

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 1229/JP/2019  
निर्धारण वर्ष / Assessment Years : 2011-12

Sh. Madan Lal Sharma, S/o Sh. Pyare Lal Sharma, C-9, Scheme-4E Block, Vidhan Sabha Colony, Murlipura, Jaipur	बनाम Vs.	ITO, Ward-1, Bharatpur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ANWPS 2210 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 1312/JP/2019  
निर्धारण वर्ष / Assessment Years : 2011-12

ITO, Ward-1, Bharatpur	बनाम Vs.	Sh. Madan Lal Sharma, S/o Sh. Pyare Lal Sharma, C-9, Scheme-4E Block, Vidhan Sabha Colony, Murlipura, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ANWPS 2210 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Rajeev Sogani(CA) &  
Sh. Rohan Sogani (CA)  
राजस्व की ओर से / Revenue by : Sh. James Kurian (CIT)

सुनवाई की तारीख / Date of Hearing : 23/11/2022  
उदघोषणा की तारीख / Date of Pronouncement: 10/01/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These are the cross appeals of the assessee and of revenue revenue  
which are directed against the order of the learned Commissioner of

Income Tax (Appeals)-22, Alwar [hereinafter referred to as [Id. CIT(A)] dated 05.09.2019 for the Assessment Year 2011-12, which in turn arise out of an order passed by ITO, Ward-1, Bharatpur passed u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 [ here in after referred to act "Act"] on 22.12.2016.

2. As the issues involved in the present appeals are inextricably interlinked or in fact interwoven, therefore, the same were argued together and are disposed off by this consolidated order.

3. The facts as culled out from the assessment record is that the Director of Income Tax (I&C), Jaipur, has passed information, in respect of the assessee that:-

"The assessee had deposited cash amounting to Rs.1.40 crores in his Bank Account with Bank of Baroda on 25.01.2011 whereas the assessee didn't filed his return of income for the relevant year.

The assessee had entered into a Memorandum of Undertaking (MOU), on 24.02.2011, with three persons, viz. Shri Arjun Ram Maharaiya, Shri Bhiva Ram & Shri Radha Krishan, in respect of sale of 28 plots, aggregating measuring to 7200 Square Yard, pertained to The Shiva Co-operative Housing Society. @Rs.20000/- per Square Yards, and received advance of Rs.1.50 crores on 24.02.2011 from three persons viz. Shri Arjun Ram Maharaiya, Shri Bhiva Ram & Shri Radha Krishan. The cash of Rs.1.40 crores had been deposited out of advance received.

The assessee had also been entered into 15 different agreements on different dates entitling 25 residential plots with the real owners of the said plots @ Rs.10000/- per Square Yards, for sale and amount of Rs.7.00 lakhs was paid in

advance, in cash for every plot, and thus, total amount of Rs.1.75 crores was paid to 15 real owners, in cash, by the assessee.

Thus, the margin of the assessee was Rs.7.20 crores, [7200 Square Yards @ Rs.10000/- per Square Yards] which constitutes his income and chargeable to tax.

Further, the assessee had paid Rs.25.00 lakhs in excess of advances received by him which also constitutes his income and chargeable to tax.”

3.1 On the basis of information passed on by the Director of Income Tax (I&CI), Jaipur, notice u/s 148 dated 11.05.2015 was issued, after recording of reasons, to the assessee, which stands duly served upon the assessee, however, the notice remained non complied with. Therefore, a notice u/s 142(1) dated 22.09.2015 was issued. In response thereto, Shri Shyam Sunder Jangid, Advocate & Authorized Representative of the assessee, send written submission dated 13.10.2015, by Speed Post, which was received by AO in his office on 17.10.2016, wherein it is stated that the assessee had filed his ITR on 09.10.2016, declaring total income at Rs. 112439/- (r/o Rs. 112440/-), after claiming of deduction of Rs. 22,506/- under Chapter VIA. The Id. AO noted from the Computation of Income of that the assessee declared his income u/s 44AD.

4. In the assessment proceeding the Id. AO made addition for Rs. 25,00,000/- as unexplained money under section 69A of the Act. The relevant finding of the Id AO on this issue is reproduced as under:

“6. Unexplained Cash

The department is having enough & concrete evidence that the assessee had entered into a Memorandum of Undertaking (MOU), on 24.02.2011, with three persons, viz. Shri Arjun Ram maharaiya, Shri Bhiva Ram & Shri Radha Krishan, in respect of sale of 28 plots, aggregating measuring to 7200 Squire Yard, pertained to The Shiva Co-operative Housing Society, @Rs.20000/- per Square Yards, and received advance of Rs.1.50 crores on 24.02.2011 to three persons viz. Shri Arjun Ram maharalya, Shri Bhiva Ram & Shn Radhar Krishan.

On the other side, the assessee had also been entered into 17 different agreements on different dates entitling 25 residential plots with the real owners of the said plots @ Rs.10000/- per Square Yards, for sale and amount of Rs.7.00 lakhs was paid in advance, in cash for every plot, and thus, total amount of Rs.1.75 crores was paid in advance to 15 real owners in cash by the assessee.

Thus, the assessee had paid Rs.25.00 lakhs [1.75 crores 1.50 crores], in cash, in excess of advances received. In respect of source of these Rs.25.00 lakhs the Authorized Representative of the assessee, on 19.12.2016, furnished a copy of receipt, in respect of returning of Cash amounting to Rs.50.00 lakhs to the persons who have entered into MOU for purchase of plots with the assessee. A perusal of the same revealed that the receipt has been furnished on plain paper and the signature on the receipt is not matching with the signature on MOU. This shows that the receipt is not genuine.

In view of the above discussion, I hold that the assessee has paid Rs.25.00 lakns out of unexplained money and therefore, Rs.25.00 lakhs is hereby added, u/s 69A, into the total income of the assessee.”

4.1 The Id. AO has also added a sum of Rs. 7,20,00,000/- as the short term capital gain based on the set of information received. The relevant finding of the Id AO on this issue is reproduced as under:

“Short Term Capital Gain

Since the assessee had entered into a Memorandum of Undertaking (MOU), with three persons, in respect of sale of 28 plots, aggregating measuring to 7200 Square Yard, @ Rs.20000/- per Square Yards, and on the other hand entered into 17 different agreements with the real owners of the said plots @ Rs.10000/- per Square Yards. Thus, the margin of the assessee is calculated at Rs. 10000/- per Square Yards and the total margin amount comes to Rs. 7.20 crores [7200 Square Yards, @ Rs. 10000/- per Square Yards].

It is worthwhile to mention here that copy agreement cancellation deeds furnished by the assessee have also been peruse very carefully and found that

these deeds have been executed on 26.05.2016 & 19.09.2016, i.e., when the assessment proceedings were going on. Further, the assessee failed to clarify the position of MOU executed in respect of sale of 28 plots. In this respect the only document, i.e., copy of receipt, furnished by the Authorized Representative of the assessee, is not genuine, as discussed in para-6. The submission submitted by the assessee during the assessment proceedings are only after thoughts of the assessee having no base.

As far as the submission of the Authorized Representative of the assessee, filed on 19.12.2016, that as per condition of the MOU if ownership disputes did not solve then advance amount are returnable to sellers with cancellation of the previous executed agreements, this version of the Authorized Representative of the assessee is very untrue. It is perused that it is nowhere narrated in the MOU executed in respect of sales of plots as well as agreements executed in respect of purchase of plots. Whereas, in the agreements executed in respect of purchase of plots the fact is clearly narrated that *the property in question is subjudice in Rajasthan High Court, and it is also narrated therein that whether the case was favourably decided or not the advances paid by the assessee is not refundable.*

In view of the above discussion, hold that the assessee has been entered into agreements in respect of purchase of plots, measuring area 7200 Square Yards @ Rs.10000/- per Square Yards and also entered into an MOU in respect of sale of same plots @ Rs.20000/- per Square Yards. Thus, the assessee gained short term capital gain at Rs.7.20 crores, therefore, Rs.7.20 crores is hereby added into the total income of the assessee as Short Term Capital Gain.”

5. Aggrieved from the order of the assessing officer, assessee preferred an appeal before the Id. CIT(A). The Id. CIT(A) deleted the addition of Rs. 7,20,00,000/- and confirmed the addition of Rs. 25,00,000/-. The relevant finding of the Id. CIT(A) is reiterated here in below :

“5.5 I have perused the assessment order as well as remand report of the A.O. submissions and cross reply of the appellant including judicial citations given therein. Following facts have emerged;

1. That the appellant had entered into a MOU with 3 persons namely; Sh. Arjun Ram Mahariya, Sh. Bhiva Ram and Sh. Radha Krishan vide agreement dated: 24/01/2011 for the purpose of sale of 28 Plots (totaling of 7200Sq. Yard) pertaining to Shiva Co-operative Society @Rs.20,000/- per square yard.

2. That the appellant had received an amount of Rs.1.5cr on 24/01/2011 and Rs.50 Lakhs on 21/02/2011 from them as advance against the intended purchase of the plots.
3. That the appellant had separately entered into agreement with various persons who were owners of 25 plots and the purchase" agreement was set for Rs.10,000/- per square yard. The appellant had paid an amount of Rs.1.75 Crore as advance (Rs.7 lakhs per plots) towards purchase of 25 plots. The amount of Rs.1.75 crore was given out of advance received from the 3 persons above as per the MOU. Thus in effect, the appellant retains Rs.25 lakhs from the advance amount received and advance given.
4. That the agreement to sell and purchase was incumbent upon the resolution of title suits pending before the Hon'ble Rajasthan High, Court. Since the matter failed to resolve therefore the sale agreement signed between the appellant and 25 plot owners were cancelled and the appellant got back the advance of Rs.7 lakhs per plots from 18 plot owners. Therefore, the appellant received back an amount of Rs.1.26 crores out of Rs.1.75 crores given as advance to the plot owners.
5. The A.O has added an amount of Rs.7.2 crore as short term capital gain on the premise that the appellant facilitated the sale of 7200 square yard of land at the rate of Rs.20,000/- per square yard whereas he got the land 7200 square yards at the rate of Rs.10,000/- per square yard. Therefore the A.O had concluded that the appellant had earned an income of Rs.7.2 crore as the difference in the sale and purchase price. However, the appellant has submitted that no actual sale/purchase had taken place as the matter failed to resolve before the Hon'ble Rajasthan High Court and hence the agreement to sell and purchase was cancelled. Since no actual sale/purchase had taken place therefore there is no question of any incidence of capital gain. The matter was remanded to the A.O vide letter dated: 09/06/2017. The A.O has submitted the remand report vide letter dated: 06/10/2017 where the A.O has concluded as under;
3. Since, the matter of legal title was disputed before Hon'ble Rajasthan High Court, it was agreed that registration of documents shall be made after decision of the court. Therefore, all 28 plots' agreements were cancelled because the dispute was not resolved by the time and the assessee received back the advance of Rs. 7 lac from some parties in respect of 18 plots which is evident from the bank account statement furnished during appellate proceedings. It is pertinent to note here that as per MOU the said advance of Rs.7 lac for each plot was not refundable in any condition to the 2 party i.e. the assessee Shri Madan Lal Sharma. Despite these facts, the assessee has received back amount of Rs.7 lac each from 18 Parties total amounting to Rs.1.26 crore (7,00,000/- \*18). The same may be treated as

commission Income of the assessee In case of any relief to be given to the assessed on addition on account of short term capital Gain Rs.7.20 crores.

6. That upon cancellation of the agreement to purchase the plots from the respective owners, all the said plots have been sold to various other parties.

5.6 I have considered the above mentioned facts. There is no doubt that the appellant is not the owners of any plots involved in this deal. He only acted as the facilitator entering into purchase agreement with the owners of the plots and on the other hand entered into MOU with 3 persons who intended to buy the 28 Plots. The whole deal fell through as the matter could not be resolved in the Rajasthan High Court where the title suit was in dispute. In view of the fact that no sale or purchase had taken place involving the appellant who is also not the owner of any plots of land therefore there is no question of incidence of any capital gain. The A.O has merely calculated the difference between intended sale and purchase consideration on the basis of an MOU and agreement. The A.O has merely calculated short term capital gain on notional premise of an intended sale and purchase of plots which had never taken place. Therefore, the short term capital gain of Rs.7.2 crores never arisen and there is no basis what so ever. Accordingly, the addition of Rs.7.2 crores on account of perceived short term capital gain is deleted.

5.7 Now, the other issue is how much money that the appellant earned as a result of this deal. The appellant had got an amount of Rs.2 Crores as per the MOU entered into with 3 persons who had given him Rs.2 crores as advance for purchase of plots. The appellant on the other hand has entered into agreement to purchase of 25 plots from the real owners and paid Rs.1.75 crores as advance to them at the rate of Rs.7 Lakhs per plots. Since the deal could not materialize hence, the appellant got back the advance amount of Rs.1.26 crores out of Rs.1.75 crores advanced to 25 owners as only 18 owners had returned the advance amount. Thus the appellant retained the amount of Rs.1.26 crores and Rs.25 lakhs i.e total of Rs. 1.51 crores. The appellant has submitted that as per the MOU he has to Creturn the amount of advance ite Rs.2 crores received from 3 persons along with an interest of 1% in the event of the appellant not able to transfer the land in the hand of the 3 persons. Since, the deal cold not materialize therefore the appellant is bound to refund the amount of Rs.2 crores received as advance alongwith interest of 1%. The relevant part of the agreement is reproduced as under;

यह है कि विक्रय किये गये उक्त वर्णित प्लाटो को प्रथम पक्ष द्वारा जयपुर प्राधिकरण जयपुर में द्वितीय पक्ष के नाम प्रतिस्थापन/नाम हस्तांतरण करवाने में प्रथम पक्ष असमर्थ हुआ तो समयाउपरान्त प्राप्त की हुयी राशि को एक प्रतिशत व्याज प्रतिमाह सहित द्वितीय पक्ष को भुगतान करने के लिये पाबंद व बाध्य रहेगा तथा इसी प्रकार प्रथम पक्ष द्वारा तय समय पर प्लाटों के जे डी ए से पट्टे बनवाने हेतू द्वितीय पक्ष के नाम प्रतिस्थापन/ नाम हस्तांतरण करवाते समय भुगतान करने में द्वितीय पक्ष असमर्थ रहता है तो प्रथम पक्ष प्राप्त की हुयी राशि को अपने हर्जे-खर्चे में जप्त कर उक्त समझौता पत्र निरस्त

कर देगा तथा उक्त समझौता पत्र समय पश्चात स्वतः ही निरस्त माना जायेगा तथा द्वितीय पक्ष द्वारा उक्त लेख पत्र को न्यायालय या कानूनी कार्यवाही ने जाने पर सभी जगह अस्वीकार व अमान्य माना जायेगा।

The agreement signed between the appellant and 25 owners has stated that if the deal could not materialize then the amount of advance i.e Rs.7 lakhs. per plots would be forfeited. The relevant part of the agreement is reproduced as under,

यह कि माननीय राजस्थान उच्च न्यायालय में विचाराधीन प्रकरण के निस्तारण में प्रथम पक्ष के पक्ष में उपरोक्त प्लॉट बाबत निर्णय नहीं होने एवं इस बाबत अग्रिम न्यायालयीय कार्यवाही में भी प्रथम के हक में निर्णय नहीं होने पर प्रथम पक्ष इस अनुबंध से स्वतंत्र होगा तथा यह अनुबंध निरस्त व समाप्त हो जायेगा। तथा द्वितीय पक्ष द्वारा अग्रिम प्रदान की गई राशि एवं उपरोक्त प्लॉट बाबत खर्च की जाने वाली राशि प्रथम पक्ष द्वारा कतई देय नहीं होगी तथा प्रथम पक्ष स्वयं अपने स्तर पर कोई भी आवश्यक कानूनी कार्यवाही करने हेतु स्वतंत्र होगा।

However, 18 of such owners had given back the advance amount totaling to Rs. 1.26 crores.

Thus it is very clear from the terms of agreement with 3 persons namely Sh. Arjun Ram Mahariya, Sh. Bhiva Ram and Sh. Radha Krishan vide agreement dated: 24/01/2011 that the amount of Rs. 2 crore remains a liability on the appellant to pay it back along with interest. The appellant is holding an amount of Rs.1.51 crore with him i.e Rs.1.26 crores received back from the 18 plot owners and Rs.25 lakhs from the amount of Rs.2 crores received from Sh. Arjun Ram Mahariya, Sh. Bhiva Ram and Sh. Radha Krishan vide agreement dated: 24/01/2011. However, if the A.O find it later that the liability is ceased to exist and comes under cessation of liability then the sum can be brought to tax later on as per the provision of section 41 (1) of the Act.

5.8 I have considered the fact that the appellant had received an amount of Rs.2 crores from Sh. Arjun Ram Mahariya, Sh. Bhiva Ram and Sh. Radha Krishan vide agreement dated: 24/01/2011 and out of this amount had advanced an amount of Rs.1.75 crores to 25 plot owners. This from the very beginning the appellant had retained an amount of Rs.25 lakhs from the advance received from Sh. Arjun Ram Mahariya, Sh. Bhiva Ram and Sh. Radha Krishan vide agreement dated: 24/01/2011. Since the appellant was appointed as an agent for the plot deals as per the agreement, therefore it is reasonable to infer that the amount of Rs.25 lakhs retained by him constitutes his commission for the work to be done by him. Accordingly, it is my considered view that the Rs.25 Lakhs is taxable in the hand of the appellant. Accordingly, the ground of appeal on the issue is partly allowed.

In effect the appellant's ground of appeal on the issue is partly allowed."

6. Both the parties feeling aggrieved from the order of the Id. CIT(A) preferred two separate appeals before the tribunal.

7. First, we take up the appeal of the revenue in ITA no. 1312/JPR/2019. The revenue has marched this appeal for the year under consideration on following ground of appeal:

“1. Whether on the facts and circumstances of the case and in law Ld. CIT(A) is justified in deleting addition of Rs. 7,20,00,000/- made by the AO on account of short term capital gain, without appreciating material facts of the case.”

8. In support of the appeal of the revenue and to substantiate the view taken by the Id. CIT(A) the Id. AR of the assessee submitted an application under rule 29 of the ITAT Rules, 1963 for admission of additional evidence.

The contention the application is reproduced here in below:

Assessee most humbly prays for admission of the following additional evidences:-

S. No.	Particulars	Page No.
1.	Copies of the sale deed entered by the original plot owners subsequently for sale of their respective plots with the buyers.	1-253
2.	Copy of the affidavit of Shri Mahaveer Singh Kulhari and Shri Nand Lal Poonia, wherein they have confirmed the factual position that the assessee had received cash, amounting to Rs. 50 lacs, from the perspective buyers, in accordance with the terms of the Memorandum of Understanding entered on 21.02.2011	254-259

Assessee, during the relevant previous year, entered into agreement to sale with the Plot Owners of 28 plots, pertaining to Shiva Cooperative Society. The assessee also entered into a Memorandum of Understanding (“MOU”) with certain prospective buyers of the plot of land. Agreement to sale and MOU entered by the assessee was dependent on the resolution of the title suit pending before the Hon’ble Rajasthan High Court. However, subsequently, such matter failed to be resolved. Resultantly, the entire such transactions entered by the assessee had to be cancelled. The agreement to sale entered by the assessee with 17 out of total 28 plot owners was cancelled. For the remaining plot of land, the plot owners subsequently sold the property to different buyers, by way of sale deed. Since, the sale deeds were entered/arranged by the

assessee subsequent to culmination of the proceedings before the lower authorities, such sale deeds could not be submitted to the lower authorities.

Such documents are relevant for the case at hand in order to establish the fact that the plots of land in the first place were never transferred to the assessee by the actual owners and resultantly no onward transfer of such plots took place from the assessee to the prospective buyers.

Further, assessee entered into a MOU with the prospective buyers of the plot of land. As per the MOU, assessee was to receive cash amounting to Rs. 50 lacs, from such buyers subsequent to entering into the MOU. Such amount was received by the assessee, in the presence of Shri Mahaveer Singh Kulhari and Shri Nand Lal Poonia, who were also witnesses in the MOU entered by the assessee. Both such persons have now confirmed the factual position by way of affidavit.

Although the factual position of the assessee having received Rs. 50 lacs in cash from the prospective buyers is discernible from the orders of the lower authorities and also submissions made before them by the assessee, however, additionally the affidavits are being filed by the assessee before the Hon'ble Bench.

As per the above facts, it is very humbly prayed that evidences may kindly be taken on record, considered and oblige since they are crucial for deciding the appeal before the Hon'ble Bench.

Reliance is placed on the following judicial pronouncement:

CIT v/s Text Hundred India (P) Ltd. (2011) 239 CTR (Del) 263

*"..Section 254 of the Income-tax Act, 1961, read with rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963 - Appellate Tribunal - Powers of - Assessment year 2004-05 - Whether under rule 29 Tribunal has discretion to admit additional evidence in interest of justice once Tribunal affirms opinion that doing so would be necessary for proper adjudication of matter; this can be done even when application is filed by one of parties to appeal and it need not to be a suo motu action of Tribunal - Held yes - Whether once it is found that party intending to lead evidence before Tribunal for first time was prevented by sufficient cause to lead such an evidence; that said evidence would have material bearing on issue which needed to be decided by Tribunal; and that ends of justice demand admission of such an evidence, Tribunal can pass an order to that effect - Held, yes - Whether, however, this rule would not apply where with existing evidence on record appellate court can pronounce a satisfactory judgment - Held, yes.."*

8.1 The Id. AR of the assessee also filed a detailed submission and the same is also reiterated here in below :

“1. Assessee, an individual, earned income, during the relevant previous year, which was below the maximum amount not chargeable to tax. Resultantly, assessee did not file his original return of income, for the relevant previous year. Case of the assessee was re-opened under Section 147. Pursuant to the notice issued under Section 148, assessee filed his return of income on 09.10.2016, declaring total income of Rs. 1,12,440 [AO Order Page 2]. Assessment was completed, under Section 143(3), read with Section 148, *vide* order dated 22.12.2016, at a total income of Rs. 7,46,34,945, resulting from additions of Rs.7,45,22,506 [AO Order Page 8].

II. Against the order passed by the Id. AO, assessee preferred appeal before Id. CIT(A), who *vide* order dated 05.09.2019, in Appeal No. 434/2016-17, deleted the additions of Rs. 7.20 crores, on account of Short-Term Capital Gain (“STCG”). However, Id. CIT(A) sustained the additions made of Id. AO of Rs. 25 lacs, on account of unexplained investment. Against the relief provided by Id. CIT (A), Department has preferred appeal before Hon’ble ITAT, Jaipur Bench, in ITA No. 1312/JP/2019. Whereas, against the additions sustained by Id. CIT(A), appeal has been preferred by the assessee before the Hon’ble ITAT, in ITA No. 1229/JP/2019.

#### BRIEF FACTS

1. During the year under consideration, assessee entered into Memorandum of Understanding (“MOU”) on 24.01.2011 [PB : 5-9] with three persons namely Shri Arjun Ram Mahariya, Shri Bhivaram and Shri Radhakrishna (“prospective buyers”).

2. Terms of the MOU [PB : 5-9] *inter-alia*, included:-

- 2.1. MOU was in relation to 28 plots from A-21-A to A-48-A (“Plots”), situated at The Shiva Operative Housing Society Limited, Jaipur James Colony, Sector No. 8, Mandir Mode, Vidyadhar Nagar, Jaipur, Rajasthan measuring 7,200 sq. yards of land (Approx);
- 2.2. Assessee to act as the representative of the actual owners of the plots, (“actual owners”), who had authorized the assessee to act on their behalf for selling the plots to the prospective buyers;
- 2.3. Assessee would get the plots registered in the name of the perspective buyers within six months from the date of entering into the MOU, after getting the title of the plots cleared and disputes pending before High Court settled;

- 2.4. Assessee was entitled to Rs. 20,000 per sq. yard of land, from the prospective buyers, for getting the plots transferred in their name, through registered documents;
  - 2.5. On entering into the MOU, Rs. 1.50 crores was received by assessee, in cash, as advance amount;
  - 2.6. Balance amount of Rs. 50 lacs was received by the assessee within 15 days of entering into the MOU, when assessee entered into "agreement to sale" with the all the the actual owners;
  - 2.7. Remaining amount of consideration for purchasing the plots was to be paid to the assessee, within 6 months from the date of MOU, provided the assessee could get the plots registered in the name of the prospective buyers, through execution of relevant documents before the Jaipur Development Authority. Assessee was also required to get possession of the plots to the prospective buyers;
  - 2.8. If assessee failed to get the plots transferred in the name of the prospective buyers and failed to get it registered, then assessee would be required to repay the amount so received from the prospective buyers, along with interest of 1% per month;
  - 2.9. MOU was signed between the assessee and the prospective buyers, in front of two witnesses namely Shri Mahaveer Singh Kulhari and Shri Nand Lal Poonia.
3. Assessee, during such period, simultaneously entered into "Agreement to Sale" [PB: 10-16 SAMPLE BASIS] with the actual owners of 28 plots. Terms of such "Agreement to Sale", *inter-alia*, included: -
- 3.1. Case regarding the plots was pending before Hon'ble Rajasthan High Court;
  - 3.2. Assessee agreed to get dispute on the plots settled in the favour of the actual owners and to contest the case on behalf of the actual owners and to incur any possible cost of litigation;
  - 3.3. Advance amount was paid to the plot owners, *in lieu* of the Agreement to Sale so entered. Such amount was Rs. 7 Lacs per plot.
  - 3.4. Assessee in turn had to pay Rs.10,000 per square yard of land, as part of the purchase consideration for purchasing the plots;
  - 3.5. Transfer of the plots to the assessee or any another person identified by the assessee was dependent on the outcome of the case pending before High Court;
  - 3.6. If the case was not decided, within considerable period then the agreement to sale so entered shall stand canceled/ terminated.
4. Assessee, resultantly, received advance amount of Rs. 2.00 crores from the prospective buyers [Rs. 1.50 Crores at the time of entering into MOU and Rs. 50

Lacs after 15 days from the MOU] and in-turn paid Rs. 1.96 crores to the original plot owners, being Rs. 7 Lacs\*28 Plots.

5. Assessee could not get the title of the land cleared and the litigation as was pending before Hon'ble Rajasthan High Court in relation to the plots could not be settled by the assessee.
6. Settlement of the pending case was a prerequisite for the MOU, entered by the assessee with prospective buyers, as well as Agreement to Sale entered by the assessee with actual owners. Since such pre-condition could not be satisfied, the assessee had to revert to the original position, by cancelling the Agreement to sale and also the MOU.
7. Assessee, thereafter, in some instances, entered into cancellation deed with the actual owners of plots of land and accordingly, the actual owners were free to sell the plots to any person, other than the assessee.
8. Out of the amount of initial advance of Rs.1.50 crores received by the assessee, assessee deposited Rs. 1.40 crores in Bank Account, as a result of which the case of the assessee was reopened by the ld. AO. [Refer AO Order Page 1 and Reasons Recorded]

DEPARTMENTAL  
GROUND NO. 1

LD. CIT(A) ERRED IN DELETING THE ADDITION OF RS.  
7.20 CRORES ON ACCOUNT OF SHORT-TERM  
CAPITAL GAIN

#### 1. ASSESSING OFFICER

- 1.1. Ld. AO treated the plots first being transferred to the assessee and, thereafter, being transferred by the assessee to the prospective buyers. Accordingly, ld. AO computed the STCG, of Rs. 7.20 crores, on sale/transfer of the plots by the assessee to the prospective buyers. [Rs. 20,000 Minus Rs. 10,000 \* 7200 Sq. Yards of Land]

#### 2. COMMISSIONER OF INCOME TAX (APPEALS)

- 2.1. Before Id. CIT(A) elaborate submissions were made by the assessee. Such submissions have also been reproduced by the Id. CIT(A), in his order from pages 3 to 4.
- 2.2. It was contended by the assessee that for Capital Gains to arise in the hands of the assessee there has to be transfer of the Capital Asset, i.e. plots first to the assessee, and thereafter by the assessee to the prospective buyers. However, since the entire transaction had been cancelled at both ends, no such transfers had taken place.
- 2.3. Such submission of the assessee was accepted by Id. CIT(A). Ld. CIT(A) at Page 11 of his order, at Para 5.6, while deleting the addition on account of STCG, held as under: -
- 2.3.i Ld. CIT(A) accepted the aforementioned factual position, of assessee only acting as a “facilitator”, i.e. with the prospective buyers on one hand and the actual owners of the plot on the other hand.
- 2.3.ii Ld. CIT(A) accepted that entire such sale and purchase transaction with the assessee was incumbent upon the resolution of the title suit, which was pending before the Hon’ble Rajasthan High Court.
- 2.3.iii Ld. CIT(A) held that since the matter failed to be resolved, both the documents had to be called off/cancelled by the assessee.
- 2.3.iv Ld. CIT(A) accepted the factual and the legal position that since no transfer of plots had taken place to the assessee and, thereafter, from the assessee to the prospective buyers, no transfer had taken place. Resultantly, there was no Capital Gain which had arisen.
- 2.3.v Ld. CIT(A) observed that the Id. AO merely calculated STCG on a “notional premise” of an intended sale and purchase of plots which had never taken place.
- Accordingly, entire such addition of Rs. 7.20 Crores, on account of STCG, was deleted by the Id. CIT(A).

### 3. SUBMISSIONS

- 3.1. Following factual position is undisputed by the lower authorities: -
- 3.1.i Assessee had entered into MOU with the prospective buyers;
- 3.1.ii Assessee simultaneously also entered into Agreement to Sale with the actual owners;
- 3.1.iii Both such documents were dependent on the resolution of the title suit pertaining to the plots, which was pending before the Hon’ble Rajasthan High Court;

- 3.1.iv This title suit could never be resolved and remained pending;
  - 3.1.v Assessee had never paid the entire consideration for purchase of the plots to the actual owners;
  - 3.1.vi Assessee had never received the entire consideration for transfer of the plots to the prospective buyers;
  - 3.1.vii Assessee was never given possession of the plots by the original buyers and resultantly such possession could not be transferred/handed over by the assessee to the prospective buyers.
  - 3.1.viii As the assessee had failed to resolve the title dispute, both such documents had to be called off/cancelled. Assessee had to enter into a cancellation deed. Such cancellations deeds submitted before the lower authorities;
  - 3.1.ix Actual owners subsequently sold the plots to some other individuals and not the assessee, by way of registered Sale Deeds. [Refer the table enclosed]
- 3.2. For Capital Gains to arise, be it Short Term or Long Term, there has to be transfer of the Capital Asset. However, in the present case, the Plots remained with the actual owners, neither the Plots were registered in the name of the assessee, nor possession of such plots was handed over to the assessee, at any point of time. Also full consideration, as was decided by the assessee with the actual owners in the Agreement to Sell was never handed over. Thus, the Plots were never transferred to the assessee. Further, assessee, himself not having any title, in his name, of the Plots, those Plots were never transferred by the assessee to the prospective buyers. Accordingly, there cannot be any Capital Gains, eligible to tax, in the hands of the assessee.
- 3.3. Even Id. AO, in his remand report, submitted to the Id. CIT(A) accepted the fact that the property was never transferred to the assessee. In this regard, the remand report of the Id. AO, reproduced by the Id. CIT(A) at Page 5-6 of his order may please be considered in correct perspective.

In view of the above, appeal of the Department, in relation to Departmental Ground No. 1 deserves to be dismissed and the order of Id. CIT(A), in this regard, deserves to be upheld.

ASSESSEE  
GROUND NO. 1

ADDITION OF RS. 25 LACS AS UNEXPLAINED CREDIT.

1. SUBMISSION

- 1.1. Assessee received Rs. 2 crores from the perspective buyers, against the MOU entered on 24.01.2011. Assessee, in-turn, paid consideration of Rs. 7 lacs per plot, for 28 plots, in total of Rs. 1.96 Crores to the actual owners. Synopsis, in this regard, is as under: -

Particulars	Amount
Advance amount initially received by assessee from prospective buyers on signing of the MOU	Rs.1.50 Crores
Add: Further advance amount received from prospective buyers	Rs. 50 lakhs
Less: Advance amount paid to respective actual owners of 28 plots	Rs. 1.96 crores
Amount finally retained by assessee	Rs. 4 Lacs

- 1.2. Ld. AO, during assessment proceedings, misconstrued the factual position involved in the case. Ld. AO considered that the assessee dealt with only 25 plots [AO Order Page 8], while entering into the Agreement to Sale with the actual owners, whereas, assessee had actually dealt with 28 plots:-
- 1.2.i This has also been accepted by the Id. AO at Page 2 and 3 of his order. Attention is drawn towards the notice issued under Section 142(1), during assessment proceedings [AO Order Page 2-3]
- 1.2.ii Even information so received by the Id.AO from the Director of Income Tax (I & CI) was in relation to 28 plots and not 25 [AO Order Page 1].
- 1.2.iii Moreover, total area of the plots, which is undisputed, is 7200 square yards. Area of 28 plots, as has been dealt with by the assessee, add upto to 7200 square yards (Approx). [AO Order Page 2];
- 1.3. The advance amount paid is Rs. 1.96 Crores, which is discernible from the Agreement to Sale entered by the assessee with the actual owners of 28 plots. Summary of the same is as under: -

S.No	Name of Actual Owner	Plot No.	Area (Sq. Yards)	Date of Agreement	Advance Paid by Assessee	Agreement to Sale [Paper Book Ref.]	Quick Ref. to advance amount in Agreement to Sale [Paper Book Ref.]																																																																																																																																																																
1	Virendra Kumar Jems (2 Plots)	A-42-A,	267	02.02.2011	14,00,000	Pg 10-16	Pg 12																																																																																																																																																																
2		A-46-A	193					3	Virendra Kumar Jems (8 Plots)	A-47-A	174	02.02.2011	56,00,000	Pg 152-179	Pg 155	4	A-48-A	170	5	A-38-A	220	6	A-29-A	220	7	A-36-A	220	8	A-39-A	220	9	A-31-A	220	10	A-32-A	220	11	Zaved Akhatar	A-34-A,	228	02.02.2011	14,00,000	Pg 17-29	Pg. 19	12	A-45-A	211	13	Shamsuluhaq	A-43-A,	276	02.02.2011	14,00,000	Pg 48-55	Pg. 50	14	A-44-A	228	15	Zaved Akhatar	A-26-A	220	23.02.2011	7,00,000	Pg 30-47	Pg. 33	16	Divya Joshi	A-30-A	220	17.03.2011	7,00,000	Pg 56-62	Pg. 57	17	Ishaq Geoge	A-27-A	520	22.03.2011	7,00,000	Pg 63-71	Pg. 64	18	Manju Devi	A-25-A	220	16.02.2011	7,00,000	Pg 72-78	Pg. 73	19	Heera Lal Bhatiya	A-40-A	220	28.02.2011	7,00,000	Pg 79-85	Pg. 80	20	Heera Lal Bhatiya	A-41-A	336	28.02.2011	7,00,000	Pg 86-96	Pg. 88	21	Saroj Bhatiya	A-24-A	220	28.02.2011	7,00,000	Pg 97-103	Pg. 98	22	Ranjani	A-37-A	220	04.02.2011	7,00,000	Pg 104-114	Pg. 105	23	P.Sarasamma	A-21-A	243	07.02.2011	7,00,000	Pg 115-120	Pg. 116	24	P.Sarasamma	A-28-A	520	16.02.2011	7,00,000	Pg 121-130	Pg. 123	25	Shanta K.	A-35-A	303	02.02.2011	7,00,000	Pg 131-137	Pg. 132	26	Chiman Lal Meena	A-22-A	440	02.02.2011	14,00,000	Pg 138-144	Pg. 139	27	A-23-A	28	Indra Meena	A-33-A	220	02.02.2011	7,00,000	Pg 145-151	Pg 146			<b>Total</b>
3	Virendra Kumar Jems (8 Plots)	A-47-A	174	02.02.2011	56,00,000	Pg 152-179	Pg 155																																																																																																																																																																
4		A-48-A	170																																																																																																																																																																				
5		A-38-A	220																																																																																																																																																																				
6		A-29-A	220																																																																																																																																																																				
7		A-36-A	220																																																																																																																																																																				
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18	Manju Devi	A-25-A	220	16.02.2011	7,00,000	Pg 72-78	Pg. 73																																																																																																																																																																
19	Heera Lal Bhatiya	A-40-A	220	28.02.2011	7,00,000	Pg 79-85	Pg. 80																																																																																																																																																																
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28	Indra Meena	A-33-A	220	02.02.2011	7,00,000	Pg 145-151	Pg 146																																																																																																																																																																
		<b>Total</b>	<b>6,968</b>		<b>1,96,00,000</b>																																																																																																																																																																		

1.4. Accordingly, assessee made advance payment of Rs. 1.96 Crores, being Rs. 7 Lacs for 28 Plots (Rs. 7 Lacs\*28 Plots = Rs. 1.96 Crores). The same is also evident from the Agreement to Sale entered by the assessee with the actual owners of plots. Such Agreement to Sale is placed on record as part of Paper Book. List of all the Plots have also been tabulated, which is enclosed with the present Gist of Submissions. Out of the total advance amount received from prospective buyers, amount of Rs. 1.40 Crores was deposited by the assessee in his bank account, which was subsequently withdrawn to make payment for the advances to the actual owners. [PB: 216]

1.5.Ld. AO considered the amount received by the assessee, on signing of the MOU, from the prospective buyers to be Rs. 1.50 crores, as against Rs. 2 crores, received by the assessee in totality.

1.5.i In this regard, it is submitted that the assessee had received an amount of Rs. 1.50 crores, at the time of signing of the MOU.

1.5.ii Thereafter, as per the terms of the MOU, the assessee was entitled to receive the balance amount of advance of Rs. 50 Lacs.

1.5.iii The time period for receiving the balance amount of Rs. 50 Lacs was 15 days from signing of the MOU.

1.5.iv Such amount was thereafter received by the assessee, in cash.

1.5.v In this regard, receipt had been submitted by the assessee before the Id. AO, during the course of assessment proceedings. However, such receipt was not found to be genuine by the Id. AO.

1.5.vi In this regard, affidavit of Shri Mahaveer Singh Kulhari and Shri Nand Lal Poonia, who were the witness of the MOU is submitted, which is placed as part of Additional Evidences before the Hon'ble Bench. In the said affidavit, both the witnesses have accepted the fact that the assessee had received Rs. 50 Lacs, after signing of the MOU and Rs. 1.50 crores, at the time of signing of the MOU. Accordingly, in the affidavit they have accepted the fact that the assessee, in totality, had received advance amount of Rs. 2 crores from the prospective buyers.

1.5.vii The factual position that the assessee had received Rs. 50 Lacs after signing of the MOU was put forth before the Id. CIT(A), during the first appellate proceedings, which has also been accepted by Id. CIT(A) at 11, Para 5.7 of his order, wherein, Id. CIT(A) has stated that "*The appellant had got an amount of Rs. 2 Crores as per the MOU entered with 3 persons who had given him Rs. 2 crores as advance for purchase of plots*".

1.5.viii Against such acceptance by Id. CIT(A) of the factual position, Department is not in appeal before Hon'ble Bench. Accordingly, Department has also accepted the factual position.

1.5.ix It is also pertinent to note that Id. AO, in his remand report, submitted to the Id. CIT(A) accepted the factual position that as per the MOU entered by the assessee with the prospective buyers, the assessee was entitled to the balance advance of Rs. 50 Lacs. In this regard, attention is drawn towards Page 5 of the CIT(A) order wherein at Para (1), "Remarks" the remand report of the Id. AO has been reproduced by the Id. CIT(A).

1.6. Ld. CIT(A) sustained the addition of Rs. 25 Lacs in the hands of the assessee for the reason that according to the Id. CIT(A), assessee on one hand had received an amount of Rs. 2 crores from the prospective buyers and had paid amount of Rs. 1.75 Crores to the actual owners:-

1.6.i While arriving at this factual position, Id. CIT(A) has considered that the assessee had paid advance amount to the actual owners of 25 plots, instead of 28 plots.

1.6.ii In this regard, it is submitted hereinbefore that the assessee had actually entered into Agreement to Sale for 28 plots and not 25 plots.

1.6.iii Since, Rs. 7 lacs was paid in advance for each of the plots for which Agreement to Sale was entered, the assessee had to pay Rs. 1.96 crores as advance amount, instead of Rs. 1.75 crores as has been considered by the Id. CIT(A).

1.6.iv Accordingly, assessee had in his possession Rs. 4 lacs, instead of Rs. 25 Lacs has been considered by the Id. CIT(A).

In view of the above factual position, additions sustained by the Id. CIT(A) should be deleted and the appeal of the assessee may please be allowed, ALTERNATIVELY, the additions sustained by the Id. CIT(A) may be restricted to Rs. 4 Lacs, being the amount finally retained by the assessee.

ASSESSEE  
GROUND NO. 2-3

REOPENING UNDER SECTION 147

#### 1. SUBMISSION

Ld. AO simply on the basis of the "information" that assessee had deposited Rs. 1.40 Crores in his bank account, reopened the case of the assessee. Id. AO did not carry out any independent application of mind. Accordingly, the present reopening is illegal and without application of mind and thus void-ad-initio.

In view of the above, reopening done by the Id. AO deserves to be quashed."

9. On the other hand, Id. DR objected to this additional evidence stating that assessee remained non-compliant to the various notices issued by the Id. AO and has not submitted the details related to the dispute pending in the high court. The assessee has also not submitted the reason as to why the parties considered him as mediator, whether he is technically qualified or not? No one can advance such a huge amount of money to deal when

the parties have subsequently sold these properties to someone else. Based on that fact he opposed to these additional evidences submitted by the assessee. The Id. DR on going through the sale deed produced by the Id. AR of the assessee as additional evidence further submitted that there is no mention about the agreement to sale that they have entered into between the land owners giving the amount as advance and thereafter cancellations of the agreement to sale and repayment of the money. If the fact submitted by the assessee is correct then in that circumstances there exist a reference of the agreement to sale coupled with the receipt of the money in the sale document produced as additional evidence. Not only that the additional evidence is not for all the parties. The rest of the party's facts needs to be examined whether the same is purchased by the assessee or not? Why the reference of the money paid and received back is not mentioned in the sale deed. Based on this information even the parties involved are required to be examined as sale document has no reference whereas evidence as submitted before the lower authorities are self-servicing notarised documents only. In view of these missing link in the sale deed even this sale deed needs to be examined based on the evidence furnished earlier, so he submitted that let this issue be verified by the assessing officer and if deem fit he may take a considered view after

examining the records submitted by the assessee as additional evidence and make necessary enquiry so as to substantiate and correlate the facts as submitted by the assessee as the stake of the revenue is much higher in terms of value and if the Id. AO feels that in real terms the advances received and repaid by the assessee needs verification to the extent of the it pertains to the income. There is no clarity about the money that received back from the plot holder to the person paid advances. Whether the assessee paid any interest as per the terms of the agreement or not and had there been a reference of the same in the sale deed the situation may be different. In the light of these missing link based on the evidence are contradictory and needs an extensive investigation as to decided the correct income chargeable to tax and if yes to what extent.

10. We have heard the rival contentions and perused the material placed on record. The bench noted that apple of discord is the receipt of the money from the prospective three buyer, then payment of money from that source to the 28 real owner of the property and deposit of the cash into the bank account of the assessee. The assessee has submitted before the lower authority the notarized agreement to sale and cancelling the agreement to sale deed but has not submitted the details of nature of

litigation pending in those plots. Not only that the information about existing litigation is not mentioned in the sale deed produced by the Id. AR of the assessee for few of the cases, even though as per the status report submitted by the Id. AR shows the litigation still going. Thus, the fact before us is contradictory on two aspects;

- i) there is no mention of the litigation in the sale deed and;
- ii) there is also no reference of agreement to sale and cancellation of the same in the sale deed when the parties have received the money for sale and thereafter the same is cancelled.

Thus, the records presented before us are not clear and require further investigation based on the facts submitted assessee being contradictory on records as till 2022 the litigation is pending as per the status report filed by the Id. AR of the assessee. Even though there is no reference of litigation and receipt of money in the sale deeds support the arguments of the Id. DR so as to decide the source of the cash deposited into the bank account which the issue remained not cleared from the facts presented before us. It is also not clear before us as to how much income against accrues to the assessee on account of this transactions executed by him as it is mentioned that the assessee has kept Rs. 25 lac out of the advances money received, whether the same is income or returned back is not clear

from the facts presented. At the same time the evidences produced by the Id. AR of the assessee as additional evidence also proves that in fact there is no sale by the assessee as agreed because the same has been sold subsequently to other parties. Out of 28 plots, in case of 12 plots the sale deed produced saying that the property is sold to the parties other than to the parties as agreed, as per the evidence produced by the assessee before the lower authorities and thereby assessee substantiate the case of the assessee. Thus, we feel it in the interest of justice to both the parties that let all these evidence be verified in relation to the short-term capital gain taxed in the assessment proceeding vis a vis the source of money deposited into the bank account in terms of the additional evidence produced by the Id. AR of the assessee. Based on these observation the bench feels it in the interest of justice if the additional evidence be examined by the assessing officer so as to decide in fact there exist any gain on this transaction as out of 28 plots sale deed is executed for few plots. Thus, the issue needs verification on various aspects based on the set of evidence placed by the assessee and therefore, the issue as raised in the ground no. 1 is set a side before the assessing officer who will decide the issue after affording proper opportunity of being heard to the assessee

and will decide the amount of income if any in accordance with the law. In the light of this facts, the appeal filed by the revenue is allowed statically.

11. In ITA no. 1229/JPR/2019 for the year under consideration, assessee has raised following grounds of appeal:

“1. In the facts and circumstances of the case and in law the Id. CIT(A) has erred in, confirming the actions of the Id. AO, in making addition of Rs. 25,00,000 as unexplained cash under section 69A. The action of the Id. CIT(A) is illegal, unjustified and arbitrary and against the facts of the case. Relief may please be granted by deleting the said addition of Rs. 25,00,000.

2. In the facts and circumstances of the case and in law the Id. AO has erred in reopening the case of the assessee, under section 147 of the Income Tax Act 1961. The action of the Id. AO is illegal, unjustified and arbitrary and against the facts of the case. Relief may please be granted by quashing such re-assessment proceedings.

3. In the facts and circumstances of the case and in law the Id. AO has erred in re-opening the case of the assessee by issuing notice under section 148 o the Income Tax Act 1961, being not in accordance with the provisions of Section 151 of Income Tax Act 1961. The action of the Id. AO is illegal, unjustified and arbitrary and against the facts of the case. Relief may please be granted by quashing such re-assessment proceedings.

4. The assessee craves his right to add, amend, or alter any of the grounds on or before the hearing.”

The ground no. 2 & 3 as raised by the assessee are in the nature of the additional ground and therefore, the assessee has relying on the decision of Honourable apex court in the case of National Thermal Power Co. Ltd. 229 ITR 383 prayed that the said grounds are legal grounds and relevant

facts are available on record and no new facts are required to be evaluated nor any further enquiry needed.

12. The Id. AR of the assessee on these two ground submitted as under:-

“Ld. AO simply on the basis of the “information” that assessee had deposited Rs. 1.40 Crores in his bank account, reopened the case of the assessee. Id. AO did not carry out any independent application of mind. Accordingly, the present reopening is illegal and without application of mind and thus void-ad-initio.

In view of the above, reopening done by the Id. AO deserves to be quashed.”

13. On the other hand the Id. DR not objected to the additional ground raised being legal in nature. But he objected to the fact that this ground is not maintainable as the assessee has not filed any ITR even though he has deposited substantial amount of cash in his bank account and based on the information the Id. AO has no option but to reopen the case of the assessee. When the Id. AO has already made enquiry that the assessee has not filed any ITR then what is the other remedy available to him to find out the source of cash deposited into the bank account. Therefore he submitted that these ground no. 2 & 3 raised as an additional ground has no merits and required to be dismissed.

14. We have heard the rival contentions and perused the material placed on record. The bench noted that it not disputed by the Id. AR of the assessee that the assessee has not filed any return of income even though he is doing business and had deposited huge amount of cash in his bank account. As the assessee already in response to notice u/s. 148 filed a return of income under the presumptive taxation proves that based on the information the Id. AO has no option to make any independent enquiry in the absence of the return of income filed and therefore, we agree with the arguments of the Id. DR that there is no merits in the arguments on these grounds and therefore, the ground no. 2 & 3 raised by the assessee are dismissed.

15. As regards the ground no. 1 for confirmation of addition of Rs. 25 lac. Since, the issue of income and deposit of cash into the bank account is set a side by the bench in the appeal of the revenue this issue being interrelated to those observations needs verification. The bench has also noted from the written submission of the assessee that whether there exist any income remained in the hands of the assessee or not. The bench was not assisted so as to decide the issue that how much amount of the money received, paid and retained. Any money in the process of this deal

chargeable to tax as income or not out of the money so deposited in to the bank account is not clear and as we have set a side the issue of chargeability of short term capital gain in the hands of the assessee in revenue's appeal before the assessing officer who will decide the issue based on the additional evidence as referred here in above and that issue has impact on the addition made in this assessee appeal as contended in Ground no. 1. Therefore, the issue as raised in the ground no. 1 is also set a side before the assessing officer who will decide the issue after affording proper opportunity of being heard to the assessee and decide this issue in accordance with the law.

16. In terms of this observations the ground no. 1 raised by the assessee is also set a side to be decided based on the additional evidence and our observations recorded in para 10 above. Thus, ground no. 1 raised by the assessee is allowed statistically.

In the result, appeal filed by the revenue is allowed statistically and appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 10/01/2023.

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 10/01/2023

\*Ganesh Kumar

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

1. The Appellant- Sh. Madan Lal Sharma, Jaipur
2. प्रत्यर्था / The Respondent- ITO, Ward-1, Bharatpur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA Nos. 1229 & 1312/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar