

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA No 461/Ind/2018
Assessment Year 2010-11
PAN : ABWPM2673E

Shri Ramesh Mangal,
27 Shaniwar Darpan,
Agra Bombay Road,
Press Complex,
Indore

V/s ACIT 3(1),
Indore

(Appellant)

(Respondent)

Revenue by

: Shri S.S. Mantri, CIT

Assessee by

: S/Shri Anil Kamal Garg & Arpit
Gaur, CAs

Date of Hearing

: 14.10.2019

Date of pronouncement

: .11.2019

ORDER

PER SHRI MANISH BORAD, A.M.

The above captioned appeal filed at the instance of assessee pertaining to Assessment Year 2010-11 is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-I (in short 'Ld.CIT(A)'), Indore

dated 02.02.2018 which is arising out of the order u/s 148 r.w.s. 143(3) dated 30.09.2016 framed by DCIT-3(1), Indore.

2. Briefly stated facts as culled out from the records are that the assessee is an individual deriving rental and business income and declared total income of Rs.10,82,420/- in the return of income filed on 31.07.2010 for Assessment Year 2010-11. The case was reopened u/s 147 of the Act on the ground of non disclosure of short term capital gain of Rs.13,21,51,725/-. Notice u/s 148 of the Act was issued and served upon the assessee. During the course of reassessment proceedings Ld. A.O observed that there is a transaction of sale of land situated at Khajrana, District, Indore. As per the sale deed dated 31.3.2010 sale consideration of Rs.14 crores is received by the assessee and the market value of the plot as per the Stamp Valuation Authority was Rs.16,17,50,000/-. This plot of land was purchased at the cost of Rs.2,95,98,275/- vide registered deed dated 12.7.2007. As per the Ld. A.O the alleged transaction needs to be taxed under the head Short Term Capital Gain in Assessment Year 2010-11 since the property was owned for less than three years. When the assessee was confronted it was submitted that the alleged transaction is a part of its business

activity and it has been duly shown in the return of income for Assessment Year 2011-12 and the net profit from the sale of land at Rs. 8,75,86,752/- have been shown. It was contended that the assessment for Assessment Year 2011-12 stands completed u/s 143(3) of the Act vide order dated 31.1.2014 accepting the alleged profit of sale of subject plot thereby accepting the genuineness of transaction and its taxability. Ld. A.O however was not convinced and in his view the transaction was to be taxed as income for Assessment Year 2010-11 and thus the addition for undisclosed Short term Capital Gain at Rs. 13,21,51,725/- (Market value of Plot As per Section 50C of the Act at Rs. 16,17,50,000/- less cost of acquisition of Rs. 2,95,98,275/-) was made to the income declared by the assessee. Ld. A.O also did not give credit to the tax paid by the assessee on the business profit declared from the alleged transaction in Assessment Year 2011-12 and also did not allow the claim of expenditure for stamp duty and registration charges of Rs. 1,72,67,070/- and brokerage expenses of Rs.28 lakhs incurred during Assessment Year 2011-12 relating to the alleged transaction of sale of plots. The income assessed at Rs.13,32,34,150/-.

3. Aggrieved assessee preferred appeal before Ld. CIT(A) against the impugned addition but failed to succeed since the addition for Short Term Capital Gain of Rs.13,21,51,575/- was confirmed by Ld. CIT(A) observing as follows;

“5. On careful consideration of the points in issue as brought out at in the assessment order, the grounds of appeal and: the submission of appellant the various grounds raised by the appellant are decided hereunder:-

5.1 Ground Nos. 1 to 7: Through these grounds of appeal, the appellant has challenged the treating of-business income on sale of land as capital gain and making the addition of Rs.13,21,51,725/-. The detailed facts are as per the assessment order and are reproduced at Para No. 3 above. During the course of appellate proceedings the appellant has made detailed written submissions which are reproduced at Para No'. 4 above.

5.1.1 On consideration of all the relevant facts it is seen that the appellant has purchased plot at Khajrana from a company named City Square Builders & Developers Pvt. Ltd. With sale consideration of Rs, 2,95,98,275/- on 12/07/2007. Subsequently, the assessee sold out the plot by registered deed dated 31.03.2010 to a company named Media Savy India Ltd. With sale consideration of Rs. 14,00,00,000/-. The Market value of the plot as per section 50C. Was Rs. 16,17,50,000/-. Moreover, the assessee had finalized an agreement with the purchaser company for sale of the plot and even taken advance of Rs. 1,50,00,000/- by cheques in the month of January, 2010. As evidence placed on record that the said land was purchased on 12/07/2007 and sold on 31.03.2010 and the possession was also given on that date.. Hence, 'holding period of the property is. Not more than 36 month further, the registration of sale took place in F.Y. 2009~10. Therefore, it should be taxed as STCG in A.Y. 2010-11.

5.1.2 The sale deed or agreement has been produced to support the claim mentions that, the registration of plot was taken place on 31/03/2010. Further, it is seen that during the course of assessment and appellate proceedings agreement has been produced to establish the terms and conditions of the sale or rather the arrangement between the appellant and M/s Media Savy India Ltd. The sale of land by the appellant is specified and the appellant has been paid the money on the basis of agreement. Further as pointed out by the AO it is ascertainable that the land has been sold by the appellant. It is further seen that while working out the capital gain the appellant has treated that the capital gain is to be taxable in the A.Y. 2011-12.

5.1.3 The same plots were purchased on 12/07/2007 which is clearly mentioned in the registered sale deed of purchase of plots at page no. 3 as well as in the registered sale dated 31-03-2010 of sale of plots as page No. 3 at para No 1, Hence, the property was purchased on 12/07/2007 and sold on 31-03-2010 and holding period of the property is not more than 36 month. The registration of sale took place in F.Y. 2009-10 and the possession was also given on the same date.

5.1.4 Considering the entire conspectus of the facts narrated by the A.O. in the assessment order and the fact that the appellant's agreement detailing the terms and condition of its deal with the seller, the profits on sale of the land are to be treated as income from short term capital gains.

5.1.5 The appellant sold the land vide registered sale deed dated 31/03/2010; In the sale deed at Page No. 9, it is mentioned that the possession of land was given on 31/03/2010. Therefore, the short term capital gain is taxable in the F.Y. 2009-10 i.e. A.Y. 2010-11. The action of the AO is therefore confirmed. Therefore, the addition made by the AO amounting to Rs13,21,51,725/- is confirmed. Therefore, the appeal on these grounds is Dismissed.”

4. Aggrieved assessee is now in appeal before the tribunal raising following grounds of appeal.

1. That the learned CIT(A) grossly erred, both on facts and in law, in confirming an addition Rs.13,21,51,725/- made by the AO in the appellant's income on account of short-term capital gain accrued to the appellant during the relevant previous year on sale of a plot situated at Khajrana, Indore.

2. That, the learned CIT(A) grossly erred, both on facts and in law, in confirming the impugned addition of Rs.13,21,51,725/- made by the AO in the appellant's income without considering and appreciating the material fact that in respect of the gain arising from the transfer of the same plot, the appellant had already been assessed to tax under the head 'profits and gains of business or profession' in the subsequent assessment year i.e. A. Y. 2011-12 by an Order of Assessment passed under s.143(3) of the Act.

3. That, the appellant further craves leave to add, alter or amend the foregoing ground of appeal as and when considered necessary.

Assessee has also raised following additional grounds of appeal;

"1.That, on the facts and in the circumstances of the case, both the authorities below grossly erred in not considering the material fact that the appellant having already been assessed to tax in respect of the transfer of the subject plot in a subsequent assessment year i.e. A.Y. 2011-12, under s.143(3) of the Act, there was no escapement of any income chargeable to tax giving rise to invocation of the provisions ofs.148 of the Act."

2. That, without prejudice to the above, both the authorities below have grossly erred in holding that the property transferred by the appellant was held by him as a short-term capital asset whereas having purchased the property on 31-03-2007 and sold the same on 31-03-2010, even if re-characterization of income

from business income to capital gain was warranted, it ought to have been regarded as transfer of a long-term capital asset held by the appellant for a period of more than 36 months in accordance with the provisions of s.2(29A) read with s.2(42A) of the IncomeTax Act, 1961."

3.That, without prejudice to the above, both the authorities below have grossly erred in invoking the provisions of s.50C of the Act in the appellant's case, by substituting the actual sales consideration of Rs.14,00,00,000/- with the value adopted by the Stamp Valuation Authority at Rs.16, 17,50,000/- without first making a reference to the Valuation Officer in accordance with the provisions of sub-section (2) of section 50C of the Act."

4.That, without prejudice to the above, both the authorities below have grossly erred in computing the short-term capital gain of the appellant at Rs.13,21,51,725/- without granting the legitimate deductions under s.48(i) of the Act in respect of payments of stamp duty & registration expenses and brokerage on sale, respectively at Rs.1,72,67,070/- and Rs.28,00,000/-, genuinely made by the appellant in connection with the transfer of the property."

5."That, without prejudice to the above, both the authorities below grossly erred in not granting the benefit of indexation of cost of acquisition and cost of improvement to the appellant in accordance with the second proviso to section 48 of the Act as the capital gain derived by the appellant from transfer of the capital asset was in the nature of a long-term capital gain."

6."That, without prejudice to the above, both the authorities below grossly erred in not issuing an appropriate direction to the effect that having preponed the incidence of tax from subsequent assessment year i.e. A.Y. 2011-12 to the assessment year under consideration, the appropriate credit for any tax already paid by the appellant in respect of the subject capital gain, in the subsequent assessment year, is required to be given for the assessment year under consideration from the date of making of such payment."

5. At the outset Ld. Counsel for the assessee requested for not pressing Additional Ground No.1 challenging the validity of reassessment proceedings. Since this additional Ground No.1 has not been pressed the same is dismissed as not pressed.

6. As regards the remaining main ground and additional grounds of appeal, Ld. Counsel for the assessee argued at length referring to the following written submissions:-

(i) Additional Ground No.2:

"That, without prejudice to the above, both the authorities below have grossly erred in holding that the property transferred by the appellant was held by him as a short-term capital asset whereas having purchased the property on 31-03-2007 and sold the same on 31-03-2010, even if re-characterization of income from business income to capital gain was warranted, it ought to have been regarded as transfer of a long-term capital asset held by the appellant for a period of more than 36 months in accordance with the provisions of s.2(29A) read with s.2(42A) of the Income Tax Act, 1961."

In this regard, it is submitted as under:

1.01 That, during the previous year relevant to A.Y. 2007-08, the appellant had purchased certain pieces of plots of diverted land admeasuring 69643.08 sq. ft. situated at Survey Nos. 211, 2/2, 2/3, 2/4, 2/5, 2/6, 217 & 2/8, village Khajrana, Tehsil & District Indore, for a total purchase consideration of Rs.2,95,98,275/- from M/s. City Square Builder & Developers Pvt. Ltd., under a registered purchase deed duly executed between both the parties on 31-03-2007. The purchase deed so executed on 31-03-2007 was duly got registered before the Sub-Registrar of Properties on 12-07-2007. A copy of the purchase deed is placed at page no. 20 to 29 of our Paper Book.

1.02 The entire consideration for purchase of the plots was paid by the appellant through account payee cheques up till 26-03-2007. As per the clause (2) of internal page no. 4 (kindly refer PB Page No. 23) of the purchase deed dated 31-03-2007, the appellant had obtained the possession of the entire plots land on 26-03-2007 itself.

1.03 That, on 31-03-2010, the aforesaid plots of diverted land were sold by the appellant for a total sales consideration of Rs.14,00,00,000/- under a registered sale deed duly executed between the parties on 31-03-2010. The Sale Deed so executed was got registered before the Sub-Registrar of Properties on 30-04-2010. A copy of the sale deed is placed at page no. 30 to 42 of our Paper Book.

1.04 That, since according to the appellant, the full consideration against the sale of the plots could be received only during the subsequent financial year relevant to the assessment year 2011-12, the appellant declared the profit on sale of such plots as his business income in the return of income filed for the assessment year 2011-12. Such fact may kindly be observed by Your Honours from the computation of total income and Profit & Loss Account of the appellant for the A.Y. 2011-12 as placed at page no. 44 and 48 of our Compilation respectively.

1.05 That, in pursuance of the return so furnished for A.Y. 2011-12, an assessment under s.143(3) of the Act for A.Y. 2011-12 was framed by the Id. JCIT, Range-I, Indore, on 31- 01-2014

determining the total income of the appellant at Rs.9,62,64,230/- which inter alia includes the profit on sale of the subject plots at Rs.8,75,86,752/-. A copy of the assessment Order is placed at page no. 51 & 52 of the Paper Book whereas copy of the Profit & Loss Account, showing the computation of profit on sale of plots, is placed at page no. 48 of the Paper Book.

2.00 However, subsequent to the framing of the assessment for A.Y. 2011-12 and having already assessed the appellant in respect of profit from sale of the subject plots, as business income, for A.Y. 2011-12, the Id. AO changed his mind and formed a belief that having handed over the possession of the plots, in the previous year relevant to A.Y. 2010-11, i.e. the assessment year under consideration, the gain on transfer of plots had taken place during such assessment year 2010-11 only and accordingly, issued the notice under s.148 of the Act to the appellant for the assessment year under consideration.

2. 1 That, the learned AO, in the impugned assessment order, besides shifting the year of taxability of the profit on sale of plots from A.Y. 2011-12 to A.Y. 2010-11, has further recharacterized

the nature of the income claimed by the appellant as business income to capital gain. According to the AO, the appellant had not carried out any business activity and therefore, the subject plots were held by him only as investment and not as stock-in-trade.

2.02 That, the learned AO, for the purpose of taxability of the capital gain, was of the view that the subject plots were held by the appellant for a period of less than 36 months and therefore, the same would be treated as a short-term capital asset and consequently, any gain arising from transfer of such capital asset would be a short-term capital gain.

3.01 It is submitted that the learned AO, for classifying the plots as 'short-term capital assets', has adopted the date of purchase of plots as 12-07-2007 and date of sale as 31-03-2010. It is submitted that as far as date of sale is concerned, the learned AO has rightly taken the date as 31-03-2010 being the date of execution of the sale deed as well as the date of handing over of the possession by the appellant to the purchasers as per the clause (4) of the sale deed [kindly refer PB Page No. 37]. However, the date of purchase taken by the Id. AO as 12-07-2007 is not

factually correct. It is submitted that such date of 12-07-2007 is the date when the purchase deed was got registered. However, in the instant case, the appellant had obtained the physical possession of the land on 26-03-2007 itself after making payment of full consideration and thereafter, as on 31-03-2007, the purchase deed was executed [kindly refer PB Page No. 23 & 27]. For the sake of provide clarity to the issue on hand and for a better understanding, the relevant dates ought to be taken into consideration and the dates wrongly adopted by the learned AO are given in a tabular form as under:

Particulars	Date of obtaining/handing over of the possession as per the Registered Documents	Rel. PB Page No.	Date of execution of the deed between the parties	Rel. PB Page No.	Date of release of the deed by the Sub-Registrar of properties	Rel. PB Page No.	Date adopted by the AO for computing holding period of plots
Registered Purchase Deed	26.03.2007	23	31.03.2007	27	12.07.2007	21	12.07.2007
Registered sale deed	31.03.2010	37	31.03.2010	41	30.04.2010	31	31.03.2010

3.02 On a perusal of the aforesaid table, it shall be observed that on one hand, in respect of date of purchase, the AO has adopted the date of registration i.e. 12-07-2007 and on the other hand, for date of sale, the AO has adopted the date of execution of the deed

i.e. 31-03-2010. Thus, it shall be appreciated by Your Honours that the approach of the AO in computing the holding period of the assets is arbitrary and misplaced.

3.03 The ownership of an asset is assumed either when the possession of the asset has been handed over or when the sale deed is executed between the parties. Thus, it shall be appreciated by Your Honours that the date of transfer of a capital asset would be considered from the date when the two parties, after payment of purchase consideration, have signed the deed in presence of two witnesses. It shall further be appreciated by Your Honours that under section 47 of the Registration Act, 1908, a registered document shall relate back to the date on which it is executed and not from the date on which it has been so registered. For a ready reference, the relevant provisions of s.47 of the Registration Act, 1908 are reproduced as under:

"47. Time from which registered document operates - A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration. "

3.04 In the instant case, the possession of the plots was taken by

the appellant under the registered purchase deed on 26-03-2007 and the purchase deed was duly executed on 31-03-2007. Undisputedly, as per the registered sale deed, the incidence of handing over of the possession and execution of the sale deed took place on 31-03-2010. Thus, the holding period of the plots by the appellant would start from 26-03-2007. It is submitted that the date when the Deed is finally released from the office of the Sub Registrar of Properties is of no relevance for computing the date of transfer. For such proposition, reliance is placed on the decision of the Hon'ble Delhi High Court in the case of *Bharti Gupta Ramola vs. CIT (2012) 72 DTR 387 (Del)*.

3.05 Likewise, on the same analogy, the date of sale of the plots by the appellant would be adopted as 31-03-2010. In such circumstances, the holding period of the plots under the provisions of s.2(42A) of the Act would be reckoned from 26-03-2007 to 31-03-2010 which will be 36 months and 5 Days. Resultantly, the subject capital asset being the plots would be a long-term capital asset under the provisions of s.2(29A) r.w.s. 2(42A) of the Act.

3.06 In the instant case, having made the payment of full consideration of purchase and having obtained the physical possession of the said land! plots on 26-03-2007 only which was duly followed by execution of a registered purchase deed on 31-03-2007, the appellant had become the absolute owner of the said properties in accordance with the provisions of s.2(47)(v) of the Act. However, even if it is analysed from the date of execution of the purchase deed, i.e. 31-03-2007, it has to be concluded that by transferring the subject properties on 31-03-2010, under a sale deed, the appellant was holding the subject capital asset for a period of more than 3 years i.e. 3 years and 1 day. It is submitted that in the similar circumstances, the Hon'ble High Court of Delhi in the case of *Bharti Gupta Ramola vs. CIT (2012) 72 DTR 387 (De!)*, placing reliance upon section 3(35) of the General Clauses Act, 1897, held that the period of holding would begin on which the assessee became the holder of the asset and one day before in the relevant calendar year. The Hon'ble Court explained the position by an example holding that if an assessee acquires an asset on 2nd January in a preceding year, the period of 12 months would be complete on 1st January next year and not on 2nd

January. Following the same analogy, in the case of the appellant, if computed from the date of execution of the deeds, the period of 36 months would get completed on 30-03-2010.

4.00 It shall be appreciated that even if the approach of the learned AO is adopted, then the resultant capital gain to the appellant would be a long-term capital gain for the reason that the holding period of the plots by the appellant is more than 36 months. Thus, the appellant shall be liable to pay long-term capital gain instead of the short-term capital gain as computed by the learned AO.

(ii) ADDITIONAL GROUND NO. 3

“That, without prejudice to the above, both the authorities below have grossly erred in invoking the provisions of s.50C of the Act in the appellant's case, by substituting the actual sales consideration of Rs.14,00,00,000/- with the value adopted by the Stamp Valuation Authority at Rs.16, 17,50,000/- without first making a reference to the Valuation Officer in accordance with the provisions of sub-section (2) of section 50C of the Act.”

In this regard, it is submitted as under:

1.01 That, the subject plots have been sold by the appellant for a total sales consideration of Rs.14,00,00,000/-.. Such fact is clearly evident from internal page no. 4 to 6 [PB Page No. 33 to 35] of the registered sale deed wherein the details of the payments aggregating to a sum of Rs. 14,00,00,000/- made by the buyers to the appellant have been given.

1.02 That, during the course of the assessment proceedings, the appellant claimed that the subject plots were actually sold for a total consideration of Rs.14,00,00,000/- only.

1.03 That, despite the aforesaid position, the learned AO invoked the provisions of s.50C of the Act by adopting the deemed value of Rs.16,17,50,000/- as given by Stamp Valuation Authority for the purpose of computing the stamp duty value of the plots sold.

1.04 Since the appellant has shown its income under the head 'income from business' and not as capital gain, there does not arise any question of invoking the provisions of s.50C by the learned AO. However, even if for the sake of argument, it is

presumed that the learned AO has rightly invoked the provisions of s.50C of the Act in the appellant's case, then the learned Assessing Officer, in terms of sub-section (2) of section 50C, was duty bound to refer the valuation of the capital asset i.e. the plots to a Valuation Officer which, in the instant case, the learned AO failed to do.

2.00 Making of reference to Valuation Officer is safe guard embodied in the scheme of the section so as to ensure that no injustice or genuine hardship is caused to any assessee. Although in the section, the word used is 'may' but it must be read as 'should'. Such a view was held by the Hon'ble ITAT, Jodhpur Bench, in the case of *Meghraj Baid vs. ITO as reported in (2008) 114 TTJ (JD) 841*.

2.01 The Hon'ble High Court of Madras in the case of *N Meenakshi vs. ACIT (2010) 326ITR 229 (Mad)* held that without receiving the report of the DVO, the AO was not justified in completing the assessment and making the addition by invoking the provisions of s.50C of the Act.

2.02 Without prejudice to the above, it is submitted that mere difference in the value adopted by the Stamp Valuation Authority for the purpose of fixing the stamp duty and that shown by an assessee as the actual sales consideration cannot be a sole basis for making an addition even under s.50C of the Act. For such proposition, reliance is placed on the decision of Hon'ble High Court of Punjab & Haryana in the case of *CIT vs. Chandni Bhuchar (2010) 323 ITR 510 (P&H)*. In such case, the Hon'ble High Court was pleased to hold that valuation done by any State agency for the purpose of stamp duty would not ipso facto substitute the actual sale consideration as being passed on to the seller by the purchaser in the absence of any admissible evidence. An AO is obliged to bring on record positive evidence supporting the price assessed by the State Government for the purpose of stamp duty. For such proposition, we wish to place our reliance on the decision of the Hon'ble High Court of Allahabad in the case of *CIT vs. Smt. Raj Kumari Vimla Devi (2005) 279 ITR 360 (All)*.

2.03 Your Honours, even this Hon'ble Bench, on earlier occasions in various cases, has held that the AO was not justified in

invoking the provisions of s.50C of the Act without making reference to the Departmental Valuation Officer under the provisions of subsection (2) of section 50C of the Act. For such proposition, reliance is placed on the following judicial pronouncements:

- i) Somesh Bhatnagar vs. ACIT (2016) 28 ITJ 398 (Trib.-Indore)
- ii) Bhopal Motors Pvt. Ltd. vs. ACIT (2016) 27 ITJ 264 (Trib.-Indore)
- iii) ITO vs. Girish Kumar Jain (2015) 26 ITJ 515 (Trib.-Indore)

Since, in the instant case, the learned AO has invoked the provisions of section 50C without first satisfying the mandatory condition enjoined in the section itself and therefore, the addition so made by the learned AO deserves to be deleted on this count too.

(iii) ADDITIONAL GROUND NO. 4

“That, without prejudice to the above, both the authorities below have grossly erred in computing the short-term capital gain of the

appellant at Rs.13,21,51,725/- without granting the legitimate deductions under s.48(i) of the Act in respect of payments of stamp duty & registration expenses and brokerage on sale, respectively at Rs.1,72,67,070/- and Rs.28,00,000/-, genuinely made by the appellant in connection with the transfer of the property."

In this regard, it is submitted as under:

1.01 That, the learned AO has computed the short-term capital gain of the appellant at Rs.13,21,51,725/- [Deemed Sales Consideration as per Stamp Valuation Authority at Rs.16,17,50,000/- less Cost of Acquisition of the plots at Rs.2,95,98,275/-].

1.02 That, the learned AO, while computing the aforesaid short-term capital gain of Rs.13,21,51,725/- has not granted the legitimate deductions available to the appellant under the provisions of clause (i) of section 48 of the Act in respect of payments made towards stamp duty and registration expenses at Rs.1,72,67,070/- and brokerage on sale at Rs.28,00,000/-.

2.01 It shall be pertinent to note that under clause (12) of the

registered sale deed [kindly refer PB Page No. 40], the expenses relating to payment of stamp duty and registration fees have been borne by the seller of the property i.e. the appellant.

2.02 In pursuance of the contractual agreement, the appellant had to incur a sum of Rs.1,72,67,070/- towards payment of stamp duty and registration fees. It is submitted that the entire payments of stamp duty and registration expenses have been made by the appellant through banking channels only. It is further submitted that the appellant, in his Profit & Loss Account for the previous year relevant to A.Y. 2011-12 [kindly refer PB Page No. 48], has duly claimed the aforesaid payment of Rs.1,72,67,070/- as an expenditure and accordingly, computed the profit on sale of subject plots at Rs.8,75,86,752/- for the previous year relevant to A.Y. 2011-12. The same was duly examined by the AO framing the assessment for subsequent assessment year i.e. A.Y. 2011-12 under s.143(3) of the Act and it was duly allowed.

2.03 It shall be worthwhile to note that since the appellant had offered the profit of Rs.8,75,86,752/- from sale of subject plots for

taxation in his return of income furnished for A.Y. 2011-12, and further since, an assessment under s.143(3) of the Act has also been framed for the A. Y. 2011-12 in the case of the appellant, the learned AO had duly verified the claim of the appellant as regard to the aforesaid payment of stamp duty and registration expenses at Rs.1,72,67,070/-.. It shall be observed by Your Honours that even the learned AO, while framing the impugned assessment order, has neither brought on record any adverse material nor made any adverse comment the aforesaid claim of the appellant is inadmissible. Thus, it shall be appreciated by Your Honours that the claim of the appellant as regard to payments of stamp duty and registration expenses deserves to be allowed in accordance with the provisions of s.48(i) of the Act.

3.01 It is further submitted that for effecting the sale of subject plots, the appellant availed the services of some property brokers, who not only identified and searched the prospective buyers of the properties but also played a significant role in the negotiation process, payment process and ultimate completion of the sale deal. In consideration of rendering the services, which obviously

related to the transaction of transfer of property by the appellant, the appellant was required to pay a brokerage of Rs.28,00,000/-, i.e. @2% of the actual sales consideration of Rs.14,00,00,000/-, to six persons. It shall be pertinent to note that the payment of brokerage has also been made through banking channels only. It is submitted that the details of the brokerage paid by the appellant have been given through a separate statement placed at page no. 71 of our Paper Book. Further, in evidence of the payments of brokerage, the copies of confirmation letters and PAN cards of the brokers are also placed at page no. 72 to 82 of our Paper Book.

3.02 Your Honours, alike stamp duty & registration expenses of Rs.1,72,67,070/-, the brokerage expenses of Rs.28,00,000/- were also claimed by the appellant as expenses in his Profit & Loss Account for the A.Y. 2011-12 [kindly refer PB Page No. 48]. It shall be pertinent to note that the brokerage expenses were also verified and duly allowed by the Id. AO while framing the assessment under s.143(3) of the Act for the A.Y. 2011-12. It is submitted that the learned AO, in the impugned Assessment Order, has not made

any adverse comment in respect of the brokerage expenses of Rs.28,00,000/- and therefore, the claim of the brokerage expenses, being genuine and reasonable expenses incurred in connection with the transfer of property, deserved to be allowed to the appellant under s.48(i) of the Act as deduction from the sales consideration of the subject plots while computing the capital gain for the relevant assessment year.

4.00 It is submitted that the mode of computation of capital gain is given under the provisions of s.48 of the Act. It is submitted that according to the provisions of s.48 of the Act, the income chargeable under the head 'capital gains' 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, the amounts namely :- (i) expenditure incurred wholly and exclusively in connection with such transfer; (ii) the cost of acquisition of the asset and the cost of any improvement thereto.

4.01 In the instant case, the learned AO has only granted deduction in respect of the cost of acquisition and has not granted the expenditure actually incurred by the appellant in relation of

transfer of the subject plots.

4.02 Since, the learned AO has not given any adverse finding in respect of the claim of incurrence of these expenses by the appellant, the legitimate deduction in respect of the aforesaid expenses genuinely incurred by the appellant ought to have been granted by the AO.

In view of the above facts and circumstances of the case, it is submitted that the legitimate deductions in respect of payments of Rs. 1,72,67,070/- and Rs.28,00,000/- respectively on account of stamp duty & registration expenses and brokerage may kindly be granted to the appellant.

(iv) ADDITIONAL GROUND NO. 5

“That, without prejudice to the above, both the authorities below grossly erred in not granting the benefit of indexation of cost of acquisition and cost of improvement to the appellant in accordance with the second proviso to section 48 of the Act as the capital gain derived by the appellant from transfer of the capital asset was in the nature of a long-term capital gain.”

In this context, it is submitted as under:

1.00 That, in the preceding grounds, we have fully demonstrated beyond all doubts that the subject plots were factually held by the appellant as long-term capital assets only.

2.00 That, since subject plots were in the nature of long-term capital asset and further since, the capital gain accrued to the appellant from transfer of capital asset was in the nature of long-term capital gain, the appellant was eligible for grant of benefit of indexation of cost of acquisition in accordance with the second proviso to section 48 of the Act, which has not been so granted to the appellant by the learned AO.

3.00 Once the appellant is granted the due legitimate benefit for claim of expenses under s48 in respect of expenses in connection with transfer of capital asset aggregating to Rs.2,00,67,070/- and as also in respect of indexed cost of acquisition at Rs.3,60,42,601/-, the resultant long-term capital gain to the appellant would be worked out at Rs.10,56,40,329/- only. For such purpose, the appellant has prepared a computation of long-

term capital gain on sale of subject plots which is placed at page no. 70 of our Paper Book.

(v) ADDITIONAL GROUND NO. 6

"That, without prejudice to the above, both the authorities below grossly erred in not issuing an appropriate direction to the effect that having preponed the incidence of tax from subsequent assessment year i.e. A.Y. 2011-12 to the assessment year under consideration, the appropriate credit for any tax already paid by the appellant in respect of the subject capital gain, in the subsequent assessment year, is required to be given for the assessment year under consideration from the date of making of such payment."

In this regard, it is submitted as under:

1.00 That, as submitted earlier, the appellant had already offered the profit on sale of the subject plots for taxation at Rs.8,75,86,752/- which is included in the total income of Rs.9,62,64,226/- shown by the appellant in his return of income for the A.Y. 2011-12. It is further submitted that on the aforesaid income, the appellant was liable for total income tax of

Rs.3,04,36,556/- [kindly refer PB Page No. 43] against which the appellant had paid a sum of Rs.3,13,38,893/- [Advance Tax & Self Assessment Tax of Rs.2,97,53,236 + TDS of Rs.15,85,657] towards his tax liability for A.Y. 2011-12. The details of the payments of taxes by the appellant are given in the Form No. 26AS of the appellant for the A.Y. 2011-12 which is placed at page no. 83 to 86 of our Paper Book.

1.01 Since the appellant had already disclosed a profit of Rs.8,75,86,752/- from sale of subject plots in the subsequent assessment year and further since, the appellant had also paid the entire tax on his returned income for the A.Y. 2011-12, the proportionate income-tax relating to the aforesaid profit of Rs.8,75,86,752/- would be worked out at Rs.2,85,13,935/-.

2.00 In respect of the profit on sale of subject plots, the appellant has duly been assessed in the subsequent assessment year, i.e. A.Y. 2011-12, under an order of assessment passed under s.143(3) of the Act by the then JCIT, Range-I, Indore, on 31-01-2014. A copy of the assessment order is placed at page no. 51 & 52 of our Paper Book. Thus, in other words, in respect of the profit

on transfer of subject properties, the appellant has already suffered due tax in a subsequent assessment year.

2.01 Now, on a perusal of the aforesaid statement of computation of capital gain [kindly refer PB Page No. 70], it shall be observed that if the approach of the AO is adopted, there would arise a long-term capital gain of *Rs.10,56,40,329/-* to the appellant. It shall further be observed by Your Honours that on such capital gain, the appellant would be required to make the payment of tax liability of *Rs.2,17,61,908/-* for the relevant assessment year.

2.02 It shall be appreciated that as against the aforesaid tax liability of *Rs.2,17,61,908/-*, since the appellant has already made a tax payment of *Rs.2,85,13,935/-* in his return of income filed for A.Y. 2011-12 in respect of the same transaction, an appropriate credit for such tax already paid by the appellant in respect of the subject capital gain, in the subsequent assessment year, is required to be given for the assessment year under consideration from the date of making of such payment.

2.03 It is submitted that if in case, a transaction has been taxed

in one assessment year, then the corresponding relief has to be granted to the assessee in other assessment year in which he has already been assessed. It would be appreciated that having already paid the tax on the same income for A.Y. 2011-12, if the year of chargeability of income is preponed to A.Y. 2010-11, then, the appellant would be eligible for claim of credit in respect of the taxes on such income for A.Y. 2011-12.

2.04 It is a settled law that an assessee cannot be taxed twice for the same income in two different assessment years. For such proposition, reliance is placed on the decision of the Hon'ble Supreme Court in the case of *Mahaveer Kumar Jain vs. CIT (2018) 404 ITR 738 (SC)*. The relevant para (13) of the decision of the Hon'ble Apex Court is being reproduced as under:

"13. The above referred cases make it clear that there is no prohibition as such on double taxation provided that the legislature contains a special provision in this regard. Now, the only question remains to be decided is whether in fact there is a specific provision for including the income earned from the Sikkim lottery ticket prior to 01.04.1990 and after 1975, in the income-tax return or not. We have gone through the relevant provisions but there seems to be no such provision in the IT Act wherein a specific provision has been made by the legislature for including such an income by an assessee from lottery ticket. In the absence of any such

provision, the assessee in the present case cannot be subjected to double taxation. Furthermore, a taxing Statute should not be interpreted in such a manner that its effect will be to cast a burden twice over for the payment of tax on the taxpayer unless the language of the Statute is so compelling that the court has no alternative than to accept it. In a case of reasonable doubt, the construction most beneficial to the taxpayer is to be adopted. So, it is clear enough that the income in the present case is taxable only under one law. By virtue of clause (k) to Article 371 F of the Constitution which starts with a non-obstante clause, it would be clear that only the Sikkim Regulations on Income-tax would be applicable in the present case. Therefore, the income cannot be brought to tax any further by applying the rates of the IT Act. "

[emphasis supplied]

6. Ld. Counsel for the assessee summarising these arguments submitted that without prejudice to the claim of business income offered during Assessment Year 2011-12 the alleged transaction may be treated to have been completed during the Assessment Year 2010-11 since the sale deed was signed by both the parties on 31.3.2010 but the transaction should be taxed under the head "Long Term Capital Gain" as the purchase deed was signed on 31.3.2007 and the possession of the plots was received by the assessee on 26.3.2007. Thus the period of holding of the plots of land by the assessee was for more than three years and therefore it should be taxed under the head "Long Term Capital Gain". He also submitted that the expenses incurred for

carrying out these transaction of sale of plot of land i.e. stamp duty registration charges as well as brokerage expenses should be allowed against the sale consideration and direction may be given to give the credit of tax paid by the assessee in Assessment Year 2011-12 on the profit shown from the sale of plots of land against the tax liability arising for Assessment Year 2010-11 on account of “Long Term Capital Gain” if taxed in Assessment Year 2010-11.

7. Per contra Ld. Departmental Representative vehemently argued supporting the findings of both the lower authorities and submitted that the assessee is consistently changing his stand. During the reassessment proceedings he claimed the alleged gain as business income to be taxed in Assessment Year 2011-12 and now contending that it may be taxed as gain under the head Long Term Capital Gain. In these facts the order of Ld. CIT(A) may be confirmed.

8. We have heard rival contentions and perused the records placed on records and carefully gone through the judgments referred by the Ld. Counsel for the assessee. All the issues raised in this appeal relates to the transaction of sale of plots of land at Village Khajrana, District Indore. Assessee purchased 69643.08 sq. Ft plot from City Square

Builders & Developers Pvt. Ltd for consideration of Rs.2,95,98,275/- vide purchased deed executed on 31.03.2007 but registered with Sub Registrar on 12.7.2007 and possession taken on 26.3.2007 as the assessee had paid total purchase consideration up to 26.3.2007.

9. These plots of land were sold to Media Savy India Ltd for a consideration of Rs.14 crores vide sale deed dated 31.3.2010 which got registered with Sub Registrar on 30.04.2010. As per the sale deed possession was accepted to have been given by the assessee on 31.3.2010. However as per the submissions made by the Ld. Counsel for the assessee, few payments were outstanding against the sale consideration which were finally received during financial year 2010-11 relevant to assessment year 2011-12 and the last payment was received on 21.3.2011 and it was on this date the possession was handed over. The assessee has disclosed this transaction during Assessment Year 2011-12 as business income showing the net profit from sale of the land at Rs.8,75,86,752/- taking into consideration the sale price of Rs.14 crores, cost of acquisition of Rs.2,95,98,275/-, the amount incurred towards stamp duty and registration at Rs.1,72,67,070/-, brokerage expenses of Rs. 28 lakhs and sundry expenses of

Rs,27,47,903/-. Whereas the Ld. A.O took the basis of sale deed executed on 31.3.2010, registered purchase deed dated 12.7.2007 and did not accept the transaction as a part of business income and taxed it as Short Term Capital Gain by taking sale consideration as per the value adopted by Stamp Valuation Authority at Rs.16,17,50,000/- and after giving the benefit of cost of acquisition of Rs.2,95,98,275/-, made addition for Short Term Capital Gain at Rs.13,21,51,575/- for the assessment year 2010-11.

10. Now going through the main grounds and additional grounds of appeal following issues raised by the assessee needs to be addressed.

(1) Whether the alleged transaction is to be taxed as business income or capital gain.

(2) If the transaction is to be taxed as capital gain whether it is to be taxed in Assessment Year 2010-11 or Assessment year 2011-12 as Short Term Capital Gain or Long Term Capital Gain.

(3) Whether the Ld. A.O was justified in applying the value of property as per Section 50C of the Act without referring it to the Valuation.

(4) Whether the assessee is eligible to get the claim of expenses for stamp duty, registration and brokerage by computing income of Assessment Year 2010-11 even though the amount have been incurred during Assessment Year 2011-12.

(5) Whether the assessee is eligible to get the benefit of tax credited during the year 2010-11 on the tax paid for the income from alleged transaction shown in Assessment Year 2011-12.

11. Now we will first take up the issue “Whether the alleged transaction is to be taxed as business income or capital gain”.

12. From perusal of the record we observe that the assessee has shown the transaction of sale of land to have been carried out in the course of business and profit derived there from is offered to tax in Assessment Year 2011-12. This was the sole transaction which was entered during the year. No documentary evidence placed before us which could show that the assessee has been carrying out the business of purchase and sale of land in the past. It is also not proved that the alleged land was held as stock-in-trade in books by the assessee in the preceding year. No tax audit report has been filed demonstrating the system of accounting and valuation of stock. Audited Profit & Loss

Account and Balance sheet also do not indicate about the preceding year details and only the single transaction of sale of land has been claimed to have been completed in the course of business. In our considered view it is not figuring out that the assessee is into the business of purchase and sale of land. Computation of income for Assessment Year 2011-12 filed at page 44-45 of the paper book shows that the assessee had earned Long Term Capital Gain from sale of plots of land at Piplia and they were not shown as part of business activity. Ld. Counsel for the assessee could not throw any light on this aspect that when the assessee was engaged in business why some other transaction have not shown under the head Capital Gain. In totality of facts we are of the considered view that the claim of the assessee made before the Ld. A.O that it is carrying out the business of purchase and sale of land has no merit and the alleged gain from transaction of sale of land needs to be taxed as capital gain. Thus this issue is decided against the assessee.

13. Now we take up the second issue that if the transaction is to be taxed as capital gain whether it is to be taxed in Assessment Year 2010-11 or Assessment year 2011-12.

14. As per section 47 of the Registration Act 1908, a registration document shall relate back to the date on which it is executed and not from the date on which it has been so registered. The relevant provision of Section 47 of the Registration Act, 1908 is reproduced below:-

"47. Time from which registered document operates - A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration. "

15. In the light of the above provision, we find that the alleged sale deed was executed on 31.03.2010. This fact is not disputed by both the parties. Though the document has been registered subsequently during the financial year 2010-11 but the sale deed has been signed by both the parties on 31.03.2010. In the course of hearing when the Ld. Counsel for the assessee was confronted with this aspect, he was fair enough to accept that 31.03.2010 may be taken as the date of sale of the plots of land. In these given facts and circumstances, we are of the view that the sale transaction was completed on 31.03.2010 and thus the incidence of tax falls in Assessment Year 2010-11.

16. Now in order to examine whether the gain from the transaction from sale of land is to be taxed as Short Term Capital Gain or Long Term Capital Gain during Assessment Year 2010-11 the relevant dates of purchase and sale of land and the handing over of the possession will be crucial. As far as the date of sale is concerned the date of sale is 31.03.2010 and in the sale deed itself the handing over of the possession is on 31.03.2010 has been accepted by the seller and buyer. So the date of handing over of the possession and the date executing the sale deed is 31.03.2010 and part of the sale consideration was received by the assessee on and before these dates. So we can safely conclude that the date of sale is 31.03.2010 for the purpose of computing the capital gain.

17. Now the other limb is the date of purchase. The purchase deed is executed on 31.03.2007. The possession of the land was taken by the assessee on 26.03.2007 since the total purchase consideration was paid on and before 26.03.2007. Taking the same analogy which we have adopted for accepting the date of sale i.e. the date of execution of the deed, the date of purchase in this case is 31.03.2007. Though the revenue authorities have adopted the date of registration of the

purchase date of 12.07.2007 as the date of purchase, we do not find any merit in the finding of Ld. CIT(A). Taking a step forward, we find that the date of taking possession i.e. 26.03.2007 is also not disputed before us. For the purpose of Section 2(47) of the Income Tax Act the transfer was completed in favour of the assessee on 26.03.2007 itself. So the date of purchase to be adopted is 26.03.2007 and counting from this date till 31.03.2010, the period is more than 36 months. Since the assessee has sold the plot of land after holding it for more than 36 months the gain arising from sale of the impugned land needs to be taxed as Long Term Capital Gain for Assessment Year 2010-11 after giving benefit of cost indexed of acquisition and other transfer expenses. This issue is thus decided in favour of the assessee. The additional Ground No.2 is allowed.

18. Now we take up the third issue that whether the Ld. A.O was justified in applying the value of property as per Section 50C of the Act without referring it to the Valuation.

19. The assessee has challenged the application of Section 50C of the Act by the Ld. A.O adopting the fair market value of the immovable asset at Rs. 16,17,50,000/- adopted by the Stamp valuation authority

as against the sale consideration of Rs.14 crores received by the assessee as per the sale deed. In the preceding paras we have already taken the view that the alleged transaction was not in the nature of business and is to be taxed as Long Term Capital Gain during Assessment Year 2010-11. Assessee has not disputed the fair market value of the property before both the lower authorities. The assessee has contended before the lower authorities that as the alleged transaction was in the nature of business provision of Section 50C of the Act is not applicable. But now since we have decided the issue by treating the gain from alleged transaction as Long Term Capital Gain, this plea of the assessee that Section 50C of the Act is not applicable on the alleged transaction, will not have legs to stand for. In the course of hearing Ld. Counsel for the assessee has challenged the fair market value adopted by the Ld. A.O at Rs.16,17,50,000/- to be higher and has pleaded that sale consideration of Rs.14 crores should be adopted to compute the capital gain.

20. Section 50C of the Act reads as follows:-

50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed [or assessable] by any authority of a State

Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed 86[or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) Without prejudice to the provisions of sub-section (1), where—

(a) the assessee claims before any Assessing Officer that the value adopted or assessed 86[or assessable] by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(b) the value so adopted or assessed 86[or assessable] by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

{Explanation 1}.—For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957). 88[Explanation 2.—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the

time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.]

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed 88[or assessable] by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed 88[or assessable] by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.]

21. Sub Section 1 of Section 50C primarily applies on the instant case. However if the assessee challenges the value adopted by the Stamp Valuation Authority and subsequently adopted by the Ld. A.O to compute the Capital Gain then the Ld. A.O may refer the valuation of the capital asset to Valuation Officer as provided in Section 50C(2) of the Act. Since this issue never came up for consideration before the lower authorities, we being fair to both the parties and in the interest of justice set aside this issue to the file of Ld. A.O with the direction that necessary reference may be made to the Departmental Valuation Officer for valuation of the impugned capital asset and if the same is less than alleged fair market value then apply the same for computation of Long Term Capital Gain.

22. Needless to mention that reasonable opportunity of being heard should be given to the assessee. In the result this issue raised by the assessee in additional Ground No.3 is allowed for statistical purpose.

23. Now we take up the fourth issue. Whether the assessee is eligible to get the claim of expenses for stamp duty, registration and brokerage by computing income of Assessment Year 2010-11 even though the amount have been incurred during Assessment Year 2011-12.

24. We observe that the assessee has claimed to have incurred registration and stamp duty charges of Rs.1,72,67,070/- and brokerage expenses of Rs.28 lakhs. Genuineness of both these expenses have not been disputed before us. These expenses were claimed as business expenditure during Assessment Year 2011-12 which were appearing in the audited financial statements. Since we have already decided the issue that the incidence of tax will fall in Assessment Year 2010-11 the alleged expenses of registration and stamp duty and brokerage which very much relates to the transaction taken place during Assessment Year 2010-11 and the quantum was ascertainable as on 31.03.2010, the assessee needs to be given the benefit of deduction of the Stamp duty and Registration expenses of Rs.1,72,67,070/- and brokerage

expenses of Rs.28 lakhs in the computation of “Long Term Capital Gain” for Assessment Year 2010-11 irrespective of the fact that the alleged amount has been paid during Assessment Year 2011-12. Ld. A.O is directed to give the deduction as decided above. In the result additional Ground No.4 is allowed in favour of assessee.

25. Now we take up the fifth issue that whether the assessee is eligible to get the benefit of tax credited during the year 2010-11 for the tax paid for the income from alleged transaction shown for Assessment Year 2011-12.

26. Through Additional Ground No.6 Ld. Counsel for the assessee has contended that the credit of tax paid by the assessee for Assessment Year 2011-12 on the profit of Rs.8,75,86,752/- should be given in case the Long Term Capital Gain is taxed in Assessment Year 2010-11. There is no dispute to the fact that the assessee has offered net profit from sale of impugned land at Rs.8,75,86,752/- in the return of income filed for Assessment year 2011-12 on 30.07.2011. The assessment was completed for Assessment Year 2011-12 u/s 143(3) of the Act on 31.01.2014. The assessee has paid due taxes on the net profit of Rs.8,75,86,752/-.

27. In the preceding paras we have decided that the alleged gain from sale of land needs to be taxed under the head "Long Term Capital Gain to be computed after adopting the valuation of the impugned property at lower of the value computed by the Departmental Valuation Officer or the value adopted by Stamp Valuation Authority and after giving deduction for cost of acquisition, stamp duty, registration charges and brokerage expenses, same transaction cannot be taxed twice i.e. during Assessment Year 2010-11 and Assessment Year 2011-12. The assessee is required to pay tax on Long Term Capital Gain for Assessment Year 2010-11 as indicated above. In our considered view the assessee is eligible to get the credit of tax paid on the net profit of Rs.8,75,86,752/- shown in the return of income for Assessment Year 2011-12 against the tax liability arising in Assessment year 2010-11. Ld. A.O is accordingly directed to do the needful. This issue raised by the assessee in Additional Ground No.6 is allowed.

28. Other grounds are general in nature which do not require any adjudication.

Ramesh Mangal
ITANo 461/Ind/2018

29. In the result appeal of the assessee is partly allowed for statistical purpose.

The order pronounced in the open Court on 20.11.2019.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 20 November , 2019

/Dev

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

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