly, the Computerized Land Records in the form of Khasra Panchsala in Form No.B-1 & P-11 are also relied upon by the appellant to contend that the computerized land records provided under the signatures of Patwari Incharge in respect of Year 2010-11 & 2011-12 on 08.10.2010 & 08.10.2011, which were furnished in the course of original assessment proceedings and were very much available with the AO in reassessment proceedings, clearly records the crop at Column No.5 as 'Paddy' (Kharif Dhan Chidka Vipra) .During original assessment proceedings, AO relied on them and accepted claim of assessee regarding sec.54B. The computerized land records are reproduced hereinunder for the sake of clarity & completeness:

ANNEXURE-38

क्र.सं.	सं.सं.	सं.सं.	सं.सं.	सं.सं.	सं.सं.				सं.सं.	सं.सं.	सं.सं.
					सं.सं.	सं.सं.	सं.सं.	सं.सं.			
1	2	3	4	5	6	7	8	9	10	11	12
सं.सं.	सं.सं.	सं.सं.	सं.सं.	सं.सं.	सं.सं.	सं.सं.	सं.सं.	सं.सं.	सं.सं.	सं.सं.	सं.सं.

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The image shows a document with a table of land records. The table has several columns, including 'क्रमांक' (Serial No.), 'प्लॉट नं.' (Plot No.), 'खेती' (Crop), 'मूल्य' (Value), 'शुल्क' (Tax), and 'वर्ग' (Area). The entries are handwritten and somewhat faint. At the bottom right, there is a signature and a date stamp that reads '2019/09/07'.

In my considered view, the computerized land records tendered by the Patwari Incharge in respect of F.Yr.2010-11 & 2011-12, submitted during original assessment proceedingsu/s 143(3), clearly reflecting the nature of crop cultivated as 'Paddy' requires to be given precedence and the same has been further confirmed by the Addl. Nayab Tehsildar & Patwari Incharge as correct and reflecting the correct position. Hence, much importance could not be placed upon the manual records of the Patwari Incharge as provided vide his reply filed on 07.09.2019.

7.8 Further, as asserted by the AO that the said land was purchased by a trader company showing its intention for utilization for non-agricultural or commercial purposes, in my considered view, what is relevant is the nature of land at the time of sale thereof and whether the same was put to use for agricultural operations in the immediately preceding two years accordingly, the intent of the purchaser of the, land could not adjudged & is not at all relevant for determination of nature of lands in question .

7.9 Another pertinent contention raised by the appellant needs to be taken note of. It is submitted by the appellant that the case of one of the co-owners Shri Sanket Jhabak (PAN: ADNPJ2775K) was also subsequently reopened in

exercise of the provisions of section 148 of the Act by the jurisdictional AO by issuance of notice u/s.148 recording the reason that on the basis of material available on record including inter alia the satellite images extracted from ISRO and the Patwari Records etc., the lands sold by appellant group were not agricultural in nature and hence, the claim of deduction put forth under section 54B deserves to be denied. Later on, the case was transferred to AO, NaFAC. Further, in order to verify the reasons recorded as opposed to the claim of the appellant's family that the cultivation paddy was carried out in the relevant period hence, lands were agricultural in nature, the AC NaFAC referred the case to the AO, VU, NaFAC stationed at Raipur to verify the veracity sanctity of the claim of agricultural operations by conducting physical verifications, inspectio & inquiries. It is further submitted that the AO, VU accompanied by the Inspector & the assessee therein conducted spot verification/inquiries and thereafter, the AO, VU tendered a Verification Report to AO, NaFAC explicitly stating that the land sold is an 'agricultural land on which agricultural operations were being carried out by the appellant & his family members in the two years immediately preceding the date of transfer i.e. 2010-11 & 2011-12 and accordingly, the appellant group duly satisfies the conditions prescribed u/s.54B of the Act entitling them to the claim of deduction under the said section. Reassessment Order (relevant excerpts) passed by the AO, NaFAC u/s.147 r.w.s.144B ON 30.05.2023 is reproduced hereinunder for the sake of reference & understanding:

xxx

xxx

xxx

xxx

xxx

Considering the contents of the reassessment order passed by the AO, NaFAC date 30.05.2023 in the case of co-owner Shri Sanket Jhabak, I find considerable force in the contentions of the appellant that the lands sold duly satisfies the conditions precedent for claim of deduction under section 54B of the Act i.e. the lands are agricultural in nature and that agricultural activities (cultivation of paddy) was being carried out in the relevant period viz. two years preceding the date of transfer F.Yrs.2010-11 & 2011-12 which conclusion has been reached by the AO, NaFAC based on the in-depth physical verification & inquiries/investigations carried out by the AO, VU stationed at Raipur accordingly, I am of the considered view that when the Verification Unit, which is another arm/wing of the Department, concludes based on inquiries & investigations that the lands are agricultural in nature subjected to agricultural operations in the stipulated period

and duly satisfying the conditions precedent for claim of deduction u/s.54B and when such conclusion has been drawn in favour of the co-owner of same land, then a different conclusion in the case of the similarly placed appellant (co-owner) can't be drawn. Accordingly, he ought to be accorded a similar treatment and ought be allowed the claim of deduction put forth u/s.54B of the Act. I further imperatively note that in the cases of other co-owners viz. Shri Sanjog Jhabak, Shri Gautamchand Jhabak, Shri Sampatlal Jhabak, Smt.Sushila Devi Jhabak, Smt. Tillotma Devi Jhabak & Smt. Pushpa Devi Jhabak, similar reassessment orders were framed under section 147 r.w.s. 144B in respect of the Assessment Year 2013-14 wherein similar reasons were recorded by the Assessing Officer on the basis of same reports, images of ISRO & patwari records etc. thereby relying & deliberating upon the documentary evidences filed and finally concluding the issue in favour of other co-owners that the lands sold were agricultural in nature deployed for agricultural purposes for a period of two years immediately preceding the date of transfer entitling the assesseees (co-owners) therein to the claim of deduction u/s.54B of the Act. Hence, I find considerable force in the contentions raised by the appellant by its very nature duly satisfying the pre-requisites of user of lands for agricultural purposes in the immediately preceding two years in the case of other co-owners, in view of uniformity as agricultural land in approach & definiteness, the appellant also deserves similar treatment and his claim of deduction u/s.54B deserves to be accepted in this regard. Reliance in this regard could be placed upon the Judgment of Hon'ble Madras High Court in the case of CIT vs. Ramesh Shroff 428 ITR 499 (Mad.) propounding similar ratio that when the land sold in question has been duly accepted & assessed. Further, it can't be denied that reason to believe for "reopening of assessment" in case of assessee were borrowed from objections raised by Internal Audit Party and there was no application of mind by AO. Accordingly, on the basis of above mentioned factual matrix and judicial pronouncements, I hold that the land sold by the appellant is 'agricultural' in nature, on which agricultural activities were carried out in the immediately preceding two years before the date of transfer and accordingly, the appellant duly satisfies the pre-requisites contemplated under the provisions of section 54B of the Act unmistakably entitling him to the claim of deduction put forth in the return of income. Hence, the action of the AO in denying & disallowing the claim of deduction of Rs.4,76,32,950/- on the pretext of it being not deployed for agricultural purposes, is

clearly unjustified, unsubstantiated, contrary to the documentary evidences on record in the shape of undisputed land revenue records and is accordingly, deleted. Accordingly, Ground No.6 of the Appeal is allowed.

8. Since, I have already decided the issues raised resulting into additions & disallowances on merits in favour of the appellant, I refrain from adjudicating legal grounds regarding the validity of reassessment proceedings, challenging the jurisdiction of AO etc. and accordingly, dismiss them as academic.

9. In the result, the appeal is allowed.”

8. The Revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us. Also, the assessee is before us as a cross-objector.

9. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR's to drive home their respective contentions.

10. Ostensibly, a perusal of the order passed by the CIT(Appeals), reveals that the assessee had, inter alia, assailed the impugned reassessment order passed by the A.O u/s. 143(3) r.w.s. 147 of the Act, dated 16.12.2019 by raising multi-facet issues, based on which, the validity of the jurisdiction assumed was challenged before him, viz. **(i)** that the reopening of the concluded assessment of the assessee beyond a period

of four years from the end of the assessment year in absence of any failure on his part to disclose fully and truly all material facts necessary for passing of the assessment was not as per the mandate of the “1<sup>st</sup> proviso” to Section 147 of the Act; **(ii)** that the A.O had grossly erred in law and facts of the case in assuming jurisdiction to reopen the concluded assessment of the assessee based on a mere “change of opinion”; **(iii)** that as the “reasons to believe”, based on which the concluded assessment had been reopened were not definite, but vague, scanty and hypothetical, therefore, the very assumption of jurisdiction based on the same could not be sustained in the eyes of law; and **(iv)** that the A.O had reopened the concluded assessment at the behest of the audit party without any independent application of mind, therefore, the same being based on a “borrowed satisfaction” was ill-founded. However, we find that the CIT(Appeals) had while disposing of the appeal though concurred with the assessee that the concluded assessment was reopened based on a “borrowed satisfaction”, i.e. based on the objection raised by the internal audit party without any application of mind, but the said observation cannot be brought within the meaning of a reasoned adjudication on the specific issue by the first appellate authority.

11. Apart from that, we find that the other contentions, based on which, the validity of the jurisdiction assumed by the A.O for reopening the

concluded assessment of the assessee was challenged by the assessee, viz. (i) the reopening of the concluded assessment beyond the period of four years from the end of the relevant assessment year was not as per the mandate of the "1<sup>st</sup> proviso" to Section 147 of the Act; (ii) the reopening of the concluded assessment based on a mere "change of opinion" is not permissible as per the settled position of law; and (iii) that the "reasons to believe", based on which, the case of the assessee was reopened were not definite, but vague, scanty, hypothetical, therefore, no valid jurisdiction for reopening of the concluded assessment could have assumed on the said basis, had not been adverted to and adjudicated upon by the CIT(Appeals).

12. Although, we cannot remain oblivion of the fact that the CIT(Appeals) by finding favour with the contentions advanced by the assessee qua the merits of the case, i.e. as regards his entitlement for claiming deduction u/s. 54B of the Act, had concurred with him and found the same to be in order, but we are of a firm conviction that for the sake of completeness and in order to avoid multiplicity of litigation, he ought to have deliberated upon all the specific issues, based on which, the validity of the jurisdiction that was assumed by the A.O u/s.147 of the Act for reopening the concluded assessment of the assessee was assailed before him. Having not so done, the CIT(Appeals) had triggered an unwarranted situation leading to multiplicity of litigation in the present case, wherein the assessee had

been pushed into further litigation and compelled to seek adjudication of the aforesaid issues by filing a cross-objection before us.

13. Considering the aforesaid facts, we are unable to persuade ourselves to concur with the piecemeal disposal of the appeal by the CIT(Appeals). Accordingly, we are constrained to restore the matter to the file of the CIT(Appeals) with a direction to re-adjudicate the issues qua the validity of the jurisdiction assumed by the A.O for reopening of the concluded assessment which were specifically assailed by the assessee before him, viz. (i) the reopening of the concluded assessment beyond the period of four years from the end of the relevant assessment year was not as per the mandate of the “1<sup>st</sup> proviso” to Section 147 of the Act; (ii) the reopening of the concluded assessment based on a mere “change of opinion” is not permissible as per the settled position of law; and (iii) that as the “reasons to believe”, based on which, the case of the assessee was reopened were not definite, but vague, scanty, hypothetical, therefore, no valid jurisdiction for reopening of the concluded assessment could have assumed on the said basis. Apart from that, the CIT(Appeals) is also directed to re-adjudicate, based on a speaking order, the claim of the assessee that his concluded assessment could not have been reopened based on a “borrowed satisfaction” i.e. without any application of mind to the objections raised by the internal audit party.

14. As we have in terms of our aforesaid observations restored the matter to the file of the CIT(Appeals), therefore, we refrain from examining his observations qua the merits of the case.

15. In the result, appeal filed by the revenue in ITA No.418/RPR/2024 and cross-objection filed by the assessee in CO No.16/RPR/2024 are allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in open court on 19<sup>th</sup> day of February, 2025.

**Sd/-**  
**ARUN KHODPIA**  
**(ACCOUNTANT MEMBER)**

**Sd/-**  
**RAVISH SOOD**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 19<sup>th</sup> February, 2025.

\*\*\*SB, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT, Raipur-1 (C.G)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.