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

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

आयकर अपील सं./ITA. No. 259/JPR/2024
निर्धारण वर्ष/Assessment Years : 2017-18

Sh. Ramnarayan Meena Sendiyawas Delli, Tonk.	बनाम Vs.	ITO, Ward, Tonk.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: DCHPM0039P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओर से/ Revenue by : Shri Arvind Kumar (CIT)

सुनवाई की तारीख/ Date of Hearing : 23/04/2024
उदघोषणा की तारीख/Date of Pronouncement : 01/05/2024

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the CIT(A), National Faceless Appeal Centre, Delhi dated 11.01.2024 [Here in after referred as "CIT(A)/NFAC"] for the assessment year 2017-18, which in turn arise from the order dated 21.03.2022 passed under section 147 r.w.s. 144 read with section 144B of the Income Tax Act, [Here in after referred as "Act"] by the AO.

2. The assessee has marched this appeal on the following grounds:-

> *"1. The Ld. CIT(A), NFAC has erred on facts and in law in dismissing the appeal filed by the assessee by holding that assessee is not interested in pursuing the appeal without providing adequate opportunity of hearing.*
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> *2. The Ld. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs. 10,05,11,000/- u/s 69 of the IT Act, 1961 on account of unexplained investment in purchase of immovable properties whereas the source of investment is fully explained.*
>
> *3. The appellant craves to alter, amend, and modify any ground of appeal.*
>
> *4. Necessary cost be awarded to the assessee."*

3. The fact as culled out from the record is that the revenue has the Information in the case of the assessee on AIMS Module for F.Y. 2016-17 relevant to A.Y. 2017-18 indicating that the assessee has paid Rs. 10,05,11,000/- for purchase of immovable property. The above transactions indicate that the assessee had taxable income during the said assessment year but he has not filed Return of Income for A.Y. 2017-18 as per section 139 of the Income Tax Act, 1961. Hence the Assessing Officer believed that income earned by the assessee has escaped assessment due to failure on the part of the assessee. On this reason to believe the case of the assessee was reopened u/s 147 of the Income Tax Act 1961. The reasons were duly recorded by the Assessing Officer

and the sanction u/s 151 of the Act to issue the notice u/s 148 of the Act was duly accorded by the appropriate Income Tax Authority. Accordingly, a notice u/s. 148 of the Act was issued on 31.03.2021 whereby the assessee was required to deliver a return in the prescribed form for the assessment year 2017-18 within 30 days of service of the notice. However, no return has been filed by the assessee in response to the notice issued u/s 148 of the Act. Subsequently the assessee was issued with the notices u/s 142(1) on 17.11.2021, 15.12.2021 and 05.01.2022, but no response has been filed by the assessee. These notices were also sent by the Speed Post through the Verification unit of the department on 18.01.2022 which was delivered on 19.01.2022, apart from the e-mail delivery, but the assessee has not filed any explanation. The assessee was also issued with final opportunity vide notice u/s 142(1) dated 08.02.2022, to which also, no response is received from the assessee. This notice was also sent by Speed Post through the Verification unit of the department on 15.02.2022 and was delivered to the assessee on 17.02 2022, apart from the e-mail delivery.

3.1 Since, there was no reply or explanation from the assessee the ld. AO left with no option but to complete the assessment

proceedings to the best of his judgment and in accordance with the provisions of section 144 of the Income tax Act, 1961 based on the information available on record. Hence a Show cause notice u/s 144 of the Income Tax Act. 1961 was issued to the assessee on 21.02.2022. The assessee was given an opportunity to file his explanation on or before 28.02.2022, but no reply has been received from the assessee. As per provisions of Section 144(1)(b) of Income Tax Act, 1961, if the assessee fails to comply with terms of a notice issued u/s 142(1), the Assessing Officer is empowered to gather relevant material and to make the assessment of the total income to the best of his judgment and determine the sum payable by the assessee based on such assessment.

3.2 The non-compliance by the assessee to statutory notices clearly show that reasonable speaking and fullest natural justice has been followed by the Assessing Officer, but it is the assessee who has not availed any chances for the reasons best known to him. Therefore, the bar of natural justice has been breached by the assessee for the reasons known to him. Accordingly. the assessment proceedings are completed, as per the information available in the case of the assessee. As it is seen from the ITBA/Insight Portal that the assessee has purchased two

immovable properties for Rs. 5,85,06,000/- and Rs 4,40,05,000/- i.e. the total investment in the properties made during the AY 2017-18 is of Rs. 10,05,11,000/-.

3.3 The assessee was given ample opportunities to furnish the explanation as regards to the sources of the investment of Rs. 10,15,11,000/- in the immovable property, however the assessee has not furnished any source of these investments. As such, the source for purchase of immovable property i.e. investment, remains unexplained and hence this unexplained investment needs to brought to tax under section 69 of the Income Tax Act 1961 as observed by the ld. AO. Hence, from the facts of the case, a legitimate inference can be drawn that the assessee had income of Rs. 10,05,11,000/-which he had invested in the purchase of immovable properties during the year under consideration and no explanation whatsoever is furnished by the assessee as regards to the source of this investment. Therefore, an amount of Rs. 10,05,11,000/- is treated as the income of the assessee and added to his total income for the A.Y 2017-18.

4. Being aggrieved by the order of the AO, the assessee filed an appeal before the ld. CIT(A). The Ld. CIT(A) observed that

notices were issued on 28.12.2023 & 04.01.2024 and requiring the assessee to file the details in support of grounds taken by the assessee. Since the assessee has not complied with the notices issued the ld. CIT(A) dismissed the appeal of the assessee ex-parte order. The extract of the finding of the ld. CIT(A) is reproduced as under:-

> "The conduct of the Appellant, as inferred from the last column of the aforesaid table/evidences that the Appellant is not interested in pursuing the Appeal: the law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in the well-known latin dictum, "VIGILANTIBUS ET NON DORMIENTIBUS JURA SUB VENIUNT". The conduct of the Appellant, as inferred from the aforesaid table, evidences that the Appellant fails on this principle of equity. Even the Hon'ble Courts, in various pronouncements, have frowned upon the Appellants who file appeals but thereafter do not take any further interest in prosecuting those appeals.
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> 1. The Hon'ble Income Tax Appellate Tribunal - Kolkata in the case of Pradeep Kumar Jhawar, Kolkata vs. D.C..T., C.C.-XX) (15 March. 2016) (ITA Nos. 450/Kol/2013 for Asst. Year: 2006-07) dismissed the appeal of the Appellant for non-prosecution.
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> 2 The Hon be Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. CWT (223 IIR 480) held as under:
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> "If the party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference,"
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> 2. Similarly, the Hon'ble Punjab & Haryana High Court in the case of New Diwan Oil Mills vs. CIT (2008) 296 IT 495) returned the reference unanswered since the assessee remained absent and there was no assistance from the assessee.

2. Their Lordships of Hon'ble Supreme Court in the case of CIT vs. B.Bhattacharjee & Another (118 IT 461 at page 477-478) held that appeal does not mean, mere filing of the memo of appeal but effectively pursuing the same.

In the judgment, their Lordships averred as follows:

"…….This turns on the meaning of the words "preferred an appeal" "Preferred" is a word of dual import. Its semantics depend on the scheme and the context, its import must help, not hamper, the object of the enactment even if liberty with language may be necessary. There is good ground to think that an appeal means an effective appeal. An appeal withdrawn is an appeal non est as judicial thinking suggests.

Black's Law Dictionary gives the following meaning: 'PREFER: To bring before; to prosecute; to try to proceed with. Thus, preferring an indictment signifies prosecuting or trying an indictment. It means to give advantage, priority, or privilege; to select for/first payment, as to prefer one creditor over others. Thus, it may mean prosecute or effectively pursue a proceeding or merely institute it. Purposefully interpreted, preferring an appeal means more than formally filing it but effectively pursuing it....."

In view of the above, it is clear that the Appellant is not aggrieved with the reassessment order impugned herein and is not interested in pursuing the same. Accordingly, the additions/disallowance as challenged in the Grounds of Appeal and in the Appeal Memo are hereby confirmed

The Last ground of appeal is always reserved for adding/altering/amending and/or substituting any or all grounds of appeal before the taking place of actual hearing or even in course of the hearing if the situation so warrants. Since the appellant has nothing to say on this. This ground of appeal is dismissed as "not pressed".

In view of the appellant's total non-compliance during appeal proceedings, I find it extremely difficult to adjudicate on the appeal for want of adequate submission and clarification, counter-clarification.

In the result, the appeal is dismissed."

5. As the assessee did not receive any favor from the appeal filed before ld. CIT(A). The present appeal filed against the said order of the ld. CIT(A) before this tribunal on the grounds as reiterated in para 2 above. To support the grounds so raised the ld. AR appearing on behalf of the assessee has placed their written submission which is extracted here in below:-

> "The assessee is an agriculturist. During the year under consideration he purchased two agriculture lands, one vide sale deed dt. 15.06.2016 (PB 3-13) for Rs.5,65,06,000/- and another vide sale deed dt. 20.06.2016 (PB 17-27) for Rs.4,40,05,000/- totaling to Rs.10,05,11,000/-, The consideration for purchase of these lands was provided by Patel Nagar Grah Nirman Sarkari Samiti Ltd (PB 42-44) from its bank account, details of which is as under:-
>
> | Date | Amount |
> |---|---|
> | 16.06.2016 | Rs. 3,87,60,000/- |
> | 16.06.2016 | Rs. 2,35,50,000/- |
> | 20.06.2016 | Rs. 4,33,00,000/- |
> | 20.06.2016 | Rs. 19,50,000/- |
> | 06.07.2016 | Rs. 14,00,000/- |
> | Total | Rs. 10,89,60,000/- |
>
> 2. The above amounts were credited in the Axis Bank account (PB 15) & Malviya Urban Co-Operative Bank Ltd. (PB 28-29) of the assessee from where the payment was made for purchase of agriculture land.
> 3. The said land was sold by the assessee to Patel Nagar Grah Nirman Sarkari Samiti Ltd vide sale agreement dt. 21.06.2016 for Rs. 10,77,21,000/- (PB 31-36). Accordingly assessee earned short term capital gain of Rs. 1,72,943/- (PB 40).
> 4. The AO on the basis of information that assessee has purchased land for Rs.10,05,11,000/- but has not filed the return issued notice u/s 148 dt. 31.03.2021. However, neither the assessee filed the return nor replied to the show cause notices issued during course of the assessment proceedings. Accordingly AO assessed the total income of assessee at Rs. 10,05,11,000/- by treating the purchase of land as unexplained investment u/s 69 of the Act.
> 5. Against the assessment order assessee filed appeal before Ld. CIT(A) along with the copy of purchase deed, sale agreement & bank statement and explained the facts of the case in Form No.35. The Ld. CIT(A) however after reproducing the assessment order at Page 3-7 of

its order observed that against hearing notice dt. 28.12.2023 adjournment was granted but against notice dt. 04.01.2024 neither any compliance was made nor adjournment was sought. He therefore dismissed the appeal by holding that in the absence of non-compliance it is extremely difficult to adjudicate the appeal for want of adequate submission, clarification and counter-clarification.

6. From the above it can be noted that assessee has explained before Ld. CIT(A) the facts relating to purchase/ sale of land and also filed all the relevant documentary evidences in support of the same which explains the source of the investment. However, the Ld. CIT(A) has not considered the same and dismissed the appeal In limine. It is submitted that L.d. CIT(A) has not provided adequate opportunity of hearing nor he has decided on the merit of the case even when the documents were filed before him. For this reliance is placed on the following cases:-

CIT Vs. Premkumar Arjundas Luthra (HUF) (2016) 240 Taxman 133 (Bom.) (HC) The AO imposed penalty upon assessee u/s 271(1)(c). The assessee challenged the order before the CIT(A). However, as none appeared for hearing in support, the CIT(A) dismissed the appeal for non-prosecution. It was held that CIT(A) is required to apply his mind to all issues which arise from impugned order before him whether or not same had been raised by appellant before him. Law does not empower CIT(A) to dismiss appeal for non-prosecution.

Kerala State Service Pensioners Co-operative Society Ltd. Vs. ITO & Ors. (2023) 230 DTR 209 (Kerala) (HC)

Appellate authority cannot dismiss an appeal for non-prosecution, instead has to decide the matter on its merits.

7. In view of above since all the documentary evidence as to the source of investment in purchase of agriculture land is available before the Hon'ble ITAT, it is prayed that instead of remanding the matter back to the AO, the appeal of assessee be decided on merit. For this purpose reliance is placed on the following cases:-

Zuari Leasing & Finance Ltd. Vs. ITO (2008) 112 ITD 205 (Del.) (Trib.) (TM) The Honb'le ITAT at Para 10 of the order held as under:-

"10. It is clear from above that primary power, rather obligation of the Tribunal, is to dispose of the appeal on merits. The incidental power to remand, is only an exception and should be sparingly used when it is not possible to dispose of the appeal for want of relevant evidence, lack of finding or investigation warranted by the circumstances of the case. Remand in a casual manner and for the sake of remand only or ax a short cut, ix totally prohibited. It has to be borne in mind that litigants in our country have to wait for long to have fruit of legal action and expect the Tribunal to decide on merit. It is therefore, all the more necessary that matter should be decided on merit without allowing one of the parties before the Tribunal to have another inning, particularly when such party had full opportunity to establish its case. Unnecessary remands, when relevant evidence is on record, belies litigant's legitimate expectations and is to be deprecated. Having regard to

aforesaid principle, it is necessary to look into records to see whether there is sufficient material on record to dispose of the issue on merit and there is no need to remand the issue to provide a fresh inning to the Revenue."
Srimanta Shankar Academy Vs. ITO (2007) 107 ITD 99 (Gauhati) (Trib.) (TM) The Honb'le ITAT at Para 10 of the order held as under:-
"It is true that remand of a matter is discretionary. But such discretion is required to be shown to be exercised in a judicial manner. In the case of Saurashtra Packaging (P) Ltd. vs. CIT (1996) 131 CTR (Guj) 40 (1993) 204 ITR 443 (Guj), their Lordships of Gujarat High Court have observed that where matter can be disposed of by the Tribunal on the basis of material already on record, a remand should not be resorted to. It is always necessary to avoid multiplicity of proceeding and to save time. There are large number of decisions of High Courts and Supreme Court where instead of directing the Tribunal to make a reference of question under s. 256(2), the Courts while disposing of reference application answered the question sought to be referred and directed the Tribunal to proceed in a particular manner. All this is done to save time and multiplicity of proceeding. I am convinced that such a course to save time should have been adopted in this case and remand of the matter is totally unnecessary. I say so for the reasons and after noting following facts available on record."

6. The ld. AR of the assessee also filed an application for admission of additional evidence under Rule 29 of Appellate Tribunal Rules, 1963 which is extracted here in below:-

“With reference to above, it is to submit that in the above appeal assessee has challenged the addition of Rs.10,05,11,000/- made u/s 69 of the Act on account of unexplained investment in purchase of immovable properties. The addition is made by the AO and confirmed by the Ld. CIT(A) since assessee did not file any reply/submission before them.

It is submitted that the investment in purchase of land was made out of the funds provided by M/s Patel Nagar Grah Nirman Sahakari Samiti Ltd. on whose behalf the agriculture land was purchased and within few days of purchase it was sold to M/s Patel Nagar Grah Nirman Sahakari Samiti Ltd. However, the required documents could not be furnished to the AO and even before the Ld. CIT(A) as he did not provided sufficient opportunity to furnish the documents. Hence we are now enclosing

herewith the documents at S. No.1 to 11 of Paper Book which goes to the root of the matter and therefore, it is requested to kindly admit theses evidences to impart substantial justice to the assessee."

7. During the course of hearing, the ld. AR for the assessee prayed that the ld. CIT(A) and the AO both have passed the ex-parte order, and the assessee was not provided adequate opportunity of being heard. Thus, the assessee may be provided one more opportunity to advance his arguments/submissions before the ld. AO on merits as the orders of the both the authority are ex parte, and the assessee prayed to grant one chance provide the details in connection with the merits of his case and the additional evidence will reduce the liability of tax substantially and therefore, in the interest of equity and natural justice the assessee praying for the one chance before the ld. AO to advance the merits of the case.

8. Per contra, ld. DR objected to the prayer of the assessee for additional evidence and for remitting the back the case file to the ld. AO. He vehemently argued that in spite of various opportunities granted by both the lower authority the assessee remained noncompliance. Thus, now the assessee has no reason to seek equity and justice. The ld. DR also submitted the documents submitted by the assessee in his paper books are not having the

certification that whether the assessee has presented the documents relied upon are not. Therefore, in that case if the Bench feels the matter may be restored to the file of the Assessing Officer then a fine be sent back. The ld. AR of the assessee also submitted that the assessee contended before the bench that the assessee has received the money from the Patel Nagar Grah Nirman Sarkari Samiti Ltd., after receipt of the money assessee has purchased the land. The assessee contended that the only capital gain is to be charged but the assessee even before the bench has not filed the copy of sale deed but has only filed the copy of the sale agreement. The ld. DR also submitted that these transaction undertaken by the assessee is also subjected to the other laws of holding the assets on behalf of the assessee and that money was not of the assessee. All these aspects need to be verified and even the source of the source in this case needs to be verified as the property is again falling back to the party from where the money is flowing.

9. In the rejoinder the ld. AR of the assessee submitted that the assessee has filed the additional evidence as it is appearing from the copy of the Form no. 35 placed on record wherein the column no. 12 stated that he wanted to file the additional evidence and at

12.1 he filed the additional evidence. The ld. CIT(A) has though, assessee has not submitted further submission but has filed the bank statement, purchase deed and sale deed from there the capital gain can easily be verified even from the Form no. 35 itself. He has not deemed it fit to call for the remand report on the additional evidence submitted by the assessee. Based on these set of facts the whole consideration cannot be added as income of the assessee but only the profit can be charged to tax.

10. We have heard both the parties and perused the materials available on record. The brief fact of the case is that based on the information with the revenue that the assessee has paid Rs. 10,05,11,000/- for purchase of immovable property. The above transactions indicate that the assessee had taxable income during the said assessment year but he has not filed Return of Income for A.Y. 2017-18 as per section 139 of the Income Tax Act, 1961. Based on that set of facts the case of the assessee was re-opened by issuing the valid notice u/s. 148, which the assessee has not disputed. The assessee has not filed any return of income in response to the notice u/s. 148 of the Act and has also not complied with the various notices including the show cause notice for the best judgment. As the assessee did not avail the

opportunity to the various notices issued the ld. AO, and thus. The ld. AO left with no option but to complete the assessment proceedings to the best of his judgment and in accordance with the provisions of section 144 of the Income tax Act, 1961 and that too based on the information available on record. Accordingly, the assessment proceedings completed, as per the information available in the case of the assessee wherein the assessee has purchased two immovable properties for Rs. 5,85,06,000/- and Rs 4,40,05,000/- i.e. the total investment in the properties made during the AY 2017-18 is of Rs. 10,05,11,000/- for which no details of the source of the investment were placed on record.

11. As regards the non-compliance before the ld. AO the ld. AR of the assessee did not demonstrate before us any reason to justify the wastage of time of revenue officers. Thus, we deem it fit to impose the cost of Rs. 10,000 [5000 for each non making any effort to the notices issued by both the lower authority] of non-compliance to be deposited into the “Prime Minister Relief Fund”.

12. So far as the merits of the case is concerned we note that the assessee while filling the appeal before the ld. CIT(A) has placed on all the records so as to determine the income chargeable to tax in the hands of the assessee, even though the

ld. CIT(A) not called for the remand report and has also not discussed the matter of additional evidence whether the same is admitted or not. Before, us the assessee has filed the more details and also prayer for admitting the additional evidence which has not been discussed by the ld. CIT(A) in his order. Thus we admit the additional evidence brought on record by the assessee and vide his paper book the content of the index filed is reproduced here in below:-

S.No.	Particulars	Pg. No.
1.	Copy of sale deed dt. 15.06.2016 in respect of agriculture land purchased by the assessee from Sh. Babu Lal	1-14
2.	Copy of bank statement of Axis Bank account	15
3.	Copy of sale deed dt. 21.06.2016 in respect of agriculture land purchased by the assessee from sh. Babu Lal	16-27
4.	Copy of bank statement of Malviya Urban Co-operative Bank Ltd.	28-30
5.	Copy of sale deed dt. 21.06.2016 in respect of agriculture land sold by the assessee to Patel nagar Grah Nirman Sahakari Samiti Ltd.	31-36
6.	Copy of bank statement of Axis bank account	37
7.	Copy of bank statement of Malviya Urban Co-operative bank Ltd.	38-39
8.	Copy of computation of total income	40
9.	Copy of ledger account of Agri Land of assessee	41
10.	Copy of confirmation of account from Patel Nagar Grah Nirman Sahakari Samiti Ltd.	42
11.	Copy of bank statement of Patel Nagar Grah Nirman Sahakari Samiti Ltd. showing payments made by them to the assessee.	43-44

13. Admitting the above additional evidence the ld. AR of the assessee in support of the ground submitted that the it is apparent from the evidence placed on record that the income of the assessee from the all the sources is below the maximum amount not chargeable to tax and therefore, the addition made is required to be restricted to income of capital gain only in the case of the assessee. On the other hand, we find force in the arguments of the ld. DR that the assessee has submitted additional evidence which were not verified by the ld. AO. Not only that the huge fund is flowing to the assessee and the source is also needs to be examined since the assessee has received the fund from the third party and the same is again on that consideration sold to the Patel Nagar Grah Nirman Sarkari Samiti Limited. Therefore, the source of investment is received from the party in advance and against the money the property is transferred to the same party whose pays the money to buy property. This transaction needs to be examine even on the other applicable laws of holding the property under Benami Laws. In the light of these set of facts since the evidence placed on record are not tested with the proper verification the matter of capital gain cannot be decided as the revenue also needs to have the fair chance to tax the correct income of the

assessee. Considering the overall set of facts as discussed herein above we admit the additional evidence with the cost as discussed above and set aside the issue of assessing the income of the assessee to the file of the assessing officer, who will decide the issue based on evidence and submission of the assessee. However, the assessee will not seek any adjournment on frivolous ground and remain cooperative during proceedings before the ld. AO.

14. Before parting, we may make it clear that our decision to restore the matter back to the file of the ld. AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the ld. AO independently in accordance with law.

In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 01/05/2024.

Sd/-	Sd/-
(डा॰ एस. सीतालक्ष्मी)	(राठौड़ कमलेश जयन्तभाई)
(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 01/05/2024

*Santosh

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

1. अपीलार्थी/The Appellant- Sh. Ramnarayan Meena, Tonk.
2. प्रत्यर्थी/ The Respondent- ITO, Ward, Tonk.
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. 259/JPR/2024}

आदेशानुसार/ By order

सहायक पंजीकार/Asst. Registrar