

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 1658/Mum/2023

(Assessment Year 2013-14)

DCIT-41(4)(1)
Room No. 425, 4th Floor, Kautilya
Bhavan, BKC, Bandra(East)
Mumbai-400051

Vs.

Abdulsattar Suleman
Ghaswala
142/48 Ghaswala Estate
S V Road Jogeshwari(W)
Mumbai-400102

(Appellant)

(Respondent)

PAN No. AALPG9088R

CO No. 83/Mum/2023

(Arising in ITA No. 1658/Mum/2023 for A.Y. 2013-14)

Abdulsattar Suleman
Ghaswala
142/48 Ghaswala Estate S V
Road Jogeshwari(W)
Mumbai-400102

Vs.

DCIT-41(4)(1)
Room No. 425, 4th Floor, Kautilya
Bhavan, BKC, Bandra(East)
Mumbai-400051

(Cross Objector/ Appellant)

(Respondent)

PAN No. AALPG9088R

Assessee by : Shri. K. Shivram,
Shri Shashi Bekal,
Shri Sunil Makhija, ARs
Revenue by : Shri. Ajay Chandran, DR

Date of hearing: 06.11.2023

Date of pronouncement : 21.12.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No.1658/Mum/2022 is filed by the Dy. Commissioner of Income Tax, Circle 41(4)(1), Mumbai (the learned

Assessing Officer) for A.Y. 2013-14 against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 14th March 2023, wherein the appeal filed by the assessee against the assessment order dated 29th December 2018, passed under Section 143(3) of the Income-tax Act, 1961 (the Act) by the Asst. Commissioner of Income, Circle 3(1), Mumbai, is allowed.

02. The learned Assessing Officer is aggrieved with that and has raised the following grounds of appeal:-

"1 Whether on the facts and circumstances of the case the Ld.CIT(A) erred in deleting the addition of Rs. 13,96,40,040/- disregarding the fact that the assessee had violated fundamental accounting principles by revaluing the land without routing the corresponding entries through the profit and loss account and without giving corresponding credits to the capital accounts of the partners, and without giving corresponding credits to the capital accounts of the partners, and as such, the book results were ex facie incorrect and misleading."

"2. Whether on the facts and circumstances of the case the Ld.CIT(A) erred in deleting the addition of Rs. 13,96,40,040/- without asking the assessee to furnish the copies of the partner capital accounts and without verifying the facts claimed by the assessee."

"3 Whether on the facts and circumstances of the case the Ld.CIT(A) has erred in granting the impugned relief based on sweeping generalized submissions of the assessee and without conducting such further inquiries that he ought to have made as his powers were coterminous with the powers of the Assessing Officer."

03. The assessee is also aggrieved with the appellate order and has raised cross objection in CO. No. 83/Mum/2023 raising the following grounds of appeal:-

"1. The Ld Assessing Officer has erred in completing the assessment vide an order dated 29/12/2018 passed u/s 143(3) r.w.s 147 of the I.T. Act, 1961 without having provided the copy of approval/sanction sought if any from the competent authority as per provisions of sec 151 of the I.T. Act, 1961 along with the copy of reasons recorded to justify that the Ld assessing officer and the approving authority has applied their mind before re-initiation of Re-assessment proceedings.

2. The Ld assessing officer has erred in initiating the Re-assessment proceedings merely based on borrowed satisfaction, i.e. based on information stated to have been received from the assessing officer who had completed the assessment of the partnership firm for the year under consideration in a very casual manner in as much as from the copy of

reasons provided by him it is not even clear as on which date the reasons were recorded, when was the proposal sent for approval to the office of the competent authority and on which date has the competent authority approved and with what observations.

3. The Ld assessing officer i.e. ACIT 31(1), Mumbai has erred in completing the assessment without having a valid jurisdiction as is evident from the notice issued u/s 148 of the I.T Act, 1961 dated 22/03/2018 by the Income Tax Officer, Ward 31(1)(1), Mumbai (the then JAO).

4. The Ld assessing officer has erred in completing the assessment without having complied with the provisions of sec 129 of the I.T Act, 1961 as is evident from the assessment order dated 29/12/2018 passed u/s 143(3) r.w.s 147 of the I.T Act, 1961 (i.e. the Ld assessing officer has not given any reference of change of jurisdiction from ITO Ward 31(1)(1), Mumbai to ACIT 31(1), Mumbai)"

04. Brief facts of the case show that the assessee is an individual who filed his return of income for A.Y. 2013-14, declaring a total income of ₹5,52,340/- on 5 October 2013. The return of income was processed and not scrutinized.



05. Subsequently, during the assessment proceedings of M/s Abdul Sattar Suleman and others for A.Y. 2013-14, it was found that the assessee introduced capital in the above partnership firm in the form of land amounting to ₹13,96,40,040/-. It was also found that the capital gain is chargeable to tax in the hands of the assessee under Section 45(3) of the Act. On perusal of the return of the assessee, the learned Assessing Officer found that the assessee has not offered any capital gains and therefore, the reasons were recorded by the learned Assessing Officer stating that he has reason to believe that income to the extent of ₹13,96,40,040/- for A.Y. 2013-14 has escaped assessment. Accordingly, notice under Section 148 of the Income-tax Act, 1961 (the Act) was issued on 22 March 2018.
06. The assessee filed its return of income on 29 November 2018, reiterating the original return filed. On 30 November 2018, reasons were requested which were provided on 3 December 2018. The assessee filed objections on 5 December 2018, and 10 December 2018, which were rejected on 11 December 2018. Thus, the reassessment proceedings commenced.
07. The assessee was asked to submit the details concerning the introduction of land. The assessee submitted that the above land was introduced in the partnership firm in the year 2010 at nil cost. Subsequently, in A.Y. 2013-14, the partnership firm revalued the land. It was stated that

neither the partnership firm has claimed a revalued amount as cost of land nor the partners have debited the account of the partnership firm with the said valuation and therefore, the question of capital gain does not arise.

08. The learned Assessing Officer found that the assessee is a partner in M/s Abdul Sattar Suleman and Others. He is the co-owner of the land along with the other partners. The said land was introduced in the partnership firm in A.Y. 2011-12 and no amount was recorded in the books of account of the partnership firm for transfer of such land. However, during the assessment year 2013-14, the partnership firm recorded the value of the land in its books of account and account of other partners, consequently, on account of the assessee was credited of ₹13,96,40,040/-. Therefore, the assessee has the right to receive the amount from the partnership firm. It was further noted that the said land is not at the disposal of the partners and partners have not withdrawn the same. The learned Assessing Officer further noted that the assets were transferred in A.Y. 2011-12, however, the amount was recorded in the books of the firm first time in A.Y. 2013-14 and therefore, the above sum is the full value consideration received or receivable to the assessee only in A.Y. 2013-14. Therefore, capital gain is chargeable to tax in A.Y. 2013-14. Accordingly, the learned Assessing Officer considered the above transfer as long-term capital gain chargeable to tax in the hands of the assessee under Section 45(3) of the Act amounting to ₹13,96,40,040/-

and passed the assessment order under Section 143(3) read with section 147 of the Act on 29th December 2018, determining the total income of the assessee at ₹14,02,02,384/-.

09. The assessee aggrieved with the same preferred the appeal before the learned CIT (A). The learned CIT (A) passed the appellate order holding that no capital gain had accrued or arose to the assessee in A.Y. 2013-14 on account of the revaluation of land which was brought into the books of the firm in A.Y. 2011-12 at ₹ nil. The learned CIT (A) relied upon the decision of the Hon'ble Supreme Court in the case of Sanjeev Woolen Mills vs. CIT reported in 279 ITR 434 (SC) and also of the co-ordinate Bench in the case of ITO ward 1(4), Calcutta, Vs. M/s. Orchid Griha Nirman Pvt. Ltd. in ITA No.2269/Kol/2013. Accordingly, the appeal of the assessee was allowed. The learned Assessing Officer aggrieved with the appellate order has preferred this appeal before us.
010. The learned Departmental Representative submitted the facts of the case stating that the assessee introduced the land in the books of the partnership firm in A.Y. 2011-12. On that date, no sum was credited to the partner's account and similarly, no amount was debited as value of land in the books of the partnership firm. Subsequently, in A.Y. 2013-14, the sum of ₹13.96 crores was credited to the account of the assessee by putting the valuation of the land. He referred to the provisions of Section 45(3) of the

Act stating that when partners transfer the capital asset to the partnership firm as capital contribution or otherwise, such sum is capital gain, shall be chargeable to tax as his income of the previous year in which transfer takes place. Further, concerning the computation of capital gain, the amount recorded in the books of account of the firm as the value of the capital asset shall be deemed as the full value of the consideration on such transfer. Therefore, the amount credited to the account of the assessee of ₹13.96 crores, is the full value consideration received for computation of capital gain. He submitted that this sum was credited in the A.Y. 2013-14 and therefore, the order of the learned Assessing Officer is correct in charging the income under the head capital gains for A.Y. 2013-14. He stated that the learned CIT (A) has incorrectly relied upon the decision of the Kolkata Bench. He further submitted that it is not the case of revaluation of assets but is a case of recording the sale consideration in the books of account of the firm by crediting the capital account of the partner. He, therefore, submitted that there is the transfer of a capital asset by the partner to the partnership firm and there is a consideration in the firm of the amount credited to the account of the partner being the amount recorded as the value of the asset transferred. He, therefore, submitted that the income is chargeable to tax in the hands of the assessee.

011. The learned Authorized Representative filed a factual paper book containing 96 pages and a case law

compilation. He submitted that the assessee has introduced land in a partnership firm M/s Abdul Sattar Suleman and Others in A.Y. 2011-12 and has given possession of land to the firm in that year. The assessee is a co-owner along with the other parties of the property as inherited property and therefore, the same was transferred to the firm at ₹ nil. Subsequently, in A.Y. 2013-14, the partnership firm revalued the land and credited the sum to the account of the partners. The firm had not claimed the revalued amount as the cost of the land and stated that there was no cost. He further stated that none of the partners had withdrawn the above sum from the partnership firm. He submitted that the transfers happened in A.Y. 2010-11, as the sale consideration is nil and the amount of consideration recorded in the books of account of the firm as ₹ nil, no capital gain arose in A.Y. 2010-11. In A.Y. 2013-14, when it is credited to the partners or partners' capital account in the form of revaluation, there is no transfer of capital assets and therefore, capital gain cannot be taxed in that year. He further referred to the ledger account of the partners in the partnership firm.

012. We have carefully considered the rival contention and perused the orders of lower authorities. In this case admittedly transfer took place in AY 2011-12, It did not happen in AY 2013-14 as per finding of Id AO also.

013. Section 45 (3) provides that :-

[(3) The profits or gains arising from the transfer of a capital asset by a person to a firm or other association of persons or body of individuals (not being a company or a co-operative society) in which he is or becomes a partner or member, by way of capital contribution or otherwise, **shall be chargeable to tax as his income of the previous year in which such transfer takes place** and, for the purposes of section 48, the amount recorded in the books of account of the firm, association or body as the value of the capital asset shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.]

014. As the year of chargeability as per section 45(3) is the 'year in which transfer takes place'. The AY in which transfer took place is AY 2011-12 and not the impugned Ay in which assessment is made. On this sole reason, the appeal of the Id AO fails.

015. Further Decision relied up on of ITAT by the Id CIT (A) has been upheld by Honourable High court Principal Commissioner of Income-tax, Kolkata-1 V Blue Heaven Griha Nirman (P.) Ltd.* [2022] 135 taxmann.com 3 (Calcutta)/[2022] 285 Taxman 663 [SLP dismissed [2023] 154 taxmann.com 17 (SC)/[2023] 295 Taxman 11 (SC) holding as under :-

"9. For the purpose of deciding whether the substantial questions of law as suggested arise for consideration, it would suffice to refer to the case of the assessee who is the respondent in ITAT No.

250 of 2017, the lead case. The assessee filed their return of income for the relevant assessment year (A.Y- 2008-09) declaring loss of Rs. 58,885/-. The assessee along with three other companies was a partner in a partnership firm under the name M/S. Salapuria Soft Zone. As amongst the three partners, two are assesses in ITAT No. 164 of 2017 and ITAT No. 239 of 2017 respectively. The income declared by the assessee was on account of the share of exempt profit from the partnership firm M/s. Salapuria Soft Zone. The return was processed under section 143(1) of the Act.

10. Subsequently, proceedings under section 147 of the Act were initiated and notice dated 3-11-2011 was issued under section 148 of the Act. The reasons for reopening was that the partnership firm M/S. Salapuria Soft Zone had revalued its assets and transferred the revalued reserve to its partners' account and the assessee being a partner had received certain sum of money on account of such revaluation reserve. Therefore, the Assessing Officer opined that he had reasons to believed on examination of record that the above has escaped assessment within the meaning of section 147 of the Act. The assets which were the subject matter was a large tract of land measuring about 3,19,086 sq. ft. owned by one M/s. I Gate Global Solutions Ltd. The said land was advertised for sale. The



assessee company along with the two other companies namely M/s Command Construction Private Limited and Blue Haven Griha Nirman Private Limited, the assessee in (ITAT No. 164 of 2017) offered to purchase for a sum of Rs. 16,94,34,666/-. Subsequently the price was increased to Rs. 22,36,79,266/- on the basis that the said land measured 3,19,08 sq. ft. in contrast with the original measurement of 3,12,092 sq. ft. An agreement was entered into on 14-6-2004 and it appears that the re-measurement of the area was done and it was found that correct extent was only 3,12,092 sq. ft., therefore, the final price stood fixed at Rs. 21,87,76,492/- and supplementary agreement dated 28-12-2004 was entered into. The three companies paid the agreed sale consideration and possession was handed over. The Deed of Sale was executed and registered in their favour on 30-3-2005. The guideline value for the purpose of stamp duty as fixed by the Government at the relevant time was Rs. 260/- per sq. ft. and the purchase price paid by the three companies was Rs. 701/- per sq. ft. The total cost of the land paid by the three companies, inclusive of stamp duty and registration charges was Rs. 24,54,54,125/-. The land was purchased with a proposal to develop an industrial park and the three companies accounted for the said land so

purchased as "work in progress" and reflected it under "Current Assets" in their balance sheet.

11. On 9-1-2006, these three companies and another company M/s. Wellgrowth Griha Nirman Private Limited. (the assessee in ITAT No. 239 of 2017) formed the partnership firm namely M/S. Salapuria Soft Zone and the three companies transferred the said land to the partnership firm. The fourth company (the assessee in ITAT No. 239 of 2017) was to arrange the finance required for development of the land. Each of the said three companies had 10% share in the profit/loss and the fourth company's share was 70%. The partnership business was deemed to have commenced from 1-4-2005. By supplementary deed of partnership dated 13-3-2006 between the four partners (companies) provided that the partnership firm M/S. Salapuria Soft Zone was entitled to avail a loan/credit facilities from commercial banks/financial institutions by mortgaging the movable and immovable properties. The firm, M/S. Salapuria Soft Zone, obtained the loan/credit facilities to the tune of Rs. 250 crores. The transfer effected by the three companies in favour of the firm was at cost and such cost was the amount recorded in the books of account of the firm for the year ended 31-3-2006, as the value of the said land with corresponding

credit to the capital accounts of each of the said three companies. Accordingly, the capital account of the assessee (respondent in ITAT No. 250 of 2017) was credited Rs. 8,15,00,000/-. The firm M/S. Salapuria Soft Zone accounted for the said land as work in progress and reflected it under "Current Assests" in its balance sheet. The completed industrial park was leased out during March 2008. On 30-3-2008 the firm converted the land, building and its amenities which were shown as inventory in its account into fixed assets. On 31-3-2008 the land and building were revalued in order to reflect the market value of the land and building in the books of account with a view to justify the bank loan of Rs. 250 crores. The amount of revaluation was credited to the "Current Account" of the four partners (three assesseees before us and M/s. Command Constructions Private Limited) in their profit sharing ratio. Thus the current account of each of the said three companies as well as the fourth company was credited. The amount which was credited in the accounts is not of much relevance for us. The above factual position is not in dispute.

12. The Assessing Officer while examining the return in the assessment which was reopened was of the view that the credit to the "Current Asset" of the assessee in the partnership firm M/s. Salapuria



Soft Zone gives rise to income chargeable to tax. The Assessing Officer in the reassessment proceedings held that bringing of land into the firm by way of inventory without crediting partners capital account and without bringing it as fixed asset cannot be considered as capital contribution by the partners during the financial year ended March 31, 2006. The land was contributed by the three companies during the previous year ended March 31, 2008 relevant to the assessment year 2008-09 by way of capital contribution when it was converted into fixed assets from inventory by the firm. The Assessing Officer held that section 45(3) was applicable in respect of such transfer made during the previous year relevant to the assessment year 2008-09. It was further held that the revaluation figure recorded in the books of accounts in the firm M/s. Salapuria Soft Zone as on March 31, 2008 was to be deemed as full value of consideration received or accruing as a result of transfer of the capital asset by way of capital contribution. Further the revaluation amount was the profit which accrued to the three companies (assesseees before us) and each of them was liable to be taxed on one-third of such profit as short term capital gains. Further, the Assessing Officer pointed out that the land was grossly undervalued till it was part of inventory in the books of accounts

of the firm to avoid the market value of the land being taken into consideration and consequently to avoid higher taxes on capital gains in the hands of the assessee company.

13. Thus, the Assessing Officer concluded that the revaluation amount was real profit and not notional and the firm was taxable in respect of its profits but the revaluation profit was not disclosed by it as its income for the assessment year 2008-09 and no tax was paid thereon. Thus, the three assesses were made liable for tax on its share of revaluation profit. With the above reasoning the assessment was completed. The assessee carried the matter on appeal to the Commissioner of Income-tax Appeal [CIT(A)] firstly questioning the validity of the re-assessment proceedings apart from the merits of the matter. The CIT(A) held that even if the case made out in the reasons recorded by the Assessing Officer is accepted, no belief could have been entertained by the Assessing Officer that any income in respect of which the partner was chargeable to tax had escaped assessment, and therefore held that the Assessing Officer acted without jurisdiction by issuing notice under section 148 of the Act. With regard to the merits of the matter, the assessee contended before the CIT(A) that the transfer of the land by the three companies to the partnership was by way of capital

contribution during the financial year ended March 31, 2006 relevant to the assessment year 2006-07. The other transfer was given effect in the accounts of the partners for the year ended March 31, 2006. The assessee's balance sheet and profit and loss account for the financial year showed that the land is "work in progress" under "Current Asset" which was transferred to the firm M/s. Salapuria Soft Zone as capital contribution. It was contended that the finding of the Assessing Officer that the partners' capital account were not credited during the financial year ended March 31, 2006 for their capital contribution by way of bringing in the said land is contrary to facts. The said land was brought in by the partners as inventory/current assets and it does not in any way alter the fact that the partners had in fact brought in the land into partnership business as their capital contribution. Further, by relying on the books of account of the firm M/s. Salapuria Soft Zone for the previous year ended March 31, 2006, it was demonstrated that the receipt of the said land by the firm was by way of capital contribution from the three assesseees as also the value thereof with corresponding credit to the partners' capital account. Further it was contended that the firm upon receipt of the said land during the financial year ended March 31, 2006 also accounted for it as

"Current Asset". The partners transferred the said land at cost and there was no profit in the hands of the partners upon transfer of the said land to the firm. Therefore, it was contended that section 45(3) of the Act was inapplicable. It was further contended that after the firm received the land as the capital contribution, it was developed by infusing substantial funds during the financial year 2005-06 and thereafter. It was only on March 30, 2008 the firm converted the developed land including construction thereon as inventory into "fixed assets" and thereafter on March 31, 2008 revalued it with consequent credit to the partners' "Current Account". Further it was contended that section 45(3) of the Act did not come into operation for the assessment year 2008-09 and by reason of conversion of the developed land and building into fixed asset by the firm or due to revaluation by the firm of the asset so converted during the previous year ended March 31, 2008. Further it was pointed out that the section 45(3) of the Act is applicable in the year of transfer by the partner of his capital asset to the partnership firm by way of capital contribution and in the case at hand the year of transfer was financial year ended March 31, 2006 and the Assessing Officer was not justified in invoking section 45(3) which had no application in the assessment year 2008-09 or for

the assessment year 2006-07. The assessee also placed reliance on the circular issued by the CBDT subsequent to the insertion of sub-section (3) in section 45 of the Act bearing Circular No. 495 dated 22-9-1987. Thus, it was contended that there was no transfer of any capital asset by the assessee to the said firm during the previous year, relevant to the assessment year 2008-09 for section 45(3) to apply and therefore, the question of resorting to a device to avoid tax under section 45(3) does not arise. The assessee further contended that the finding of the Assessing Officer that the land was grossly undervalued till it was part of the inventory in the books of the firm M/s. Salapuria Soft Zone is wholly without any basis. There was no under valuation of the land when it was held by the said firm as inventory. By relying to the decision of the Hon'ble Supreme Court in *Chainrup Sampatram v. CIT* [1953] 24 ITR 481, it was contended that for accounting purposes, the stock is valued at cost or market price whichever is lower and the market value is taken only when it falls below cost. Further it was submitted that the three companies paid Rs. 21,87,76,492/- for purchasing the said land which was more than two and half times the guideline value fixed by the Government for stamp duty purposes at the relevant time. Further it was contended that the

entire area underwent major development and became a premium destination for IT and ITES and several IT parks and SEZ zones and also high end residential projects were developed in the year. The area which was revalued was in a Gram Panchayat, was brought under the limits of the Municipal Corporation of Bangalore and it carried out various developmental activities by constructing flyovers under passes etc. water supply and sewerage facilities were provided and the FAR ratio of construction of buildings was also increased on account of the road width of 150 feet.

14. Subsequently the land price in the area continued to rapidly rise and the state government kept on revising the guideline value for stamp duty purpose thrice. The assessee contended notwithstanding such price rise, in accordance with the accounting principles, the land held as inventory could only be shown at its costs. The revaluation of the asset by the firm was justified by contending that it was to bring it in line with the current market value of the land and building and for justifying the bank finance obtained by the firm to the tune of Rs. 250 crores. Thus, it was submitted that the revaluation was not the colourable device. Other factual details with regard to the loan availed by the firm were also placed for consideration.

15. The CIT(A) accepted the contention raised by the assessee. After examining the factual issues it specifically held that revaluation of an asset is not a business transaction resulting in any pecuniary gain which can form subject matter of taxation. Ultimately by a well reasoned order, the CIT(A) allowed the appeal filed by the assessee. Aggrieved by the same, the revenue preferred the appeal before the tribunal. The tribunal firstly considered the validity of the reopening of the assessment under section 147 of the Act. After elaborately considering the facts the tribunal held that, if at all any income accrues or arises owing to such revaluation, it is an issue which had to be dealt with in the assessment of the firm M/S. Salapuria Soft Zone which is the separate taxable entity. After noting the facts the tribunal held that in terms of the section 10 (2A) of the Act partners' share in the total income of the firm is not to be included in the total income of the partner. Therefore, it was held that there was no reason for initiating proceedings under section 147 of the Act. With regard to the applicability of section 45(3) of the Act, the tribunal after considering the books of accounts of the firm recorded the following factual findings :—

The books of account of the said firm for the financial year ended March 31, 2006 clearly

reflected the receipt of the said land by it by way of capital contribution from three of its partners as also the value thereof with corresponding credit to the partners' capital accounts. The land upon purchase was shown by the said three companies as part of their current assets. The said firm upon receipt of the said land during the financial year ended March 31, 2006 also accounted for it as a current asset. The partners transferred the said land at cost. As such, there was no profit in the hands of the partners upon transfer of the said land to the said firm. Section 45(3) of the Act is applicable only in respect of a capital asset. The said provision has no application in the instant case since what was transferred by the partners was a current asset and not a capital asset. Section 45(3) of the Act did not come into operation for the assessment year 2008-09 by reason of conversion of the developed land and building into fixed assets by the said firm or due to revaluation by the said firm of the asset so converted during the previous year ended March 31, 2008. Section 45(3) of the Act is applicable in the year of transfer by the partner of his capital asset to the partnership firm by way of capital contribution. In the instant case, the year of transfer was the financial year ended March 31, 2006. The ITO was wholly unjustified in invoking section 45(3) which had no application in

the assessment year 2008-09 or for that matter in the assessment year 2006-07. Even otherwise, section 45(3) seeks to determine the capital gains with reference to the value of the asset recorded in the books of account of the firm. The value so recorded is statutorily deemed to be the full value of consideration received or accruing to the partner as a result of the transfer of the capital asset to the firm. Thus, section 45(3) does not seek to substitute by any other figure the value agreed between the partners at which the asset is transferred by a partner to the firm.

16. With regard to the revaluation, tribunal re-appreciated the facts which were considered by the CITA. With regard to the development of the area in question, as to how there was steep rise in the value of the properties and the state government revised the guideline value for the purpose of stamp duty several times between 2004-07 and after noting the price rise the tribunal held notwithstanding the said fact in accordance with the accounting principles the land held as inventory was shown at its cost and therefore it cannot be said that under valuation was done by the assessee as alleged by the Assessing Officer.

17. Further more on facts the tribunal agreed with CIT(A) that after conversion of inventory into fixed

asset the firm revalued the developed land including construction thereon in order to bring it in line with the current market value to justify the business assistance secured by the firm from the banks to extent of nearly Rs. 250 crores. Therefore, on facts the tribunal concluded that the revaluation was not a colourable device.

18. Further more on facts it was held that there was no withdrawal by the partners from capital accounts and therefore there cannot be any income liable to tax in their hands.

19. After having given our anxious consideration to the entire matter we find that a thorough examination of the factual position has been done by the CIT(A) and the tribunal as well. We find no questions of law, much less substantial questions of law arises for consideration in this appeal. In the result, the appeals are dismissed. No costs."

016. Therefore respectfully following the decision of Honourable High court and also on plain reading of the provision of section 45 (3) of the Act , no addition could have been made in AY 2013-14 in absence of transfer of capital assets in this year.

017. Honourable Gujarat High court in case of Manoj Dwarkadas Pritmani v Assistant Commissioner of Income-

tax, [2021] 130 taxmann.com 284 (Gujarat) has held , though with respect to reopening but relevant here that

"11. It appears from the record that the assessee had transferred his land to M/s. Swaminarayan Enterprise as part of capital contribution in the partnership firm as per Partnership Deed duly executed on 15-8-2008. Undisputedly, the land in question was not transferred in the name of Firm. It is a settled law that where immovable property is transferred by a partner to the firm as a capital contribution and registration does not take place by paying stamp duty, the case would be covered under section 45(3) of the Act. As per Section 45(3) of the Act, whenever a partner contributes any capital asset in the partnership firm, then the value of capital asset recorded in the books of account of the firm is to be considered as the full value consideration for the purpose of computing capital gain.

12. Section 45(3) says that the profits or gains arising from the transfer of capital asset by the person to a firm in which he is or becomes a partner by way of a contribution or otherwise, shall be chargeable to tax as his income of the previous year in which such transfer takes place and for the purposes of Section 48, the amount recorded in the books of account of the firm, as the value of the capital asset shall be deemed to be the full value of the consideration received or accruing as a result of transfer of capital asset.

13. In the present case, we find that no any amount was credited by the firm in the account of the assessee as a consideration for the land in question during the year AY 2009-10. The record further indicates that the full value of consideration of the transfer of said land being recorded was NIL. Under such circumstances, we are of the view that since the transfer of land as a part of capital contribution the partnership firm took place in the year 2008, the same can be assessed only in the AY 2009-10 and not in the AY 2011-12. Therefore, for the year under consideration no amount of capital gain could be said to have taxable.

14. In view of the provisions of law and facts of the present case, we are of the view that the reasons lack validity and the AO had proceeded on erroneous premise and there was no sufficient material before the AO to take a prima-facie view that income of the assessee for the year under consideration has escaped assessment."

018. In view of above facts and following decision of Honourable High courts , in absence of any contrary decision shown to us, we confirm the order of the learned CIT [A] and hence all grounds of appeal of the Id AO fails and hence dismissed.



019. In the result appeal of learned Assessing officer for A. Y. 2013-14 is dismissed.

020. As we have dismissed the appeal of the Id Ao co filed by assessee becomes academic as no adjudication is required on validity of assessment challenged there in.

021. Accordingly, appeal of the Id AO is dismissed on merits and CO of the assessee is dismissed as academic.

Order pronounced in the open court on 21.12. 2023.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 21.12. 2023

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

BY ORDER,

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai