

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपीलसं./ITA No. 853/JPR/2025
निर्धारणवर्ष/AssessmentYear : 2017-18

Kiran Yadav A-120, Dr.Rajendra Prasad Nagar-A, Badarwaas NR, 200Ft By-Pass, Heerapura Jaipur 303 020	बनाम Vs.	The ITO Ward -2 (3) Jaipur
स्थायीलेखा सं./जीआईआरसं./PAN/GIR No.: AOHPY1870K		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओरसे/ Assesseeby :Shri K.L. Moolchandani-AR
राजस्व की ओरसे/ Revenue by: Shri Gautam Singh Choudhary, JCIT-DR

सुनवाई की तारीख/Date of Hearing : 16/09/2025
उदघोषणा की तारीख/Date of Pronouncement: 16 /10/2025

आदेश/ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by the assessee is directed against the order of learned Commissioner of Income Tax, National Faceless Appeal Centre, Delhi[for short CIT(A)] dated 02.04.2025 for the assessment year 2017-18 raising therein following grounds of appeal.

"(1)On the facts and in the circumstances of the case, the Id. CIT (A) has factually and legally erred in not addressing and adjudicating the Grounds of 1 and 2 raised in the Appeal filed. Thus the Appeal order so passed in absence of disposal of these grounds is not a well-reasoned and logical order and the same deserves to be modified on this ground alone as it is a clear case of violation of

the equity and natural justice by not providing adequate opportunity despite of specific request made in this regard vide reply dated 1.3.2022.

(2) On the facts and in the circumstances of the case, the Id. Authorities have factually and legally erred in working out the capital gain at Rs.1724767 and taxing the same without appreciating the fact that the appellant had claimed development expenses of Rs. 13,55,905/-. Thus the addition made on account of such working and confirming the same by the CIT(A) are factually and legal incorrect and the addition so made deserves to be deleted summarily.

(3) On the facts and in the circumstances of the case, the Id. CIT (A) has factually and legally erred in observing incorrectly (vide para 4.3.3 at page no.20 of the Appeal Order) that the appellant has not filed any details such as confirmation and other details etc, or any other documentary evidences with regard to the development cost of Rs. 13,55,905 (i.c. 535799 Mitti Barai, Rs 391430 construction of Boundary wall and Rs.428676 remuneration paid to security guards, etc.) of the Property under consideration. Such findings are self-contradictory and factually incorrect as evident from the body of the Appeal Order itself at page No.16 wherein it has been clearly mentioned that 31Vouchers and other confirmations etc. were submitted in support of such expenses. This fact has not been disputed or denied by the Authorities Below. Thus the findings arrived at on the basis of such incorrect facts are patently incorrect and deserves to be modified and the additions confirmed on the basis of such incorrect findings deserves to be deleted summarily

(3)(a) Again, on the facts and in the circumstances of the case, the Authorities Below had factually and legally erred in observing that the Appellant did not claim any such development expenses originally. As evident from the Computation filed vide letter dated 30.11.2021 during the course of assessment proceedings, the Appellant had claimed cost of Boundary Wall and Mitti Bharai of Rs.1,95,100/- & Rs.92,500/- with indexed cost of Rs.3,47,290/- & Rs.1,78,802/- respectively. The Authorities Below did not take note of such Computation and had incorrectly observed that the Appellant did not claim such cost originally. Thus such findings of the Authorities Below are factually incorrect which led to the above incorrect findings of the Authorities Below which are factually incorrect and deserves to be quashed summarily.

3(b) Further, on the facts and in the circumstances of the case, the CIT (A) has factually and legally erred in not addressing the disallowance of Rs.4,29,676/- on account of the disallowance of the remunerations paid to the Security Guards as made by the Assessment Unit. Thus the Appeal Order to this extent is not well reasoned and logical order and deserves to be quashed summarily.

In view of above discussions, the addition of Rs.13,55,905 by disallowing the above expenses of the development cost is factually and legally incorrect and the same deserves to be deleted summarily,

(4) On the facts and in the circumstances of the case, the Id. CIT (A) has factually and legally erred in not appreciating the honest and bona-fide reasons as explained at page no.16 of the Appeal Order itself which had prevented the Appellant from submitting the required details and documents in the beginning. More-over the Id. CIT (A) did not consider these facts and did not give any findings on such facts and circumstances which had prevented the Appellant from submitting these details in the beginning. In fact, the Appeal Order has been passed in a hurried manner without deliberating over the point at issue rendering the Appeal Order bad in Law which requires to be modified and the additions so confirmed arbitrarily deserve to be deleted.”

2.1 Apropos grounds of appeal of the assessee, it is noticed that the Id.CIT(A) has passed an ex-parte order by confirming the order of the AO as to assessing the Long Term Capital Gain amounting to Rs.17,24,767/- as the assessee had not filed any details. The narration so made by the Id. CIT(A) at para 4.3 to para 7 of his orders are reproduced as under:-

“4.3 I have gone through the grounds of appeal, assessment order and the written submissions of the appellant. In the original return of income, the appellant had filed the computation of long term capital gain as under:

Sales consideration		Rs. 10,00,000
Less: indexed cost of purchase	Rs. 2,06,624	
Indexed cost boundary wall	Rs.3,47,290	
Indexed cost of MittiBharai	Rs. 1,78,802	Rs. 7,32,716
Capital Gain		Rs.2,67,284

4.3.1 When the notice u/s 142(1) was given for invoking the provisions of sec.50C of the IT Act, the appellant had filed the revised computation of long term capital gain, which is as under:

Sales consideration value 50C		Rs 19,31,391
Less: Indexed cost of purchase	Rs.2,06,624	
Indexed cost of boundary wall	Rs.5,35,799	
Indexed cost of mittibharai	Rs. 3,91,430	

Security guard	Rs. 75,949	
Security guard	Rs. 68,790	
Security guard	Rs. 63,380	
Security guard	Rs. 57,508	
Security guard	Rs. 52,734	
Security guard	Rs. 49,954	
Security guard	Rs. 40,000	
Security guard	Rs. 21,361	Rs. 15,63,529
Total income		Rs. 3,67,862

4.3.2 The AO observed that the assessee has documentary evidence in support of boundary wall and mittibharai which has also been enhanced or adjusted in the revised computation to reduce the long term capital gain. The AO further held that the expenses incurred on security guard cannot be regarded as capital asset or cost of improvement to capital asset.

4.3.3 The appellant has not filed any details such as for the payment made, documentary evidence in this regard such as mode of payment, copy of the bank account showing withdrawals, receipt issued etc. In the appellate proceedings, burden of proof lies on the assessee to prove that facts and findings of the AO are incorrect. The AO has clearly pointed out that if the figures given in the receipt were actual why the same were not considered in the original computation of capital gain claiming the capital loss instead of capital gain computed at Rs. 2,67,284/-

4.3.4 In these circumstances and in view of the foregoing facts, I am of the opinion that no interference is required in the assessment order. The order of the Assessing officer assessing the Long term capital gain at Rs. 17,24,767/- Is upheld. All the grounds raised in this appeal are dismissed.

5. With regard to initiation of penalty proceedings 270 A of the IT Act, penalty proceedings w/s 270A were initiated as the AO opined that the appellant had unreported/misreported the income. Since the penalty proceedings initiated were backed by valid reasons, this ground of appeal is dismissed. Further, Penalty proceedings were initiated and penalty if any will be levied by the AO by a separate order. Therefore, this ground is premature, not sustainable and hence, dismissed.

6. Lastly, the appellant craveleave to add, alter, amend the grounds of appeal. However, no such option has been exercised by the appellant during appeal proceedings. Hence, this ground is dismissed as infructuous.

7. In the result, the appeal is dismissed.”

2.2 During the course of hearing, the Id.AR of the prayed that the lower authorities are not justified in working out the capital gain at Rs.17,24,767/- and thus the same deserves to be deleted summarily. The written submissions as advanced by the Id.AR of the assessee during course of hearing is reproduced as under:-

“WRITTEN SUBMISSIONS MADE BEFORE THE H’BLE, ITAT, (SMC) BENCH, JAIPUR IN THE CASE OF Ms. KIRAN YADAV, A-120, Dr.RAJENDRA PRASAD NAGA, JAIPUR-AN:AOHPY1870K-A.YR. 2017-18- APPEAL NO. 853/JPR/2025- D.O.H.6.8.2025

May it please your honors,

In this case, the re-assessment proceedings were initiated u/s 147/148 of the Act (as per old Provisions of the Act) vide DIN & Notice No. ITBA/AST/S/148/2020-21/1032056321(1) DATED 31.3.2021(Copy enclosed for ready reference). As mentioned in the Assessment Order, the re-assessment proceedings were initiated after obtaining the required satisfaction of the JCIT, Range-I, Jaipur on account of the alleged unverifiable transaction of the immoveable property of Rs.19,31,391/-. Obviously, the reasons as mentioned in the body of the Assessment Order are factually and legally incorrect as the JCIT is not the competent Authority to record satisfaction to initiate such re-assessment proceedings. Again, the alleged un-verifiable transaction of the Property does not come within the ambit of the provisions of sections u/s 147/148 of the Act. In fact, the provisions of section 147 of the Act come into play only in the case of the ‘Escaped Income’ only and not the ‘Un-verifiable Transaction’ as mentioned in the body of the Assessment Order. Despite of such procedural and legal lacunae, the Appellant had filed Return of Income on 30.4.2021 in response to the notice u/s.148 of the Act, showing therein income of Rs.2,67,280/- as Capital Gain from the sale of the Property under consideration. During the re-assessment proceedings, the Appellant had revised the long Term Capital Gain at Rs.3,67,682/-(as per enclosed Computation Sheet) as against Rs.2,67,280/- (declared in the Return originally filed on 30.4.2021) after claiming Indexed Cost of Plot at Rs.2,06,624/-, Development Cost on construction of Boundary Wall of Rs. 5,35,799/-,

Indexed Cost of MittiBharai of Rs.3,91,430/- and Rs.4,28,676/- paid to Guards for 7 years to protect the Plot from being trespassed and occupied by the miscreants.

2. During the course of re-assessment proceedings, the Appellant had produced all the required details and documents like confirmation letters etc. from the concerned parties with supporting **31 vouchers**. The honorable Assessment Unit was however not willing to admit these details and documents **without pointing out any mistake or discrepancy etc.** in these vouchers as per following findings as recorded in Para 12 of the Assessment Order at page No.9 being re-produced hereunder for ready reference:

The assessee's above reply has been duly considered. In reply the assessee has submitted that very short period was given for procuring the supporting and documentary details and evidences in support of expense incurred for the development of asset under consideration. From the history of notices issued, it is noticed that the assessee was given various opportunities vide notices issued u/s 143(2) dated 30.6.2021 and notices 142(1) issued on 28.12.2021 again after lapse of three weeks further opportunities were given on 21.1.2022, 10.2.2022 and 18.2.2022. Finally show cause was issued on 26.2.2022. Hence the assessee's say that very short period was given is found unacceptable. Further from the submission it is noticed that no new documentary evidences have been brought vide above reply. From the above details narrated in the order, it can be seen that the assessee enhanced the cost of improvement on mittibharai and boundary wall and added expenses on security guard in the revised computation when he was brought the provisions of section 50C to his notice. Further in the show cause notice proposed computation of capital gain was given.

The assessee has requested for personal hearing on VC. However in the show cause notice it was clearly mentioned asunder:

If required, after filing written reply you may request for personal hearing so as to make oral submissions or present your case. The request only be made by clicking the Seek Video Conference button available against the SCN. In the view notices of this proceeding in the e-proceedings tab on e-filing portal. The request can be made only before expiry of compliance date & time. On approval of request personal hearing shall be conducted exclusively through video conference.

However the assessee has not clicked the seek video conferring button available against the SCN giving the proposed computation. The said request has to be made before the expiry of compliance date and time.'

3. Obviously, the above findings were factually incorrect and deserve to be quashed for the following reasons:

- (a) In fact, the Appellant had pointed out the fact of '**in-adequate opportunity**' in respect of the final show cause notice dated **26.2.2022** only vide which only two days were allowed to file the objections to the proposed variation to be made in the returned income. The compliance of the earlier notices had been made regularly from time to time as evident from the body of the assessment order itself. The Appellant had been submitting required details and explanation from time to time along-with **31 supporting vouchers etc.** as mentioned in the body of the Assessment order itself. Thus the honorable Assessment Unit had misconstrued this objection without appreciating the facts of the case in right perspective.
- (b) Again, the honorable Assessment Unit had incorrectly mentioned that no new documentary evidences were brought vide above reply. Such findings are factually incorrect as the Appellant had submitted **31 confirmation letters** from the concerned parties in support of the cost of development of the Property. Thus the cost of development was fully and properly vouched and verifiable as the H'ble Assessment Unit did not dispute this fact and also did not point out any mistake or discrepancy in such confirmation letters. Thus it is an admitted and undisputed fact.
- (c) The H'ble Assessment Unit did not whisper a single word about the expenses of **Rs.4,28,676/-** incurred for the security of the property under consideration from being trespassed and protect the property from unauthorized occupation by the miscreants. In the written submission the claim of these expenses were made vehemently before the H'ble Assessment Unit on **3.3.2022**, the definition of Capital Expenses was articulately brought home as under vide Ground No.4 at penultimate page (copy enclosed for ready reference) as under:

'Capital Expenditure is money an assessee spends to buy, improve or maintain assets that are expected to benefit the business long-term.'

As evident from the Assessment Order, the H'ble Assessment Unit did not consider the above definition and had straight-away disallowed these expenses summarily without deliberating over such contentions of the Appellant.

4. Accordingly, an Appeal was filed, assailing the Assessment Order on five grounds as per copy of Form No.35 enclosed for ready reference. In Appeal Order, the honorable Appeal Centre did not address first two grounds for the reasons best known to the Centre. Remaining 3 Grounds were dismissed in single para vide Para No. **4.3.3** of the Appeal Order at page No.20 as under:

Para 4.3.3. & 4.3.4 at Page No.20 of the Appeal Order :-

4.3.3 'The Appellant has not filed any details such as confirmation for the payment made, documentary evidence in this regard such as mode of payment, copy of the bank account showing withdrawals, receipt issued etc. In the appellant proceedings, burden of proof lies on the assessee to prove that facts and findings of the AO are incorrect. The AO has clearly pointed out that if the figures given in the receipts were actual, why the same were not considered in the original computation of capital gain claiming the capital loss instead of capital gain computed at Rs.2,67,284/-'

4.3.4 'In these circumstances and in view of the foregoing facts, I am of the opinion that no interference is required in the assessment order. The order of the Assessing Officer assessing the Long term capital gain at Rs.17,24767/- is upheld. All the grounds raised in this appeal are dismissed.'

5. On going through the above findings it appears that the H'ble Appeal Centre had dismissed this appeal half-heartedly and in a casual manner without going through the Grounds of Appeal and also without appreciating the facts of the case in right perspective; so much so, the Centre did not venture to address first two grounds of the Appeal and other grounds of Appeal have also been adjudicated illogically and incorrectly in casual manner as discussed in coming paras:

- (a) At the out-set, it may be pointed out that for compliance of the final show cause- notice dated 26.2.2022, time of **two** days was allowed to file the objections and explanation etc. in respect of the proposed variations to be made in the Returned Income. Obviously the time of **'two days'** allowed to submit objections was inadequate as held by H'ble Supreme Court in number of cases as per extracts of judgment being re-produced hereunder for ready reference:

'that denial of adequate opportunity to be heard, violating principles of natural justice, can invalidate an order. This principle, rooted in the concept of fairness and due process, ensures that individuals affected by administrative or quasi-judicial action have a chance to present their case.'

The audialtenram principle, which means “hearing the other side’ is a key element of natural justice, requiring that individuals be given an Opportunity to respond to allegation or adverse decisions.”

The H’ble Supreme Court has repeatedly stressed that a violation of the principles of natural justice such as inadequate notice or opportunity to be heard, can render an order voidable.....Denial of opportunity may make an order void. Limitation of time cannot stand in the way of not giving adequate opportunity. The principle is inviolable.

In view of above findings of the H’ble Supreme Court, the H’ble Appeal Centre was rather duty bound to address this ground in the interest of equity and natural justice. Non-addressing this ground in the Appeal Proceedings is rather denial of justice and renders the Appeal Order bad in law to be quashed summarily.

(b) Again, the H’ble Appeal Centre had also failed to address second ground regarding not allowing personal hearing as provided in the Site itself by the Assessment Unit on Technical and flimsy grounds. The H’ble Appeal Centre was duty bound to address this ground specifically and categorically by giving its well considered opinion as to whether the Assessment Unit was justified to ignore such request of the Appellant on technical ground. As on date, it is rather a settled Law that denying of an opportunity of personal hearing on technical ground is contrary to the principles of equity and natural justice as held by the H’ble Supreme Court repeatedly and continuously as under:

H’ble Delhi High Court in the cases of Renew Power (P) Ltd. (Writ Petn. No. 5235 of 2021- (B) Blue Square Infrastructure LLP vs National Facaeles Assessment Centre, Delhi and Anr. (2021) 321 CTR(Del) KBB Nuts (P) Ltd. (Writ Petn.(Cuvul) No. 5234 of 2021- (C) Bombay High Court in the case of Raja Builders (Writ Petn. (L) No. 11224 of 2021 , (D) Madras High Court in the case of Praful M. Shah (Writ Petn. (L) No. 11143 of 2021, Madras High Court and so in so many other cases as reported in the CTR in the month of July, 2021.

Thus as per legal Jurisprudence, the H’ble Appeal Centre was legally obliged to address this Ground in the interest of equity and natural justice to decide specifically and categorically as to whether the H’ble Assessment Unit was justified in ignoring such request of the Appellant on technical

grounds. In absence of adjudicating this ground, the Appeal Order is not legally maintainable and deserves to be quashed summarily.

(c) Without prejudice to the above two legal and procedural objections, the H'ble Appeal Unit had dismissed remaining 'three' grounds also in very perfunctory and casual manner as re-produced hereunder for ready reference:

4.3.3: The Appellant has not filed any details such as confirmation for the payment made, documentary evidence in this regard such as mode of payment, copy of the bank account showing withdrawals, receipt issued etc. In the appellate proceedings burden of proof lies on te assessee to prove that facts and findings of the AO are incorrect. . The AO has clearly pointed out that if the figures given in the receipt were actual why the same were not considered in the original computation of capital gain claiming the capital 'loss' instead of capital gain computed at Rs.2,67,284/-'

(c)-i On going through the above findings of the Appeal Centre, it is noted that the H'ble Appeal Centre had incorrectly observed that no details such as confirmation for the payment made and other details were filed. Obviously such findings are factually incorrect as evident from the Body of the Assessment Order itself mentioning therein that **31 confirmation** letters had been filed by the Appellant. Not only this, in the same para and in the same breath, the H'ble Centre had contradicted itself by observing that when the 'figures given in the receipt were actual why the same were not considered in the original computation of capital gain claiming the capital 'loss' instead of capital gain computed at Rs.2,67,284/-'. Such observations clearly indicate that the findings of the H'ble Centre are self-contradictory and factually incorrect. In first breath, the H'ble Centre had observed that 'no details regarding development cost was filed by the Appellant and in the second breath, it had observed that figures given in the receipts were actual why the same were not considered in the original computation of capital gain'. **From these findings, it is revealed that the Appellant had submitted 31 receipts which contained the details of the actual cost. Thus above findings are not only incorrect but the same are self-contradictory.** For ready reference copy of these vouchers is submitted once again in the '**Paper-Book'**.

Further, in order to appreciate the facts of the case in right perspective, it would be in the fitness of the things to briefly discuss the back-ground and

history of the Appellant. The Parents of the Appellant Svs. . Mohal Lal Yadav and Smt. Sohani Devi Yadav are permanently residing at 133, Nemi Nagar, Vaishali Nagar Jaipur. At the relevant point of time i.e. in **2007** she was unmarried and was putting up with them at Jaipur only at the above address. The Property under consideration i.e. Plot No.21 in the Residential Scheme of Green Avenue Sundriawas, Kalawar Road, Jaipur was allotted to the Appellant by M/s JhalanaDoongari Grah Nirman Sahkari Samiti, Jaipur on **24.7.2007** , when she was hardly **21yrs old** and was putting up with her Parents, at 133,Nemi Nagar, Vaishali Nagar, Jaipur. At the given point of time, she had also completed her Graduation and was engaged in part time Tuition Jobs earning her Pin-Money. Out of her Pin-money, she had purchased the above mentioned Plot for **Rs.1,01,200/-**. After few months, she got married on **21.11.2007** to Sh. Charuj Yadav of 1205, Vista 10, Uniworld City, New town, Kolkata, 700156 and had shifted there. Since then, she is livingat Kolkata only. Out of the Cash Gifts and other ceremonial and customary cash gifts totaling about Rs. 10 lac. as received on the occasion of her Marriage Ceremony , she had made investment in the development of the Property under consideration by way of (i) Boundary Wall about Rs. 3 lac. ,(ii) MittiBharai about Rs.2 lac and (iii) Remuneration paid to the Security Guards about Rs.4.3 lac etc. through her parents only who had continued to reside at Jaipur only at the same address. In support of such history of the Appellant and the nature and sources of the investment made in the cost of the development of the Property, Affidavit of the Appellant on oath is enclosed for your kind perusal and record. As confirmed in the Affidavit, the nature and sources of the investment of the development expenses incurred in the said Property stands satisfactorily explained and confirmed by her in the Affidavit. Thus the apprehensions as expressed by the Authorities Below regarding nature and sources of the investment made in the development of the said Property are no longer relevant warrantingany adverse view.

(c)-ii It would also be worth-mentioning fact that the H'ble Assessment Unit did not point out any mistake or discrepancy in such vouchers. In absence of any discrepancy or mistake, the correctness and genuineness of these confirmations cannot be disputed and denied. Thus the apprehensions as expressed by the Appeal Centre are patently ill-founded and are not legally maintainable.

(c)-iii Again from these observations, it is noted that the findings of the H'ble Appeal Centre are also miss-leading and baffling as no 'capital loss' was ever claimed by the Appellant at any state in any manner. On perusal of the Assessment Records it would be noted that in this year, the Original Return was filed on 30.4.2021 (Copy enclosed for ready reference) wherein all these expenses were duly declared and claimed to work out the Capital Gain of Rs.2,67,284/-. No loss what-so-ever was ever worked out at any stage in any manner. Thus such findings of the H'ble Assessment Centre are not well founded and deserve to be quashed summarily.

(c)-iv Lastly, the H'ble Appeal Centre has said nothing about the claim of Rs.4,29,676/- on account of the indexed cost of the Expenses incurred on remuneration paid to the 'Security Guards'. Thus to this extent the Appeal Order is not a well-reasoned and logical order and is therefore not legally maintainable.

During the course of the assessment proceedings, it was explicitly brought on record that these expenses were of "Capital Nature' as defined by the Judicial Authorities from time to time. As on date, it is rather a settled Law that Capital Expenditure is money an assessee spends to buy, improve or maintain asset that are expected to benefit the business on long term. The assets are usually physically like land, building machinery or equipment but can also be intangible like licenses trade marks or patents'.

Neither the H'ble Assessment Unit nor the H'ble Appeal Centre had addressed this point. Thus the Assessment Order and the Appeal Order are not well reasoned and logical order and are therefore bad in law and the capital gain of Rs.17,24,767/- as worked out by the Authorities Below is factually and legally incorrect which deserves to be reduced to Rs.3,67,862/- as declared by the Appellant.

(c)-v In view of the above facts and discussions, the working of the Capital Gain at Rs.17,24,767/- by the Authorities Below and taxing the same are obviously incorrect and the same deserve to be deleted summarily for the reasons as explained in the fore-gone paras.'

To support the case, the Id. AR of the assessee has filed the following paper book.

S.N.	Details of documents	Page No.
1.	Copy of notice u/s 147 of the Act vide DIN & Notice No. ITBA/AST/148/2020-21/1032056321(1) dated 31-03-2021	1
2.	Computation Sheet Capital Gain working	2,2A & 3
3.	Computation Sheet Capital Gain working	4 to 19
4.	Copy of written submission made before Hon'ble NFAC dated 3-03-2022	20-26
5.	Affidavit of Ms. Kiran Yadav	27 to29
6.	Copy of original return filed on 30-04-2021	30 to 32

2.3 On the other hand, the Id.DR supported the orders of the authorities below and submitted that the assessee has submitted the cost of acquisition claim in the computation and the claim is without sufficient evidence and therefore, he supported the finding recorded in the order of the lower authority.

2.4 We have heard both the parties and perused the materials available on record. Brief facts of the case are that the assessee had not filed return of income for the A.Y. 2017-18 u/s139(1) / 139(4) of the Act. The Department received information from the Office of ITO (I&CI)-II, Jaipur and details available on INSIGHT PORTAL, that the assessee had sold immovable property amounting to Rs.19,31,391/- during the period under

consideration and the taxability of above transactions remained unverifiable. On verification of the same, the Notice u/s 148 of the Act was issued on 31-03-2021 which was duly served upon the assessee. Thus, in response to the notice u/s 148 of the Act, the assessee had filed return of income declaring total income of Rs.2,67,280/-. Accordingly notice u/s 143(2) of the Act was issued on 30-06-2021. Further notices u/s 142(1) alongwith questionnaire were issued on 22-11-2021 and 26-11-2021 for requisite compliance. In response to the above notices, the assessee filed reply on 30-11-2021 submitting copies of computation of income, sale deed and bank documents. However, the reply could not be viewed. Hence, the assessee was asked to furnish/ upload the same vide notice u/s 142(1) dated 28-12-2021. In response to the notice, the assessee filed reply on 3-1-2022 furnishing computation of income, sale deed and bank accounts. The AO noted that in the computation of income, the assessee had disclosed only income under the head capital gain. The calculation of long term capital gain submitted by the assessee is as under:-

“Computation of total Income (u/s 148)

Income from Capital Gain (Chapter IV E)

267284

Long Term Capital Gain

1Land (20/02/2017)

Value u/s 50C 1000000

Sales Consideration Received 1000000

Sales Consideration	1000000
Less: Transfer Expenses	<u>0</u>
	1000000

Less: Indexed Cost

Cost of Purchase	206624
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F.Y. 2007-08 101200/551*1125

Boundary Wall	347290
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F.Y. 2009-10 195100/632*1125

Mitti Bharai	178802
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F.Y. 2008-09 92500/582*1125	-----
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<u>732716</u>
<u>267284</u>

Gross Total Income	----- <u>267284</u>
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Total Income	267284
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Rounded off u/s 288A	267280
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Adjusted total income (ATI) is not more than Rs. 20 Lakh, hence AMT Not applicable.”

The AO going through the sale deed noticed that the assessee had sold the plot for Rs.10.00 lacs and the amount was received through cheques.

However, the stamp valuation of the same was at Rs.19,31,391/-. Thus according to the AO, the provisions of Section 50C are attracted.

Accordingly, the notice u/s 142(1) of the Act was issued on 24-01-2022.

The assessee in response to notice (supra) revised his computation of

income as well as calculation on long term capital gain which is available at page 5 of the assessment order. The AO noted that in the revised computation of long term capital gain, the assessee adopted the consideration value from Rs.10.00 lacs to Rs.19,31,391/- as per provisions of Section 50C and increased the expenses incurred on boundary wall from Rs.1,95,100/- (claimed in original computation) to Rs.3,01,000/- (before indexation) and mittibharai from Rs.92,500/- (claimed in original computation) to Rs.2,02,500/- (before Indexation) and added expenses shown to Security Guard on bare plot year- wise from 2009-10 to 2016-17 and also did cost indexation on the same which were not claimed in the original computation of capital gain in the return filed in response to notice u/s 148 of the Act. The AO further noted that the assessee in the original computation has not claimed the expenses on account of boundary wall and mittibhari as per the figure shown in the bills whereas he was having the bills in his possession and thus showed the less amount on boundary wall and mittibharai. The AO also noted that when subsequently the provisions of Section 50C were brought to his knowledge the assessee revised his computation by inflating the expenses on boundary wall and mittibharai and added expenses on security guard and thus submitted the receipts for the same before him. The assessee was issued following

notice u/s 142(1) dated 18-02-2022 requiring him to give the genuineness of the expenses incurred.

"Please refer to your reply dated 31-1-2022 submitting the receipts letter in respect of expenses on boundary wall and mittibharai.

2. As per your request dated 16.02.2022 you are hereby given final opportunity to submit on or before the date mentioned in notice u/s 142(1) the documentary evidence in support of work executed, schedule of payments, mode of payment i.e. bank account statement giving details of payments made to the party against the work executed

3. Please note if no information/documentary evidence is furnished proving the genuineness of bills on account of expenses on boundary wall and mittibharai, no deduction on account of cost of improvement to capital asset will be allowed from the capital gain and the assessment will be finalized on 24.02.2022 which may please be noted."

To this effect, the AO noticed that assessee filed online reply on 23.02.2022 forwarding the month wise cash receipts of having paid the amount on account of boundary wall and mittibharai. He further noted that earlier the assessee submitted the confirmation letters accepting the total amount received. Now the assessee has submitted the receipts having made cash payment on various dates. However, no proof regarding withdrawal of the same from bank account has been submitted before the AO. Thus according to the AO, the bills/receipts submitted by the assessee on boundary wall and mittibharai are fake bills as the assessee could not prove the genuineness of expenses. The AO further noted that the expenses incurred on security guard cannot be regarded as capital asset or

cost of improvement to capital asset. Thus according to the AO, any capital expenditure incurred by the owner of the asset for making addition or alteration to such capital asset which enhances the value of the asset or rise its price shall be treated as cost of improvement. Hence the expenses paid to security guard yearwise and indexation thereof are disallowed. The AO further noted that the assessee had submitted documentary evidence in support of boundary wall and mittibharai which has also been enhanced or adjusted in the revised computation to reduce the long term capital gain and if the figures given in the receipt were actual why the same were not considered In the original computation of capital gain claiming the capital loss instead of capital gain computed at Rs.2,67,284/-. Thus according to the AO, this shows that they are not actual but inflated to reduce the capital gain and the revised figures are disallowed. It is noted that the AO issued show cause notice on 26-02-2022 to the assessee requesting to explain as to why the above mentioned expenses claimed to be incurred on account of boundary wall, mitti bharal and expenses on security guard should not be disallowed and giving the proposed computation of long term capital gain on or before 1-3-2022 for which the assessee submitted the reply before the AO at page 8 and 9 of the assessment order. The assessee had

requested the AO for personal hearing on VC. However, in the show cause notice, it was clearly mentioned as under:-

“C. If required after filing written reply you may request for personal hearing so as to make oral submission on present your case. The request can only be made by clicking the Seek Video Conference button available against the SCN, in the view notices of this proceedings in the e-proceedings tab on e-filing portal. The request can be made only before expiry of compliance date & time. On approval of request, personal hearing shall be conducted exclusively through video conference

The AO found that the assessee had not clicked the seek video conferencing button against the SCN giving the proposed computation and the said request had to be made before the expiry of compliance date and time and thus in view of the submissions /documents made available before him from time to time the AO made addition of Rs.17,24,767/- as Long Term Capital Gain in the hands of the assessee with following calculation.

Value as land as per stamp duty Valuation	19,31,391/-
Less: Indexed cost of acquisition of land	
1,01,200/551*1125	2,06,624/-
Long Term capital gain	<u>17,24,767/-</u>

In first appeal, the d. CIT(A), confirmed the action of the AO and thus dismissed the appeal of the assessee with following observation.

“4.3.3 The appellant has not filed any details such as for the payment made, documentary evidence in this regard such as mode of payment, copy of the bank account showing withdrawals, receipt issued etc. In the appellate proceedings, burden of proof lies on the assessee to prove that facts and findings of the AO are Incorrect. The AO has clearly pointed out that if the figures given in the

receipt were actual why the same were not considered in the original computation of capital gain claiming the capital loss instead of capital gain computed at Rs. 2,67,284/-

4.3.4 In these circumstances and in view of the foregoing facts, I am of the opinion that no interference is required in the assessment order. The order of the Assessing officer assessing the Long term capital gain at Rs. 17,24,767/- Is upheld. All the grounds raised in this appeal are dismissed.”

From the entire conspectus of the case, the Bench has come to conclusion that the security guard expenses claimed by the assessee are not allowable as there is no need to deploy the guard on barren land but constructing boundary wall and mittibharai is reasonable cause to cover the piece of land and thereby the expenditure incurred on it cannot be denied and the assessee submitted proof of having incurred those expenses. The bench noted that the assessee has submitted 31 supporting vouchers which were not disputed. He also submitted 31 confirmation of having incurred the expenditure. Therefore, all these expense incurred for the improvement on the capital assets were not doubted based on the evidence placed on record. Hence, in this situation, we do not concur with the expenses incurred by the assessee on deployment of Security Guard and except this, the other expenses are allowed. Thus the appeal of the assessee is partly allowed and the AO is directed to give effect accordingly.

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

Order pronounced in the open court on 16 /10/2025.

Sd/-
(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

Sd/-
(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 16 / 10/2025

*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Smt.Kiran Yadav, Jaipur
2. प्रत्यर्था / The Respondent- The ITO, Ward -1(3), Jaipur
3. आयकरआयुक्त / Theld CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर /DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No. 853/JPR/2025)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar