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. 18/JP/2023
निर्धारण वर्ष/Assessment Years : 2008-09

Shri Hanuman Prasad Tambi 32, Desh Bhushan Nagar, Galta Gate, Jaipur.	बनाम Vs.	ITO Ward-5(4), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADUPP 9340F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal, C.A.
राजस्व की ओर से/ Revenue by : Mrs Monisha Choudhary, Addl.CIT

सुनवाई की तारीख/ Date of Hearing: 12/04/2023
उदघोषणा की तारीख/Date of Pronouncement : 14 /06/2023

आदेश/ ORDER

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

This appeal is filed by the assessee against the order of the ld.CIT(A), National Faceless Appeal Centre, Delhi [hereinafter referred as "NFAC"] dated 15-11-2022 for the assessment year 2008-09 wherein the assessee vide application dated 18th Feb. 2023 prayed for admission of revised grounds under Rule 11 of the I.T.AT Rules 1962 which are as under:-

> ''1. The ld. CIT(A) has erred on facts and in law in confirming the action of the AO in treating the gift of immovable property to daughter-in-law as chargeable to capital

gain tax on the basis of sale deed executed by the assessee instead of gift deed.

2. The ld. CIT(A) has erred on facts and in law in confirming the action of the AO in treating the sale consideration of the property u/s 50C at Rs.12,84,450/- without referring the matter to DVO u/s 50C(2) of the Act.

3. The ld. CIT(A) has erred on facts and in law in confirming the action of AO in allowing deduction u/s 54F with reference to the deemed consideration instead of actual consideration.''

The Bench has taken into consideration the revised ground filed by the assessee (supra) which shall be adjudicated on merit hereunder.

2.1 Apropos Ground No. 1 to 3 of the assessee, brief facts of the case are that the as per AIR details, the assesseee had sold immovable property for the total consideration of Rs.14.00 lacs which had been valued at Rs.25,68,900/- for the purpose of charging stamp duty and on verification of record, it had been found that the assessee had not filed the return of income for the year under consideration. Thus according to the AO, the assessee had failed to disclose fully and truly all material facts necessary for his assessment and accordingly in view of the above facts and circumstances of the case the AO noted that there were sufficient reasons to believe that an amount of Rs.25,68,900/- had escaped

assessment within the meaning of Section 147 of the Act. Hence, notice u/s 148 dated 25-03-2015 was issued and served upon the assessee through speed post and in compliance to notice u/s 148, the assessee had filed the return of income on 16-06-2015. Thereafter notice u/s 142(1)/143(2) of the Act issued alongwith query. In compliance to notice, the ld. AR of the assessee attended hearing before the AO and filed ITR for the year under consideration alongwith computation, sale deed, power of attorney dated 30-12-1988 relating to Plot Nol. 32, Desh Bhushan Nagar, Galta Gate, Jaipur. It is worthwhile to mention that the fact relating to Plot No. 32, situated at Dehbhushan Nagar, Galta Gate, Jaipur measuring 266.66 sq. ft is that this plot was allotted to Shri Chote Lal Jain by Jawaharpuri Bhawan Nirmam Sahakari Samiti Ltd. Shri Chote Lal Jasin sold this plot to Shri Ghanshyam Tambi for Rs.4.00 lacs vide agreement dated 30-12-1998 (PB Page 8 to 12) and gave power of attorney (POA) to brother of Shri Ghanshyam Tambi i.e. the assessee (PB Page 13 to 17). On the basis of such power of attorney, a part of plot measuring 128.88 sq. yard was sold for Rs.4.00 lacs to Shri Atal Behari vide sale deed dated 15-03-2008 (PB Page 18-29) which was valued by the Sub-Registrar at Rs.5,92,625/-. The sale consideration so received was used for construction on part of remaining plot. In response to notice u/s 148 of the Act, the assessee filed the

return on 16-06-2015 (PB Page 9-10) declaring long term capital gain of Rs.94,695/- as under:-

Sales Consideration	Rs.5,92,625/-
Less:-Indexed cost of acquisition	Rs.3,01,289/-
	Rs.2,91,336/-
Less:-Deduction u/s 54F	Rs.1,96,441/-
LTCG	Rs. 94,695/-

The Investment in house property u/s 54F is Rs.4,00,000/-. Thereafter out of remaining plot measuring 137.78 sq. yd., the assessee as Power of Attorney holder transferred part of plot measuring 84.38 sq. yd. to his daughter-in-law Smt. Asha Tambi. It is noted that in fact, the assessee gifted the property to his daughter-in-law but for legal title and he executed sale deed dated 24-03-2008 (PB 11 to 23 Paper Book) in which sale consideration of Rs.3.00 lacs was mentioned but no consideration was received. This fact was stated by the assessee in his affidavit dated 14-11-2015 (PB 24 to 25 of paper book) filed during assessment proceedings. Further the assessee vide letter dated 23-11-2015 (PB 26 of Paper Book) also stated that he can produce his daughter-in-law to confirm this fact. However, the AO held that the registered sale deed clearly shows that the assessee has received sales consideration in cash from Smt. AshaTambi in presence of Sub-Registrar and the witnesses. If the sale deed is wrongly executed the assessee is

required to rectify the same at that time. The submission of the assessee is an afterthought and hence is not acceptable. The Sub-registrar has valued this part of plot at Rs.6,91,825/-. Accordingly, the AO computed the long term capital gain at Rs.5,38,669/- as under:-

Total sales consideration u/s 50C (5,92,625+6,91,825)	Rs.12,84,450/-
Less:- Indexed cost of acquisition (1500*213.26=319890/351*551)	Rs. 5,02,163/-
	Rs. 7,82,287/-
Less:- Deduction u/s 54F (4,00,000*7,82,287/12,84,450)	Rs. 2,43,618/-
Long Term Capital Gain	Rs. 5,38,669/-

2.2 Before the ld. CIT(A), the assessee apart from the contentions raised before AO further submitted that the AO has wrongly calculated the deduction u/s 54F by taking frictional value of sale consideration at Rs.12,84,450/- rather than actual sale consideration of Rs.7.00 lacs but the ld. CIT(A) did not accept the contention of the assessee by holding that this is a mere assertion of the assessee and is not supported by any evidence. The sale deed in question is duly executed in front of the Sub-registrar and stamp duty of Rs.39,970/- and registration fee of Rs.6,920/- has also been paid by the assessee or his daughter-in-law. The affidavit given by the assessee is just an afterthought. Further if the contention of assessee that deduction u/s 54F should be calculated using the 'actual consideration' and not the deemed value taken as per section 50C of the Act is allowed then the deduction

claimed u/s 54F will be reduced. Taking the 'actual consideration' the assessee has calculated the deduction u/s 54F at Rs.1,96,641/-. This should be the deduction allowable to the assessee but as against this the AO has computed and allowed the deduction at Rs.2,43,618/- which is more than that claimed by the assessee. Perhaps the assessee is of the opinion that in a single computation, two different values of the sales consideration should be taken the deemed value u/s 50C in the numerator and the actual consideration in the denominator. This plea, on the face of it, is totally illogical and hence is rejected.

2.3 During the course of hearing, the ld. AR of the assessee filed the following written submission alongwith case laws praying therein to quash the order of the ld. CIT(A).

> ''1. From the above facts it can be noted that assessee only acted as POA holder of Sh. ChoteLal Jain/ Sh. GhanshyamTambi and as per the documents he is not the owner of property. Thus, no capital gain can be assessed in the hands of assessee in respect of sale deed executed by him as POA holder even when the assessee admitted capital gain in his hand. This for the reason that once the lower authorities considered the sale deed as sacrosanct, then as per the document, sale deed was executed by the assessee only as POA holder and therefore capital gain, if any, can be assessed only in the hands of real owner and not in the hands of assessee. Reliance in this connection is placed on the following cases:-
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> Sh. Gyan Chand AgarwalVs. Addl. CIT ITA No.266/JP/17 order dt.10.07.2017 (Jaipur) (Trib.)
> The only issue in this ground is whether the sale consideration of the land belonging to Shri Sultan Meena can be taxed in the hands of the assessee, who is admittedly Power of Attorney holder of Shri Sultan Meena. There is no dispute with regard to the fact thatShri Sultan Meena is recorded owner in the land in question. There is also no dispute with regard

to the fact that there is no evidence on record suggesting that the Power of Attorney to Shri Sultan Meena was executed by the assessee by paying consideration of the land. The Authorities below doubted about the transaction on the basis that the assessee failed to produce Shri Sultan Meena to prove that the sale consideration so received was handed over to the said Shri Sultan Meena and also in the absence of any receipt by the owner of the land, stating that the assessee acted merely an agent. Admittedly, the revenue has not brought out any material suggesting that the assessee received this consideration as the owner of the land. As per the sale deed enclosed at page 46 of the Paper Book, it is stated that the owner of the land wished to sale the land for personal and family needs. It is recorded in the sale deed that the attorney holder received a sum of Rs.269,37,000/- as a Power of Attorney of the owner of the land. This fact remained undisputed. Even if it is assumed that the assessee has received money and not handed over the same to the land owner such receipt is a liability not an income so far the assessee is concerned. Since, the Revenue has not brought any material on record suggesting that this power of attorney was executed in lieu of a consideration. In the absence of such material, purely, on the basis of presumption and suspicion tax liability cannot be fastened on such receipt on the assessee. Hence, the AO is directed to delete the addition however, he is free to take action against the real owners as per law.

Sh. SurajNarainKhatoriaVs. ITO ITA No.1043/JP/11 order dt.27.05.2013(Jaipur) (Trib.)

The relevant findings at Para 11 to 13 are as under:-

"11. We have heard parties with reference to material on record. Shri Bharat Singh, S/o- Shri Moti Singh and Shri Vijay Pal Singh, S/o- Shri Bharat Singh Choudhary by a registered power of attorney dated 13/11/2006 appointed ShriSuraj Narayan, son of ShriNarain Singh Khatoria as their power of attorney in respect of 0.30 hect. of agricultural land situated in khasra No. 13 at village Bhakrota for getting the revenue record corrected in that respect and after getting its mutation in their name, sell this land to any person on their behalf and his acts were binding on them. The said power of attorney was executed on Non-Judicial Stamp paper of Rs. 500/-. However, the registering authority adopted value at Rs. 13.80 lacs and for stamp duty purposes and charged stamp duty of Rs. 27,600/- thereon. The said power of attorney is found laid on record at assessee's paper book pages 22-23.

12. The admitted fact is that the appellant after correction of revenue record and recording the said land measuring 0.30 hect. in the name of Shri Bharat Singh and Shri Vijay Pal Singh, sold the same to Smt. Radha Devi Khatoria vide sale deed dated 19/12/2007 placed at assessee's paper book pages 49 to 54. The said sale deed has been executed by the appellant in his capacity as a power of attorney of Shri Bharat Singh and Shri Vijay Pal Singh for a sale consideration of Rs. 4.11 lacs. Smt. Radha Devi Khatoria happens to be

wife of the appellant. The enquiries conducted by the Assessing Officer reveals that ShriSurajNarainKhatoria, the appellant has not returned or made payment of the aforesaid sale consideration of Rs. 4.11 lacs to Shri Bharat Singh and Shri Vijay Pal Singh as the same is stated to have been denied categorically by them, but appellant's case is that the said payment stood made to Smt. Manju Yadav as is evidenced by the sale deed executed by the appellant. For such a controversy, the remedy lies somewhere else. The Sub-Registrar, in this case has adopted value of this property at Rs. 42 lacs for stamp duty purposes, which has been treated as sale consideration by the Assessing Officer.

13. Perusal of the sale deed dated 19/12/2007 at page 50 of the assessee's paper book, it is revealed that said ShriSurajNarain did not execute the sale deed as an owner of the aforesaid land measuring 0.30 hect.. He executed sale deed in his capacity as a power of attorney holder only wherein he had only a delegated right. This right was not independent right of the appellant. There is also no reliable material or documentary evidence on record to show that the said ShriSurajNarain, the appellant before us had purchased the aforesaid land from any of its earlier owners before transferring the same in the name of Smt. Radha Devi Khatoria through sale deed dated 19/12/2007 as a power of attorney holder. It is a different matter that the sale consideration received by him on behalf of the previous owners was not paid or returned to them immediately after execution of sale deed or even up to the time of enquiries made by the Assessing Officer. The appellant, thus, being neither owner nor a deemed owner of the said capital asset, the said capital asset cannot be taken as property of the appellant. The sale consideration of the aforesaid land, therefore, could not be a subject matter of transfer of his own capital asset. The Income Tax Department has also not assessed him as a representative assessee or an agent of the said Shri Bharat Singh and Shri Vijay Pal Singh and as such question of making assessment of income from capital gains by application of provisions of Section 50-C of the Act adopting full value of consideration at Rs. 42 lacs in his hands, is neither justified nor called for. The authorities below, therefore, have erred in bringing to tax the income from capital gains in his hand though the same may be a subject matter of taxation in the hands of the real owners. In this view of the matter, the addition so made being unjust and uncalled for, the same is directed to be deleted."

CIT Vs. C. Sugumaran (2014) 113 DTR 35 (Mad.) (HC)

Assessee, an individual was a power agent of M, who was actual owner and vendor of property. M entered into a registered power of attorney in favour of assessee without any consideration for dealing with property. After execution of power of attorney, property was registered in name of assessee's wife (D) for Rs.25 lacs by a sale deed dated 23.10.2008. AO observed that it was assessee who sold plot to his wife D for a sum of Rs.25.00 lakhs, whereas guideline value of property was Rs.60.00 lakhs at that point of time by adopting the

fair market value of the property at Rs.60.00 lakhs based on index cost at Rs.11.00 lakhs as on 01.04.1981. AO assessed capital gains at assessee's hands rejecting his contention that he had acted only as a power of attorney holder of actual owner M. CIT(A) affirmed findings of AO. Tribunal held that assessee could not be treated as owner of property sold on 23.10.2008 and there was no question of computing capital gains in the hands of assessee. It was held that section 2(47)(vi) provides that any transaction by way of agreement or arrangement or in any manner whatsoever, which has effect of transferring or enabling the enjoyment of any immovable property would get character of transfer. In instant case there was no transfer to or enabling enjoyment of property in favour of assessee in any manner and therefore, sub-clause (vi) of Section 2(47) does not get attracted. Clause 21 of power of attorney showed that no consideration was received from power agent for appointing him as power of attorney. Property right has also not been handed over to power agent. Letter of land owner subsequently issued does not come to the aid of the Department. It was duty of the power of attorney holder to deliver amount received for the purpose of transfer of property. Circular No.495 dated 22.9.1987 also states that legal ownership would continue with the transferor but the property rights if it is transferred by way of power of attorney would come within ambit of sub-clause (vi) of Section 2(47). Terms of power of attorney clearly show that property rights has not been transferred to power of attorney holder and there is also no provision for enabling enjoyment. Power of attorney is valid and same has been accepted by revenue. Thus, capital gains cannot be assessed in hands of assessee.

2. Without prejudice to above, if assessee is considered to be the real owner, the transfer of part of plot measuring 84.38 sq. yds to his daughter in law Smt. AshaTambi is in fact a gift but the document was wrongly executed as sale deed (PB 11-23). Sales consideration of Rs.3 lacs mentioned in the sale deed wasnever received by the assessee from his daughter in law. This fact was stated by the assessee in his affidavit dt. 14.11.2015 (PB 24-25) filed during assessment proceedings. Further the assessee vide letter dt. 23.11.2015 (PB 26) also stated that he can produce her daughter-in-law to confirm this fact.However, the assessee was neither required by the AO to produce Smt. AshaTambi nor AO issued any summon to Smt. AshaTambi. Hon'ble Supreme Court in case of Mehta Parikh & Co. Vs. CIT 30 ITR 181 at Pg 187 has held that the rejection of affidavit filed by the assessee is not justified unless the deponent has either been discredited in cross examination or has failed to produce other supporting evidence when called upon to do so.This is also reiterated by Hon'ble ITAT, Jaipur Bench in case of Kuldeep Chand GargVs. ITO 37 Taxworld 127 where it held that contents of duly sworn and affirmed affidavit are to be accepted as such unless the deponents are examined to established otherwise. Therefore, simply presuming that the document filed by the assessee is an afterthought story is on surmises & conjectures. This apart in both the sale deeds Sh. Sachin Tambi, husband of AshaTambi is the witness and in sale deed of Sh. AtalBehari Sh. GhanshyamTambi is also a witness. Further the electricity connection on the house constructed on plot measuring 84.38 sq. yds was also taken bySh.

Sachin Tambi as per receipt dt. 27.08.2008 issued by JVVNL(copy enclosed at Pg 30). This also shows that as a mutual adjustment to give a legal title assessee gifted the plot measuring 84.38 sq. yds to AshaTambi but wrongly executed the sale deed. Hence, on this transaction no capital gain can be computed.

3. Without prejudice to above, it is submitted that a part of plot measuring 128.88 sq. yds sold to Sh. AtalBehari was valued by the Sub-registrar at Rs.5,92,625/- whereas the part of plot measuring 84.38 sq. yds gifted to Smt. AshaTambi wasvalued by the Sub-registrar at Rs.6,91,825/-.The rate of plot sold to AtalBehari as per sub-registrar works out at Rs.4598.27 sq. yd. whereas the rate of plot gifted to AshaTambi works out at Rs.8198.92 sq. yd. This shows that value taken by the stamp authorities of both the plots has wide variation.In these circumstances, assessing the gain by taking the FMV of the property u/s 50C at Rs.12,84,450/- without referring it to the DVO u/s 50C(ii), even though the assessee has not specifically objected to the same is not as per law. In this connection reliance is placed on the decision of Hon'ble Calcutta High Court in case of Sunil Kumar Agarwal Vs. CIT (2014) 372 ITR 83 where it was held as under:-

"The case of the assessee was that price offered by the buyer was the highest prevailing price in the market. If this is his case then it is difficult to accept the proposition that the assessee had accepted that the price fixed by the District Sub-Registrar was the fair market value of the property. No such inference can be made as against the assessee because he had nothing to do in the matter. Stamp duty was payable by the purchaser. It was for the purchaser to either accept it or dispute it. The assessee could not on the basis of the price fixed by the Sub-Registrar have claimed anything more than the agreed consideration of sum of Rs.10 lakhs which according to the assessee was the highest prevailing market price. It would follow automatically that his case was that the fair market value of the property could not be Rs.35 lakhs as assessed by the District Sub-Registrar. In a case of this nature the AO should in fairness have given an option to the assessee to have the valuation made by the DVO contemplated under s. 50C. As a matter of course, in all such cases the AO should give an option to the assessee to have the valuation made by the DVO. The legislature did not intend that the capital gain should be fixed merely on the basis of the valuation to be made by the District Sub-Registrar for the purpose of stamp duty. The legislature has taken care to provide adequate machinery to give a fair treatment to the citizen/taxpayer. There is no reason why the machinery provided by the legislature should not be used and the benefit thereof should be refused. Even in a case where no such prayer is made by the advocate representing the assessee, who may not have been properly instructed in law, the AO discharging a quasi-judicial function has the bounden duty to act fairly and to give a fair treatment by giving him an option to follow the course provided by law. The matter is

remanded to the AO. He shall refer the matter to the DVO in accordance with law. After such valuation is made, the assessment shall be made de novo in accordance with law."
In view of above, adopting the value of property at Rs.12,84,450/- without referring the matter to DVO is bad in law and the capital gain be directed to be computed by considering the actual sales consideration at Rs.7,00,000/-.

4. Without prejudice to above, it is further submitted that AO has calculated the deduction u/s 54F with reference to deemed consideration of Rs.12,84,450/- instead of actual consideration of Rs.7 lacs.Section 54F(1) provides that if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged u/s 45. Explanation to section 54F provides that "net consideration", in relation to the transfer of a capital asset, means 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. Deemed value of consideration provided u/s 50C is neither consideration received nor accrued. It is only for the purpose of section 48 as provided in section 50C(1). Therefore, deduction u/s 54F is to be calculated with reference to actual sales consideration of Rs.7 lacs and notdeemed consideration of Rs.12,84,450/-. For this purpose reliance is placed on the following case laws:-
Mrs. BaskarababuUshaVs. ITO (2022) 193 ITD 573 (Chennai) (Trib.)
Deeming fiction provided for computing full value of consideration as a result of transfer of property as per provisions of section 50C is only applicable for determining full value of consideration as defined u/s 48 and thus, for purpose of computing exemption u/s 54F, deeming fiction provided u/s 50C could not be enlarged.
ITO Vs. Raj Kumar Parashar (2017) 167 ITD 237/ 164 DTR 174 (Jaipur) (Trib.)
If the assessee has invested the entire sale consideration in new house property, the capital gains are exempt u/s 54F. 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 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.
Thus, deduction u/s 54F if calculated with reference to actual sales consideration comes to Rs.4,47,021/- (4,00,000*7,82,287/7,00,000) as against Rs.2,43,618/- computed by AO and

thus, the long term capital gain works out to Rs.3,35,266/- (782287-447021) as against Rs.5,38,669/- worked out by AO and confirmed by Ld. CIT(A)."

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

2.5 We have heard both the parties and perused the materials available on record. Without going on to the various contentions raised by the parties, the main issue in this appeal is whether the sale deed dated 24.03.2008 executed by the assessee in favour of Smt. Asha Tambi, daughter-in-law of the assessee stating consideration of Rs.3 lacs is in fact a sale deed or is a gift of property by the assessee Smt. Asha Tambi. The AO on the basis of this sale deed has taken the full value of consideration u/s 50C at Rs.6,91,825/- and computed the long term capital gain accordingly which is confirmed by Ld. CIT(A). We note that in support of the contention that the sale deed was wrongly executed instead of executing the gift deed and that the consideration mentioned in the sale deed was never received by the assessee from his daughter-in-law, assessee filed an affidavit dated 14.11.2015 where he declared that sale deed has been wrongly executed, he was having no knowledge of transferring legal title at the time of execution, he executed sale deed instead of gift deed as per the advice of his advocate and that he has not received any sale consideration from daughter-in-law. We also note that assessee vide his

letter dated 23.11.2015 (Page26 of PB) to the AO specifically explained that if he has any doubt, daughter-in-law can be produced to confirm the fact. However, the AO did not require the assessee to produce Smt. Asha Tambi. Thus the affidavit filed by the assessee is not controverted. Hon'ble Supreme Court in case of Mehta Parikh & Co. Vs. CIT 30 ITR 181 at Pg 187 has held that the rejection of affidavit filed by the assessee is not justified unless the deponent has either been discredited in cross examination or has failed to produce other supporting evidence when called upon to do so. This is also reiterated by Hon'ble ITAT, Jaipur Bench in case of Kuldeep Chand Garg Vs. ITO 37 Taxworld 127 where it held that contents of duly sworn and affirmed affidavit are to be accepted as such unless the deponents are examined to established otherwise. On the direction of Bench the legal heir of assessee also filed affidavit of Smt. Asha Tambiwhere also she affirmed that his father-in-law executed the sale deed instead of gift deed and that she has not paid the amount of Rs.3 lacs as mentioned in the sale deed. In these facts and circumstances, we are of the view that no capital gain can be computed in respect of the sale deed executed in favour of Smt. Asha Tambi as it is only a gift to close relative and not a sale and, therefore, Ground No. 1 is allowed. Since, we hold that there is no capital gain, therefore, the consequential ground nos. 2 and 3 become

educative. In the result Ground No.1 of assessee is allowed and Ground No.2 & 3 is not decided being infructuous. Thus the appeal of the assessee is partly allowed.

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

Order pronounced in the open Court on 14 /06/2023.

Sd/- Sd/-

(राठोड कमलेश जयन्तभाई)	(डॉ.एस.सीतालक्ष्मी)
(RATHOD KAMLESH JAYANTBHAI)	(Dr. S. Seethalakshmi)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 14/06/2023.
*Mishra
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Hanuman Prasad Tambi, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-5(4), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 18/JPR/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar