आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, ''SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 254/JP/2022
निर्धारण वर्ष/Assessment Year : 2010-11

Smt. Narangi Devi W/o Shri Ram Swaroop Jat Village: Ramalyawas, Amer	बनाम Vs.	The ITO Ward -7 (4) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: DOSPD 1990 B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Shrawan Kumar Gupta
राजस्व की ओर से/ Revenue by: Smt. Monisha Choudhary, JCIT

सुनवाई की तारीख/ Date of Hearing : 25/08/2022
उदघोषणा की तारीख/Date of Pronouncement: 4 /10/2022

आदेश/ ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 17-06-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2010-11 wherein the assessee has raised the following ground of appeal

> ''1.1 The impugned assessment order u/s 147/144 dated 26.12.2014 as well as the notice u/s 18 and the action taken by the Id. AO u/s 147 are bad in law and on facts of the case, for want of

jurisdiction, barred by limitation, without proper approval or satisfaction and various other reasons and hence the same may kindly be quashed.

1.2 The ld. AO has erred in passing the Ex-party assessment order without providing adequate and reasonable opportunity of being heard in the gross breach of law. Hence the assessment so made and consequent additions so made may kindly be quashed and delete.

2. The ld. CIT(A) has erred in passing the order partly taking in to consideration our WS and paper book filed during the course of physical hearing on 05.11.2019 and providing adequate and reasonable opportunity of being heard in the gross breach of law. Hence the additions so made by the Id. AO may kindly be quashed and delete.

3.1 Rs.18,22,250/- : The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs.18.22.250/- on account of Long Term Capital Gain on sale of sale of agriculture land which is otherwise exempt(being out of Municipal Limit applicable and not being a capital assets) and also erred in the action of the Id. AO in taking the higher value adopted by the Stamp Authority in place of actual sale consideration mentioned in sale deed and received by the assessee, while determining the LTCG. Hence the addition so made by the AO and confirmed by the Id. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the addition may kindly be deleted in full.

3.2 The Ld. CIT(A) has also grossly erred in law as well as on the facts of the case in confirming the action of the ld. AO in not allowing the deduction u/s 54B on the purchase of new assets for which the assessee is entitled. Hence the deduction so denied by the AO and confirmed by the Id. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the addition may kindly be directed to allow the same.

4. The Id. AO has grossly erred in law as well as on the facts of the case in charging interest u/s 234A,234B and 234C.. The appellant totally denies it liability of charging of any such interest. The interest,

so charged, being contrary to the provisions of law and facts, may kindly be deleted in full.''

2.1 Brief facts of the case are that the AO noted that assessee did not file the return of income for the assessment year 2010-11 under the provisions of Section 139(1) of the Act. As per information received from the Director of Income Tax (I&CI), Jaipur vide his office letter No. DIT(I&CI)/JPR/50C/2013-14/3145 dated 21-02-2014, the assessee alongwith other members i.e. (ii) Prem Devi W/o Shri Ramji Lal, (iii) Smt. Bhagwati Devi W/o Shri Surgyan, (iv) Smt Prem Devi W/o Shri Rameshwar R/o Village-Ramalyawas, Tehsil-Amer, Jaipur (Raj) had sold the agrilculture land measuring 5.93 hectares situated at Khasra No. 5295 in village /Patwar area/Land record inspection area –Reengus, Tehsile-Shrimadhopur, Distt.-Sikar to Sky Way Colonizers Pvt. Ltd. through its authorized signatory Shri Sushil Gupta S/o Shri Matadeen Gupta, Caste – Mahajan, R/o 5th Floor, Alankar Plaza, A-10, Central Spine, Vidhyadhar Nagar, Jaipur for sale consideration of Rs.54,50,000/- through sale deed dated 23-02-2010 which was executed by Sub-Registrar, Palsana (Sikar). The AO noted that the Sub-Registrar, Palsana (Sikar) estimated the cost of land at Rs.1,00,54,000/- in which the assessee's share is Rs.25,13,500/- on which the long term capital gain had arisen. The AO further noted that no return of income was filed by the assesee disclosing the Long Term Capital Gain created by selling of the above immovable property. Thus according

to the AO, the case of the assessee is covered under the provisions of Section 50C of the Income Tax Act. It is also observed by the AO that the assesse with 6 others partners purchased the above sold property from Shri Kailash Chand Pareek S/o Shri Sita Ram, Bhanwari Devi W/o Shri Mangla Ram, ,Village Rekhiawaniyan Ki Dhani, Rigus, Kalu Ram, Jogendra S/o Mohan Nath, Jivani W/o Mohan Nath, Buti Nath S/o Bal Nath Jogi, Village-Ringus, Tehsil-Shrimadhopur (Sikar) at Rs.38,00,000 paying the stamp duty of Rs.4,00,000/- on 11-02-2005 in which the assessee's share is Rs.5,25,000/-. In the case of the assessee, the AO calculated the long term capital gain as under:-

S.N.	Particulars	Cost of acquisition	LTCG
1.	Sale consideration	25,13,500/-	
2. 3.	Cost of property (assessee's share) a And Indexed cost of property	5,25,000/- (cost of property – 4,75,000/-& stamp duty -50,000 5,25,000x632/480 = 6,91,250	18,22,250/-

Thus according to the AO, the long term capital comes to Rs.18,22,250/- and after proper verification of the above information from the record, the assessment proceedings u/s 147 of the Act for the assessment year under consideration was initiated by the AO after recording the reasons as well as taking prior approval of Pr. CIT-3, Jaipur vide her letter dated 17-03-2017. Thereafter, notice u/s 148 of the

Act was issued on 17-03-2017 by the AO which was got served upon the assesee through Registered Post dated 20-03-2017 as well as physically on 30-03-2017. In compliance thereof, no return of income was filed by the assessee. Further, notice dated 22-06-2017 and show cause notice dated 13-07-2017 were issued to the which were also got served through Registered A/D. In compliance of notices, Shri Pawan Kumar Sharma, CA/AR of the assese submitted a reply along with a power of attorney on 01-08-2017. The AO again issued the notices to the assessee on 10-08-2017 & 31-08-2017 fixing the date of hearing on 15-09-2017 but none appeared on behalf of the assessee before the AO. It is pertinent to mention that because of change of incumbent notice u/s 142(1) of the Act was issued on 12-10-2017 fixing the case on 18-10-2017 for which none attended the case on behalf of the assessee. The AO further noted that the assesseee submitted her submission dated 3-11-2017 which was not found tenable by the AO because the case of the assessee covers u/s 50C of the Act. Therefore, according to the AO, the value of the property estimated by the Sub-Registrar, Palsana (Sikar) will be treated as per the cost of property instead of face value declared in the sale deed. Further, the AO noted that the assessee mentioned in her reply that the above property is an agriculture land only which is not a capital asset under the provisions of Section 2(14)(iii)(b) of the and this land is situated 40 KM away from Municipal Limit of Sikar city i.e. the land is situated beyond 8 KM from the Municipal Limit. However, the Tehsildar (Land

Revenue) Shrimadhopur (Sikar) vide his office letter No. LR/17/1979 dated 3-10-2017 informed that agriculture land containing Khasra No. 5295 is situated under the Municipal Limits of Ringus (Sikar). The reply dated 20-11-2017 submitted by the assessee was not found tenable by AO. The AO further noted that the assessee claimed deduction u/s 54B of the Act against the agriculture land situated at Villag-Chirada, Patwar halka-Khorashyamdas, Tehsil-Amer (Jaipur) which was purchased by the assessee alongwith other three partners from Shri Sita Ram S/o Shri Bhura, Caste-Gurjar, R/o Villag-Chirada, Tehsil-Amer Jaipur at Rs.51,50,000/- on 11-10-2010 in which share of the assessee is Rs.12,87,500/- (1/4th of Rs.51,50,000/-) which is not allowable because the assessee purchased the above property after the due date of filing of return income for the assessment year consideration. Thus according to the AO, the deduction u/s 54B of the Act of Rs.12,87,500/- was not allowed as the assessee purchased the immovable property before the due date of filing of return of income or the amount of capital gain account should be deposited in capital gain account scheme where the assessee failed to follow the relevant concerned terms and conditions for deduction u/s 54B of the Act. Therefore, the AO did not allow deduction u/s 54B of the Act to the assesse. Thus after considering the facts and circumstances of the case, the income of the assessee is calculated by the AO as under:-

1.	Income as per return not filed	Rs.Nil
2.	Long Term Capital Gain	Rs.18,22,250/-
	Total Taxable income (LTCG)	Rs.18,22,250/-

2.2 In first appeal, the ld. CIT(A) sustained the action of the AO by observing as under:-

> ''5.3 The AO has recorded at page 3 of the assessment order that the appellant claimed the deduction u/s 54B of the Income Tax Act, 1961 against the agriculture land situated at Village-Chirada, Patwar halka-Khorashyamdas, Tehsil- Amer (Jaipur) was purchased by her alongwith other three partners from Shri Sita Ram s/o Shri Bhura, Caste-Gurjar, r/o Village –Chirada, Tehsil-Amer, Jaipur at Rs. 51,50,000/- on 11.10.2010, in which the share of the assessee is Rs. 12,87,500/- (1/4 of Rs. 51,50,000/-), which is not allowable because the appellant purchased the above property after the due date for filing of return of income for the assessment year under consideration. Hence, the deduction u/s 54B of the Income Tax Act, 1961 of Rs. 12,87,500/- is not allowed to the assessee as the assessee should purchase the above immovable property before the due date for filing of return of income or the amount of capital gain account should be deposited in capital gain account scheme. Hence the assessee failed to follow the relevant concerned terms and conditions for deduction u/s 54B of the Income Tax Act, 1961. The deduction u/s 54B of the I. T. Act, 1961 is not allowed.
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> **5.4** Exemption under section 54B can be claimed in respect of capital gains arising on transfer of capital asset, being agricultural land. Sub-section (2) of section 54B states that the amount of the capital gain which is not utilized by assessee for the purchase of the new asset before the date of furnishing of return of income u/s 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in a Capital Gains Account Scheme, 1988 in any such bank or institution and shall be accompanied by proof of such deposit made before the date of furnishing of return of income u/s 139(1). The appellant did not file return of income for AY 2010-11 within the date specified u/s 139(1). Appellant neither deposited the Long Term Capital Gains in a Capital Gains Account Scheme before the due date of filing return nor did she purchase the agricultural land at Village-Chirada, Patwar halka-Khorashyamdas, Tehsil-Amer (Jaipur) before the due date of filing return of income for AY 2010-11. The judicial precedents relied upon by appellant can be distinguished on facts from the specific facts of the case of appellant. In view of the above discussion, **grounds of appeal 3.1 and 3.2 are dismissed.''**

2.3 During the course of hearing, the ld. AR of the assessee prayed that the ld. CIT(A) has erred in confirming the action of the AO for which the ld. AR filed the

detailed written submission and thus prayed to delete the addition confirmed by the ld. CIT(A).

''SUBMISSION:1. Correct facts: At the very outset we wants to bring correct facts before your honor which have been ignored by the ld. AO and ld. CIT(A) both despite available before them. The correct facts of the case are that the group of assessee's jointly (seven persons, in the ratio of 1/8th Suji devi in 1/4th) had purchased the agriculture land measuring 5.93 Hectares situated at Khasra No. 5295 in Village Patwar area/land record Reengus Tehsil Srimadhopur District Sikar for Rs.38,00,000/- and registry cost of Rs.4,00,000/- totaling to Rs.42,00,000/- on dt. 11.02.2005. Thereafter they have sold this land in two part one part by Smt. Santosh Devi, Smt. Suji Devi and Smt. Meera Devi for Rs. 43,50,000/- on dt. 17.03.2010 and other part by Smt. Prem Devi w/o Rameshwar, Smt. Prem W Devi /o Ramji Lal, Smt. Narangi Devi and Smt. Bhagwati Devi for Rs.54,50,000/- on dt. 23.02.2010. While charging stamp duty the Sub Registrar Palsana has valued the property at Rs.1,01,78,240/- and 1,00,54,000/- respectively. For your ready reference and at glance kindly see the below chart(Also submitted before ld.CIT(A)).

CHART AT GLANS SHOWING ALL THE DETAILS AND POSITION

Name of Party	**Land**	**Purchase Amount In Rs.**	**Sale Amount In Rs**	**DLC rate Charged In Rs**	**LTCG calculate-d by AO In Rs**	**Actual DLC rate as per Sub Registrar Srimadhopur in the year 2009-10 enclosed.**	**Actual LTCG In Rs**
Narangi	0.74(hec.)	525000	1362500	2513500	1822250	1169693/835834	671250
Prem/Ramesh war lal	0.74(hec.)	525000	1362500	2513500	1822250	1169693/835834	671250
Prem/Ramji Lal	0.74(hec.)	525000	1362500	2513500	1822250	1169693/835834	671250
Bhagwati	0.74(hec.)	525000	1362500	2513500	1822250	1169693/835834	671250
Santosh	0.74(hec.)	525000	1087500	2544560	1853310	1169693/835834	396250
Suji	1.48(hec.)	(1050000 Actual) 525000	2175000	5089120	4397870 (3706620(actual)	2339385/1671667	792500
Meera	0.74(hec.)	525000	1087500	2544560	1853310	1169693/835834	396250

Total	**5.93 Hect/23.72 Bhiga**	**4200000**	**9800000**	**20232240**	**14702240**	**9357540/6686668**	**4270000**

In the case of Smt. Santosh, Smt Suji and Smt. Meera the DLC rate has been adopted by the Sub Registrar at Rs. 34,32,796/- per hect. i.e 1,01,78,240/- /2.965 or Rs. 8,58,199/- per bhiga because 1 hect is equal to 4 bhiga.

In the case of Narangi, Smt. Prem Rameshwar, Prem Ramji Lal Jat , and Bhagwati the DLC rate has been adopted at Rs. 33,90,894/- per hect. i.e 1,00,54,000/- /2.965847723 per bhiga because 1 hect is equal to 4 bhiga

However as per the Stamp Duty rate list of Sub Registrar Shrimadhopur the DLC rate for irrigated land was Rs. 3,94,500/- per bhiga and for unirrigated land was of Rs. 2,81,900/- per bhiga in the year 2009-10 the copy of the same are enclosed (PB 60-65) and as per this the total value of the entire lands comes of Rs.93,57,540/- (3,94,500X23.72) of irrigated and Rs. 66,86,668/- (28190X23.72) of unirrigated land respectively, while the assessee's had sold the land for Rs.98,00,000/- which is more than to the above rates. However despite the same details filed before the ld. CIT(A) he has not verified and asked the ld. AO, it means he has nothing with him to rebut the contention of the assessee. Both the lower authorities have ignored these vital facts and did not tried to know the actual DLC rate of the said land. Hence the LTCG on the entire lands comes only of Rs.42,70,000/- for all the assessee's as against Rs.1,47,02,240/-. We have failed to understand that how the DLC rate has been adopted by the Sub Registrar Palsana Sikar. It may be that he has adopted the rate for the land situated at Road while the land of the assessee's were situated 200 meter inside the road or after leaving the one khasara from the road. And the rate for the land situated inside the road or after the one khasara from the road is only of for irrigated land was Rs. 3,94,500/- per bhiga and for unirrigated land was of Rs. 2,81,900/- per bhiga in the year 2009-10.

Therefore your honor is humbly requested to accept the our above contention and delete the addition to the above extent on this grounds alone, Further we had requested to the ld. CIT(A) that if he is having any doubt about the above, then report of the ld. AO may kindly be obtained after getting full verification and examination of the issue, however he has failed to do so rather confirmed the addition which is against the principal of natural justice.

2.1 DLC Rate has been wrongly charged by the Stamp Authority: It is submitted that as per above para I, the DLC rate has wrongly been estimated by the Stamp Authority. Because the land sold was not situated at the road, but the same was

situated inside the road or 200 meter from the road or after one Khasra No. of road as clearly mentioned in the sale deed. And it appears that the Stamp Authority has been charged the rate of the land situated on the main road. We are enclosing herewith the copy of Purchase deed and sale deed of the impugned land (PB8, 22). And assessee's are being illiterate ladies belongs to a rural area and farmers does not know about the DLC rate and Income Tax act etc. And when there is no obligation on the assessee to pay the Stamp Duty the same was to be paid by the purchasers and we failed to understand why he paid so much duty there may be one and other reason for that the assessee's are not concerned.

2.2 Contradictory Approach on DLC rate: Further it is also very important to note that in the year 2005 the assessee had purchased the land for Rs.38,00,000/- and after five years they sold the same for Rs.98,00,000/- taking the profit about 160% or 2.6 times and it is not possible that the DLC rate has increased about 2.6 time.

3. No evidence of receiving Excess sale consideration: Further the ld. AO has not brought on record that the assessee has received more or excess consideration or own money than to actual sale consideration. On this preposition kindly refer following decision of the Honble Supreme Court and High Courts

3.1 In the case of **CIT vs. Khandelwal Shringi & Co.: (2017) 398 ITR 0420 (Raj)** it has been held that *Income from undisclosed sources—Unexplained investments—Purchase of agricultural land—Deletion of addition—Tribunal deleted addition made by AO on account of unexplained investment in purchase of agricultural land on basis of sale agreement and other documents found and impounded during course of survey u/s 133 in which sale consideration was specified amount—Held, while computing undisclosed income, rates of property fixed by Stamp Valuation Authority for purposes of registration of sale deeds, could not be taken to be price for which property was purchased—In absence of evidence on record, higher price for sale of land could not be presumed from consideration shown in registered sale deeds and rates of property fixed by Stamp Valuation Authority for registration purposes could not be taken to be price for which property might had been sold—There was no justification for AO to estimate selling price of land at Rs. 40 per sq.ft. instead of Rs. 20 per sq.ft. and for CIT(A) to presume selling price at 22 per sq.ft—Tribunal committed no error in allowing appeal of assessee—Revenue's appeal dismissed.*

3.2 The Honble Supreme Court in the case of **CIT vs. Shivakami co. (P) Ltd. 159 ITR 0071(SC)** held that *Capital gains—Applicability of first proviso to s. 12B of 1922 Act—Proviso to s. 12B not attracted unless there is evidence that more consideration than what was stated in the document of transfer was received—Onus in this regard is on Revenue—Emphasis in those provisions is on consideration declared or disclosed by the assessee as distinguished from the consideration actually received by the assessee—Capital gains is intended to tax the gains of the assessee and not what the assessee might have gained—Shares sold by the assessee to related parties at lower value allegedly for safeguarding the shares from being taken over by Government in settlement*

of tax dues—No evidence that consideration actually received was more than what was disclosed or declared by the assessee—There was thus no understatement of full value of consideration—No capital gains under the first proviso to s. 12B was, therefore, leviable

3.3. In this connection we also relying on the decision of Honble Rajasthan High Court in **CIT v/s K.K. Enterprises 178 Taxman 187(Raj.)/13 DTR 289** wherein it has been held that *" AO determined the sale price of the plots by adopting the rate of Rs. 40 per sq.ft. on the basis of rate taken by sub registrar and made addition to assessee's income not justified. Apparently, there was no reliable material on record before the assessing authority to assume sale of plots at Rs. 40 per sq. ft.. In the absence of any evidence on record, it cannot be presumed hat land has been sold by the assessee at a higher price than the consideration shown in the registered sale deeds- Rates of property fixed by the Stamp valuation Authority for registration purpose cannot be applied to arrive at the price for which the property might have been sold*".

The ratio of above judgments is also followed by the jurisdictional ITAT Jodhpur Bench, Jodhpur recently in the case of **Sh. Hussain Ali Bohara ITA No. 564&578/Jodh/2010 dt. 19.01.2012**

3.4 In case of **CIT v/s Supriya Enterprises 232 ITR 887(Ker).** It has been held that The registered documents reflect the price of the land is a piece of evidence which cannot be discarded. The ordinary rule is that apparent state of affairs is real unless contrary is proved and the burden of proving the contrary lies on the person who assessed/alleged it Kindly refer **Daulat Ram Rawat Mull 87 ITR 349 (SC).**.

ACIT v/s Excellent Land Developers (P) Ltd. 1 ITR (Trib.) 563

3.5 In the case of **Inderlok Hotels (P) Ltd v/s ITO 122 TTJ 145(Mum).** Here also the position is very same because here assessee purchases a land and after conversion and developing in to plotting the same have been sold after making some profit. The lower authority nowhere alleged that the assets were sold in loss and he neither made any inquiry nor brought any evidence on record that the land sold on higher price than shown in sale deed. If he was having any doubt about the sale price of lands he could have made independent inquiry. The assessee has discharged onus lie upon him by producing the copies of sale deed. Now the onus was lies upon the revenue to disprove the same.

3.6 In **CIT V/S Chandni Bhuchar 34 DTR 137(P&H)-** It has been held that valuation done by the any State Agency for The purpose of the stamp duty would not ipso fact substitute the actual sale consideration as being passed on the seller by the purchaser in the absence of any admissible evidence value taken by the stamp duty authority could not be taken as actual sale consideration and value shown in the sale

deed had to be accepted. Also refer **CIT v/s Smt. Raj Kumari Vimla Devi (2005) 279 ITR 360(All). CIT v/s Shweta Buchar 192 Taxman 67(P&H) Also refer Hussain Ali Bohara in ITA No. 564 & 578/JDH/2011 dt.**

3.7 In CIT v/s Dolphin Builders (P) Ltd 90 DTR 75(MP)-Understatement of sale consideration of flates- When there was no evidence that the excess amount, if any was collected by G- Builders or even if it was collected then it was passed on the assessee. No addition could be made in the hands of the assessee.

*Recently followed by the Honble ITAT in the case of **Sh. Jagdish Chandra Boriwal in ITA No. 216/JD/2017 dt. 01.08.2017**.*

However the ld. CIT(A) has not stated a single word on these above pleases of the assessee

4. Benefit or claim have been denied u/s 54B: *Further the ld. AO and ld. CIT(A) both have denied the claim of the assessee u/s 54B by stating that the investments have been made after the due date of return filing or no supporting evidences have been filed in support of the claim. In this regard it is submitted that first here the LTCG is to be determined further what is the amount of to be invested. And under the Sec. 54B the amount of capital gain is to be invested and the LTCG of actual not of on the basis of DLC rate. And it is the settled law that the investment in new assets is to be invested to the actual LTCG which comes 6,71,250/-, 6,71,250/-, 6,71,250/- and 6,72,250/- 3,96,252/-, 792,252/-, and 3,9 6,252 /-, respectively and the assessee have invested more than to these. On this preposition kindly refer*

In the case of **Gyan Chand Batra V/s ITO 133 TTJ 482(Jp)** it has been held that "*From sub-s. (1) of s. 50C, it is clear that in case the consideration received is less than the value adopted by stamp valuation authority then the value so adopted is to be taken as full value of the consideration for the purposes of s. 48. Sec. 50C provides a deeming provision for considering the full value of consideration as the value adopted for stamp duty. In modern statutes, the expression 'deem' is used a great deal and for many purposes. It is at times used to introduce artificial conceptions which are intended to go beyond legal principles or to give an artificial construction of a word for phrase. Thus the artificial meaning of full value of the consideration has been given in s. 50C for the purpose of s. 48. One is entitled to ascertain the purpose for creating a statutory fiction. After ascertaining the purpose, full effect must be given to the statutory fiction and it should be carried to its logical conclusion and to that end, it would be proper and even necessary to assume all those facts on which alone fiction can operate. The legislature in its wisdom has referred to s. 48 in s. 50C for adopting the same value as fair market value. Hence, the deeming fiction as provided in s. 50C in respect of the words 'full value of consideration' is to be applied only for s. 48.* ***The words 'full value of consideration' as mentioned in other provisions of the Act are not governed by the meaning of full value of consideration as contained in s. 50C. The natural meaning of full value of consideration refers to consideration specified in the sale deed. Hence, for the meaning***

of full value of consideration as mentioned in different provisions of the Act except in s. 48, one will have to consider the full value of consideration as specified in sale deed.—*CIT vs. Smt. Nilofer I. Singh (2009) 221 CTR (Del) 277 : (2008) 14 DTR (Del) 108 : (2009) 309 ITR 233 (Del)* ***relied on.***

In Explanation to s. 54F(1), it is mentioned that net consideration means the full value of consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer. The meaning of full value of consideration in Explanation to s. 54F(1) will not be governed by meaning of words 'full value of consideration' as mentioned in s. 50C. The value adopted for stamp duty is to be considered as full value of consideration for the purpose of computing the capital gains under s. 48. Sec. 54F(1) says that capital gains is to be dealt with in accordance with the provisions of sub-cls. (a) and (b) of s. 54F(1). In the instant case, the cost of new asset is not less than the net consideration thus the whole of the capital gains will not be charged even if the capital gains has been computed by adopting the value adopted by stamp registration authority. It is clearly mentioned in s. 54F(4) also that net consideration which is not appropriated towards the purchase of new asset the same is to be taxed in case such net consideration not appropriated is not deposited in the capital gain account. It is not necessary that the new asset should be got registered before filing of the return. The requirement of law is that net consideration is required to be appropriated towards the purchase of the new asset. Thus deduction under s. 54F is clearly applicable. Deeming provisions as mentioned in s. 50C will not be applicable to s. 54F so far as the meaning of full value of consideration is concerned as deeming provision mentioned in s. 50C is for specific asset and for the purpose of s. 48. Hence the assessee is entitled for deduction under s. 54F.—CIT vs. Ace Builders (P) Ltd. (2005) 195 CTR (Bom) 1 : (2006) 281 ITR 210 (Bom) and CIT vs. Assam Petroleum Industries (P) Ltd. (2003) 185 CTR (Gau) 71 : (2003) 262 ITR 587 (Gau) ***applied.***

The same has also followed and held in the caase of **ITO v/s Raj Kumar Parashar 192 TTJ 603(Jp)(2018) in ITA No. 11/Jp/ 2016 dt. 28.09.2017** where it has been held that *Where the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45. What is therefore relevant is the investment of the net consideration in respect of the original asset which has been transferred and where the net consideration is fully invested in the new asset, the whole of the capital gains shall not be charged under section 45 of the Act. The net consideration for the purposes of section 54F has been defined as the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer. In other words, the consideration which is actually received or accrued as a result of transfer has to be invested in the new asset. In the instant case, undisputedly, the consideration which has accrued to the assessee as per the sale deed is Rs 24,60,000 and the whole of the said consideration has been invested in the capital gains accounts scheme for purchase of the new house property which is again not been disputed by the Revenue. The consideration as determined under section 50C based on the stamp duty authority valuation is not a consideration which has been*

received by or has accrued to the assessee. Rather, it is a value which has been deemed as full value of consideration for the limited purposes of determining the income chargeable as capital gains under section 48 of the Act. Therefore, in the instant case, the provisions of section 54F(1)(a) are complied with by the assessee and the assessee shall be eligible for deduction in respect of the whole of the capital gains so computed under section 45 read with section 48 and section 50C of the Act. The decisions of the Coordinate Benches as referred supra support the case of the assessee. The subject issue was not for consideration before the Hon'ble Karnataka High Court and hence, the same doesn't support the case of the revenue. We are therefore of the considered view that the provision of section 50C(1) of the Act are not applicable to section 54F for the purpose of determining the meaning of full value of consideration.

The ratio of Gyan Chandra has also been followed by the Honble ITAT Mumbai Bench(D) *In the case of* ***Raj Babbar V/s ITO 56 SOT 01(Mum)(2013)*** *where it has been held that It is a 2t suggest that there is nothing to bar benefits of exemption u/s 54F in respect of the capital gains relatable to the FVC as per the deemed fiction u/s 50C of the Act. Clause (a) of section 54F(1) specifies that If the cost of the new asset is not less than the net consideration in respect of the original asset, there is no chargeable capital gains u/s 45 of the Act. In the instant case, the cost of the new asset is Rs. 17,65,752/- and 'net consideration' as defined is '..the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer' ie Rs 16,87,000 as per sec 50C and Rs 8 lakhs as per the sale deed. The said clause (a) refers to the provisions of section 45 of the Act. In the given facts of the instant case, no chargeable capital gains arises u/s 45 of the Act. Thus, in this case, with investment of Rs. 17,65,752/- in new asset, the cost of the new asset is not less than the net consideration (NC) in respect of the original asset. Of course, the 'net consideration' has two variants depending on FVC adopted and in this case, the NCs are quantitatively lesser than the cost of the new asset leaving no chargeable capital gains u/s 45 of the Act. Therefore, the assessee is not chargeable to any capital gains considering the given facts of the case and also the said clause (a) of section 54F(1).*

The deeming fictional meaning of section 50C cannot be imported for the purpose of explaining the meaning of the 'net consideration' mentioned in Explanation u/s 54F(1) of the Act. In effect, for working out the exempt income also, the deeming fiction does not have any effect in the circumstances where the cost of the new asset is not less than the net consideration whether computed as per the section 48 or 48 rws 50C. On this facts of the present case, where the assessee undisputedly invested 33 lakhs (1.4.06-31.3.2008) in toto and Rs 17,65,752/- (July 2006-march 2008) was invested during the specified period) mentioned in section 54F(1), considering the provisions of the clause (a), the assessee is not chargeable gains for taxation u/s 45 of the Act.

It is noticed that the CIT(A) confirmed the addition on a couple of reasons, namely (a) the provisions of section 54F(1) does not permit invoking of the provisions of section 50C of the Act. Therefore, 'net consideration'/full value consideration should be

as per the sale deed figures and not as per the deemed full value consideration figures; and (b) the assessee is new asset includes only the Ground plus 1st floor only and not in respect of two floors (sic). Further, CIT(A) has not discussed the provisions of the clause (a) and (b) of section 54F(1) of the Act in his order. Actually, the assessee's house consists of Ground plus 4 floors. He relied on SB decision in the case of Sushila M Jhavari, supra and restricted the investment in first floor only and denied exemption in respect of the investment in other floors. Elaborate discussion on why such restriction was not given. Probably, CIT(A) is of the opinion that the Ground plus 1st floor is one house and other floors refers to other residential house. The said SB decision never disapproved the allowability of the investment of capital gains in a residential house, which may include two flats with one kitchen and the same are functionally one dwelling unit, may located at two different floors, may be adjacent vertically and horizontally. CIT(A) has not appreciated the facts of the present case, where the assessee's house constructed include ground plus 4floors, where the Ground floor is a big living room, 1st floor: Kitchen plus 2 bed room; 2nd floor: three bed rooms; 3rd floor: three bed rooms and 4th floor: 3bed rooms. Thus, the said details which are disputed by the revenue suggest that functionally, the assessee's house in question constitutes one residential house only. Therefore, the assessee's claim is in tune with the said SB decision in the case of Sushila M Jhavery (supra). CIT(A) restricting the exemption of capital gains to Rs 5,84,837 is not proper.

Based on the factual matrix of the present case, where the assessee invested total full value consideration of Rs 16,87,000/- (as per the SRO) in the residential house, which is one house only as it has only one kitchen, and these FVC is less than the invested amounts of 17,65,752/-, during the specified period, the assessee is not chargeable to tax on the capital gains u/s 45 of the Act. Whether we compute the capital gains apply FVC as pr the sale deed or the deemed FVC as per the section 50C, the net consideration is less than the investment in one residential house. Therefore, considering the provisions of section 54F(1)(a) of the Act, the order of the CIT(A) is not proper in denying exemption in respect of the capital gains relatable to the deemed full value of the consideration mentioned in section 50C of the Act. Accordingly, the grounds raised by the assessee are allowed and in favour of the assessee.

Also refer Prakash Karnawat v/s ITO 49 SOT587(Jp) where it has been held *Capital gains—Valuation—Assessee sold property for Rs. 40 lakhs—AO took the value determined by DVO under s. 50C at Rs. 67.13 lakhs—AO reduced the indexed cost of Rs. 13.27 lakhs shown by the assessee and computed the long-term capital gain at Rs. 53.86 lakhs—Assessee had made investment of Rs. 40 lakhs in Bonds, therefore, the same was also reduced and the remaining amount of Rs. 13.86 lakhs was added to the income—Assessee challenged replacement of actual sales consideration by applying provisions of s. 50C—Deeming fiction as provided in s. 50C in respect of the word 'full value of consideration' is to be applied only for s. 48—Since entire amount of sale consideration has been invested in bonds, therefore, provisions of s. 50C are not applicable—Further as assessee invested entire sale consideration of Rs. 40 lakhs in the bonds eligible for s. 54EC, he is entitled for deduction under s. 54F*

Hence the deduction should be allowed.

5. Investment after due date u/s 139(1) but before but date u/s 139(4): *Further the investment after due date of filling the return of income in this regard it is also submitted that the due date is not to be consider only 139(1) but also the u/s 139(4). And it is also very settled legal position of law that the investment in new assts can be done till the date of return filling u/s 139(4).*

(i) The Honble Jurisdictional High Court in the case of the case of **Pr. CIT vs. Shankar Lal Sharma D.B. Income Tax Appeal No. 153/2017 19th December, 2017 (2017) 100 CCH 0311 RajHC (2018) 253 TAXMAN 0308 (Rajasthan)** *Where it has been held Deduction—Capital gains—Non deposition of net sale consideration—Rejection—Validity thereof—Assessee was picked up for scrutiny assessment and assessment was finalized u/s 143(3)—Assessee claimed for deduction—AO declined claim of deduction U/SS 54B and 54F on ground that assessee had not deposited net sale consideration in capital gain account—CIT(A) set aside order of AO—Held, in case of in Fathima Bai v. ITO, it was held that extended due date u/s 139(4) would be 31.3.1990—Assessee did not file return within extended due date, but filed return on 27.2.2000—However, assessee had utilized entire capital gains by purchase of house property within stipulated period of section 54(2) i.e., before extended due date for return under section 139, assessee technically might have defaulted in not filing return u/s 139(4)—But, however, utilized capital gains for purchase of property before extended due date u/s 139(4)—Deposit in scheme should have been made before initial due date and not extended due date was untenable contention—Reading of aforesaid sub-section would show that if person had not furnished return of previous year within time allowed under subsection (1) i.e. before 31st day of July of Assessment Year, assessee Could file return before expiry of one year from end of ever relevant Assessment Year—Considering said case, instant court had considered provisions and interpreted same—In that view of matter, issue was required to be answered in favour of assessee and against department—Assessee's appeal allowed.*

(ii) In the case of **Jag Mohan Sharma (Deceased) Legal Heir Nitesh Sharma v/s ITO Ward 1(1),Jaipur in ITA No. 1089/Jp/2016 dt. 13.03.2018.** Held as under

"5. As regards the non deposit of the amount in the Capital Gain Account Scheme, we note that the assessee has sold the agricultural land on 30th November, 2012 and the house was purchased on 30.10.2014. Therefore, the investment made by the assessee is within two years from the sale of the existing asset and is not beyond the stipulated period as provided under section 54F of the Act. The only objection raised by the AO and ld. CIT (A) is non deposit of amount in the Capital Gain Account Scheme. However, when the assessee has invested the amount within the stipulated period as provided under the provisions of section 54F, then the substantial requirement as per section 54F(1) is satisfied. The Hon'ble Madras HighCourt in the case of CIT vs. Sardarmal Kothari (supra)

Again in the case of Fathima Bai vs. ITO (supra), the Hon'ble Karnataka High Court has reiterated its view that once the entire capital gain was utilized by the assessee by purchasing a house property before the extended due date under section 139(4), the exemption under section 54 would be allowable to the assessee. In view of the facts and circumstances of the case when the assessee has invested the amountwithin the stipulated period as prescribed under section 54F and in view of the various decisions cited supra, we decide this issue in favour of the assessee and hold that the assessee is eligible for deduction under section 54F in respect of the investment made in the house purchased on 13th October, 2014."

In the case of Sabita Devi Agrawal V/s ITO 69 ITR(Trib) 231 Kolkata 19.12.2048 *it has been held that Capital Gains—Sale of original capital assets—During assessment proceeding, AO found that assessee had used borrowed funds for making investment in capital gains accounts scheme—No relief was granted by CIT(A)—Held, s. 54F nowhere envisaged that sale consideration obtained by assessee from sale of original capital asset was mandatorily required to be utilized for purposes of meeting cost of new asset—It held that investment made by assessee might be sourced other than entirely from capital gains—Objection of Revenue authorities could not be sustained—*

Held:

The P&H High Court in the case of CIT vs. Kapil Kumar Agarwal has held that s. 54F nowhere envisages that sale consideration obtained by assessee from sale of original capital asset is mandatorily required to be utilized for purposes of meeting cost of new asset. It held that investment made by the assessee may be sourced other than entirely from the capital gains. Thus, objection of the Revenue authorities cannot be sustained

When it is allowable that the assessee may purchased the new assests by way of other source other than entirely from capital gain then it is presumed that the amount is also not necessarily to deposit in capital gain account.

In the case of **CIT vs. K RAMACHANDRA RAO (2015) 277 CTR 0522 (Kar)** it has been held that *Capital Gains—Capital Gain On Transfer Of Certain Capital Assets Not To Be Charged In Case Of Investment In Residential House—Denial of exemption—Matter in question was when Assessee invest entire sale consideration in construction of residential house within three years from date of transfer, could he be denied exemption u/s. 54F on ground that he did not deposit said amount in capital gains account scheme before due date prescribed u/s. 139(1)—Held, as per S 54 (4), in event of Assessee not investing capital gains either in purchasing residential house or in constructing residential house within period stipulated in S. 54F(1), if Assessee wanted benefit of S. 54F, then he should deposit capital gains in account that was duly notified by Central Government—In case Assessee wanted to claim exemption from payment of income tax by retaining cash, then said amount was to be invested in Government account—If intention was not to retain cash but to invest in construction or any purchase of property*

and if such investment was made within period stipulated therein, then S. 54F(4) was not at all attracted.

In the case of Manilal Dasbhai Makwana vs. ITO (2018) 172 ITD 0001 ((Ahmedabad-Trib)) held that *Capital Gains—Capital gain on transfer of land used for agriculture purposes not to be charged in certain cases—Belated Return—Assessee was an agriculturist and filed his return of income belatedly—During scrutiny assessment, AO noticed that two parcels of agricultural land was purchased before sale of agricultural land—Similarly, another agricultural land was purchased after due date of filing return of income u/s 139(1)—AO was of a view that in terms of provisions of s. 54B(2), assessee was required to deposit capital gains in prescribed bank account before due date of filing return of income u/s 139(1)—However, assessee was failed to deposit capital gain in bank account as per requirements and therefore, AO disallowed claim of deduction u/s 54B—On appeal, CIT(A) allowed deduction u/s 54B in respect of land purchased before sale of original land, however, continued to deny deduction of long term capital gains u/s 54B towards purchase of agricultural land after due date of filing of return of income u/s 139(1)—Held, when an assessee furnishes return subsequent to due date of filing return u/s 139(1) but within extended time limit u/s 139(4), benefit of investment made up to date of furnishing of return of income prior to filing return u/s 139(4) could not be denied on such beneficial construction—Capital gains utilized towards purchase of new asset before furnishing of return of income before either u/s 139(1) or u/s 139(4) would be deemed to be sufficient compliance of s. 54(2)—Assessee would be required to demonstrate before AO that investment in new asset had actually happened before furnishing of return of income by assessee u/s 139(4)— AO should grant relief to assessee u/s 54B in accordance with law, where it was found that investment had been carried out in new asset as contemplated in s. 54B before date of furnishing belated return of income u/s 139(4)—*

5.2 Further it is also settled law that the property can be purchased in the name of relatives. And the ld. CIT(A) has not given any adverse view on the same.

5.3. Further we also rely upon the judgments referred in the above decisions and also rely upon on the arguments and finding given in these above decisions and may be read as part of our WS.

6. Further neither any addition has been made in the hands of the purchasers nor any inquiry has been made in his hand whether he has paid excess amount to the amount mentioned in the sale deed. In absence of the same also no addition can be made without any inquiry.

7. Thus in view of the above facts, circumstances, submissions and legal position the Assessment order as well as notice U/s 148 may kindly be quashed and the addition so made may also kindly be deleted in full and oblige.

8. Further as per the assessee the list of DLC rate have been given to the AO and also the details of investments in the new assets in some of the case. However there is no reference of the same in the assessment order. Thus we had requested to the ld. CIT(A) that *"if he is of the view that these are the new evidence then in the interest of natural justice we request to kindly admit the same u/r 46 of the Act. As the assssee's are illiterate ladies and belongs to rural area and farmers and these evidences goes to the root of the matter. Hence this is may be treated an application also u/r 46A".* And the ld. CIT(A) has not speak a single word on these it means has admitted these evidences.

GOA-1: Invalid action u/s 147/148

SUBMISSIONS ON LEGAL ISSUE OF 148/147:

1. No income escaped: *Further it is submitted that the notice u/s 148 can be issued only when there is any escapement of income because S. 147 provides that If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, here the assessee has not escaped any income he has already calculated the LTCG and made investment u/s 54/54B, the AO has reopened the case on the basis of value adopted by the Stamp Collector for the purpose of stamp duty and not shown the transaction in the return which have not been filed. In which the value was adopted at Rs.1,01,78,240/ and 1,00,54,000/- on their own purpose as against actual sale consideration at Rs.43,50,000/- and 54,50,000/-. And for invoking the deeming provision of S. 50C the AO issued the notice u/s 147/148 and in this provision no escapement of income is involved and also no income has been accrued or arose. Hence if there is no escarpment then the notice issued u/s 148 is invalid.*

2. Reason to believe and not reason to suspect:

2.1 *It is submitted that even under the amended law by the finance act 1989 the condition precedent or words, which continues right since inception till date, are "reason to believe" and not "reason to suspect". The word "believe" has to be understood in contradistinction of suspicion or opinion. Belief indicates something concrete or reliable. Kindly* ***refer Gangasharan & Sons Pvt. Ltd. 130 ITR 1 (SC), and ITO v. Lakhmani Mewal Das, (1976) 103 ITR 437 (SC).***

2.2 *The belief of the Officer should be as to escapement of income and the belief should not be a product of imagination or speculation. There must be reason to induce the belief.*

2.3 *Further, the belief must be of an honest and reasonable person based upon reasonable grounds. The officer may act on direct or circumstantial evidence; but his belief must not be based on mere suspicion, gossip or rumor. The AO would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the provision of law. The Court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the Court* ***(Sheo Nath Singh v. AAC, (1971) 82 ITR 147 (SC).***

3. In the present case on the facts it can be proved that the ld. AO did not have any material direct or circumstantial to have based his belief, nor that his belief was bonafide and in good faith. Because the AO has issued the notice u/s 148 only on the basis of AIR Information however the same has not been sold on such value,. The information was borrowed not his own i.e he has not recorded his own satisfaction and there was no material or evidence in the hands at the time of issue of notice u/s 148 except wrong information. The ld. AO neither made any inquiry or collected any material that the assessee has received own money or more consideration than to mentioned in the sale deed or actually received nor brought the evidence on the record that the assessee has escaped any actual income. He has proceed only on imagination or suspicion rather than to reason to believe. He was only having information borrowed, hence no notice u/s 147 can be issued on the borrowed information. And in the present case at the time of reasons even there was no sale deed in the hands of the ld. AO, there was only an information and information itself is not reason to believe.

In the case of Mukesh Modi & Ors. vs. DCIT 366 ITR 418 (Raj) held that *Evasion of tax was menace to society but Assessee contributing to the exchequer in form of tax could not be allowed to suffer on mere pretence that it had evaded payment of tax. Rowing and fishing enquiry in hands of AO on mere suspicion or change of opinion could not satisfy expression "reason to believe" exposing Assessee for reopening of assessment. Notice for reopening of assessment was not in consonance and in conformity with under Section 147 and made specified notice vulnerable. High Court pointed that, reasons given by AO for issuance of notice for Re-assessment were not plausible and convincing. In fact order, where objections were rejected by AO, was not self-contained speaking order. Upon perusal of the order, it was amply clear that the same contains conclusions and is bereft of reasons.(para 12)*

Notices issued to Assessee by AO under Section 147/148 were not satisfying the pre-requisites for same. There was no whisper in the notice, or iota of proof that while issuing same. AO had reason to believe that any income chargeable to tax had escaped assessment for the assessment year. Notice issued by AO simply for his own verification and to clear his doubts and suspicions to re-examine the material which were already available on record at time of passing of t earlier assessment orders. The legislature under Section 147 has not clothed AO with such jurisdiction therefore the action could not be upheld in the background of facts of instant case. One more redeeming fact which had direct nexus with the subsequent re-assessment proceedings and ramification of the same had culminated into re-assessment orders was the impugned order where AO rejected the objections submitted by Assessees pursuant to notice under Section 147/148. Order passed by AO in this behalf was not a speaking order which could not be sustained. In view of legal infirmity in the notice under Section 147/148 and laconic order of AO while rejecting objections Assessee the consequential assessment Orders were liable to be annulled.(para16)

4. Only in the Act there is a deeming provisions, which provide to adopt the value. But it not means that there is escapement of any income. As the notice u/s 148 was

issued on the reasons that As per information received from the DIT (I&CI) Jaipur, during the F.Y. 2009-10 assessee along with other three Co Owner namely Smt. Prem Devi W/o Sh. Ramji Lal, Smt. Bhawati Devi W/o Sh. Surgyan and Smt. Prem Devi W/o Rameshwar Lal has sold their share of agriculture land situated at Khsra No. 5295 of village Ringus, Patwar Region Tehsil Srimadhopur, District Sikar, Rajasthan to M/s Skyways Colonizers Pvt. Ltd for a sale for sale consideration of Rs.54,50,000/- through sale deed dt. 17.03.2010 and Sub Registrar Srimadhopur has estimated the value at Rs. 1,00,54,000/-. Therefore, as per provision of Se. 50C of the IT Act, the sale value of the property for the purpose of calculation of Capital gain is required to be taken at Rs.1,00,54,000/-. Since the capital was sold jointly, hence the share of the assessee in the sale consideration comes at is Rs.25,13,500/-. Hence I have reason to believe that the assessee has escaped her capital gain income to the extent of Rs.25,13,000/- within the meaning of Sec. 147. Here we would like to submit that how it can be said that the assessee actually received the excess amount than to mentioned in the sale deed, in want of any concrete material evidences.

5. Directly Covered Matter: Further the above mater is also directly covered by the decision **In the case of ITO vs. Shiv Shakti Build Home (P) LTD. (2011) 141 TTJ 0123(Jodh)** it has been held that t*he Inspector has only stated that though the assessee purchased the property @ Rs. 250 per sq. ft. in that area, the rate was from Rs. 500 to 600 per sq. ft. No details or any instances have been given in the said report. In any case this report could not be the basis for information of belief of the AO regarding escapement of income. There has to be nexus between formation of belief and escapement of income. In the present case, only valuation done by the stamp valuation authority and the Inspector's report have been taken as basis for formation of belief. There has to be reason for formation of belief and the reason should be such, from which prima facie it could be inferred that there is escapement of income. Every reason, if remotely connected with the issue, cannot be said to be a sufficient reason for formation of belief regarding escapement of income. There has to be live nexus between the reason and formation of belief regarding escapement of income. Merely because the stamp valuation authority has adopted certain valuation for payment of stamp duty, the same cannot be a basis to conclude regarding escapement of income in the hands of purchase, particularly when no tangible material has been brought on record to suggest the escapement of income except the Inspector's report which cannot be relied upon.—CIT vs. D.N. Pachori (2010) 189 Taxman 420 (MP)* ***relied on.***

Recently the Honble ITAT Jaipur Bench Jaipur has followed the above decision in the case of **Arun Kumar Choudhary V/s ITO in ITA No. 268/Jp/2015 dt. 08.09.2016** wherein in para 9 page 8 onward it has been held that *"9. Evidently, the provision of Se. 50C are deeming provisions enacted specifically for the purpose of Sec. 48 of the Act. Sec. 50C(1) specifically provides that where the consideration received qua transfer of the land is less than the value adopted by the Stamp Valuation Authority, the value so adopted shall, for the purpose of Se. 48 be deemed to be the full value of consideration received as a result of transfer. Sec. 48 provides the mode of computation of capital gain. A conjoint reading of Sec. 50C and 48 of the Act Shows that the deeming*

provisons of Sec. 50C are only for such computation. That being, so as rightly contended, the valuation adopted by the Stamp Valuation Authority cannot by itself, be made the basis for reopening the concluded assessment.

10. thus, a mere adoption of higher value of the property by the Stamp Valuation Authority cannot lead to a formation of belief of escapement of income, particularly when the value so adopted is adopted for the stamp duty purpose only.

11. Moreover, it is nowhere the case of the department that the Assessing officer had brought on record any tangible material whatsoever to suggest escapement of income, which could have, beside the Inspectors report, led to the formation of belief of escapement of income. It is trite, as also considered in the case of ITO v/s Shiv Shakti Build Home (P) Ltd (Supra), that there has to be a nexus between the formation of belief and the alleged escapement of income. In the absence of any positive material brought on record by the Assessing Officer to suggest escapement of income. , no such nexus exist herein. Therefore respectfully following the decision in the case of ITO v/s Shiv Shakti Build Home (P) Ltd (Supra), the grievance of the assessee by way of the modified additional ground taken is accepted and the initiation of the assessment proceedings is quashed."

Recently followed by the Honble ITAT in the case of ***Sh. Jagdish Chandra Boriwal in ITA No. 216/JD/2017 dt. 01.08.2017****.*

Here is the same position, thus above matter is directly covered by the decision of Jurisdictional ITAT.

Once there is no income at all, there can't question of any escapement thereof. It was only suspicion on the part of AO. The above judicial guideline, do not support his case Hence the notice u/s 148 may kindly be quashed and oblige.

6. Further only on the basis of information or AIR information no proceedings can be initiated. In the case of Smt. Usha Agrawal v/s ITO in ITA No. 260/Agra/2018 dt.11.09.2018 it has been held that " theAO based the reopening merely on the bare information received by him from the CBDT that the assessee had filed a declaration under the VDIS 1997, in which, he (sic-she) had declared an amount of Rs.10,02,948/- on 31.12.1997, but had not paid the tax thereon and the Certificate was not issued to him (sic-her). It was this bald so called information, which was reproduced by the AO in the reasons recorded and he, without any further inquiry thereon, i.e., without any independent application of his own mind to it, formed his alleged reason to believe escapement of income. The reopening is, thus liable to be set aside and reversed on this score alone. We hold so. The reopening of the assessee's completed assessment is cancelled on this count itself.

And in the present case at the time of reasons even there was no sale deed in the hands of the ld. AO, there was only an information and information itself is not reason to believe

Also refer CIT vs. Indo Arab Air Services (2016) 283 CTR 0092 (Del).

7. Hence in view of the above facts, circumstances and legal position the assessment proceedings may kindly be quashed.

8. Thus in view of the above submissions the Assessment order as well as notice U/s 148 may kindly be quashed and the addition so made may also kindly be deleted in full and oblige.''

2.4 On the other hand, the ld. DR supported the order of the ld. CIT(A).

2.5 The Bench heard both the parties and perused the materials available on record. It emerges from the record that the assessee is a lady who has not filed the return of income. The AO issued the notice dated 17-03-2017 on the reason that ''as per information received from the Director of Income Tax (I&CI) dated 21-02-2014, the assessee alongwith other members i.e. (ii) Prem Devi W/o Shri Ramji Lal, (iii) Smt. Bhagwati Devi W/o Shri Surgyan, (iv) Smt Prem Devi W/o Shri Rameshwar R/o Village-Ramalyawas, Tehsil-Amer, Jaipur (Raj) had sold the agriculture land measuring ½ share of 5.93 hectares situated at Khasra No. 5295 in village /Patwar area/Land record inspection area –Reengus, Tehsile-Shrimadhopur, Distt.-Sikar to Sky Way Colonizers Pvt. Ltd. Vidhyadhar Nagar, Jaipur for sale consideration of Rs.54,50,000/- through sale deed dated 10-02-2010 and Sub-Registrar, Srimadhopur has estimated the value at Rs.1,00,54,000/- in which the share of each lady is Rs.25,13,500/- on which the LTCG had arisen. The AO stated that the case of the assessee's are covered under the provision of Section 50C of the Act and the assessee has escaped her income to the extent of Rs.25,13,000/- within the

meaning of Section 147 of the I.T. Act. The submission of the assessee is mentioned hereinabove. Further, the assessee with other 6 partners purchased the above sold property/land for Rs.38,00,000/- paying the stamp duty of Rs,4.00 lacs on 11-02-2005 in which the share of each lady was Rs.5,25,000/-. The AO has calculated the LTCG as under:-

S.N.	Particulars	Cost of acquisition	LTCG
1.	Sale consideration	25,13,500/-	
2. 3.	Cost of property (assessee's share) a And Indexed cost of property	5,25,000/- (cost of property – 4,75,000/-& stamp duty -50,000 5,25,000x632/480 = 6,91,250	18,22,250/-

The AO at page 3 of the assessment order noted that on 3-11-2017 the assessee submitted her submission which is not tenable/ acceptable because the assessee is covered u/s 50C of the Act. Therefore, the value of the property estimated by the Sub-Registrar, Palsana (Sikar) will be treated the cost of the property in place of face value declared in the sale deed. The AO has also declined the claim of the assessee that the said property is agriculture land and not a capital asset on which the AO has also got the report of Tehsildar (Land Revenue), Sikar, Shrimadhopur dated 3-10-2017 who informed that the said land is situated under the Municipal Limit of Ringus (Sikar) and during the hearing before us the ld. AR has not stated

or submitted anything in this regard. It is also pertinent to mention that the AO has also denied the claim of the assessee of deduction u/s 54B of the Act against the agriculture land situated at Village-Chirada, Patwar Halka-Khorashyamdas, Tehsil-Amer (Jaipur) was purchased by her alongwith other three partners from Shri Sita Ram S/o Shri Bhura, Caste-Gurjar, R/o Village-Chirada, Tehsil-Amer Jaipur at Rs.51,50,000/- on 11-10-2010 in which the share of the assessee is Rs.12,87,500/- ($1/4^{th}$ share of Rs.51,50,000/) by stating that the assessee purchased the above property after the due date of filing of return of income for the assessment year under consideration. Thus, the AO made the addition of Rs.18,22,250/- which has been confirmed by the ld. CIT(A). It is noted that the ld. AR of the assessee has not stated anything regarding the property being the capital asset and situated within the Municipal Limits. Hence, it is deemed that the property is a capital asset and chargeable to LTCG. Now the issue is that whether the assessee is eligible for deduction u/s 54B for purchase of land after due of filing of return and what amount is to be invested whether according to actual sale consideration or as per DLC Rate for claiming deduction u/s 54B of the Act, whether for calculation of LTCG, the cost of acquisition should be as per DLC rate or actual sale consideration and what is the actual DLC rate or whether assessee has received excess sale consideration as mentioned in the sale deed. Regarding deduction u/s 54B for investment in purchase of land after due date of return filling. On perusal

of the record, it is found that the assessee had purchased agriculture land i.e. new assets on 11.10.2010, vide purchase deed placed at PB 39- 51. The lower authorities had denied the claim by stating that the land was purchased after the due date of filling of the Return. The ld AR of the assessee has brought our attention to the decision of Honble Jurisdictional Raj. High Court in the case of the case of **Pr. CIT vs. Shankar Lal Sharma D.B. Income Tax Appeal No. 153/2017 19th December, 2017 (2017) 100 CCH 0311 RajHC (2018) 253 TAXMAN 0308** (Rajasthan) *where it has been held Deduction-Capital gains-Non deposition of net sale consideration-Rejection-Validity thereof-Assessee was picked up for scrutiny assessment and assessment was finalized u/s 143(3)-Assessee claimed for deduction-AO declined claim of deduction U/S 54B and 54F on ground that assessee had not deposited net sale consideration in capital gain account-CIT(A) set aside order of AO-Held, in case of in Fathima Bai v. ITO, it was held that extended due date u/s 139(4) would be 31.3.1990-Assessee did not file return within extended due date, but filed return on 27.2.2000-However,assessee had utilized entre capital gains by purchase of house property within stipulated period of section 54(2) i.e. before extended due date for return under section 139, assessee technically might have defaulted in not filing return u/s 139(4) But, however, utilized capital gains for purchase of property before extended due date u/s 139(4)-Deposit in scheme should have been made before*

initial due date and not extended due date was untenable contention-Reading of aforesaid sub-section would show that it person had not furnished return of previous year within time allowed under subsection (1) i.e. before 31st day of July of Assessment Year, assessee could file return before expiry of one year from end of ever relevant Assessment Year-Considering said case, instant court had considered provisions and interpreted same-In that view of matter, issue was required to be answered in favour of assessee and against department-Assessee's appeal allowed. Further the Co-ordinate Bench in the case of Jag Mohan Sharma (Deceased) Legal Heir Nitesh Sharma v/s ITO Ward 1(1), Jaipur in ITA No. 1089/Jp/2016 dt. 13.03.2018. Held as under

> *5. As regards the non deposit of the amount in the Capital Gain Account Scheme, we note that the assessee has sold the agricultural land on 30th November, 2012 and the house was purchased on 30.10.2014. Therefore, the investment made by the assessee is within two years from the sale of the existing asset and is not beyond the stipulated period as provided under section 54F of the Act. The only objection raised by the AO and Id. CIT (A) is non deposit of amount in the Capital Gain Account Scheme. However, when the assessee has invested the amount within the stipulated period as provided under the provisions of section 54F. then the substantial requirement as per section 54F(1) is satisfied. The Hon'ble Madras HighCourt in the case of CIT vs. Sardarmal Kothari (supra)*
>
> *Again in the case of Fathima Bai vs ITO (supra), the Hon'ble Karnataka High Court has reiterated its view that once the entire capital gain was utilized by the assessee by purchasing a house property before the extended due date under section 139141, the exemption under section 54*

would be allowable to the assessee. In view of the facts and circumstances of the case when the assessee has invested the amount within the stipulated period as prescribed under section 54F and in view of the various decisions cited supra, we decide this issue in favour of the assessee and hold that the assessee is eligible for deduction under section 54F in respect of the investment made in the house purchased on 13th October, 2014.",

Thus, respectfully following the decision of the Hon'ble Rajasthan High Court and Co-ordinate bench (supra), it is held that the assessee is eligible for claim of deduction u/s 54B and as per record and purchase deed the assessee had invested the amount of Rs.13,51,388/-(1/4th of Rs.51,50,000/- purchase cost+2,55,550/- stamp duty).

2.6 Regarding the amount which is to be invested for claiming the deduction u/s 54B for calculation the LTCG, whether according to actual sale consideration or as per DLC rate. In this regard, on bare perusal of the Sec. 54B of the Act, the amount of capital gain is to be invested. As per AO, LTCG was of Rs. 18,22,250/- by taking the DLC Rate but as per assessee the same is of Rs.6,71,250/- as per sale deed. Now the question arises whether the actual LTCG should be as per sale consideration received or on the basis of DLC rate. To this effect, the ld. AR has drawn our attention to the following decisions.

(a) Gyan Chand Batra V/S ITO 133 TTJ 482(JP) wherein it has been held that "From sub-s. (1) of s. 50C, it is clear that in case the consideration received is less than the value adopted by stamp

valuation authority then the value so adopted is to be taken as full value of the consideration for the purposes of s 48. Sec. 50C provides a deeming provision for considering the full value of consideration as the value adopted for stamp duty. In modern statutes, the expression 'deem' is used a great deal and for many purposes. It is at times used to introduce artificial conceptions which are intended to go beyond legal principles or to give an artificial construction of a word for phrase. Thus the artificial meaning of full value of the consideration has been given in s. 50C for the purpose of s. 48. One is entitled to ascertain the purpose for creating a statutory fiction. After ascertaining the purpose, full effect must be given to the statutory fiction and it should be carried to its logical conclusion and to that end, it would be proper and even necessary to assume all those facts on which alone fiction can operate. The legislature in its wisdom has referred to s. 48 in s 50C for adopting the same value as fair market value. Hence, the deeming fiction as provided in s. 50C in respect of the words 'full value of consideration is to be applied only for s. 48. The words full value of consideration as mentioned in other provisions of the Act are not governed by the meaning of fut value of consideration as contained in s 50C. The natural meaning of full value of consideration refers to consideration specified in the sale deed Hence, for the meaning of full value of consideration as mentioned in different provisions of the Act except in s. 48, one will have to consider the full value of consideration as specified in sale deed-CIT vs. Smt. Nilofer Singh (2009) 221 CTP (Dell 277: (2008) 14 DTR (Del) 108 (2009) 309 ITR 233 (Del) relied on.

In Explanation to s. 54F(1), it is mentioned that net consideration means the full value of consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer. The meaning of full value of consideration in Explanation to s. 54F(1) will not be governed by meaning of words "full value of consideration as mentioned in s. 50C. The value adopted for stamp duty is to be

considered as full value of consideration for the purpose of computing the capital gains under s. 48. Sec. 54F(1) says that capital gains is to be dealt with in accordance with the provisions of sub-cls. (a) and (b) of s. 54F(1). In the instant case, the cost of new asset is not less than the net consideration thus the whole of the capital gains will not be charged even if the capital gains has been computed by adopting the value adopted by stamp registration authority. It is clearly mentioned in s. 54F(4) also that net consideration which is not appropriated towards the purchase of new asset the same is to be taxed in case such net consideration not appropriated is not deposited in the capital gain account. It is not necessary that the new asset should be got registered before filing of the return. The requirement of law is that net consideration is required to be appropriated towards the purchase of the new asset. Thus deduction under s. 54F is clearly applicable. Deeming provisions as mentioned in s. 50C will not be applicable to s. 54F so far as the meaning of full value of consideration is concerned as deeming provision mentioned in s. 50C is for specific asset and for the purpose of s. 48. Hence the assessee is entitled for deduction under s. 54F.-CIT vs. Ace Builders (P) Ltd. (2005) 195 CTR (Bom) (2006) 281 ITR 210 (Bom) and CIT vs. Assam Petroleum Industries (P) Ltd. (2003) 185 CTR (Gau) 71: (2003) 262 ITR 587 (Gau) applied.

(b) The above decision followed in case of ITO v/s Raj Kumar Parashar 192 TTJ 603(JP)(2018) In ITA No. 11/jp/ 2016 dt. 28.09.2017 where it has been held that Where the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45, What is therefore relevant is the investment of the net consideration in respect of the original asset which has been transferred and where the net consideration is fully invested in the new asset, the whole of the capital gains shall not be charged under section 45 of the Act. The net consideration for the purposes of section 54F has been defined as the full value of the consideration received or accruing as a result of the transfer of the capital asset as

reduced by any expenditure incurred wholly and exclusively in connection with such transfer. In other words. the consideration which is actually received or accrued as a result of transfer has to be invested in the new asset. In the instant case, undisputedly, the consideration which has accrued to the assessee as per the sale deed is Rs 24,60,000 and the whole of the said consideration has been invested in the capital gains accounts scheme for purchase of the new house property which is again not been disputed by the Revenue. The consideration as determined under section 50C based on the stamp duty authority valuation is not a consideration which has been received by or has accrued to the assessee. Rather, it is a value which has been deemed as full value of consideration for the limited purposes of determining the income chargeable as capital gains under section 48 of the Act. Therefore, in the instant case, the provisions of section 54F(1)(a) are complied with by the assessee and the assessee shall be eligible for deduction in respect of the whole of the capital gains so computed under section 45 read with section 48 and section 50C of the Act. The decisions of the Coordinate Benches as referred supra support the case of the assessee. The subject issue was not for consideration before the Hon'ble Kamataka High Court and hence, the same doesn't support the case of the revenue. We are therefore of the considered view that the provision of section 50C(1) of the Act are not applicable to section 54F for the purpose of determining the meaning of full value of consideration.

(c) The ratio of Gyan Chandra has also been followed by the Honble ITAT Mumbai Bench(D) In the case of Raj Babbar V/S ITO 56 SOT 01 (Mum) (2013) where it has been held that it is to suggest that there is nothing to bar benefits of exemption u/s 54F in respect of the capital gains relatable to the FVC as per the deemed fiction u/s 50C of the Act. Clause (a) of section 54F(1) specifies that it the cost of the new asset is not less than the net consideration in respect of the original asset, there is no chargeable capital gains u/s 45 of the Act. In the instant case, the cost of the new asset is Rs. 17,65,752/- and net

consideration as defined is the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer le Rs 16.87.000 as per sec 50C and Rs 8 lakhs as per the sale deed. The said clause (a) refers to the provisions of section 45 of the Act. In the given facts of the instant case, no chargeable capital gains arises u/s 45 of the Act. Thus, in this case, with investment of Rs. 17.65.752/- in new asset, the cost of the new asset is not less than the net consideration (NC) in respect of the original asset. Of course, the 'net consideration has two variants depending on FVC adopted and in this case, the NCs are quantitatively lesser than the cost of the new asset leaving no chargeable capital gains u/s 45 of the Act. Therefore, the assessee is not chargeable to any capital gains considering the given facts of the case and also the said clause (a) of section 54F(1).

The deeming fictional meaning of section 50C cannot be imported for the purpose of explaining the meaning of the 'net consideration' mentioned in Explanation u/s 54F(1) of the Act. In effect, for working out the exempt income also, the deeming fiction does not have any effect in the circumstances where the cost of the new asset is not less than the net consideration whether computed as per the section 48 or 48 rws 50C. On this facts of the present case, where the assessee undisputedly invested 33 lakhs (1.4.06-31.3.2008) in toto and Rs 17.65.752/- (July 2006-march 2008) was invested during the specified period) mentioned in section 54F(1), considering the provisions of the clause (a), the assessee is not chargeable gains for taxation u/s 45 of the Act.

It is noticed that the CIT(A) confirmed the addition on a couple of reasons, namely (a) the provisions of section 54F(1) does not permit invoking of the provisions of section SOC of the Act. Therefore, 'net consideration /full value consideration should be as per the sale deed figures and not as per the deemed full value consideration figures; and (b) the assessee is new asset includes only the Ground plus 1st floor only and not in respect of two floors (sic). Further, CIT(A) has not

discussed the provisions of the clause (a) and (b) of section 54F(1) of the Act in his order. Actually, the assessee's house consists of Ground plus 4 floors. He relied on SB decision in the case of Sushila M Jhavari, supra and restricted the investment in first floor only and denied exemption in respect of the investment in other floors. Elaborate discussion on why such restriction was not given. Probably, CIT(A) is of the opinion that the Ground plus 1st floor is one house and other floors refers to other residential house. The said SB decision never disapproved the allowability of the investment of capital gains in a residential house, which may include two flats with one kitchen and the same are functionally one dwelling unit, may located at two different floors, may be adjacent vertically and horizontally. CIT(A) has not appreciated the facts of the present case, where the assessee's house constructed include ground plus 4floors. where the Ground floor is a big living room, 1st floor: Kitchen plus 2 bed room; 2nd floor: three bed rooms: 3rd floor: three bed rooms and 4th floor; 3bed rooms. Thus, the said details which are disputed by the revenue suggest that functionally, the assessee's house in question constitutes one residential house only. Therefore, the assessee's claim is in tune with the said SB decision in the case of Sushila M Jhavery (supra). CIT(A) restricting the exemption of capital gains to Rs 5,84,837 is not proper.

Based on the factual matrix of the present case, where the assessee invested total full value consideration of Rs 16,87,000/ (as per the SRO) in the residential house, which is one house only as it has only one kitchen, and these FVC is less than the invested amounts of 17.65.752/-, during the specified period, the assessee is not chargeable to tax on the capital gains u/s 45 of the Act. Whether we compute the capital gains apply FVC as pr the sale deed or the deemed FVC as per the section 50c, the net consideration is less than the investment in one residential house. Therefore, considering the provisions of section 54F(1)(a) of the Act, the order of the CIT(A) is not proper in denying exemption i n in respect of the capital gains relatable to the deemed

mentioned in section SOC of the raised by the assessee are assessee. value of the consideration Act. Accordingly, the grounds allowed and in favour of the

(d) Prakash Karnawal v/s TO 49 50 587(Jp) where it has been held Capital gains-valuation Assessee sold property for Rs. 40 lakhs-AO took the value determined by DVO under s. 50C at Rs. 67.13 lakhs-AO reduced the indexed cost of Rs. 13.27 lakhs shown by the assessee and computed the long-term capital gain at Rs. 53.86 lakhs-Assessee had made investment of Rs. 40 lakhs in Bonds, therefore, the same was also reduced and the remaining amount of Rs. 13.86 lakhs was added to the income-Assessee challenged replacement of actual sales consideration by applying provisions of s. 50C-Deeming fiction as provided in s. 50C in respect of the word 'full value of consideration is to be applied only for s. 48-Since entire amount of sale consideration has been invested in bands, therefore, provisions of s. 50C are not applicable-Further as assessee invested entire sale consideration of Rs. 40 lakhs in the bonds eligible for s. 54EC, he is entitled for deduction under s. 54F.''

Thus by respectfully following the above decision of the Co-Ordinate Bench, it is held that no addition is required to be made on account of LTCG in the present case. As per above decisions for claiming u/s 54B on account of LTCG, the assessee is required to invest the amount as per actual sale consideration and not as per DLC Rate. The assessee as per record i.e. sale deed and purchase deed had invested the amount of Rs.13,51,388/-(1/4th of 51,50,000/- purchase cost + 2,55.550/- stamp duty) u/s 54B of the Act in purchase of new assets i.e. agriculture land while the actual LTCG was of Rs.6,71,250/-, which was to be invested by the assessee. It shows that the assessee had invested more amount of

Rs.13,51,388/- than the amount of Rs.6,71,250/-. Thus no addition is required to be made.

2.7 Regarding the calculation of LTCG, the cost of acquisition should be as per DLC rate or actual sale consideration and what is the actual DLC rate or whether assessee has received excess sale consideration as mentioned in the sale deed. In this regard it is found that the assessee sold her share of the property for Rs. 13,62,500/-(1/4th of Rs.54,50.000/-) and the stamp authorities has taken the value at Rs.25,13,500/-(1/4 of 1,00,54,000/-). The assessee has submitted that she has not received excess sale consideration only the actual amount mentioned in the sale deed i.e. is Rs.13,62,000/-. It is further noted that one side the AO has taken the support of the value adopted by the Sub-Registrar and the other side the ld/ A/R submitted the DLC rate chart at PB 60 to 65 taken from the office of Sub-Registrar Shrimadhopur Sikar for DLC Rate of the property in the year under consideration for that area which comes to Rs.11,69,693/- ($1/4^{th}$ of Rs.46,78,772/-). In support of it, the assessee stated that the land was situated far off the road or after leaving one Khasra Number as mentioned in the sale deed (PB 8 & 22). The ld. AR stated that all these documents were also furnished before the lower authorities. According to ld. AR, wrong DLC Rate had been taken by the AO in place of actual DLC Rate looking to the above mentioned DLC Rate Chart (PB 60 to 65). As per ld. AR, the

DLC Rate would have been charged by the AO as per the rate of property situated at Road side. However, the property was situated far off the road. To this effect, the ld. AR has drawn our attention by citing the following decisions.

1. CIT vs Khandelwal Shringi & Co. (2017) 398 ITR 420 (Raj)
2. CIT vs Shivakami Co. (P) Ltd. 159 ITR 71 (SC)
3. CIT vs K.K. Enterprises 178 Taxman 187 (Raj)
4. Inderlok Hotels (P) Ltd vs ITO, 122 TTJ (Mum.)

In these decision, the Hon'ble Court stated that in absence of evidence on record, higher price for sale of land could not be presumed from the consideration shown in registered sale deeds and rates of property fixed by Stamp Valuation Authority for registration purposes could not be taken to be price for which property might had been sold. It is noted that in this case the AO has not brought evidence of receiving excess amount. The AO proceeded only on the basis of the value adopted by the Stamp Valuation Authorities. Thus as per the findings given by the Hon'ble Courts (supra), no addition is liable to be made. In this view of the matter, the addition sustained by the ld. CIT(A) is deleted.

3.1 As regards Ground No. 1 and 2 of the assessee, the ld. AR of the assessee has filed the written submissions but has neither argued on these grounds of appeal nor brought any contrary material to rebut the observations of the lower

authorities as the assessee has not filed the return of income. In this view of the matter, the Ground No. 1 and 2 of the assessee are dismissed.

4.1 The Ground No. 4 is regarding charging of interest u/s 234A, 234B and 234C which is consequential in nature.

5.0 In the result, the appeal of the assessee is partly allowed

Order pronounced in the open court on 4 /10/2022.

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 4/10/2022
*Mishra
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:
1. The Appellant- Smt. Narangi Devi, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 7(4), Jaipur
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 254/JP/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar