आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI PARESH M JOSHI, JUDICIAL MEMBER
AND
SHRI ARVIND SONI , ACCOUNTANT MEMBER

ITA No.1076/Ind/2025
(AY: 2012-13)

Shailendra Kumar Sogani, 39, Jain Mandir Road, Chowk **(PAN:ABNPS4435P)**	बनाम/ Vs.	DCIT-4(1), Bhopal
(Appellant)		(Respondent)
Assessee by	Sh. S.S. Deshpande,CA	
Revenue by	Shri Binay Kumar Rai, Sr.DR	
Date of Hearing	17.09.2026	
Date of Pronouncement	12.10.2026	

आदेश / O R D E R

Per Paresh M Joshi, J.M:

This is an appeal filed by the Assessee under section 253 of the income tax Act 1961,[hereinafter referred to as the **Act** for the sake of brevity] before this tribunal, as & by way of a second appeal .The Assessee is aggrieved by the order bearing No:-ITBA/APL/S/250/2025-26/1082613608(1) dated **14.11.2025** passed by the Ld. CIT(A) u/s 250 of the Act, which is hereinafter referred to as the **"Impugned order".** The Relevant Assessment year is 2012-13 and the

corresponding previous year period is from 01.04.2011 to 31.03.2012.

2. **Factual Matrix**

2.1 That as and by way of an Assessment order **made u/s 143(3) RWS 147 of the Act,** the total income of the assessee was computed and assessed at **Rs. 47,21,080/-.** The return of income was at **Rs. 28,24,060/-. An addition of Rs. 15,22,500/- was made by virtue of Para 5 of the aforesaid assessment order. Yet another addition was made of Rs. 3,74,521/- by virtue of Para 7 of the aforesaid assessment order** . That the aforesaid assessment order is dated **06.12.2017,** which is hereinafter referred to as the **"Impugned Assessment Order"** for the sake of **brevity.**

2.2 That after the **ROI** was filed on **29.09.2012** an assessment order **u/s 143(3) was passed on 20.03.2015** accepting the **ROI at Rs. 28,24,060/-. In brief ROI at Rs. 28,24,060/- was accepted by the revenue.**

2.3 That subsequently thereafter **the revenue reopened** the case **u/s 147** of the Act by issuing a notice **u/s 148** of the Act dated **30.03.2017** as the revenue **had a reason to belief** that the income **chargeable to tax of Rs. 48,21,258/-** had escaped the assessment within the meaning of section 147 for the following reasons:-

> ***"In the above said case, the assessee e-filed its return of income for A.Y. 2012-13 on 29.09.2012 declaring total income of Rs. 28,24,060/-. Assessment order u/s 143(3) has been passed on 20.03.2015 determining the assessed income at Rs. 28,24,060/-.***
>
> ***The assessee is an individual deriving income from running a petrol pump and capital gain during the relevant Assessment Year On examination of records it was found that the assessee and eleven other individuals sold an agricultural land for Rs. 6,00,00,000/- on 31.03.2012. He has purchased three agricultural lands alongwith three other***

individuals and after deducting indexed cost o acquisition Rs. 58,875/- and exemption u/s 54B of Rs. 15,22,500/- offered LTCG of Rs. 14,18,625/- for taxation. The agricultural land was sold by the assessee on 31.03.2012 but he has purchased other agricultural land before that transfer i.e. on 01.03.2012 and 25.03.2012, Further, the assessee showed sale consideration Rs. 30,00,000/- instead of Rs. 50,00,000/- which is 1/12th share of Rs. 6,00,00,000/-.

To claim deduction ws 54B of the Income-Tax Act, 1961, the assessee has to purchase new agricultural land within 2 years from the date when such transfer takes place. Therefore the allowed exemption of Rs. 15,22,500/- is in contravention to the section 54B of the Income-Tax Act 1961. Thus a total LTCG of Rs. 35,22,500/- (Rs. 50,00,000-Rs. 58,875/- Rs. 14,18,625/-) is the escaped income on this issue

and should be added back to the total income of the assessee.

Further examination revealed that the assessee has concealed the income of commission on sale of petrol and diesel by showing the commission at lower rates than the prescribed rates of Ministry of Petroleur: and Natural Gas. Thus the assessee concealed total of Rs. 12,38,088/- on commission income from the sale of petrol and diesel."

Thus, there is total under assessment of income of Rs. 48,21,258/- and same should be added back to the assessed income of the assessee.

In view, of the above facts and circumstances, I have reason to believe that income to the extent of Rs. 48,21,258/- has escaped assessment in the above mentioned case. Therefore, notice u/s 148 of Income Tax Act, 1961 to be issued with prior approval of

Hon'ble Joint Commissioner of Income-tax, Range-4, Bhopal (M.P.)"

2.4 That in response **to the notice u/s 148 dated 30.03.2017** the assessee filed a letter/reply dated **24.08.2017** stating that the original return of income filed by the assessee on **29.09.2012** may be treated as return filed in response to the notice u/s 148.

2.5 That thereafter a notice **u/s 143(2)** was issued to the assessee on **29.08.2017** by the revenue.

2.6 That thereafter a notice u/s 142(1) of the Act was also issued to the assessee by the revenue on **29.08.2017** along with **a letter providing a certified copy of the reasons** for the purpose of **the reopening of the assessment**.

2.7 Thereafter in response to the above notice(s) the Ld. AR attended the assessment proceedings and filed written submissions which were all placed on the record.

2.8 In response to the core querry of the revenue to the assessee raised via **notice u/s 142(1) dated 29.08.2017** wherein the assesse was requested to justify his **claim of exemption regarding "Long term capital gain" on the sale of agriculture** land which was situated at **"PHANDA"** Bhopal M.P. and the documentary evidence in support thereof the assessee had placed on the record of the Ld. AO following which is reproduced in the **"Impugned Assessment Order"** as follows:-

"With reference to the order sheet entry dated 14.11.2017 it is respectfully submitted as under.

(A) Regarding **offering capital gain at Rs. 30,00,000/-** in the ROI by the assessee following averment and were made:-

"(1) The copy of the brief facts regarding sale of Agriculture Land situated at Gram Bawadia Kalan, Misrod having an area of 1.69 acres, situated along with the Bhopal-Hoshangabad main road and 5.5 acres on the inside and discharge of capital gain

tax liability thereon, as agreed between all family members (legal heirs) of Late Shri Phoolchand Jain is attached herewith at pages 1 to 3.

(2) A copy of memorandum of family settlement made between the legal heirs of Late Shri Phoolchand Jain on 01-04-2010 is also attached herewith at pages 4 to 12. From the perusal of the agreement Your Honour shall find that the above land sold will be possessed and owned equally by the five families viz.

a. Mr. Babulal Sogani (Since deceased)

b. Mr. Ratanlal Sogani (Since deceased)

c. Mr. Shantilal Sogani (Since deceased)

d. Mr. Rajendra Sogani

e. Mr. Ashok Kumar Jain

The respective equal shares of the five families will be further shared equally by the male members of the respective families.

(3) That in accordance to the family settlement the sale consideration Rs.6,00,00,000/- was equally

distributed among 5 families in equal proportion i.e. 1/5 each (Rs.1,20,00,000/-) Again each family distributed his family share among their children (members) in the ratio as under.

S.No.	Ascendant Members	Distribution made among children	Total
1.	Babulal ji Sogani	6 members Rs.20,00,000/- each	1,20,00,000/-
2.	Ratanlal Sogani	4 members Rs.30,00,000/- each	1,20,00,000/-
3.	Shantilal Sogani	3 members Rs.40,00,000/- each	1,20,00,000/-
4.	Rajendra Sogani	3 members Rs.40,00,000/- each	1,20,00,000/-
5.	Ashok Kumar Jain	2 members Rs.(80,00,000+40,00,000)/-	1,20,00,000/-
		Total	6,00,00,000/-

(4) That the assessee, Shri Shailendra Kumar Sogani, (assessee) is a legal heir of Late Shri Ratanlal Sogani. The distribution of sale consideration of the deceased Shri Ratanlal made in the hands of his four sons in equal share te. 30,00,000/- each, therefore, Shri Shailendra Kumar has shown his share as Rs.30,00,000/- in his hand. It is further submitted that all 18 members in whose hands sale consideration Rs.6,00,00,000/- was distributed have filed their share of sale

consideration in their respective I.T. returns. The detail of which is attached at page 13. The copies of their individuals L.T. returns are also attached herewith at pages 14 to 59.

(5) Thus Your Honour shall find that full and respective share of capital gain of Rs. 6,00,00,000/- is declared by the members in their respective return of income. The capital gain is chargeable @ 20.3% of total long term capital gain whether it is shown in one hand or shown by 18 members. The tax will be the same and there will no loss of revenue in both cases. Therefore, there is no mistake in framing the assessment by A.O. Kindly therefore, drop the proceedings on this issue. ?" With regard to claim of deduction u/s.54B of the I.T. Act."

(B) With regard to claim of deduction u/s 54B of the Act it was submitted as follows:-

"(1) The assessee in his letter dated 14/11/2017 has clarified that the assessee have purchased lands only after transferring some part of the land, proportionate the sale amount they received. It is submitted that up to 30-12-2011 land valued Rs. 3,75,00,000/-have been transferred to the purchaser. The assessee request Your Honour to kindly summon the purchasers in order to ascertain the facts that the part of the land have been transferred to the purchaser much before the registration of the sale deed took place. The assessee will pay the charges of summoning them which will be paid upon receiving challan at your hand. In case you are not ready then pleas provide a suitable opportunity to the assessee to produce them for ascertaining the facts as stated by him.

(2) The section 2(47) is very clear with regard to transfer of the land which says, "any transaction involving the allowing of the possession of any immovable property to be taken or retained in part

performance of a contract of the nature referred to in section 534 of the Transfer of Property Act, 1882(4 of 1882)"

Further, the Supreme Court of India in an important judgment dated 01-07-2014 has held that an agreement to sell extinguishes some right of the transfer in the property and creates some right in favour of the transferee which is in line with the definition of the term "transfer" as per section 2(47) of the I.T Act for grant of exemption u/s 54 related to long term capital gain on residential house. The apex court also stressed that a purposive interpretation must be given in considering a claim for exemption. The gist of the judgment is attached herewith at page 60. Thus the claim of deduction u/s. 54B is correct and deductable as per proviso of section 2(47).

Hoping the above information will be well in order. However, any other information in the matter is needed kindly inform the assessee accordingly."

2.9 The Ld. AO by virtue of Para 4.1, 4.2, 4.3 & 4.4 of the "Impugned Assessment Order" i.e. basis family tree, family settlement etc. **found sale consideration of Rs. 30,00,000/- of the assessee as acceptable.**

2.10 **With regard to the claim of exemption of the agricultural land amounting to Rs. 15,22,500/- the claim was not found acceptable *"because as per section 54B of Income Tax act, if the assessee purchases another land for agriculture purposes within a period of two years from the date of sale of agricultural land used by an individual or his parents, exemption 54B is allowed. In the case of assessee, agricultural land was sold on 31.03.2012 but the assessee purchased other agricultural land before such transfer i.e. on 01.03.2012 and 25.03.2012. Therefore, the assessee is not eligible to claim deduction u/s 54B of the Act."***

Consequently an amount of Rs. 15,22,500/- was disallowed by the Ld. AO and same was added back to the total income of the assessee.

2.11 That with regard to the another issue of the case which was on income of the commission on sale of diesel and petrol amounting to Rs. 12,98,758/- wherein the allegation was of **showing commission at lower rate** then what was prescribed by the rates of the ministry of petroleum and natural gas on which the assessee was show caused it was the case of the assessee that **all the commission was received by the assesse through RTGS in the Bank account** and during the year under consideration. The assessee had received only the commission of Rs. 24,28,853/-. The assessee had relied upon the **copy of the bank statement** wherein it was seen that **commission of Rs. 24,27,853/- was received in gross,** out of which an amount of Rs. 4,88,522/- was debited as **Evaporation Loss**. However, P/L showed an amount of Rs. 19,39,330/- as credited on account of commission on the sales and amount of Rs. 4,88,522/- was credited as evaporation loss. Thereafter total commission of Rs. 24,27,853/- was credited in the books of account as commission of the assessee. The Ld. AO in the Impugned Assessment Order at Para 6.1 has

reproduced relevant extract of P/L A/c of the assessee. In the Impugned Assessment Order at Para 7 it is also recorded by the Ld. AO that by virtue of section 133(b) of the Act an information was sought from the Indian Oil Corporation [IOC] vide letter dated 24.11.2017. Basis information provided by "IOC" it was found out that total commission of Rs. 28,02,374/- was received for the period commencing April 2011 to March 2012. **The scanned copy of working is reproduced by the Ld. AO in Para 7 of the "Impugned Assessment Order"**. In the ultimate analysis the Ld. AO has added Rs. 3,74,521/- being the difference [Rs. 28,02,374 – 24,27,853] amount as the income of the assessee.

2.12 That the assessee being aggrieved by the aforesaid **"Impugned Assessment Order"** prefers the **first appeal u/s 246A of the act** before the Ld. CIT (A) who by the **"Impugned Order"** has **dismissed the first appeal of the assessee** on the grounds and the reasons stated therein. The core grounds and the reasons for the dismissal of the first appeal were as under:-

5.1 Ground of appeal no. 1:- This ground of appeal is related to the addition of Rs. 3,74,521/- on account of the difference of commission amount received from Indian Oil Company Ltd. and actually declared by appellant in books of account.

Appellant had declared total income of Rs. 24,27,853/- from commission on sale of diesel and petrol which was shown in the Profit & Loss account. The appellant has contended that the impugned addition was made on the basis of information requisitioned from Indian Oil Company Ltd. u/s 133(6) of the Act. The commission is paid by Indian Oil Company Ltd. after the sales are verified by them, the calculations are checked and all this activity for the month of march can be done only in April of the subsequent year and accordingly the assessee could not have received the

commission due as per the calculations made. The appellant further stated that as per the accounting policy being consistently followed by the assessee the commission income is accounted as and when it is received. All the payment were received from IBP through cheques/RTGS after deduction of TDS and the appellant had received total commission of Rs. 24,27,853/- from the said company which was verified from bank statement and accepted by the AO in her order. Moreover, as per Form 26AS total commission was received of Rs. 24,27,853/- and TDS was deducted thereon by the payer company and duly appearing in Form 26AS of the appellant.

I have been considered the facts of the case, reply submitted by appellant, relevant documents available on record and assessment order. The submissions of appellant not found

prima facie tenable, as during the assessment proceedings on 29.08.2017, A.O. the show caused asseessee to declare complete commission earned for the previous year. As per the copy of audit report filed, the assessee follows mercantile system of accounting & therefore must account for all the income accrued or received in previous year. Later on, the information was sought by the Assessing Officer during the assessment proceedings from the Indian Oil company Ltd. u/s 133(6) wherein it is clear that commission on sale of petrol & diesel for the month of February & March, 2012 was paid by payer to appellant. Thus, the contention of appellant that he had not received any commission for the Month of February & March, 2012 is duly denied or unacceptable.

Considering the above referred facts, it is found that the action of Assessing officer in

calculating commission on the basis of information received resulting into to enhancement of commission income earned by the appellant during previous is correct. Therefore, this ground of appeal is hereby dismissed with the addition was made by AO is upheld.

5.2. Ground of appeal no. 2:- This ground of appeal is related to the addition of Rs. 15,22,500/- on account of disallowance of deduction claimed under section 548 of the Act.

The appellant has contended in his submission that appellant along with his various family members had sold ancestral property (agriculture land) for a total consideration of Rs. 6.0 crore out of which his share was Rs. 30.00 lakh. The registration of the sale deed took place on 31.03.2012. The appellant claimed deduction u/s. 54B on account of

investment made by him in purchase of agriculture land which was got registered in his favour, alongwith the three other co-owners on 01.03.2012 & 25.03.2012. However, the A.O disallowed the said deduction in view of the provision of section 54B of the Act which provide that the capital gain earned should be invested for purchase of agricultural land AFTER that date. The appellant has stated that his family had entered into an agreement to sell with the purchaser of the land on 20.12.2010 with regards to sale of the agricultural land under consideration. Further, it is submitted that the conditions of section 2(47)(v) of the Act appellant. r.w.s 53A of the Transfer of Property Act are duly complied with in the case of the appellant.

I have considered the reply submitted by appellant and assessment order. It is noted that the appellant alongwith his family

members have entered into an agreement to sell the land on 20.12.2010 & it was not a sale deed. The agreement was entered into for the purpose of development of residential colony, duplex flats on certain terms & conditions, wherein the details of terms, with date of payment in instalment was decided. It was agreed upon that in case of delay in payment on scheduled dates alongwith agreed interest, the appellant with other will be competent to take any decision. The purchaser will be provided only a copy of title documents of the land and all original documents will remain with appellant until the complete payment for the land sold is made to the appellant (sellers).

It is noted that section 45(5A) of the Act provide that where the capital gain arise to an individual assessee from transfer of a capital asset, land or building or both, under a specified agreement, the capital gain will be

chargeable to income tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority and for the purpose of section 48 the stamp duty value on the date of issue of said certificate of his share as increased or by the consideration received, shall be deemed to be full value of the consideration received or accruing as a result of the transfer of the capital asset.

Further that, in this case the sale deed for the transfer of land has been executed by the appellant & other sellers on 31.03.2012. As per agreement to sell dt. 20.12.2010, the appellant has received Rs. 75 lacs on 20.12.2010, but no detail or evidence has been filed to show that on the so claimed capital gain earned during the financial year 2010-11, the appellant & other sellers have either paid

capital gain tax or deposited that proportionate unutilized capital gain in the specified a/c in bank before the due date of filing of his ITR for the A.Y. 2011-12 in terms with provision of section 54(2) of the Act. In view of the above, it is clear that the capital gain on transfer of land arose to the appellant on the date of sale deed i.e. dt. 31.03.2012.

The appellant has contended that capital gain has arisen to him before 31.03.2012, therefore he should be allowed deduction u/s. 54B for purchase of agricultural land by him on 01.03.2012 & 25.03.2012.

It is found that the contention of of appellant is not tenable in view of the provisions of Section 54B of the Act. The extract portion of section 54B is reproduced as hereunder:-

"(1) where the capital capital gain arises from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by [the assessee being an individual or his parent, or a Hindu undivided family] for agricultural purposes, and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, instead of the capital gain being charged to income tax as income of the previous year in which the transfer took place...

It is clear from above, that deduction u/s. 54B from capital gain on transfer of a capital asset being agricultural land would be allowed only when the new land, being used for agricultural purposes, is purchased within a period of two years after date of sale deed. Though the

legislature has categorically provided that deduction u/s. 54 is allowable where the assessee has within a period of one year before or two years after the date on which the transfer took place purchased or within a period of three years after that date constructed yet in the case of deduction u/s 54B it is categorically provided that the deduction will be allowed only when the agricultural land is purchased after that date. However, in the case of appellant agricultural land was sold on 31.03.2012 but appellant purchased another land for agriculture purposes before such transfer i.e. on 01.03.2012 & 25.03.2012. Therefore, the appellant is not eligible to claim deduction u/s. 54B of the Act.

Further, the contention of appellant that all the conditions mentioned in section 2(47)(v) of the Act and 53A of the Transfer of Property Act

are duly complied with in the case of appellant is not accepted. As the conditions are mentioned in section 53A is not recognize with the income Tax act. Section 53A defines of part performance of immovable property therein transferee has performed or is willing to perform his part of the contract through taken possession of the property or any part thereof. It is not define the provisions of Section 54B of the Act.

Thus, on considering the above facts, appellant has failed to disprove the finding of A.O. Therefore, this ground of appeal is dismissed with the addition made by the A.O. is upheld.

5.3. Remaining ground of appeal is general in nature and do not require any adjudicate at this stage. Consequently, the same is dismissed.

6. As a result, the appeal of appellant is dismissed."

2.13 That the assessee being aggrieved by the **"Impugned Order"** has preferred the instant second appeal before this tribunal and has raised the following grounds of appeal in the form no. 36 against the **"Impugned Order"** which are as under:-

> ***"1. That on the facts and in the circumstances of the case of the assessee the learned Commissioner Of Income Tax, Appeals was not justified in confirming addition made by the AO of Rs 15,22,500.00 as disallowance on account of deduction claimed under section 54 B.***
>
> ***2. That on the facts and in the circumstances of the case of the assessee the learned Commissioner Of Income Tax Appeals was not justified in confirming addition made by the AO of Rs 3,74,521.00 on account of commission.***
>
> ***3. The assessee craves leave to add, alter amend or withdraw any ground of appeal on or before the time of hearing."***

3. **Record of Hearing**

3.1 The hearing in the matter took place before this Tribunal on 17.09.2026 when the Ld. AR for & on behalf of the Assessee appeared before us and interalia contended that the **"Impugned Order"** is bad in law, illegal and not proper. It therefore deserves to be set aside.

3.2 The Ld. AR has also raised an additional ground as ground no:4 which is as under:-

> ***"Ground No. 4 : That on the facts and in the circumstances of the case of the assessee the initiation of proceedings u/s 148 was illegal, invalid and bad in law as it was simply on account of change of opinion."***

3.3 The Ld. AR has placed on the record of this tribunal a paper book containing pages 1 to 103 and few judgements i.e. (2012) 25 Taxmann.com 200 (Delhi) (FB) CIT v/s Usha International judgement of Hon'ble Supreme Court of India

in case titled Shri Sanjivlal v/s CIT Chandigarh CA No:-5899-5900 of 2014 dated 01.07.2014 and order of ITAT Indore (SMC) in ITA No:- 173/Ind/2023 AY 2010-11 dated 12.12.2023, in case of Pitambar lal v/s ITO 3(3) Bhopal.

3.4 The Ld. AR then additionally submitted that an additional legal ground as ground no:-4 is being taken as and by way of a legal ground and the relevant facts in this regard are already on the record. The Ld. AR fairly submitted that this legal ground was not taken up before the first appellate authority in the first appeal. The Ld. DR submitted that the revenue has no objection in this regard but same would be argued basis merits.

3.5 The Ld. AR then submitted that the assessee is an individual. He is in the business of selling petrol, diesel etc. The assessee for the year under consideration i.e. AY 2012-13 [FY 2011-12] had shown income of Rs. 28,24,060/- in his ROI. The assessee had sold agriculture land along with other family members. The core issue falls under section 54B of

the Act which falls under "CH IV"→ computation of income from capital gain" → capital gain on transfer of land used for agriculture purposes not to be charged in certain cases. The thrust of section 54B is **"two years from the date of transfer if the assessee repurchases agriculture land".** That in the case of the present assessee an assessment order was framed under section 143(3) accepting the ROI. In this regard the Ld. AR invited our attention to paper book page 32 which was **a copy of an assessment order u/s 143(3) dated 20.03.2015. It was submitted that in this order no addition were made and ROI was accepted**. Our attention was then invited paper book page 79 which was the assessee's reply dated 22.12.2014 to the letter of revenue dated 03.12.2014. In this reply which culminated in the order dated 20.03.2015 all the material questions with regard to the issue of capital gain were answered and relevant documents were enclosed too. The said letter's important points were brought to our notice i.e. Para 5. Thereafter out attention was invited to paper book pages 80 to 82 which was the assessee's reply to revenue in reply to

notice u/s 142(1) dated 27.08.2014 & 143(2) notice dated 10.12.2014 hearing for which was on 19.12.2014. The amount received **form IOC was Rs. 24,27,853/- and TDS deducted was Rs. 48,557/-.** All material documents as were sought by the revenue too were given like ROI (complete copy), audited balance sheet, P/L, A/c, trading A/c, Capital A/c etc. TAR was too given. COI was given. List of all bank A/c were too furnished. Para 13 & 14 were read out wherein the details of immovable property **purchased** by the assessee during the FY 2011-12 along with deeds and so also **sold** were furnished as were sought. Nature of the assessee business which was of sale of petrol and diesel on "company owned and company operated [COCO] Pump of IBP Company Ltd. on terms and conditions as per lease agreement was explained too. It was stated IBP company provides handling and commission to the assessee on the sales made at the pumps. Salient features of policy for running COCOs were too provided. Other details like GP, NP of last 3 years list of debtors etc. were too furnished. Letter filed on hearing date 09.03.2015 were at paper book pages 83 to 84.

3.6 The Ld. AR then submitted and contended that after the assessment order dated 20.03.2015 framed u/s 143(3) of the Act the case of the assessee was **reopened for the reassessment u/s 147 of the Act vide notice dated 30.03.2017 u/s 148 of the Act paper book page 86**. By the revenue's letter dated 29.08.2017 reasons were furnished [PB page 85]. Our attention was then invited to paper book page 87 wherein there are two grounds for the reopening of the assessment which were as under:-

> ***(1) "On examination of records it was found that the assessee and eleven other individuals sold an agricultural land for Rs. 6,00,00,000/- on 31.03.2012. He has purchased three agricultural lands alongwith three other individuals and after deducting indexed cost of acquisition Rs. 58,875/- and exemption u/s 54B of Rs 15,22,500/-offered LTCG of Rs. 14,18,625 for taxation. The agricultural land was by the assessee on 31.03.2012 but he has purchased other agricultural land before that transfer i.e.***

on 01.03.2012 and 25.03.2012. Further, the assessee showed sale consideration Rs. 30,00,000/- instead of Rs. 50,00,000/- which is 1/12th share of Rs. 6,00,00,000/-.

To claim deduction u/s 54B of the Income-Tax Act 961, the assessee has to purchase new agricultural land within 2 years from the date when such transfer takes place. Therefore the allowed exemption of Rs. 15,22,500/- is in contravention to the section 54B of the Income-Tax Act 1961. Thus a total LTCG of Rs. 35,22,500 (Rs. 50,00,000- Rs.58,875/-Rs. 14,18,625/-) is the escaped income on this issue and should be added back to the total income of the assessee."

(2) Further examination revealed that the assessee has concealed the income of commission on sale of petrol and diesel by showing the commission at lower rates than the prescribed rates of Ministry of Petroleum

and Natural Gas. Thus the assessee concealed total of Rs. 12,38,088/ on commission income from the sale of petrol and diesel."

3.7 The Ld. AR then briefly stated about the provisions of section 147/148 **as it stood during the AY 2012-13. It was submitted that there was no monetary limit for invoking the provisions of section 147/148 and period of limitation was 4 years or 6 years.** The Ld. AR stated that the assessee was already subjected to the rigors of section 143(3) proceeding which had culminated into an assessment order dated 20.03.2015 and all the necessary information and documents including deeds of purchase and sale as were pointed out by him in the beginning of the hearing were on record and nothing was suppressed. Due inquiry and due verification were conducted by the Ld. AO and an order was passed accepting the ROI. Hence the revenue basis provision of section 147 ought not to have issued notice u/s 148. **It is a case of change of opinion on the part of the revenue and mere change of opinion later on same and identical**

set of facts cannot be a ground to initiate the reassessment proceedings. Full and complete issue were examined in the proceedings conducted u/s 143(3) which led to passing of an assessment order dated 20.03.2015 wherein the assessee was fully compliant too. The Ld. AR then **once again revisited** paper book page 32& 33 and read out from the assessment order dated 20.03.2015 passed u/s 143(3) of the Act and submitted that issue like the assessee running a petrol/ diesel pump of IOC was examined basis books of accounts, TAR. The books and vouchers were test checked. Net profit issues basis sale and purchase were examined. The fact that rate of sales and purchase of petrol/diesel were controlled rates in the hand of IOC was too examined and income was verified as a whole of the assessee. **All the information** relating to the sale **purchase of immovable property and the necessary evidences in relation there to were kept on record.** In brief the Ld. AR submitted that nothing adversial was found against the assessee despite submissions of all papers, material which were all examined and order dated 20.03.2015 u/s 143(3) speak for itself.

3.8 The Ld. AR then invited our attention to the paper book page 48 which **was an agreement of sell dated 20.12.2010 wherein there are total 5 sellers all closely related of sogani family which was a huge family including legal heirs respectively and buyer was one M/s Vardhaman Infrastructure which was a partnership firm.** There is a reference of **family partition dated 01.04.2010** too amongst family members of sogani family. Description of land parcel is there. About 17 members of **sogani family had authorised 5 sellers within the family to execute the agreement of sale.** In brief it was contended that all the five sellers were authorised by remaining members of sogani family to **go ahead with agreement of sell with the buyers. The total consideration was six corers**. An upfront payment [advance] of Rs. 75 Lakhs by buyer to the 5 sellers through different cheques is depicted therein [page 49 of PB]. There is flow of consideration of **1 Cr each on 30.06.2011, 30.09.2011 and 30.12.2011. There is a flow of consideration of Rs. 2.25 Cr dated 31.03.2012 too** [page 49 of PB]. The Ld. AR brought to our attention Para 2 of

agreement of sell wherein it is stated that **the aforesaid consideration amount would be released for payment in instalments on dates mentioned strictly**. There is an interest clause too for failure to adhere to timelines drawn up**. The factum of possession is at Para 10 of the agreement of sell.** The Ld. AR then invited our attention to PB page 50 Para 10 and read out the same. It is recorded therein that **sum of Rs. 75 Lakhs is security deposit [can be used]** which will **remain deposited with 5 sellers and corresponding possession of the subject property would be released in favour of buyer. It is also avered and recorded that as per the terms of payments** recorded in **Para 1 if the seller receives the instalments as per schedule of payments simultaneously possession of land of in proportionate to release instalments of payments would be given to the buyer.** The Ld. AR in brief contended that after upfront payment of Rs. 75 Lakhs there were series of instalment payments on date fixed and upon **receiving proportionate amount of installment the sellers was to give proportionate possession of land to the buyers.** The

Ld. AR then invited our attention to paper book page 34 which was a copy of sale deed dated **31.03.2012** wherein the assessee is at serial no:- 12 as one of the seller amongst others to buyer M/s Vardhaman Infrastructure Bhopal by virtue of which entire land was finally sold upon **receiving full payment of Rs. 6 Crores as was stipulated earlier i.e. agreement of sell dated 20.12.2010.**

3.9 The Ld. AR then contended that the instant case is the **first of purchase of immovable property** [agriculture] and sale of **immovable property [agriculture] has taken place at a later stage.** In this regard the Ld. AR invited our attention to the internal page 5 of the "Impugned Assessment Order" and read out the relevant portion [Para 2.8 Supra]. The Ld. AR then read out Para 5 of "Impugned Assessment Order" on internal page 10 [Para 2.10 Supra].

3.10 The Ld. AR then invited our attention to paper book pages 52 to 78 wherein there are 3 purchase deed [name of assessee as buyer amongst other family members] dated

01.03.2012 (two) and 25.03.2012 (one). The Ld. AR stated that **these 3 purchase deed of the assessee before sale are undisputed fact**. The Ld. AR then invited our attention to the order of ITAT Indore Bench in case of Pitamber Lal Sunderdas Rajdev V/s ITO-3(3) Bhopal ITA No:- 173/Ind/2023 AY 2010-11 dated 12.12.2023 and relied upon Para 9& 12 of the said order. Basis this order of ITAT the Ld. AR contended that claim of the assessee u/s 54B cannot be denied **on the ground that the investment in purchase of agriculture land made by the assessee prior to the transfer of existing agricultural land if the said investment is made from the consideration received against this transfer.** The Ld. AR then has placed reliance on the judgement of Hon'ble Supreme Court of India in case titled Shri Sanjivlal V/s CIT [CA No:- 5899 & 5900 of 2014] dated 01.07.2014 wherein the Hon'ble Supreme Court had observed that **"The question to be considered by this court is whether the agreement to sell which had been executed on 27th Dec. 2002 can be considered as a date on which the property i.e. residential house had been**

transferred. In normal circumstances by executing an agreement to sell in respect of an immovable property, a right in personam is created in favour of the transferee/vendee. When such a right is created in favour of the vendee, the vendor is restrained from selling the said property to someone else because the vendee, in whose favour the right in personam is created, has a legitimate right to enforce specific performance of the agreement, if the vendor, for some reason is not executing the sale deed. Thus by virtue of the agreement to sell some right is given by the vendor to the vendee. The question is whether the entire property can be said to have been sold at the time when an agreement to sell is entered into. In normal circumstances, the aforesaid question has to be answered in the negative. However looking at **the provisions of section 2(47) of the act,** which defines **the word "transfer" in relation to capital asset, one can say that if a right in the property is extinguished by execution of an agreement to sell, the capital asset can**

be deemed to have been transferred. The relevant portion of section 2 (47) defining the word "transfer" is as under:-

"2 (47) "transfer" in relation to capital assets includes:-

(i)……

(ii)the extinguishment of any rights therein ; or

……"

Now in the light of definition of "transfer" as defined u/s 2(47) of the Act, it is clear that when any right in respect of any capital asset is extinguished and that right is transferred to someone, it would amount to transfer of a capital asset.

3.11 The Ld. AR then invited our attention to Para 7 of the "Impugned Assessment Order" which deals with second issue of addition of Rs. 3,74,521/- (differential) which was the total commission income (differential) which the assessee had received from the Indian Oil Corporation on account of sale of petrol and diesel. The basis to arrive at figure of Rs. 28,02,374/- **was a chart prepared on the basis of**

information provided by IOC. The assessee's figure of commission income was Rs. 24,27,853/-. The amount of difference was Rs. 3,74,521/- which was added. In this regard the Ld. AR invited our attention to paper book page 30 which was form no:- 26AS TDS TRACES for FY 2011-12 = AY 2012-13 which shows credit of Rs. 24,853.00, as amount paid. Our attention was invited to paper book page 23 which **was trading and profit and loss account ended 31.03.2012** wherein evaporation loss is Rs. 4,88,522.00 and commission on sales is Rs. 19,39,330.40 the aggregate of which comes to Rs. 24,27,853.00.

3.12 In sum up the Ld. AR submitted that Impugned Order is bad in law and reopening is too bad in law. On merits no addition should be made basis Hon'ble Supreme Court order and ITAT Indore Order (Supra).

3.13 Per contra the Ld. DR appearing for the revenue submitted to us that issue to be decided is whether in the given facts and the circumstances benefit of section 54B is to

be allowed or not? In this regard the Ld. AR contention is wrong, on agreement of sell dated 20.12.2010 **as that is an unregistered document and therefore has no evidentiary value**. Even if agreement of sell is taken into account then some capital gain ought to have been offered in the AY 2011-12 as Rs. 75 Lakhs was received on execution of agreement of sell dated 20.12.2010. According to **the Ld. DR the relevant date for purposes of the Act is 31.03.2012 on which date sale deed was executed.** The agriculture lands were purchased on **01.03.2012 and 25.03.2012 which dates are prior to 31.03.2012 and law in this regard is clear**. With regard to the argument of the Ld. AR that the revenue has changed opinion reliance was placed on Para 25 of full bench decision of Hon'ble Delhi High Court in case of CIT V/s Usha International Ltd. reported in (2012) 25 taxmann.com 200 (Delhi) (FB). The Para 25 was read out by the Ld. DR. Our attention was drawn to the fact that notice u/s 142(1) dated 27.08.2014 and letter dated 03.12.2014 of the revenue basis which reply's were filed on 22.12.2014 [PB page 79] and PB page 80 are not in the paper book. The Ld.

DR also read out page 81, Para 13&14 which was the assessee's reply wherein details of purchased property and sold property are given. The Ld. DR contended that basis these documents of sale and purchase of agriculture land **no opinion** was formed by the revenue in assessment round u/s 143(3) dated 20.03.2015 PB page 32& 33. Re:- Usha International Ltd. was reiterated. Issue of deduction was not examined by the Ld. AO consequently no opinion was formed invocation of 147/148 is justifiable by the revenue. A brief argument was canvassed on method of accounting carried out by the assessee. In rejoinder the Ld. AR relied upon gist of case law paper book pages 97 to 103. Hearing was over and concluded.

4. **Observations Findings & conclusions**

4.1 We have to decide the legality, validity and proprietary of the **"impugned order"** basis records of the case & the rival submission canvassed before us.

4.2 We have carefully perused the records of the case and have heard the submissions.

4.3 We basis records of the case & after hearing & further upon examining the rival contentions of the Ld. AR & the Ld. DR canvassed before us are of the considered opinion that the **"Impugned Assessment Order" is passed u/s 147/148 of the Act** wherein these are two core issue and two additions. Prior thereto the total income of the assessee was computed and assessed at Rs. 28,24,060/- under section 143(3) by an assessment order dated 20.03.2015. It is the case of the assessee before us that assessment order dated 20.03.2015 passed u/s 143(3) of the Act ought not to have been subjected to proceedings u/s 147 of the Act as the same deals with the income escaping the assessment. One of the key ingredient of section 147 as it stood at the material time was that the Ld. AO should have "reason to believe" that any income chargeable to tax has escaped assessment then subject to the provisions of section 148 to 153 then he may assess or reassess such income. The test was "reason to believe" and "escapment of income". The Ld. AR has

contended that all issues were before the Ld. AO and all facts, reply, submissions, material for real income computation was provided for and in fact ROI was accepted. Per contra the Ld. DR submitted that issues raised in the instant appeal had escaped determination hence proceedings were initiated u/s 147/148 of the Act which is justifiable. We find that in the assessment order dated 20.03.2015 the core issue raised in 147/148 were not dealt with save and except that **it is recorded in the said order that in relation to sale and purchase necessary documents with regard to immovable property were placed on record, with regard to the claim of long term capital gain. However the same were placed on record and no issues were identified at that stage.** Therefore **no opinion was formed at that stage** and therefore **the contention of the Ld. AR that there is change of opinion** on the part of **the revenue** and therefore notice u/s 147/148 are wrong and **improper**. With regard to the second issue of determination of the total commission received by the assessee during the year as was allegated of Rs. 2802374/- visa-a vis of Rs. 2427853/- and addition of

Rs. 3,74,521/- this issue was not examined and it was simply avert in the original assessment order dated 20.03.2015 that information related to profit in respect of sale of petrol and diesel were given. There was no formation of any opinion, consequently any change of opinion does not arises at all. Had both the issue had been examined by then the Ld. AO he would have formed an opinion. Since no opinion was formed later on the revenue felt the necessity to do reassessment basis reasons and rightly had reason to believe that income has escaped assessment. We do see any infirmity with regard to reopening of the closed assessment. The objection was the Ld. AR is therefore rejected to this extent only.

4.4 In instant appeal there are two core issues one is addition of Rs. 15,22,500/- which was on account of purchase of agriculture land accounting to Rs. 15,22,500/- (claim u/s 54B) and another was addition of Rs. 3,74,521/- on account of concealed commission (difference between Rs.

28,02,374/- - Rs. 24,27,853/-) on account of sale and purchase of petrol and diesel.

4.5 With regard to the first issue we observe that by an agreement of sell dated **20.12.2010** there are total 5 sellers all closely related to Sogani family which was a huge family consisting of several members and legal heirs who had proposed to sell their agriculture land holding to one M/s Vardhaman Infrastructure. We also find a reference to the family partition dated **01.04.2010** too, amongst the family members of Sogani family. **The family members about 17 had authorised 5 sellers with the family to execute the agreement of sell for a total consideration of 6 Cr. An upfront payment (advance/deposit which can be used by sellers) is depicted therein.** Therefore there is flow of consideration from buyers to sellers of Rs. 1 Cr on 30.06.2011, 30.09.2011 and on 30.12.2011. And finally there is a flow of consideration of Rs. 2.25 Cr dated 31.03.2012 too. [All promised to be paid in agreement for sell dated 20.12.2010]. There is also a clause that flow of

consideration shall be released for payment in installation on dates mentioned strictly if not then interest clause. There is also a clause that is the sellers receives the installments as scheduled of payments **then proportionate possession of land would follow in proportionate to the installments**. The copy of sale deed is dated 31.03.2012 when the entire land was sold upon receiving full payment of 6 Cr by the sellers (assessee being one of the co-seller) on page 52 to 61 of paper book we observe that there is a purchase deed dated **01.03.2012** of Rs. 20,10,750/- where assessee is at serial No:- 2 as buyer amongst total 4 other family members of agriculture land, there is the second purchase deed dated **01.03.2012** of Rs. 20,10,750/- where too the assessee is a buyer amongst total 4 other family members of agriculture land [PB page 61 to 70] and there is third purchase deed dated 25.03.2012 [PB pages 71 to 78] of Rs. 20,68,500/- wherein too the assessee is a buyer amongst total 4 other family members of agriculture land [Assessee share ¼th]. In brief purchase deeds are dated **01.03.2012** and **25.03.2012** [3 purchase deed] whereas sale deed to M/s Vardhaman

Infrastructure is dated **31.03.2012** for 6 Cr. There is **thus purchase the first and then sale. Basis agreement of sale dated 20.12.2010 we observe that an amount of Rs. 3.75 Cr was already paid to the 5 sellers on or before 30.12.2011** [PB page 49] i.e. 75 Lakh as upfront i.e. on 20.10.2010, and Rs. 1 Cr each on 30.06.2011, 30.09.2011, and 30.12.2011 with proportionate possession of land to the buyer. **In brief we hold that basis agreement of sell dated 20.12.2010, the assessee see along with fly members had 3.75 Crores on 30.12.2011 which is much prior to purchase deed dated 01.03.2012 and 25.03.2012. Hence consideration for purchase deed has flown out of agreement of sell dated 20.12.2010. Hence against sale of agriculture land there is a purchase of agriculture land**. The revenue authorities have **taken sale deed dated 31.03.2012** into consideration to arrive at a finding how there can be the first purchase and then sale. **The revenue authorities failed to appreciate that by virtue of agreement of sell dated 20.12.2010** the assessee not only received consideration as aforesaid **but had parted**

possession of his proportionate ancestral land on receiving proportional instalment of consideration which had worked out to Rs. 3.75 Cr by 30.12.2011 even though full payment of 6 Cr was released on date of sale deed [ancestral land] on 31.03.2012. The revenue authorities therefore had erred in law. The Ld. AR has rightly relied upon the judgment of Hon'ble Supreme Court of India in case filed Shri Sanjeevlal V/s CIT, Chandigarh in CA No:- 5899-5900 of 2014 dated 07.01.2014 wherein it has been held that ***"In normal circumstances by executing an agreement to sell in respect of an immoveable property, a right in personam is created in favour of the transferee/vendee. When such a right is created in favour of the vendee, the vendor is restrained from selling the said property to someone else because the vendee, in whose favour the right in personam is created, has a legitimate right to enforce specific performance of the agreement, if the vendor, for some reason is not executing the sale deed. Thus, by virtue of the agreement to sell some right is given by the vendor***

to the vendee. The question is whether the entire property can be said to have been sold at the time when an agreement to sell is entered into. In normal circumstances, the aforestated question has to be answered in the negative. However, looking at the provisions of Section 2(47) of the Act, which defines the word "transfer" in relation to a capital asset, one can say that if a right in the property is extinguished by execution of an agreement to sell, the capital asset can be deemed to have been transferred. Relevant portion of Section 2(47), defining the word "transfer" is as under:

"2(47) "transfer", in relation to a capital asset, includes,-

(i)……..

(ii) the extinguishment of any rights therein: of r…… "Now in the light of Section 2(47) of the Act, it is clear that when any right in respect of any capital asset is extinguished and that right is transferred to someone, it would amount to transfer of a capital asset. In the light of the aforestated definition, let us look at the facts of the present case where an

agreement to sell in respect of a capital asset had been executed on 27th December, 2002 for transferring the residential house/original asset in question and a sum of Rs. 15 lakhs had been received by way of earnest money. It is also not in dispute that the sale deed could not be executed because of pendency of the litigation between Shri Ranjeet Lal on one hand and the appellants on the other as Shri Ranjeet Lal had challenged the validity of the Will under which the property had devolved upon the appellants. By virtue of an order passed in the suit filed by Shri Ranjeet Lal, the appellants were restrained from dealing with the said residential house and a law-abiding citizen cannot be expected to violate the direction of a court by executing a sale deed in favour of a third party while being restrained from doing so. In the circumstances, for a justifiable reason, which was not within the control of the appellants, they could not execute the sale deed and the sale deed had been registered only on 24th September, 2004, after the suit filed by Shri Ranjeet

Lal, challenging the validity of the Will, had been dismissed. In the light of the aforestated facts and in view of the definition of the term "transfer", one can come to a conclusion that some right in respect of the capital asset in question had been transferred in favour of the vendee and therefore, some right which the appellants had, in respect of the capital asset in question, had been extinguished because after execution of the agreement to sell it was not open to the appellants to sell the property to someone else in accordance with law. A right in personam had been created in favour of the vendee, in whose favour the agreement to sell had been executed and who had also paid Rs.15 lakhs by way of earnest money. No doubt, such contractual right can be surrendered or neutralized by the parties through subsequent contract or conduct leading to no transfer of the property to the proposed vendee but that is not the case at hand.

In addition to the fact that the term "transfer" has been defined under Section 2(47) of the Act, even if looked at the provisions of Section 54 of the Act which gives relief to a person who has transferred his one residential house and is purchasing another residential house either before one year of the transfer or even two years after the transfer, the intention of the Legislature is to give him relief in the matter of payment of tax on the long term capital gain, If a person, who gets some excess amount upon transfer of his old residential premises and thereafter purchases or constructs a new premises within the fime stipulated under Section 54 of the Act, the Legislature does not want him to be burdened with tax on the long term capital gain and therefore, relief has been given to him in respect of paying income tax on the long term capital gain. The intention of the Legislature or the assessee should be given some relief. Though it has been very often said that common sense is a stranger and an incompatible partner to the Income Tax Act and it is also said that

equity and tax purpose with which the said provision has been incorporated in the Act, is also very clear that the be given to the provisions of the Act. In the case of Oxford University Press v. Commissioner of Income Tax [(2001) 3 SCC 359] this Court has observed that a purposive interpretation of the provisions of the Act should be given while considering a claim for exemption from tax. It has also been said that harmonious construction of the provisions which subserve the object and purpose should also be made while construing any of the provisions of the Act and more particularly when one is concerned with exemption from payment of tax. Considering the aforestated observations and the principles with regard to the interpretation of Statute pertaining to the tax laws, one can very well interpret the provisions of Section 54 read with Section 2(47) of the Act, i.e. definition of "transfer", which would enable the appellants to get the benefit under Section 54 of the Act.

Consequences of execution of the agreement to sell are also very clear and they are to the effect that the appellants could not have sold the property to someone else. In practical life, there are events when a person, even after executing an agreement to sell an immoveable property in favour of one person, tries to sell the property to another. In our opinion, such an act would not be in accordance with law because once an agreement to sell is executed in favour of one person, the said person gets a right to get the property transferred in his favour by filing a suit for specific performance and therefore, without hesitation we can say that some right, in respect of the said property, belonging to the appellants had been extinguished and some right had been created in favour of the vendee/transferee, when the agreement to sell had been executed. Thus, a right in respect of the capital asset, viz. the property in question had been transferred by the appellants in favour of the vendee/transferee on 27th December, 2002. The sale deed could not be executed for

the reason that the appellants had been prevented from dealing with the residential house by an order of a competent court, which they could not have violated.

In view of the aforestated peculiar facts of the case and looking at the definition of the term 'transfer" as defined under Section 2(47) of the Act, we are of the view that the appellants were entitled to relief under Section 54 of the Act in respect of the long term capital gain which they had earned in pursuance of transfer of their residential property being House No. 267, Sector 9-C, situated in Chandigarh and used for purchase of a new asset/residential house.

The appeals are, therefore, allowed with no order as to costs. The impugned judgments are quashed and set aside and the Authorities are directed to re-assess the income of the appellants for the Assessment Year 2005-2006, after taking into account the fact that the

appellants were entitled to the relief, subject to fulfilment of other conditions."

The Ld. AR has also rightly placed reliance on the order of ITAT, Indore Bench in case of Pitambar lal V/s ITO-3(3), Bhopal ITA No:- 173/Ind/2023 dated 12.12.2023 wherein in Para 12 it is observed as under:-

> ***"12. It is pertinent to note that the language of section 54B as well as section 54EC so far as the investment is concern are pari materia and therefore, in view of the decision of Pune Bench of the Tribunal the claim of the assesse u/s 54B cannot be denied on the ground that the investment in purchase of agricultural land is made by the assessee prior to the transfer of the existing agricultural land if the said investment is made from the consideration received against this transfer. The decision of the Pune Benches of the Tribunal in case of Subhash Vinayak Supnekar (supra) has been***

upheld by the Hon'ble Bombay High Court reported 77 taxmann.com 226. Accordingly in the facts and circumstances of the case the claim of deduction u/s 54B of the Act in respect of the investment made for purchase of land dated 03.03.2008 is allowed.

4.6 In so far as the addition of Rs. 3,74,541/- being the difference of the commission income on account of sell/purchase of petrol/diesel we observe and hold that working done by the revenue in Para 7 of the Impugned Assessment Order of Rs. 28,02,374/- is erroneous and wrong as the Ld. AR basis PB page 30 form 26 AS has demonstrated the total payment of Rs. 24,27,853/- was made by IOC to the assessee and not Rs. 28,02,374/- as alleged hence differential amount is wrongly calculated of Rs. 3,74,521/-. In trading and profit and loss account dated 31.03.2012 breakup of Rs. 24,27,853 is shown as Rs. 4,88,522/- evaporation loss + Rs. 1939330/- which

aggregate to Rs. 24,27,853/-. We concur with submission of the Ld. AR in this regard that addition is not warranted.

4.7 The Ld. DR contention that agreement of sell dated 20.12.2010 is unregistered document and has no evidentiary value is not acceptable as this is **a document in common parlance in sale and purchase of immovable property. This is a document basis customs and usages. It is a common parlance document. It is not argued that same is bogus and fictions. It is also not contended that it is a make belief document and/or sham/subterfuge.** Other argument of Ld. DR on reopening are already taken into consideration in preceding Para that is 4.3. We record that the Ld. AR has argued and contended both on applicability of 147/148 and so also on merits. **However we concur with his contentions on merits.**

4.8 In view of the premises drawn up by us, we set aside the Impugned Order and allow the appeal of the assessee and delete additions.

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5 **Order**

5.1 **The appeal of the Assessee is allowed.**

Pronounced in open court on 12.10.2026.

Sd/-	**Sd/-**
(ARVIND SONI)	**(PARESH M JOSHI)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Indore
Dated : 12 /10/2026

Copies to:
(1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore

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