

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR  
श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 1311/JP/2018  
निर्धारण वर्ष / Assessment Year :2008-09

Gopi Ram Sharma, Kototya Ki Dhani, Gram-Nindar, Tehsil-Amer, Jaipur.	बनाम Vs.	I.T.O., Ward 7(4), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: GURPS 2939 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)  
राजस्व की ओर से / Revenue by : Shri Raj Mehra (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 23/04/2019  
उदघोषणा की तारीख / Date of Pronouncement : 30/04/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 28/08/2018 of Id. CIT(A)-3, Jaipur for the A.Y. 2008-09, wherein the assessee has raised following grounds:

- "1. The Id. CIT(A) has erred on facts and in law in deciding the appeal ex parte without providing adequate opportunity of hearing.*
- 2. The Id. CIT(A) has erred on facts and in law in not deciding the individual grounds of appeal on merits and thereby upholding the order of A.O.*
- 3. The appellate craves to alter, amend and modify any ground of appeal.*

4. *Necessary cost be awarded to the assessee.*

2. At the time of hearing, the Id AR of the assessee has stated that the assessee does not press ground No. 1, the same may be dismissed being not pressed. The Id DR has not raised any objection if ground No. 1 of the assessee's appeal is dismissed as not pressed, accordingly, ground No. 1 of the assessee's appeal is dismissed being not pressed.

3. Ground. No. 2 of the appeal is regarding the addition made by the A.O. on account of long-term capital gain on sale of agricultural land and the Id. CIT(A) has confirmed the addition made by the A.O.

4. The Id AR of the assessee has submitted that the assessee is an agriculturist and sold agricultural land for a consideration of Rs. 2,08,45,000/-. The A.O. issued notice U/s 148 of the Act and passed assessment ex parte whereby an addition of Rs. 2,01,74,158/- was made by the A.O. At the outset, he has submitted that since the assessment order as well as the impugned order of the Id. CIT(A) was passed ex parte, therefore, the matter may be set aside to the record of the A.O. for further adjudication. Further, an identical issue has been considered by this Tribunal in the case of other co-owners of the same land vide order dated 31/10/2017 passed in ITA Nos. 522 to 528/JP/2017. Thus, the Id AR has submitted that so far as the claim of the assessee that no capital

gain can be assessed to tax when there is no cost of acquisition of the land in question was decided against the assessee. However, as regards the merits of the capital gain, since the orders were passed ex parte, therefore, the Tribunal remanded the matter back to the record of the A.O. for considering the objections of the assessee and then decide the same as per law. Thus, the Id AR has pleaded that since the A.O. as well as the Id. CIT(A) have passed impugned order ex parte, therefore, the matter may be remanded to the record of the A.O. for deciding the issue afresh after considering the objections of the assessee.

5. On the other hand, the Id DR has objected to the remand of the matter to the A.O. and submitted that the assessee despite various opportunities given by the A.O. as well as the Id. CIT(A) has not presented his case, therefore, it is a misuse of process of law.

6. We have considered the rival submissions as well as relevant material on record. From perusal of the record, we find that the assessment order passed U/s 147 read with Section 144 of the Act as no body has appeared on behalf of the assessee before the A.O.. The Id. CIT(A) has also dismissed the appeal of the assessee because the assessee has not responded to the various notices issued and therefore, the appeal of the assessee was not decided on merits but it was

dismissed due to non-representation or filing any record against the assessment order. At the outset, we note that an identical issue has been considered by this Tribunal in the case of other co-owners of the land namely Sh. Ram Lal Sharma & Ors. in ITA Nos. 522 to 528/JP/2017 order dated 31/10/2017. In the said case, the assessee raised various objections against the assessment of the capital gain and the Tribunal after considering the relevant facts as well as decisions relied upon by the assessee has decided the matter in paras 4 to 11 as under:

"4. *I have heard the Id. AR as well as Id. DR on the admission of additional grounds. The assessment orders were passed by the AO u/s 144 read with section 147. It is pertinent to note that the land in question was agricultural land and therefore, the assessees were under belief that no capital gain is chargeable to tax arising from transfer of agricultural land in question. However, the AO treated the land in question within the municipal limit, Jaipur and therefore assessed the capital gain to tax. The Id. CIT(A) has confirmed the action of the AO. In the additional grounds the assessee has raised to two issues that the land was acquired by the forefathers of the assessee without any cost as it was granted /awarded to the forefathers without any consideration and the assessees have inherited this land as an ancestral property. Therefore, in the absence of any cost of acquisition the assessee claimed that the computing of the capital gain provision fails and therefore, no capital gain can be charged to tax in respect of transfer of the land in question in view of the decision of Hon'ble Supreme Court in case*

*of CIT vs. B.C. Srinivasa Setty 128 ITR 294 as well as decisions of Hon'ble High Courts. The second issue raised by the assessee in the additional ground is regarding the land in question was ancestral property and therefore it was assessable in the hands of the HUF and not in the hand of the individual assessee. These two issues raised in the additional grounds are purely legal in nature though in the absence of these issues raised before the authorities below no verification or enquiry was conducted by the authorities below specifically in the contest of these two legal issues however, from the findings of the authorities below it cannot be inferred that there was a cost of acquisition and the property was not an ancestral land. Accordingly, in the facts and circumstances of the case and in view of the decision of Hon'ble Supreme Court in case of CIT vs. NTPC Limited 229 ITR 383 the additional grounds raised by the assesseees are admitted for consideration and adjudication.*

5. *Additional ground No. 1 regarding no cost of acquisition and therefore, capital gain cannot be charged to tax. The Id. AR of the assessee has submitted that the forefathers of the assesseees were cultivators of the land which was under the jagirdari of Rao Inder Singh and his wife (known as maa ji). Subsequently as per the Rajasthan Land Reforms & Resumption of Jagirs Act, 1952 this land was allotted to Sh. Jeevan & Sh. Kanha. Thus the land was allotted without any cost of the consideration and therefore, there was no cost of acquisition of this land in the hand of the forefathers. Since the assesseees have inherited this land being an ancestral property, therefore, as per provisions of section 49(1) the cost of acquisition of the asset in the hand of the assessee shall be deemed to be the cost for which the previous owner of the property acquired it. Further, as per the explanation to section 49(1) the cost of previous*

*owner of the property will be considered as in the hands of the forefathers of the assessee who were allotted this land. The Id. AR of the assessee has further submitted that even as per the provisions of section 55 (2) read with section 55 (3) no cost can be imputed to this asset as there was no cost of acquisition. The Id. AR of the assessee has submitted that the provisions of section 55 are applicable only when there is a cost but which is not ascertainable whereas in the case of the assessee the cost is nil or no cost then the question of ascertaining the cost does not arise. In support of his contention he has relied upon the decisions of Hon'ble Gujarat High Court in case of CIT Vs. Mandhar Singh Ji P. Jadeja 281 ITR 19 as well as Thakur Dwara Shri Krishanju Maharaj Handiyaya, Barnala vs. CIT 162 ITR 93. He has also relied upon the decision of this Tribunal in case of CIT vs. Pashu Mohammed Zainuddin 142 TTJ 17. Thus the Id. AR has submitted the land is an ancestral land as accepted by the AO in the assessment order and therefore, when there is no cost of acquisition by the forefathers of the assessee then the capital gain cannot be chargeable to tax. He has further contended that the amendment brought into statute u/s 55(2) vide Finance Act 1987 provides the cost of acquisition in relation a capital asset being goodwill of business or a trade market or trade name or right to manufacture or right to carry in business or tenancy right etc. The said provisions is not applicable in case of tangible asset and particularly for land in question.*

5. *On the other hand, Id. DR has submitted that it is not a case where the cost of acquisition cannot be ascertained but no consideration was paid. Thus she has contended when the property was acquired by the assessee by succession and the cost of acquisition by the previous owner could be ascertained then the decision relied upon*

*by the Hon'ble Supreme Court in case of Vs. B.C. Srinivasa Setty as well other Hon'ble High Courts are not directly applicable in the facts and circumstances of the present case. The Id. DR has pointed out that even if no cost is paid but the cost was ascertainable at the time of acquisition of land then the provisions of section 55(3) are applicable in this case and the fair market value of the asset as on 01.04.1981 would be the cost of acquisition of land for the purpose of computing capital gain. She has relied upon the decision of Hon'ble Punjab and Haryana High Court in case of CIT Vs. Raja Malwinder Singh 334 ITR 48 as well as decision in case of Thakur Dwara Shri Krishanju Maharaj Handiyaya, Barnala vs. CIT 366 ITR 38 and submitted that the Hon'ble Punjab and Haryana High Court while following the full bench decision in case of Raja Malwinder Singh reiterated the view has taken by the Full Bench. Through the decisions relied upon by the AR will not help the case of the assessee.*

6. *I have considered the rival submissions as well as relevant material on record. The land in question was acquired by the assessee by succession, therefore, the cost of acquisition of the land in question in the hand of the assessee would be taken as the cost in the hand of the previous owner of the land. The Id. AR of the assessee has contended that the land was allotted under the Rajasthan Land Reforms and Resumption of Jagir Act, 1952 without any consideration, therefore, the cost of acquisition in the hand of the previous owner is nil. Thus the Id. AR of the assessee has submitted that in view of the decision of Hon'ble Supreme Court in case of CIT Vs. B.C. Srinivasa Setty (supra), decision of Hon'ble Gujarat High Court in case of CIT vs. Mandharshingji P. Jadeja (supra) as well as CIT vs. H.H. Maharana Sahib Shri Lokendra Singhji the*

*Jagir property gifted to the forefathers of the assessee has no cost of acquisition in the hand of the ancestors and therefore no capital gain accrued where the cost of acquisition is not ascertainable. It was also contended that the fair market price cannot be taken into consideration where the cost of acquisition was not ascertainable. On the other hand, the Full Bench decision of Hon'ble Punjab and Haryana High Court in case of CIT vs. Raja Malwinder Singh (supra) has held that even in a case where the cost of acquisition cannot be ascertained, section 55(3) prescribes the cost to be equal to the fair market value on the date of acquisition in case of acquiring the land either at some cost or without cost but there can be no situation when the cost is incapable of ascertainment. This view of the Hon'ble Punjab and Haryana High court was again reiterated in case of Thakur Dwara Shri Krishanji Maharaja Handiyaya, Barnala (Supra). Thus it is clear that there are divergent views of Hon'ble High Courts on this issue particularly the interpretation and understanding of the decision of Hon'ble Supreme Court in case of CIT vs. B.C. Srinivasa Setty (supra). The issue before the Hon'ble Supreme Court in case of CIT vs. B.C. Srinivasa Setty was the taxability of capital gain on transfer of goodwill of a newly commenced business. The Hon'ble Supreme Court has observed that no business commenced for the first time possesses goodwill from the start. It is generated as the business is carried on and may be augmented with the passage of time. Therefore, goodwill in a newly commenced business is a self-generated asset and in this said contest the Hon'ble Supreme Court has held that the cost of acquisition of self-generated asset like goodwill is not possible. The relevant finding of the Hon'ble Supreme Court decision in case of CIT Vs. B.C. Shrinivasa Setty in paras 8 to 11 as held as under:-*

*“8 The mode of computation and deductions forth in s. 48 provide the principle basis for quantifying the income chargeable under the head “capital gain”. The section provides that the income chargeable under that head shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset:*

*“(ii) the cost of acquisition of the capital...”*

*What is contemplated is an asset in the acquisition of which it is possible to envisage a cost. The intent goes to the nature and character of the asset, that it is an asset which possesses the inherent quality of being available on the expenditure of money to a person seeking to acquire it. It is immaterial that although the asset belongs to such a class, it may, on the facts of a certain case, be acquired without the payment of money. That kind of case is covered by s. 49 and its cost, for the purpose of s. 48, is determined in accordance with those provisions. There are other provisions which indicate that s. 48 is concerned with an asset capital of acquisition at a cost. Sec. 50 is one such provisions. So also is such s s. (2) of s. 55. None of the provisions pertaining to the head “Capital gain” suggests that they include an asset in the acquisition of which no cost at all can be conceived. Yet there are assets which are acquired by way of production in which no cost element can be identified or envisaged. From what has gone before, it is apparent that the goodwill generated in a new business has been so regarded. The elements which create it have already been detailed. In such a case, when the asset is sold and the consideration is brought to tax, what is charged is the capital value of the asset and not any profit or gain.*

*9. In the case of goodwill generated in a new business there is the further circumstance that it is not possible to determine the date when it comes into existence. The date of acquisition of the asset is a material factor in applying the computation provisions pertaining to capital gains. It is possible to say that the “cost of acquisition” mentioned in s. 48 implies a date of acquisition, and that inference is strengthened by the provisions of ss 49 and 50 as well as sub-s (2) of s. 55.*

10. *It may also be noted that if the goodwill generated in a new business is regarded as acquired at a cost and subsequently passes to an assessee in any of the modes specified in sub-s. (1) of s. 49, it will become necessary to determine the cost of acquisition to the previous owner. Having regard to the nature of the asset, it will be impossible to determine such cost of acquisition. Nor can sub-s. (3) of s. 55 be invoked, because the date of acquisition by the previous owner will remain unknown.*

11. *We are of opinion that the goodwill generated in a newly commenced business cannot be described as an "asset" within the terms of s. 45 and, therefore, its transfer is not subject to income tax under the head "Capital gains".*

*Thus it is clear that the ruling laid down by the Hon'ble Supreme Court is based on specific facts and nature of capital asset being goodwill which is self-generated as it is not possible to determine the date when it comes into existence. The date of acquisition of the asset is a material factor as observed by the Hon'ble Supreme Court in applying the computation provisions pertaining to the capital gains. The Hon'ble Supreme Court has further observed that it is possible to say that the cost of acquisition as mentioned in section 48 implies a date of acquisition, and that inference is strengthened by the provisions of sub-section 49 and 50 as well as sub-section (2) of section 55. Thus, while analyzing the term the cost of acquisition of capital asset as per section 48 of the Act the Hon'ble Supreme Court has held that what is contemplated is an asset in the acquisition of which it is possible to envisage a cost. The intent goes to the nature and character of the asset, that it is an asset which possesses the inherent quality of being available on the expenditure of money to a person seeking to acquire it. It is immaterial that although the asset belongs to such as class it may, on facts of certain cases be acquired without the payment of*

*money. Therefore, when a capital asset which possesses the inherent quality or monetary value at the time when the persons seeking to acquire it but it was acquired without the payment of money would not take such capital asset in the category that it will not possible to determine the cost of acquisition. Further, in case of self generated intangible asset like goodwill there is not acquisition by the transferor whereas in the case of land acquired by the transferor without any cost but is capable acquisition of cost and therefore the land which was acquired without cost cannot be put into category of the asset which is self generated and the determination of cost of acquisition is not possible. There may be two categories of capital asset where the cost of acquisition is nil. In first category no cost is paid by the person who has acquired it. In other case the asset is self generated in due course of time and it is not possible to ascertain the cost of acquisition and date of generation/acquisition. Therefore, the case of the assessee falls in the categories of the land in question carried/ possesses cost or monetary value though the forefathers of the assessee acquired it without any cost. In such a situation the provisions of section 55 (2)(b) would come into play. For reading reference section 55(2)(b) 55(3) are quoted as under:-*

*Section 55 (2)(b)*

*“(b) in relation to any other capital asset,—]*

*(i) where the capital asset became the property of the assessee before the [1st day of April, [1981]], means the cost of acquisition of the asset to the assessee or the fair market value of the asset on the [1st day of April, [1981]], at the option of the assessee ;*

*(ii) where the capital asset became the property of the assessee by any of the modes specified in [sub-section (1) of] section 49, and the capital asset became the property of the previous owner before the [1st day of April, [1981]], means the cost of the capital asset to the previous owner*

*or the fair market value of the asset on the [1st day of April, [1981]], at the option of the assessee ;*

*(iii) where the capital asset became the property of the assessee on the distribution of the capital assets of a company on its liquidation and the assessee has been assessed to income-tax under the head "Capital gains" in respect of that asset under section 46, means the fair market value of the asset on the date of distribution ;*

*(iv) [\*\*\*]*

*[(v) where the capital asset, being a share or a stock of a company, became the property of the assessee on—*

*(a) the consolidation and division of all or any of the share capital of the company into shares of larger amount than its existing shares,*

*(b) the conversion of any shares of the company into stock,*

*(c) the re-conversion of any stock of the company into shares,*

*(d) the sub-division of any of the shares of the company into shares of smaller amount, or*

*(e) the conversion of one kind of shares of the company into another kind,*

*means the cost of acquisition of the asset calculated with reference to the cost of acquisition of the shares or stock from which such asset is derived.*

*Section 55 (3)*

*"Where the cost for which the previous owner acquired the property cannot be ascertained, the cost of acquisition to the previous owner means the fair market value on the date on which the capital asset became the property of the previous owner."*

*Thus as per clause (b) sub-section (2) of section 55 read with section 49 (1)(iii)(a) of the Act the cost of acquisition of the asset acquired by succession or inheritance or devaluation shall be deemed to be the cost for which the previous owner of the property acquired it. Where the capital asset become the property of the assessee or previous owner before 01.04.1981 the cost of acquisition means the cost of acquisition of the asset to the previous owner or fair market value of the asset on 01.04.1981 at the option of the assessee. Even*

*in case where the cost for which the previous owner acquired the property cannot be ascertained the cost of acquisition to the previous owner means the fair market value on the date on which the capital asset becomes the property of the previous owner as provided under sub-section (3) of section 55. Since this case of the assessee is covered by provisions of section 55(2)(b) read with section 49(1) of the Income Tax Act therefore, the cost of the acquisition of the property for the purpose of computing the capital gain would be fair market value as on 01.04.1981. The full bench of Hon'ble Punjab and Haryana High Court after considering the decision of the Hon'ble Supreme Court in case of CIT vs. B.C. Srinivasa Setty (supra) as well as other decisions relied upon by the Id. AR on this point has observed in paras 5 to 7 as under:-*

*"5. It is pointed out that the judgment in B.C. Shrinivasa Setty's case (supra) is distinguishable. It was observed therein that in a newly started business the value of goodwill was not ascertainable, and on sale of goodwill, capital gain was not attracted. It is submitted that in the case of acquisition of land, the same is either acquired at some cost or without cost and under the scheme of the Act, there can be no situation when the cost is incapable of ascertainment. Section 55(2) provides for taking the cost either equal to the market value as on January 1, 1954, or at the option of the assessee equal to the cost of acquisition of the previous owner. Section 55(3) provides that where the cost of acquisition of the previous owner cannot be ascertained, it has to be taken to be equal to the market value on the date the asset was acquired by the previous owner. The Explanation to section 49(2), i.e., who acquires property otherwise than by way of gift, will or by succession.*

*6. In the present case, the assessee acquired the property by succession from the previous owner. According to the stand of the assessee, the cost of acquisition by the previous owner could not be ascertained. However, he failed to exercise the option of going either by the date of market value on the date of acquisition or by*

*the cost of the previous owner in which case the only option available to the Assessing Officer was to proceed to compute capital gain by taking the cost of the asset to be the fair market value on the specified date, i.e., January 1, 1954 as per applicable provision for assessment year 1977-78 and as on January 1, 1964 for the assessment year 1978-79. Even in a case where the cost of acquisition cannot be ascertained, section 55(3) statutorily prescribes the cost to be equal to the market value on the date of acquisition. This being the position, capital gain is not excluded even on the plea that value of the asset in respect of which capital gain is to be charged was incapable of being ascertained. The view taken in Amrik Singh's case (supra) based on the assumption that where market value cannot be ascertained, capital gain cannot be applied, is not correct being against the statutory scheme. Similarly, the view taken by the Madhya Pradesh High Court in CIT v. H.H. Maharaja Sahib Shri Lokendra Singhji [1986] 162 ITR 93/25 Taxman 66 cannot be accepted. The said judgment also does not give effect to the mandate of section 55(3) which provides for a situation where the value of the asset acquired could not be ascertained. If the market value can be ascertained, it has to be taken to be equal thereto and if the value cannot be ascertained, it has to be equal to the market value on a specified date at the option of the assess. It is not the case of the assessee that land had no market value at all on the date of its acquisition. The contention that the value was incapable of being ascertained, as already observed, the value in such case has to be taken as being equal to market value on a specified date.*

*7. We, thus, hold that even where the cost of acquisition of capital asset cannot be ascertained but the asset has a market value, capital gain will be attracted by taking the cost of acquisition to be fair market value as on January 1, 1954, or on date statutorily specified or at the option by the assessee, the market value on the date of acquisition.*

*The Hon'ble Punjab and Haryana High Court reiterated this view in case of Thakur Dwara Shri Krishanji Maharaj Handiyaya, Barnala vs. CIT (supra). In view of the facts and circumstances of the case as*

*well as the above discussion and following the full bench decision of Hon'ble Punjab and Haryana High Court in case of Thakur Dwara Shri Krishanji Maharaj Handiyaya, Barnala vs. CIT (supra) I am of the considered opinion that the land in question does not fall in the category of the capital asset for which the cost of acquisition is not possible to be ascertained. Accordingly, the cost of acquisition in the hand of the assessee would be the fair market value as on 01.04.1981. Accordingly, this issue is decided against the assessees.*

- 7. Ground No. 2 is regarding the capital gain is assessable in the hand of HUF and not in the hand of the assessee. In support of this ground the assessee has also filed additional evidence in the shape of copy of sale deed on 08.05.2008 and revenue record in respect of the land in question as well as the copies of revenue record/ mutation in the name of earlier owners of the land.*
- 8. I have heard the Id. AR as well as Id. DR and considered the relevant material on record. The Id. DR has vehemently objected to the admission of the additional evidence and submitted the despite sufficient opportunity given to the assessee by the AO and Id CIT(A) the assessee has not explained the reasons as to why this evidence was not filed before the authorities below.*
- 9. I have considered the rival submissions and careful perusal of the additional evidence proposed to be filed by the assessee. It is noted that all the documents sought to be filed by the assessee are either the copies of the Revenue record showing the status of the land in question in past or a sale deed dated 08.05.2008. Therefore from the very nature of the documents filed by the assessee as additional evidence it is clear that there is no possibility or scope of creating or manipulating with the evidence. Thus the question of creating any*

*evidence or putting up a claim in the nature of afterthought is ruled out. Accordingly, in the facts and circumstances of the case and the in the interest of justice when all the documents sought to be filed by the assessee as additional evidence are beyond the control and reach of the assessee and further when the assessment was framed due to the time constrained the additional evidence sought to be filed by the assessee is admitted.*

10. *Having admitted the additional ground no. 2 is required to be adjudicated after examination and verification of the evidence filed by the assessee at this stage. Accordingly, the additional ground No. 2 of the assessee is set aside to the record of the Assessing Officer for adjudication after consideration and examination of additional evidence filed by the assessee. Needless to say that the assessee is be given an opportunity of hearing.*

**Now Main Ground**

11. *Ground No. 1 and Ground 2 (iii) of the original grounds are not pressed by the assessee as at the time of hearing. The Id. AR of the assessee has stated at bar that the assessee does not press ground No. 1 and Ground No. 2(ii) of the appeals. The Id. DR has no objection even these two grounds are dismissed as not pressed. Accordingly, the ground No. 1 and ground No. 2(iii) of the grounds of appeals are dismissed having not pressed. The other grounds are on the merits of confirming the capital gain. Since the additional ground regarding the assessment of capital gain in the hand of HUF has been remanded to the record of the AO and the same goes to the root of the matter therefore, the other grounds of the assessee's appeal are also set aside to the record of the AO to consider the objection of the assessee and then decide the same if need arises.*

*In the result, assessee's appeals are partly allowed for statistical purposes."*

Thus, the objections raised by the assessee in those cases regarding taxability of the capital gain was decided against the assessee. Following the earlier order of the Tribunal we hold that the capital gain arising from the land in question has to be computed by taking fair market value as on 01/4/1981. As regards the other issues, since the Tribunal has set aside the matter to the record of the A.O., therefore, maintaining the rule of consistency, the merits of the capital gain assessed to tax is set aside to the record of the A.O. for adjudication of the same afresh after considering the objection and contention of the assessee.

7. In the result, appeal of the assessee is partly allowed for statistical purposes only.

Order pronounced in the open court on 30<sup>th</sup> April, 2019.

Sd/-  
(रमेश सी शर्मा)  
(RAMESH C SHARMA)  
लेखा सदस्य / Accountant Member

Sd/-  
(विजय पाल राव)  
(VIJAY PAL RAO)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30<sup>th</sup> April, 2019

\*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Gopi Ram Sharma, Jaipur.

2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 7(4), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1311/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar