

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI**

**BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 4747/Del/2012
AY: 2008-09**

**ITA No. 4746/Del/2012
AY: 2009-10**

**ACIT,
Circle 20(1),
Room No. F-308,
Vikas Bhawan,
New Delhi.
(Appellant)**

vs

**Bharat Export,
293. Dhakka Johar,
DR. Mukharjee Nagar,
New Delhi.-110009
(PAN: AAAPB6979M)
(Respondent)**

Appellant by: Shri S.L. Anuragi DR
Respondent by: Shri C.S. Anand, Adv.

**Date of hearing: 18.02.2016
Date of pronouncement:**

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

Both the appeals are preferred by the Department. I.T.A. 4746 pertains to assessment year 2009-10 and has been preferred against the order passed by the Ld. CIT (A)-XXII, New Delhi dated 28.06.2012. I.T.A. 4747 pertains to assessment year 2008-09 and the impugned order is dated 21.06.2012 passed by the Ld. CIT (A)-XXII, New Delhi. Since both the appeals were heard together, they are being disposed of by this common order.

I.T.A. NO. 4747/Del/2012

2. The assessee is said to be engaged in the manufacture and sale of stainless steel cutlery/utensils. The original return declaring nil income was filed on 30.09.2008 and a revised return declaring a total income of R.s 67,85,297/- was filed on 5.1.2009. In this year, the assessee had disclosed Gross Profit @9.58% of the turnover. It was the observation of the Assessing Officer that there was a much higher level of scrap generation in the manufacturing process of the assessee as against the norms of the Central Excise Authorities. The Assessing Officer also recorded a finding that no day to day record was maintained in respect of raw material consumed at various stages of production of goods and of different categories of cutlery/kitchenware produced. The Assessing Officer also held that the purchases of raw material and sale of finished goods could not be said to be completely verifiable. The Assessing Officer proceeded to calculate excess turnover by reducing the percentage of wastage and thereafter, by applying the GP ratio of 9.56%, worked out the difference in GP on estimated enhanced turnover at Rs.53,65,284/- which was added to the income of the assessee. Also Rs. 1,09,830/- being 1/6th of the Vehicle Running Expenses

was added back to the income on account of personal use. Further, during the year under consideration, the assessee had sold a factory situated at Plot No. 89, Kundli, Distt. Sonapat, Haryana for a sum of Rs. 1,51,65,000/- on 28.11.2007. The factory had been purchased by the assessee for Rs.22,10,000/- on 12.09.2002 and the assessee declared Long Term Capital Gain (LTCG) of Rs. 79,57,158/- on the same. Deduction u/s 54G of the Income Tax Act, 1961 (the 'Act' in brief) in respect of the full amount of LTCG was claimed on the ground of shifting the industrial undertaking from urban area to a non-urban area. However, the Assessing Officer was of the opinion that neither the assessee's undertaking was shifted from an urban area, nor the transfer of the factory at Kundli was effected in the course of, or in consequence of shifting the undertaking to a non-urban area given the fact that neither the manufacturing unit nor the establishment were shifted to a non-urban area and that the assessee continued to operate from D-14, SMA Industrial Estate, G.T. Karnal Road, Delhi. The Assessing Officer was of the opinion that as the basic condition laid down in section 54G of the Act for the claim of exemption of LTCG was not satisfied, the claim of exemption u/s 54G was not allowable. Consequently,

the Assessing Officer determined the surplus on sale of factory at Rs.1,32,53,275/- and allocated it between land and building in the ratio of land and the total covered area. The Assessing Officer determined the Short Term Capital Gain (STCG) on surplus attributable to business at Rs. 76,44,306/- and LTCG on surplus attributable to land at Rs. 33,65,983/-.

3. Aggrieved, the assessee approached the Ld. First Appellate Authority who deleted the entire addition of Rs.53,65,284/- on account of gross profit on enhanced sales on the basic reasoning that the Assessing Officer had proceeded to substitute his own estimate for the income computed on the basis of books of account without even rejecting the books of account or invoking the provisions of section 145(3) of the Act.

4. The second addition of Rs.1,09,830/- being disallowance of Vehicle Running Expenses was, however, confirmed as no log books were being maintained by the assessee.

5. As far as the issue of denial of exemption u/s 54G of the Act was concerned, the assessee did not raise this issue before the Ld. First Appellate Authority at all. However, the quantum of Long Term Capital Gains and Short Term Capital Gain was

recomputed by the Ld. CIT (A). LTCG was enhanced by Rs. 52,75,539/- and the assessee was given relief of Rs.82,08,161/- in STCG by taking into account the Circle Rate in force at that point of time. Now, the Department is in appeal before us and has raised the following grounds:-

“1. Whether Ld. CIT (A) has erred in fact and law in deleting the addition in GP by ignoring the input-output norms as issued by the Central Excise Authorities which was followed by the A.O.?”

*2. Whether Ld. CIT (A) was correct in deleting the G.P. addition by A.O. despite the fact that the assessee has not been maintaining bay stock register? **

3. Whether Ld. CIT (A) is correct in valuation of Long Term Capital Gain and Short Term Capital Gain by adopting the different methods of calculating the same?

4. Whether Ld. CIT (A) is correct in valuation of Long Term Capital Gain and Short Term Capital Gain by ignoring the actual sale consideration and value of land at which building was built?

5. Whether Ld. CIT (A) has erred in ignoring fact that taking Circle rate of Rs.9000/- per square feet attracts applicability of Section 50C of Income Tax Act, 1961.

6. The appellant craves leaves to amend or alter all or any of the aforesaid grounds of appeal and amend, alter or add any other ground of appeal.”

I.T.A. 4746/Del/2012

6. In this appeal, the only dispute is regarding Gross Profit addition on estimated enhanced sales. In the year under consideration, the assessee had disclosed a G.P. rate of 9.37% on

the turnover. The Assessing Officer relied on the findings of the Assessing Officer in the immediately preceding year i.e. assessment year 2008-09 in the assessee's case and applied the ratio of scrap production @41.17% of total production and on that basis calculated the total production of scrap at 4,08,605.75 kg as against 4,84,110 kg shown by the assessee and treated the balance of 75,504.25 kg as unaccounted production of finished goods. The unaccounted sale was worked at Rs. 20,990,181.50 and by applying the GP rate of 9.37% of gross profit of Rs.19,66,780/- was worked out and added back to the income of the assessee. In appeal, the Ld. CIT (A) deleted the entire addition by holding that in absence of adverse material/evidence, any addition based on an alternate calculation, ignoring the books of accounts and even without rejecting the books of account of invoking the provisions of section 145(3) of the Act could not be sustained. Aggrieved, the Department is now in appeal before us and has raised the following grounds of appeal:-

“1. Whether Ld. CIT(A) has erred in fact and law in deleting the addition in GP by ignoring the input-output norms as issued by the Central Excise Authorities which was followed by the A.O.?”

2. Whether Ld. CIT (A) was correct in deleting the G.P. addition by A.O. despite the fact that the assessee has not been maintaining day to day stock register?”

3. The appellant craves leaves to amend or alter all or any of the aforesaid grounds of appeal and amend, alter or add any other ground of appeal .”

7. The Ld. DR in his arguments placed heavy reliance on the assessment orders and submitted that in view of the detailed observations and findings of the Assessing Officer, the Ld. CIT(A) was patently wrong in deleting the additions and that the assessment orders ought to be restored.

8. The Ld. AR submitted that as far as the G.P. addition was concerned that the assessee firm was engaged in the business of manufacture & sale of various items of stainless steel cutlery / utensils. Main raw material was S.S Patta/Patti and the finished products were stainless steel cutlery/utensils (e.g. knife, spoon, fork, ladle, server, tong, turner etc.). The assessee had been maintaining cash book, ledger, sales bills, purchase bills / vouchers, stock register & other supporting documents. During the course of assessment proceedings, the assessee had filed the required information, details, documents etc. and produced the relevant records. The AR further submitted that the Excise & Taxation Deptt. of Haryana had accepted the purchases & sales declared by the assessee for the years under consideration. The trading results as declared by the assessee were accepted by the

Income Tax Deptt. vide scrutiny assessment orders for A.Y.2005-06 A.Y. 2006-07. The Ld. AR emphasised that it was only after carefully examining the facts of the case, the contents of the assessment order and the submissions / explanation made by the assessee, that the Ld. CIT (A) had observed that the assessee had been maintaining stock records on day to day basis. He also submitted that the Ld. CIT (A), had appreciated the assessee's contention that maintaining item-wise, shape-wise, size-wise & usage-wise stock of raw material consumed and goods produced, on day to day basis, was not feasible.

9. On the issue of Capital Gains, the Ld. AR submitted that during the year under consideration, the assessee had sold its immovable property, built on Plot no. 89, Kundli, Distt Sonapat (along with various other assets/fixtures), vide sale deed dt 28.11.2007, against total consideration of Rs. 1,51,65,000/-. The assessee had declared profit on sale of the said fixed assets, in its P&L A/c for the year under consideration, at Rs. 84,38,234/- (Rs. 83,80,517/- + Rs. 57,717/-). Further, the assessee had treated the amount of Rs. 83,80,877/- as Long-Term Capital Gain, on the plea that it is the land only which appreciated with the passage of time. The Ld. AR submitted that

Long-Term Capital Gain		56,08,969
Sale Consideration		
Less: Indexed cost of Acquisition 18.19.628 X 551		22.42.986
447		33.65.933
Short-Term Capital Gain		
(i) on sale of building		
Sale Consideration	76,44,306	
Less: WDV	0	76,44,306
(ii) on sale of other assets	19,11,725	Nil
Less: WDV	19.11.725	76.44.306

11. The LD. AR submitted that the Ld. CIT (A) had formed a view that the method adopted by the A.O. for apportionment of the value between Land & Building, was not proper. During the first appellate proceedings, the assessee had informed the Ld. CIT(A) that the circle rate for Industrial Land located at HSIDC, Kundli, Sonapat was Rs. 9,000/- per sq. yrd. In order to arrive at a conclusion in this regard, the Ld. CIT (A) had required the JCIT, Sonapat (Haryana) to collect the information regarding the prescribed rates / circle rates / minimum rates for registration of properties in Sonapat during F.Y. 2007-08, particularly as on 28.11.2007 [date of sale] for Industrial plot located at HSIDC, Kundli, Sonapat and constructed area on industrial plot from the competent authority and the Ld. CIT(A) had been informed by the JCIT, Sonapat vide his letter dt. 04.05.2012 that the circle rate for industrial Plot located at HSIDC, Kundli Sonapat was Rs.

9000/- per sq. yrd and also that no rate for constructed area was prescribed.

12. The Ld. AR submitted that based on these circle rates, the Ld. CIT(A) had reached a conclusion that the sale consideration for land be adopted at Rs. 1,07,64,000/- (1196 sq. yds x Rs. 9,000/-) and the sale consideration for building & other assets, be adopted at Rs.44,01,000/- (being the difference of Rs. 1,51,65,000/- & Rs. 1,07,64,000/-) . The Ld. AR also submitted that the Ld. CIT(A) had verified the assessee's claim that the A.O. had not allowed the deduction on account of cost of acquisition of building and other assets, whose WDV was Rs. 49,64,855/- and that the Ld. CIT(A) had found such claim of the assessee in order. The Ld. AR also submitted that the Sub-Registrar / Stamp Valuation Authority had accepted the valuation of the above referred property declared at Rs. 1,51,65,000/- by the assessee as seller and Smt. Jyoti Kukreja as purchaser. Accordingly, the Sub Registrar had charged Stamp Duty of Rs. 6,06,600/-, @ 4% of the total sale value of Rs.1,51,65,000/-. The Ld. AR placed reliance on the orders of the Ld. CIT (A) and submitted that the same should be upheld.

13. We have heard the rival submissions and have given them due consideration. Also the records have been perused. A perusal of the impugned orders shows that both the issues have been dealt at length by the Ld. CIT (A). As far as the issue of G.P. is concerned, the same is discussed in great detail in paras 8.1 to 8.9 of the impugned order for Assessment Year 2008-09 as under:-

“8.1 After perusal of the Assessment Order and the submissions of the Assessee during the course of assessment proceedings, it is seen that the Assessing Officer has primarily relied upon the letter issued by the Central Excise Authorities to M/s Jagdamba Exports, as per which the input-output norms for kitchenware (cutlery) have been fixed to specify that as against input of 1.700 there should be an output of 1.000. This fixation of input- output norms as per the letter to M/s Jagdamba Exports is stated by the Counsel of the Assessee to be specifically for that concern and only for calculation of fiscal incentives. Though, even if the norms are for calculation of fiscal incentives, they cannot entirely be brushed aside, as they being issued by the Central Excise Department to an Assessee engaged in a similar line of trade, give an indication of the input-output ratio expected in this line of trade; but they cannot be blindly followed for every Assessee and definitely cannot be used to reject the books of accounts without any discrepancy being found in the books of accounts or any adverse evidence or material being found against the purchases, production or sales of the Assessee. The results shown by any Assessee in the same line of trade can be compared with these norms and the books of accounts can be examined in case there is any deviation. However, even in the case of significant deviation from these norms, the income shown by any Assessee can be disturbed only after some evidence or material is found against the purchases, production or sales, or accounting

by the Assessee. These norms, though they may be useful to restrict fiscal benefits by the Central Excise Authorities; cannot be used to reject the books of accounts of the Assessee, and to substitute the income as per the books of accounts, by the income estimated by the Assessing Officer, using these norms, without any adverse evidence or material at all.

8.2 The Assessing Officer has mentioned in para 5 of the Assessment Order that the Assessee has claimed to have maintained complete record relating to production, stock etc. It has been further admitted by the Assessing Officer that the Assessee has produced an item register, which gives chronological details of purchases of SS Patta/ Patti, details of quantity sent for manufacture of Cutlery and details of quantity left. Regarding the finished / semi finished goods, the Assessing Officer has stated that the Assessee has furnished details of quantity wise purchases and sales. To counter the claim of the Assessee that complete record relating to production and stock etc. has been kept, the Assessing Officer has stated that:-

(i) the Assessee has maintained only computer generated details and no primary/manual record has been produced in support of these computerized details,

(ii) that no day to day production of different categories of Cutlery or Utensils have been maintained, and

(iii) the details of quantity wise purchase and sales have been prepared on basis of various vouchers entered in the books.

8.3 The above three observations/objections of the Assessing Officer against the books of accounts and accounting by the Assessee are discussed below:-

(i) The books of accounts cannot be rejected merely on the basis that they are computer generated or that the books of accounts are directly maintained on computer. No doubt, very often manual records are maintained for the primary entries and thereafter the

entries on the computer are later done by the computer operator, but this does not mean that for computerized records, a parallel set of manual records have to be maintained by every Assessee. It may be possible that a particular Assessee makes the entries directly on computer and this cannot be a basis for rejection of the computerized books of accounts. It would have been another case if there was any evidence or material to show that the Assessee maintains manual books also and those are not being produced before the Assessing Officer, but this is not the case here.

(ii) *The Assessee has not maintained the day to day production of different categories of Cutlery or Utensils and for this the Counsel of the Assessee has stated during the appellate proceedings that there are a very large number of Cutlery items of different designs, sizes, shapes etc. and has claimed that maintaining item wise, design wise, shape wise, size wise and usage wise stock record was not practically feasible. In fact, if the Assessing Officer had a doubt that the Assessee was resorting to some manipulation in the production of different items by inflating the production of some items and suppressing the production of other items, he should have specifically mentioned that and should have investigated on those lines. However, even if there is increase in the production of one item and decrease in the production of another, the overall position will not change. In any case, non maintenance of day to day production of different categories of Cutlery or Utensils was at best an issue which could have been investigated further if the Assessing Officer had any doubt regarding manipulations being done in inter se production of items. However, neither the Assessing Officer has done investigation in this regard, nor any doubt for any such manipulations have been expressed, and this issue has just been used as an excuse to brush aside the results on the basis of the books of accounts of the Assessee, without any evidence or material to the contrary.*

(iii) *The Assessing Officer has also commented that the Assessee has furnished the details of quantity wise purchase and sales preparing them on the basis of*

vouchers entered in the books. No adverse inference can again be drawn from this observation and in fact this observation of the Assessing Officer rather supports the case of the Assessee that the quantities of purchases and sales tally with the vouchers entered in the books.

8.4 Thus the above analysis of para 5 of the Assessment Order in which the Assessing Officer has commented upon the accounting by the Assessee shows that there is nothing in these comments to come to an adverse conclusion against the Assessee.

8.5 In para 6.3 to 6.8 above, the comments of the Assessing Officer regarding the survey conducted on the business premises of the Assessee on 28.09.2010 (relevant to A.Y. 2011-12), and the statement of Sh. Javinder Singh (partner) recorded on 29.09.2010 (reproduced on page 3 to 5 of the Assessment Order) have been discussed. It is seen that the survey and the statement of Sh. Javinder Singh was relevant for Assessment Year 2011-12, whereas the Assessing Officer was assessing the case of the Assessee for Assessment Year 2008-09. There is nothing in the Assessment Order or the statement of Sh. Javinder Singh to show that there was any relevance of the survey or the statement for the relevant Assessment Year i.e. A.Y. 2008-09. Further, the only questions in the statement which can have any relevance for stock and accounting by the Assessee are questions number 3 and 4, as mentioned in para 6.5 above. As already mentioned in that para 6.5, it is obvious from the reply of Sh. Javinder Singh that he is replying for any stock records in addition to the computerized records which include the stock records, and when he says that there is no stock register in reply to question 3, it is evident that he is referring to stock records separate from the computerized stock records, as in the same reply, he mentions that the stock details on computer have already been provided to the questioner. Again, as mentioned in para 6.5 above, in reply to question 4, Sh. Javinder Singh states that there is no stock register or record separately regarding the various stages of manufacture of goods, which does not imply that any stock records are not being maintained, but only that the stock records on the computer are being relied upon by the Assessee, and that the Assessee is not

maintaining any stock records for the various stages of manufacturing. However, as discussed in para 8.3 (ii), above, non maintenance of day to day production of different categories of Cutlery or Utensils was at best an issue which could have been investigated further if the Assessing Officer had any doubt regarding manipulations being done in inter se production of items. However, neither the Assessing Officer has done investigation in this regard, nor any doubt for any such manipulations have been expressed, and this issue has just been used as an excuse to brush aside the results on the basis of the books of accounts of the Assessee, without any evidence or material to the contrary.

8.6 Thus it is also seen from an analysis of para 5.1 of the Assessment Order and the statement of Sh. Javinder Singh, reproduced on page 3 to 5 of the Assessment Order that there is nothing for any adverse conclusion regarding the stock or the accounting by the Assessee.

8.7 In para 5.3 of the Assessment Order (reproduced above in para 6.9 of this order), the Assessing Officer has concluded that "the purchases of raw material and sale of finished goods cannot be said to be completely verifiable. " The Assessing Officer has come to this conclusion without any adverse inference or finding against the purchases of raw material and sale of finished goods by the Assessee. In fact there is no adverse evidence or material at all regarding the purchases or sales of the Assessee. The Assessing Officer has doubted the verifiability of the purchases and sales merely on the basis of his comments regarding the norms by the Central Excise Authorities, the method of accounting by the Assessee (including the non maintenance of stock records for different stages and categories of goods) and the survey conducted at the Assessee's premises in F.Y. 2010-11 (relevant to A.Y. 2011-12) and the statement of Sh. Javinder Singh (partner), which all have been discussed and analysed above, and it is clear that the Assessing Officer has not at all been able to bring anything on record from which adverse conclusion against the books of accounts of the

Assessee or the purchases, production or sales by the Assessee can be drawn.

8.8 The Assessing Officer further mentioned in para 5.3 of the assessment order that a fair estimate of production of goods, can be made on the basis of details of scrap generated as per the Assessee's records and keeping in view the norms of input/output laid down by the Central Excise Authorities. However, as already mentioned above in para 8.1, the norms give an indication of the input-output ratio expected in this line of trade; but they cannot be blindly followed for every Assessee. The results shown by any Assessee in the same line of trade can be compared with these norms and the books of accounts can be examined in case there is any deviation. However, even in the case of significant deviation from these norms, the income shown by any Assessee can be disturbed only after some evidence or material is found against the purchases, production or sales, or accounting by the Assessee. These norms, though they may be useful to restrict fiscal benefits by the Central Excise Authorities, cannot be used to reject the books of accounts of the Assessee, and to substitute the income as per the books of accounts, by the income estimated by the Assessing Officer, using these norms, without any adverse evidence or material at all. The Assessing Officer has proceeded in para 5.4 and para 5.5 of the Assessment Order to estimate and enhance the purchases and sales and income of the Assessee on the basis of these norms, without any adverse evidence or material against the purchases, production or sales of the Assessee, and has enhanced the Gross Profit by estimate by an amount of Rs.53,65,284/- to the total income of the Assessee. It is obvious that this action of the Assessing Officer cannot be sustained as there is no evidence or material against the purchases, production or sales by the Assessee; and also the comments of the Assessing Officer regarding the above norms, the accounting by the Assessee, and the survey and statement in F.Y. 2010-11, discussed in the Assessment Order, have all been analysed above and seen to conclude nothing adverse against the Assessee. Further, it is also seen that the Assessing Officer has substituted his own estimate for the income computed on

the basis of books of accounts of the Assessee, without even rejecting the books of accounts or invoking the provisions of section 145(3). It has already been discussed above that there was no evidence or material to reject the books of accounts of the Assessee.

*8.9 In view of the above, the addition of Rs.53,65,284/- to the income on the basis of enhancement of Gross Profit of the Assessee, cannot be sustained, and is hereby deleted.
(Deleted: Rs.53,65,284/-)”*

14. For assessment year 2009-10 also, a similar reasoning and detailed discussion is found on pages 3 to 18 of the impugned order. In view of the detailed analysis and adjudication of the Ld. CIT (A) and also in view of the fact that the Department could not negate the findings of the Ld. CIT (A) on the issue before us also, we find no reason to interfere and we accordingly dismiss ground nos. 1 and 2 in I.T.A. No. 4746 and ground no. 2 and 3 in I.T.A. No. 4747 and uphold the findings of the Ld. CIT (A).

15. As far as the issue of capital gains is concerned it is again seen that the Ld. CIT (A) has arrived at a reasoned conclusion after a detailed discussion which is found in paras 13.1 to 13.9 of the impugned order. The relevant paragraphs are being reproduced here for a ready reference:-

“13.1 As against income from Capital Gains on sale of factory being disclosed at Nil by the Assessee in the return of income, the Assessing Officer has assessed the Long Term Capital Gains at Rs.33,65,983/- and the Short Term Capital Gains on sale of factory at Rs.76,44,306/-, against which the Assessee is in appeal as per Grounds of Appeal 1 (c) and 1 (d).

13.2 The Assessing Officer has applied an ad-hoc system of bifurcation of the sale consideration between the Land and Building and has taken the total area of land and added to it the total covered area and has arrived at the total of 2S25.9946 sq. yard, from which the surplus has been allocated by the Assessing Officer. This is not at all a proper method for apportionment of the value between Land and Building and cannot be accepted particularly when there are alternate and logical methods available for the valuation. In fact the DM/DC/Collector of each District declares the Circle Rates and even if no other rates are available, at least the Circle Rates declared by the Collector of the District can be used for valuation rather than valuation on the basis of ad-hoc methods such as that applied by the Assessing Officer. The Assessee informed that the Circle Rates for Industrial Plot in Kundli, Sonapat was Rs.9,000/- per sq. yard. The Joint Commissioner of Income Tax, Sonapat, Haryana was required to collect the information regarding the prescribed rates/ circle rates / minimum rates for registration of properties in Sonapat during the Financial Year 2007-08, particularly as on 28.11.2007 (date of sale of factory), for the following:-

- 1. HSIDC Industrial Estate, Kundli, Sonapat (for industrial plot)*
- 2. Constructed Area in Industrial Plot (if any)*

The office of the Joint Commissioner of Income Tax, Sonapat Range, Sonapat vide their letter dated 04.05.12 have enclosed the collector rate of HSIDC, Kundli for the period 2007-08 as received from Sub Registrar Sonapat, as per which the rate for HSIDC Industrial Plot, Kundli is Rs.9,000/- per sq. yard. The letter dated 04.05.2012 also informs that no rate for constructed plot is prescribed by the local authority.

13.3 As the minimum rates for industrial plot in HSIDC Kundli have been fixed at Rs.9,000/- per sq. yard, there is no logic in taking the value of land as on date of sale at a much lower rate, which has been done by the Assessing Officer on an ad-hoc basis without any proper justification. It has been informed from the

office of JCIT Sonepat Range that no rate has been prescribed for the constructed plot. In normal situations the value of land appreciates whereas the value of the construction upon it depreciates. Hence, the best option is to take the minimum prescribed rates for industrial land and after determining the value of the land the balance can be apportioned to the construction. It is well known that in cases where the property includes both Land and Building, normally it is the land whose value appreciates and hence the primary focus has to be on the valuation of the land and only secondarily on the construction which stands upon it, unless there is some special feature in the construction due to which there is deviation from this common situation. There is nothing to show that the construction upon the land was the real reason for appreciation in value and not the land itself. Accordingly, the value attributed to the land is worked out at Rs. 1,07,64,000/- (1196 sq. yards X Rs.9,000/-). Since the entire consideration is Rs. 1,51,65,000/- and the minimum valuation of land works out to Rs. 1,07,64,000/-, the balance left for apportionment to building and other depreciable assets is Rs.44,01,000/-. The Ld. Counsel of the Assessee submitted that the Assessing Officer has not allowed the deduction for cost of acquisition for building and other assets whose WDV should be taken at Rs.49,64,855/-.

13.4 As per the ordersheet entry dated 26.04.\2 the Assessee was required to explain as to why the Long Term Capital Gain be not adopted at Rs.86,41,522/- and the Short Term Capital Gain on sale of factory be taken at Rs.5,63,855/- (Loss). Since an enhancement was proposed in the Long Term Capital Gain assessed by the Assessing Officer, who assessed it at Rs.33,65,983/-, the Assessee was informed that this may be treated as opportunity u/s 251(2) of the I.T. Act for showing cause against enhancement of income from Long Term Capital Gain. The relevant ordersheet entry dated 26.04A2 is as under:-

“It is seen that the AO has applied an ad-hoc system of bifurcation of Sale Consideration between Land and Building on a Area Proportionate basis and has not at all allowed deduction on account of Cost of Acquisition while computing Short Term Capital Gain. Ld. Counsel has submitted that when the Circle Rate for land is available at Rs.9,000/- per sq. yard for industrial land at HSIDC, Kundli, only that rate can be applied by the AO for

calculating the Sale Consideration for land and the remaining consideration is to go towards Building etc.

However, it is observed that applying a rate of Rs.9,000/- per square yard for land, the Sale Consideration allowable to land works out to Rs. 1,07,64,000/-. As against this, AO has adopted a figure of Rs.56,08,969/- and worked out Long Term Capital Gain at Rs.33,65,983/-. The Counsel for the Assessee in his submission dated 24.02.12, has worked out the Long Term Capital Gain at Rs.85,21,013/- taking Sale Consideration of land at Rs. 1,07,64,000/- and Cost of Acquisition of land at Rs. 18,19,628/-, which after indexation has been taken at Rs.22,42,986/-. Perusal of the Purchase Deed reveals that the land was purchased for Rs. 14,35,200/- (on 12.9.2002) and Stamp Duty of Rs.2,76,250/- was paid for both Land & Building (purchased for Rs.7,74,000/-). Thus the Stamp Duty paid for land on a proportionate basis works out to only Rs. 1,79,397/- (as the cost of land is 64.94% of total Purchase Consideration).

After applying indexation, the Cost of Acquisition of land works out to Rs.21,22,478/-, as under:

(Rs. 14,35,200/-	Purchase Consideration
Rs. 1,07,268/-	Payment to HSIDC for Land Transfer (for Plot)
<u>Rs. 1,79,397/-</u>	Stamp Duty Cost for Land.
<u>Rs. 17,21,865/-</u>	$x \frac{551}{100} = \text{Rs.}21,22,478/-$.

447

Please explain why the Long Term Capital Gain for land be not adopted at Rs.86,41,522/- (Rs. 1,07,64,000 - Rs.21,22,478); as against Rs.33,65,983/- taken by the A.O.; shown at Rs.79,57,158/- in computation of income by Assessee, and reduced to Nil, claiming exemption u/s 54G; and worked out at Rs.85,21,013/- in the written submissions dated 24.02.12. This may be treated as an opportunity u/s 251(2) of the I.T. Act for showing cause against enhancement of Income from Long Term Capital Gain.

The Ld. Counsel has admitted that the Assessee has not raised any ground for exemption u/s 54G.

For Short Term Capital Gain after taking the Circle

Rate for Land at Rs. 1,07,64,000/- the Balance left for apportionment to Building & other Depreciable Assets is Rs.44,01,000/-. The Ld. \ Counsel has submitted that the AO has not allowed the deduction for Cost of acquisition for Building, whose WDV should be taken at Rs.49,64,855/- to work out the Short Term Capital Gain / Loss at Rs.5,63,855/- (Loss). To submit evidence for WDV claim.”

13.5 *In the reply dated 03.05.2012, the Ld. Counsel has by and large admitted the working by the undersigned but has claimed that if the proportionate Stamp Duty amount is taken out from the cost of acquisition in respect of land, then the same amount deserves to be apportioned towards the cost of acquisition in respect of building. However, the WDV of the building and other assets claimed at Rs.49,64,855/- already include this amount and hence no further allowance can be made. Further, in the reply dated 19.06.2012 the Assessee has claimed that the WDV of building and other assets was claimed at Rs.41,92,079.67/-, which is taken from the details of fixed assets as on 31.03.2008 (forming part of Annual Audited Accounts for F.Y. 2007-08), which was available with the AO during the course of assessment proceedings. The Assessing Officer has noted in Para 7 of the Assessment Order that as per the Purchase Deed dated 12.09.2002, the covered area measured 6750 sq. feet which is a fact, but has failed to take into account the fact that the Sale Deed dated 28.11.2007 mentions the covered area as 14669.50 sq. feet on Page 3 of that Sale Deed. Further, from Para 8 of the Assessment Order, it is seen that the WDV of Buildings is at Rs.22,80,155/-, Security Deposit is for Rs.7,72,775/- and the WDV of other items is Rs.19,11,925/- (Other items after inclusion of Security Deposit add upto Rs.26,84,700/-). These items are in addition to the land transferred. The Assessing Officer has taken into account the WDV of other items at Rs.19,11,925/- and has rejected the claim of the Assessee regarding Security Deposit of Rs.7,72,775/-, but has failed to take into account the WDV of Building which is seen to be Rs.22,80,155/- from Para 8 of the Assessment Order, without any discussion or mentioning any reason, and hence the exclusion of WDV of Building amounting to Rs.20,80,155/- cannot be accepted and has to be included in the WDV for calculation of Capital Gain.*

13.6 *Regarding the Security Deposit, the Assessing Officer has mentioned in Para 8.2 of the Assessment Order that “there is no*

specific mention in the Sale Deed regarding the relevant Security Deposit having being transferred in the name of the purchaser". Regarding the security deposit amount, it has been claimed by the Assessee that the Assessee had been having security deposit of Rs.7,72,775/- for power connection installed in its factory building located at Kundli, and that during the year under consideration, the said amount of Rs.7,72,775/- had been transferred to Factory Building (Kundli) Account. Perusal of the copy of Balance Sheet of M/s Bharat Exports as on 31.03.2007 shows that as per Annexure IX, the security deposit for Rs.7,72,775/- appeared under the head Electric UHBVNL 89-Kur, which does not appear in the Balance Sheet (Annexure IX) of M/s Bharat Exports as on 31.03.2008. The Counsel has also drawn attention to the sale deed dated 28.11.2007 in which it has been mentioned that the sale includes the electrical connection and security deposit also. Perusal of the sale deed dated 28.11.2007 shows that it is mentioned on page 3 that the sale is towards the industrial plot of 1196 sq. yards alongwith 14,669.50 sq ft. covered area alongwith connection and fittings for bijli (electricity), pani, severage etc. alongwith boundry wall, main gate etc. Page 4 of the sale deed mentions that the seller has no objection to the purchaser getting the owners names changed for the property and also the connection for bijli, pani, severage etc. Thus it is quite clear that the electricity connection for the factory alongwith the security deposit of Rs.7,72,775/- has also been transferred alongwith the factory, and has to be taken alongwith the WDV for the Building and other assets. Thus the claim of the Assessing Officer in Para 8.2 of the Assessment Order that there is no specific mention in the Sale Deed regarding the transfer of the relevant Security Deposit to the purchaser is not correct. Further in the same Para 8.2 the Assessing Officer has further claimed that "the very nature of the item is such that the same cannot be allowed as cost of acquisition of the factory or improvement to the same". This assertion of the Assessing Officer is again without any basis and cannot be accepted. Thus the WDV for the Building and other assets (other than Land) has to be taken at Rs.49,64,855/- (22,80,155 + 19,11,925 + 7,72,775).

13.7 Taking into account the above discussion, the Long Term Capital Gain and Short Term Capital Gain on sale of factory is worked out as under:-

13.7 Long Term Capital Gain

The Long Term Capital Gain on transfer on land is worked but at Rs.86,41,522/- as under:-

*Value of Industrial Land (1196 sq. yards @ Rs.9,000/-:
1,07,64,000/-*

After applying indexation, the Cost of Acquisition of land works out to Rs.21,22,478/-, as under:

Rs.14,35,200/- Purchase Consideration

Rs. 1,07,268/- Payment to HSIDC for Land Transfer (for Plot)

Rs. 1,79,397/- Stamp Duty Cost for Land.

$$\underline{\text{Rs. 17.21.865/-}} \times \frac{551}{447} = \text{Rs.21,22,478/-}.$$

Long Term Capital Gain on Land = Rs.86,41,522/- (1,07,64,000 - 21,22,478).

Short Term Capital Gain (Loss)

The Short Term Loss on transfer of Building and other assets is worked out at Rs.5,63,855/- (Loss) as undervalue of Building and other assets (Rs. 1,51,65,000 - 1,07,64,000) = 44,01,000/-.

WDV of Building and other assets (Rs.41,92,079.67 + Rs.7,72,775) = Rs.49,64,855/-.

Short Term Capital Gain (Loss) on Building and other assets = Rs.5,63,855/- (Loss) (Rs.44,01,000 - Rs.49,64,855).

13.8 The Long Term Capital Gain on Land is to be taken as Rs.86,41,522/- and the Short Term Capital Gain (Loss) on Building and other assets is to be taken as Rs.5,63,855/- (Loss). As already discussed above in Para 11.2, the Assessee is not entitled for any exemption u/s 54G of the I.T. Act, 1961. Thus there is enhancement in the Long Term Capital Gain which was taken at Rs.33,65,983/- by the Assessing Officer, by Rs.52,75,539/- and relief in the Short Term Capital Gain which was taken at Rs.76,44,306/- by the Assessing Officer, by Rs.82,08,161/-. The Capital Gains on sale of factory are worked out at Rs.80,77,667/- (Rs.86,41,522 - Rs.5,63,855). This is in addition to the Short Term Capital Gain of Rs.57,357/- mentioned by the Assessing Officer on page 11 of the Assessment Order.

13.9 Here, it is worth mention that it was held by the Hon'ble ITAT

Delhi in the case of Honda Siel Cars India Ltd. Vs. ACIT 109 ITD 1, that no statutory notice is prescribed u/s 251(2) for enhancement of income and that if the Assessee is made aware of the proposed enhancement and the explanation obtained during the course of hearing and considered, then the enhancement is proper. In the present case the Assessee was made aware of the proposed enhancement in the Long Term Capital Gain on Land through ordersheet entry and the explanation of the Assessee was obtained and considered.

(Enhancement in LTCG by Rs.52,75,539/-; Relief in STCG, Rs.82,08,161/-).

16. On this issue also, the Department could not support its challenge before us by any cogent reason or evidence so as to negate the findings of the Ld. CIT(A) and hence in view of the reasoning/calculation adopted by the Ld. CIT(A), we have no hesitation in upholding his action. We accordingly dismiss ground nos. 3, 4 & 5 in I.T.A. No. 4747.

27. In the result, both the appeals of the Department are dismissed.

Order pronounced in the Open Court on 18.05.2016.

Sd/-

**(S.V. MEHROTRA)
ACCOUNTANT MEMBER**

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: the 18th of May, 2016

‘GS’

I.T.A. Nos. 4747 & 4746/D/2012
Assessment Years 2008-09, 09-10

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT 4. CIT(A)
4. DR, ITAT

By Order

ASSTT. REGISTRAR