

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

डॉ. 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. 42/JPR/2023
निर्धारण वर्ष / Assessment Years : 2009-10

Smt. Vimla Sharma 83A, Sanjay Nagar, Joshi Marg, Kalwar Road, Jhotwara, Jaipur.	बनाम Vs.	ITO, Ward-1(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BAJPS 4630 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mukesh Khandelwal (C.A.)
राजस्व की ओर से / Revenue by : Ms Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing 01/03/2023
उदघोषणा की तारीख / Date of Pronouncement : 13/03/2023

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi [herein after referred as Id. "NFAC/CIT(A)"] for the assessment year 2009-10 dated 11.01.2023, which in turn arises from the order passed by the Income Tax Officer, Ward-3(1), Jaipur under Section

143(3)/147 of the Income Tax Act, 1961 (in short 'the Act') dated 23.12.2016.

2. The assessee has marched the present appeal on the following ground of appeals:

“1. That under the facts and circumstances of the case the Id. CIT(A) has erred seriously in sustaining the action of the Id. AO in discarding the valuation report of an approved valuer on mere technical grounds and working out capital gain as per his own whims.

2. That under the facts and circumstances of the case, the Id. CIT(A) has erred seriously in dismissing the appeal of the appellant by mentioning that no reply was filed by the appellant on various notices issued whereas the appellant had already submitted her submissions on 28.09.2021.”

3. The fact as culled out from the records is that the case of the assessee was reopened based on the information received from sub registrar about sale of a property by the assessee which was not declared in the original return. In pursuance to notice u/s 148 the appellant filed a return declaring the gain earned on sale of property. The appellant had declared the gain and claimed the cost of acquisition based on valuation report obtained from a valuer who is approved by the revenue department. The Id. AO had some

doubts about the content of the valuation report and hence he summoned the valuer in the assessment proceeding in the case of the assessee. The statement of the valuer was recorded and he has given the explanation of the questions raised before him. The AO has alleged that there are some discrepancies in the valuation report and therefore, discarded the same and assessed the capital gain as per his own working which resulted into a addition of Rs. 5,26,096/- under the head short term capital gain.

4 Aggrieved, from the said order of assessment the assessee has filed the appeal before the Id. CIT(A) who after hearing the contention of the assessee dismissed the appeal of the assessee by giving his following findings on the issue:-

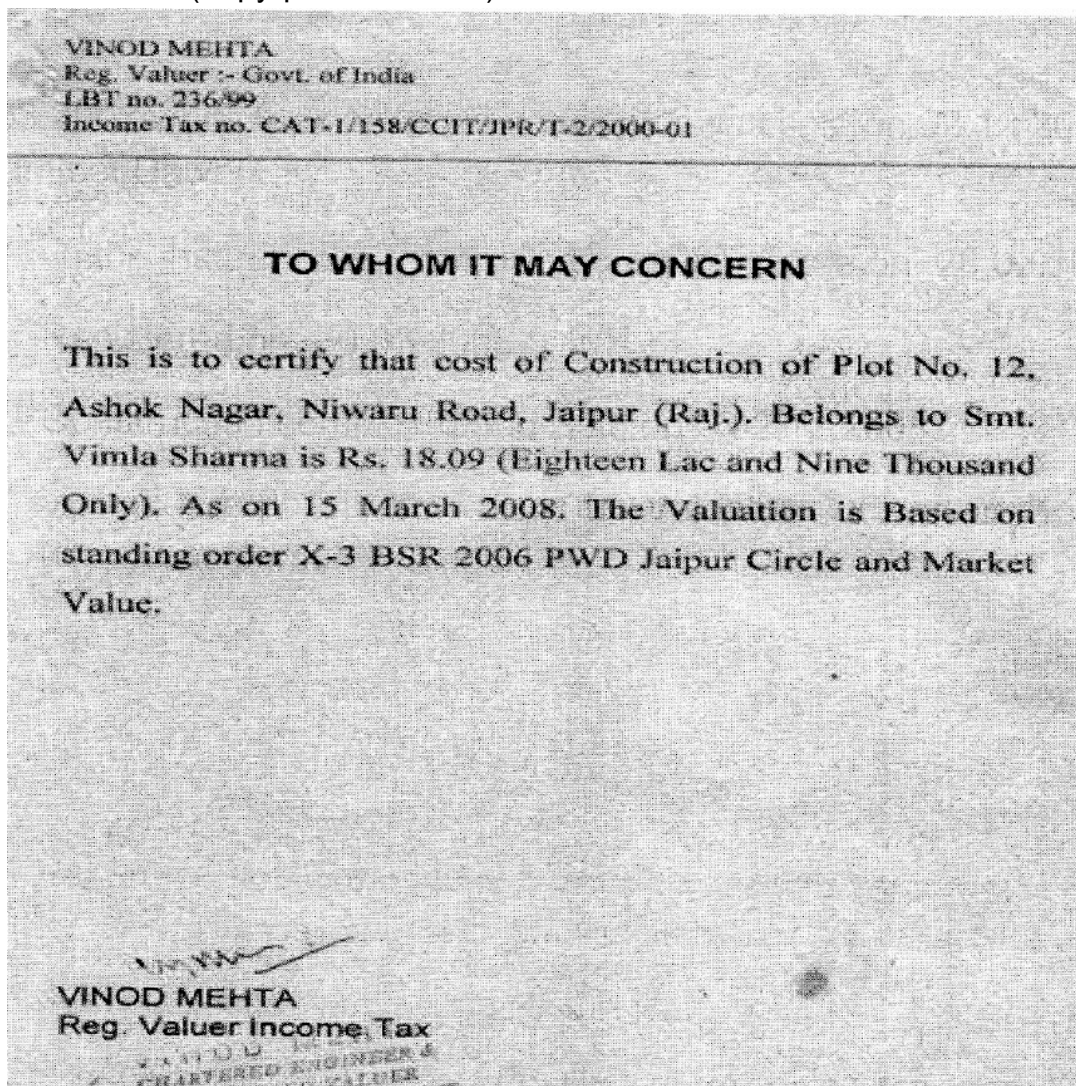
“5.1 The assessee did not file any response to 148 notice and showed capital gain of Rs. 5,26,096/-. The case of the AO is that the Cost of the property has been shown more than actual cost. The AO disallowed the value of furniture & fixture for not filing Bills and Vouchers expenses in this regard. The AO also disallowed 20% of premium of Rs. 3,01,487/- which was taken on total construction by the Valuation Officer. The AO found that the valuation report mentioned the value of property as on 15.03.2008 while the constructed property was sold on 02.12.2008 to Sh. Paramjeet Daweta.

5.2 In the instant case the property was purchase on 26.02.2008

Registered on 30.03.2008

Construction completed and sold on 02.12.2008

Valuation report prepared by the Valuation Officer on 15.03.2008 (copy pasted below)



5.3 I have gone through all the documents, submitted before me and found that property was purchased by assessee vide JDA patta which was handed over to Smt. Vimla Sharma on 26.02.2008. Property registered in the name of assessee on 30.03.2008. The property was sold to Sh. Paramjeet Daweta on 02.12.2008. Valuation of constructed property was done on 15.03.2008 by the Valuation Officer. It is unbelievable and impossible to understand that both ground floor and first floor of the house was completed within a span of 17 days that also before the registration of the property to the name of the valuation done on 15.03.2008 does not stand the test of reliability.

The property was valued even before the registration in the name of the assessee. It is apparently cleared that when the property was valued it was not constructed/or the construction was not complete.

5.4 There is no evidence filed by the assessee during the appellate proceedings that the construction of the property was started before the registration of the property in the name of the assessee. In such circumstances the valuation report filed by the assessee has no evidenciary value being prepared prematurely before the construction was complete/started. The AO has correctly rejected the valuation done by Valuation Officer and estimated the cost on the basis of his best judgment. In such circumstances of the case, I find no reason to interfere with the order of the AO.

6. The appeal of the assessee dismissed.”

5. As the assessee has not received any relief from appeal filed before the Id. CIT(A) she has filed an appeal before the tribunal.

6. To support the various grounds so raised by the assessee the Id. AR of the assessee relied upon the written submission filed by him and the same is reiterated here in below:-

“The appellant had purchased a piece of land admeasuring 187.31 sq. yards situated at Ashok Nagar, Niwaru Road, Jhotwara, Jaipur through registered sale deed dated 11.10.2007 (APB 13-21). Immediately thereafter the appellant started construction thereon and such construction was completed by 15th March, 2008. A total construction of 1430.53 sq. ft was got done by the appellant. The said land and constructed house thereon was sold through a registered sale deed dated 02.12.2008 for an apparent sale consideration of Rs. 22,15,000 (APB 22-33). Admittedly the appellant did not file a ROI for the AY 2009-10 and hence whatever capital gain had been earned by her remained undisclosed. The AO on receiving information about such sale of property and non filing of ITR issued notice u/s 148 of the Income Tax Act, 1961 on 17.03.2016. An ROI was filed in response thereto on 05.12.2016 wherein capital gain on above transaction was duly disclosed. In the ROI the appellant had disclosed STCG on above transaction as under :-

Sale Consideration		22,15,000
Less : Cost of Land	2,00,000	
Cost of construction	18,09,000	
Registry Charges	15,200	
JDA Patta Charges	14,678	
	-----	20,38,878
STCG		----- 1,76,122 -----

Notices were issued u/s 143(2) and 142(1) during the assessment proceedings which were duly complied with. The appellant had supported the cost of construction of the house with report of a registered valuer (APB 5-12). The Id. AO had doubts about the same and hence the Valuer was summoned who appeared before him and replied to the queries of the Id. AO and his statements were also recorded. Not convinced with the replies the Id. AO considered cost of construction at Rs. 12,83,904 in place of Rs. 18,09,000 and he also disallowed a sum of Rs. 1,000 out of claim of the appellant towards cost of Registration paid by him for Rs. 15,200 on purchase of land and hence disallowance of Rs. 5,26,096 was made by him resulting into assessment of STCG at Rs. 7,02,218 as against Rs. 1,76,122 declared by the appellant. An appeal against the assessment order so framed by Id. AO was preferred before the Id. CIT (A)- 1, Jaipur which was later on transmitted to CIT (A), NFAC.

First Appeal

The Id. CIT (A) dismissed the appeal of the appellant by relying completely on the observations of the Id. AO and without considering the submissions given by the appellant. Hence this appeal

Ground wise submissions are as under

Ground No. 1 : That under the facts and circumstances of the case the Id. CIT (A) has erred seriously in sustaining the action of the Id. AO in discarding the valuation report of an approved valuer on mere technical grounds and working out capital gain as per his own whims..

The Id. CIT (A) has sustained the action of the Id. AO whereby he discarded the valuation report of a registered valuer. The Id. AO had summoned the valuer and recorded his statements and while rejecting the report he has alleged as under :-

1. The valuer has valued furniture and fixture at Rs. 4,00,000 whereas there is no mention about any furniture and fixture in the sale deed executed by the assessee and hence the valuation of furniture and fixture is wrong.

2. Escalation of year wise cost by 10% per year is wrong as the O.M. of CPWD was applicable for Delhi metro city and hence not applicable for Jaipur.

3. The Allotment letter of the land was issued by development authority on 26.02.2008 and was registered with Sub Registrar on 30.03.2008 whereas the registered valuer had stated to have valued the property on 15.03.2008 which shows that the valuer had made the valuation report without inspection of the property.

Based on above observations he rejected the valuation report and worked out the valuation as per his own calculations.

The appellant raises the following objections to the action undertaken by the Id. AO :-

1. Registered valuer is an expert person to whom registration was granted by the Hon`ble Chief Commissioner of Income Tax after considering his competence and expertise whereas AO is a person who is an expert in an altogether different field and therefore rejection of report an expert person in his field is something like arguing with an expert without having adequate knowledge in the field, and such approach is absolutely wrong and unjustified. Therefore the action of the Id. AO is patently illegal and deserves to be quashed. If he had any confusion about the same he could have referred the matter to the Departmental valuation cell which he had not done.

2. The valuer had clearly stated in response to question no. 5 (as appearing on page 3 of the AO order) that he had valued the wardrobes, show cases in drawing room, kitchen and other wooden items affixed in the structure. He has further stated in response to question no. 6 that fixed furniture is part of immovable property and hence the same had been valued separately. The Id. AO seems to have considered furniture and fixture as comprising of dining table, sofas, tables etc. which is not the position in present case. In this regard it is also further submitted that the registered valuer while applying BSR rates adopted only value for building structure in finished shape without having any fixed furniture items such as wardrobes, show cases etc.. It is also further submitted that this is not a case wherein the value of furniture has been considered twice. Therefore this objection of the Id. AO is also without any basis and deserves to be rejected.

3. The valuer had adopted the structure rates as per standing orders of state PWD for the year 2006 and applied escalation @ 10% per year to reach on the cost for the year 2008. The valuer had clearly stated in response to

question no. 8 that he had taken the rates as per standing order no. x-3/2006. Therefore adoption of such escalation percentage is fully justified. The Id. AO applying his little knowledge rejected such escalation without any basis and hence his observation on this issue is also liable to be rejected.

4. The Id. AO has stated that since the registration of the allotment letter was executed on 30.03.2008 and hence the statement of the valuer in his report that he had valued the property for valuation on 15.03.2008 is wrong and on such basis he has doubted that no such valuation was carried by the valuer. The Id. AO seems to have formed the opinion that construction work could have commenced only after registration of the allotment letter. He forgot to take note of the fact that the appellant had purchased the land on 11.10.2007 through registered sale deed and immediately thereafter she started the construction work and completed the construction work by 15.03.2008 on which day valuation was done by the registered valuer. As per existing law in the state no permission is required for construction of residential premise in plots of small sizes. This plot purchased by the appellant is having size of 187.31 Sq. yards equivalent to 157.40 sq. metres and hence no permission was required for starting the construction work. Since the appellant was having valid title of the land purchased by her through registered sale deed she was competent enough to start construction work on the plot for construction of a house. It is therefore sincerely submitted that this allegation of the Id. AO is without considering the local laws and hence same deserves to be quashed.

It is also further submitted that if the Id. AO was having doubt about the sanctity of the valuation report, he could have referred the matter to District Valuation Officer who could have critically examined the report of the registered valuer. No such action had been taken by the Id. AO. It is therefore sincerely requested that the instant action of the Id. AO in ignoring the valuation report of a registered valuer on untenable grounds is clearly unjustified and hence his action deserves to be quashed.

Ground No. 2 : That under the facts and circumstances of the case, the Id. CIT (A) has erred seriously in dismissing the appeal of the appellant by mentioning that no reply was filed by the appellant on various notices issued whereas the appellant had already submitted her submissions on 28.09.2021.

With your honour's kind permission the appellant would like to amend this ground. AS all the facts in this revised ground are available on record and no further investigations are to be carried and hence it is sincerely requested to permit the appellant to revise the ground.

The revised ground is as under :-

Ground No. 2 : That the Id. AO as well as Id. CIT (A) erred seriously in analysing the available information as per their whims without considering the replies of the appellant.

The Id. AO as well as Id. CIT (A) erred very seriously in deeming the date of purchase of land by the appellant on 26.02.2008 (Page 5 of CIT A order). The correct fact is that the appellant had purchased the land through registered sale deed dated 11.10.2007 (APB 13-21). The above stated date 26.02.2008 was the date on which Jaipur Development Authority had issued Patta. Only because of this reason the Id. CIT (A) states in his order at page 6 in first para (7th line) that it is hard to believe that construction of ground floor as well as first floor was completed within a span of only 17 days i.e. gap between 15.02.2008 and 26.02.2008 whereas correct availability of days was 156 days i.e. gap between 11.10.2007 and 15.03.2008. Therefore this contention is wrong. The registered purchase deed was submitted to Id. AO and it was clearly mentioned in the submissions given to him (appearing at page 6 of the assessment order also). The Id. CIT (A) seems to have had copies of the version of the Id. AO without verifying the documents and submissions given to him.

Regarding availability of bills of furniture fixture are concerned the appellant could not produce the bills due to time gap as the assessee got construction work during 2007-08 whereas the assessment proceedings took place during 2016-17 and the assessee had already sold the property during 2008-09 and might have delivered the same to the buyer. Alternatively it is also submitted that the valuer had only considered the cost of wooden work of those items which were affixed in the walls and were not moveable in nature and the work of the same might have been done by a carpenter brought by the contractor of the assessee. Therefore the action of both the authorities in basing their decision on above reason is wrong and unjustified.

Regarding disallowance of Rs. 1,000 out of registration charges of registered sale deed for purchase of land dated 11.10.2007 the total amount claimed for Rs. 15,200 stands duly verified with stamp paper of Rs. 1000 used for sale deed (APB 15) and endorsement on back side of APB 16 (Rs. 14,200) whereas the Id. AO as well as Id. CIT (A) only allowed deduction on the basis of endorsement at back page of APB 16 without noting that this was the amount worked out by registering authority as balance payable. Therefore such disallowance is also without any basis and deserves to be deleted.

Your honour is sincerely requested to allow the appeal and oblige.”

6.1. In addition to the above written submission, the Id. AR of the assessee submitted that the assessee has purchased

the land in 2007 constructed the house and after constructing the same has been sold within 18 months of the construction. The assessee has offered the short-term capital gain and has also filed report of approved valuer in support of the claim of cost of acquisition. As the assessee being individual has not kept the relevant bills and vouchers to support the cost of constructions incurred she has submitted a report of valuer to support the cost of construction. As the assessment was reopened at the fag end of 6th year and assessee has no supporting proof or records to support the cost of acquisition she has relied upon the report of the valuer in connection with the construction of the house so sold by her. The Id. Assessing Officer, during the course of assessment proceedings summoned the valuer called for explanation required the Id. Assessing Officer has not observed anything adverse from the statement of valuer and the Assessing Officer is not technically competent enough to comment upon the method of valuation adopted by the expert. Now based on the valuation report filed by the Assessing Officer, he is of the

view that the valuation report given by the valuer is not in accordance with law and has summoned the valuer and his statement was recorded. The learned Assessing Officer being not technically qualified and if he is not satisfied with the report of the valuation he must have referred the matter to Department Valuation Cell but he is not permitted to make any adjustment in the valuation report. If in any case if the Id. Assessing Officer is of the strong view about the correctness of the same then he could have referred the matter to departmental valuation officer but he having not qualified cannot make adjustment on the valuation report submitted by the technical expert approved by the revenue. The Id. AR of the assessee further submitted that the valuer has already specified in the statement recorded before the Id. Assessing Officer that the valuation of furniture consist the fixed furniture which is part of the immovable property which has not been disproved placing anything contrary. The valuer being third party expert the statement cannot be disproved by the Id. Assessing Officer without not bringing anything contrary on record. The Id. Assessing Officer

further adjusted the premium workout @ 20% which is also not the domain of the Id. Assessing Officer these issue as categorically covered in question No. 8 wherein the valuer has specifically justified the technical rate and has referred the order No. x-3/2006 which has not been controverted by the Id. Assessing Officer. Therefore, the adjustment made by the Id. Assessing Officer is outside the scope of his domain and the addition made is required to be deleted.

7. Per contra, the Id. DR appearing on behalf of the Revenue and having relied upon the findings of the Assessing Officer submitted that the assessee merely relied upon the valuation report for cost of construction as claimed and has not submitted any bills to prove the claim of cost of construction and therefore the Assessing Officer rightly corrected the claim of cost made by the assessee against the sale of property.

8. In the rejoinder, the Id. AR of the assessee submitted that the assessee has filed her return after 6 years of passage of time wherein the assessee being not technically competent enough being a lady to keep all the records to prove the cost of construction of his small house that she builds on the plot. Due to these personal reasons and the same was sold immediately. The notice u/s 148 of the Act was issued on 17.03.2016. The assessee has to support the cost of construction and as she has not kept all the documents related to cost of construction she has deem it fit to claim the cost of construction based on technical report of valuer who has issued a report who is registered with the office of the Chief Commissioner of Income Tax, Jaipur. He being technical expert estimated the cost of construction for the house that she sold. As regard the allegation as reiterated that the findings of the Id, CIT(A) as relied upon the Id. DR, Id. AR submitted that it is not disputed that the impugned land is purchased by the assessee in 2007 as it is evidently clear in the computation appearing at page No. 10 of the assessment order. Only the Patta was issued by the

Jaipur Development Authority (JDA) in 2008 whereas the purchase of land is completed on 11.10.2007, therefore, the issue of patta is merely formalities the assessee is having due possession of land and therefore, the contention raised by the Id. CIT(A) that the property was purchased by the assessee on 26.02.2008 and the property was sold on 02.12.2008 is incorrect. The Id. CIT(A) based on this finding ignored the fact that the property was acquired in 2007 but only patta was issued in February, 2008 the assessee has also started construction and sold the house as it is evident from the sale deed placed on record. Therefore, merely of formalities done latter on the construction work done cannot be doubted. The Id. CIT(A) not doubted any of the part of valuation report and the confirmed the findings without mentioning any defect and therefore the contention of Id. CIT(A) is also against the provisions of law.

9. We have considered the rival contentions and submission placed on record by both the parties. The Bench noted that it is

not disputed that the assessee has purchased the land on 11.10.2007, the assessee has sold the impugned land & building thereupon on 02.12.2008 the period available for the assessee to build the house is almost 14 to 15 months from the date of purchase looking to the size of the house the time period cannot be doubted. The Bench further noted that the assessee was given notice almost at the far end of the month after 6 years of the assessment year and considering the fact that the assessee being a lady cannot submit and substantiated the cost of the house by way of actual supporting bills and vouchers. To support the cost of construction incurred by her she has no option to get the cost estimate by an approved valuer which she deed to substantiate the cost of construction of house she sold. The Bench further noted that the Id. Assessing Officer has already during the course of assessment proceedings called for the presence of valuer and the valuer has substantiated his valuation report and the Id. Assessing Officer merely doubted at the various technical aspects of the valuation for which the Id. AO has not substantiated the view taken by him, whereas the valuer has. We find that in the assessment proceedings the valuer satisfactorily

dealt with the questions raised by the Id. Assessing Officer and has satisfactorily answered the issue placed before him. We see no reasons of the Id. AO interfering the valuation done by the valuer who being technical expert. We find that the approach of the Id. AO in dealing the report of the AO is nothing but interfering the domain of the expert. If Id. AO has any issue above the valuation the correct approach should be to refer the matter the Departmental valuation officer but merely to correct the technical person's report is nothing but the huger mugger approach of the Id Assessing Officer and the same is not correct while dealing with the technical matters. Thus, the addition which is made based on the confused or doubted mind is not permitted and the addition so made disturbing the report of valuer is not permitted. Therefore, we are of the considered view that the adjustment made by the Id. Assessing Officer and as confirmed by the Id. CIT(A) is not proper and without any basis and without contrary dealing with the report of valuer and nothing brought on record to disprove the report of the valuer and therefore, based on this set of fact the adjustment so made by the lower authorities are hereby quashed and the addition so made are deleted.

10. In terms of these observation both the ground raised by the assessee are allowed.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 13/03/2023.

Sd/-

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

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

जयपुर / Jaipur

दिनांक / Dated:- 13/03/2023.

***Santosh**

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

1. अपीलार्थी / The Appellant- Smt. Vimla Sharma, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(1), Jaipur.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्ड फाईल / Guard File { ITA No. 42/JP/2023 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar