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

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 515/JP/15
निर्धारण वर्ष/Assessment Year : 2008-09

Shri Lalchand Meena S/o Pratap Meena, Village- Dhamsiya, via Kukas Tehsil Amer, Jaipur	बनाम Vs.	The ITO Ward 7(3), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. ANPPM 0169 E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितीकी ओर से/Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से/Revenue by : Shri Rajendra Singh (Addl.CIT)

सुनवाई की तारीख/Date of Hearing : 28.03.2017
घोषणा की तारीख/Date of Pronouncement: 27.06.2017.

आदेश/ORDER

PER SHRI VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of ld. CIT (A) -3, Jaipur dated 8.01.2015 wherein the assessee has taken following grounds of appeal;

"(1) The ld. CIT(A) has erred on facts and in law in confirming the action of the AO in making addition of Rs. 72,49,655/- on account of short term capital gain by:

(a) holding that when a capital assets has been genuinely transferred as per the provisions of section 45(3) of the Act as capital contribution to the firm, then the same capital assets cannot be transferred subsequently by way of any other mode and therefore, the transfer of land as capital contribution is not genuine more particularly

when the firm existed only on papers and no business is carried out by firm.

(b) holding that the capital gain is liable to be taxed in the year under consideration on execution of the sale deed and not in A.Y. 06-07 when the assessee contributed the land to the partnership firm M/s Crystal Park Resorts.

(c) not considering and deciding the various contentions raised by the assessee regarding non chargeability of capital gain on the facts and circumstances of the case.

2. The ld. CIT(A) has erred on facts and in law in confirming the addition of Rs. 1,29,385/- u/s 69C by holding that expenditure incurred for obtaining the JDA patta and on payment of lease money was required to be incurred by the assessee and not by the firm and even from the firms account, the source of such amount is not explained.

3. The ld. CIT(A) has erred on fact and in law in confirming the action of AO in treating the agricultural income of Rs. 60,000/- declared by the assessee as income from other sources."

2. In respect of ground no. 1, the brief facts of the case are that the Assessing officer, based on information available on AST system, observed that the assessee was in receipt of sale consideration of Rs.1,73,45,452/- on account of sale of the land situated in village Harwar, Tehsil Amer on 31-03-2007 and assessee has not filed any income tax return. Accordingly, notice u/s 148 was issued and served on the assessee on 4-03-2013. In response to the same, assessee filed his return of income on 8-04-2013 declaring income of Rs.43,630/- besides agricultural income of Rs.60,000/-**.**In course of assessment proceedings, assessee submitted that he, along with Sh. Mukesh Meena constituted a partnership firm in the name and style of M/s Crystal Park Resorts vide Partnership Deed dated 01.03.2006 to carry on the business of real estate, development of land, running of guest house, hotels, motels, resorts etc. and other tourism related activities in which the land purchased by them between 18.12.2004 to 24.02.2006 was contributed to the

firm at cost as their capital contribution. Thereafter, to have the land in the name of the firm in the revenue records, various formalities were undertaken by the assessee in his name and thereafter the sale deed was executed by the assessee in the name of the firm on 26.07.2007 which was registered on 31.07.2007. In this sale deed, the fact that the assessee has already transferred this land to the firm is specified and it is also clarified that the sale deed is executed only with the object of removing any legal doubts. Hence, there is no transaction under the Income Tax act, 1961 in the year under consideration as land already stood transferred in AY 2006-07. The AO didn't agree with the contentions of the assessee and considered the date of transfer of land as 31.07.2007, adopting the sales consideration u/s 50C at Rs. 1,73,45,452/- and the assessee's share in the land at two third as per the partnership deed worked out the assessee's share in the sale consideration at Rs. 1,15,63,635/- and after reducing the cost of purchase at Rs. 63,62,450/-, computed the short term capital gain of Rs.72,49,655/- which was added to the income of the assessee.

3. Being aggrieved, the assessee carried the matter in appeal before the ld CIT(A) who confirmed the action of the AO and his findings which are under challenge before us are as under:

> *"On careful consideration of all relevant facts it may be noted that as per provisions of section 45(3) the profit or gain arising from transfer for a capital asset by a person to a firm by way of capital contribution would be treated to be a transfer for the purpose of sec. 48 of IT Act and the amount recorded in the books of accounts shall be deemed to the full value of consideration for such transfer of capital asset. However when a capital asset has been genuinely transferred as per provisions of section 45(3) of IT Act then the same capital asset cannot be transferred subsequently by way of any other mode. The very fact that*

subsequent to such transfer on 01.03.2006 as per provisions of section 45(3), the assessee has transferred /sold the land on 31.07.2007 by way of registered sale deed itself indicated that the earlier transactions dated 01.03.2006 showing the transfer of land as capital contribution were not genuine. There is no dispute on the fact that subsequent to such alleged transfer dated 01.03.2006, the assessee has filed an affidavit before the JDA claiming absolute ownership on the land. The facts also indicate that the earlier transfer was not genuine as if the earlier transfer was genuine no absolute ownership can be claimed. Moreover in the sale deed dated 31.07.2007 the assessee has again claimed complete ownership and rights on such land and the facts stated in the sale deed dated 31.07.2007 can not believed to be incorrect or false. It may also be noted that though the transfer of land to the firm is shown and returns of income of this firm are also filed but the fact is that such firm existed only on papers and no business was carried out by the firm. The documents filed by the appellant indicate that the assessee entered into the partnership firm as a partner by showing capital contribution by way of transfer of land but in a very short period by 19.01.2007 the assessee has received back an amount of Rs. 50,00,000/- from the firm, against the capital contribution of Rs. 63,64,983/-. These facts indicating that the firm was created just to show the transfer of land to the firm and to avoid proper capital gain liability as per provisions of sec. 50C. The above facts also indicate that both the partners i.e. assessee and Shri Mukesh Kumar Meena who were original partners to the firm never genuinely intended to carry out any business. Keeping in view these facts the AO has rightly treated the transfer of land as on 31.07.2007 by way of sale deed to be a transfer within the meaning of section 2(47) and rightly taxed the capital gain arising in the hands of the appellant as per provisions of section 50C of IT Act, accordingly the addition made by the AO amounting to Rs. 7249655/- on account of short term capital gains is confirmed. The ground of appeal is dismissed."

4. The dispute relates to how would transfer of land, by an individual to the partnership firm where he becomes a partner, be taxed. Whether it should be taxed under the provisions of section 45(3) i.e. when the assessee,by virtue of entering into a partnership deed, transferred his land to the partnership firm namely M/s Crystal Park Resorts by way of his capital contribution which were duly recorded in the books of the partnership. Alternatively, whether it should be taxed in accordance with the provisions of section 50C when conveyance deed was subsequently executed, duly registered with the stamp duty authorities and stamp duty duly paid i.e, when the land was sold through registered sale deed dated 31.07.2007 by the assessee alongwith Shri Mukesh Kumar Meena to M/s Crystal Park Resorts. Secondly, once a land is deemed to be transferred to the firm by way of capital contribution by a partner u/s 45(3) of the Income Tax Act, 1961, whether the subsequent registration of such land in the name of the firm in the revenue records could lead to a conclusion that earlier transfer was non-genuine and the earlier transaction should be disregarded.

5. During the course of hearing, the AR submitted that to decide the issues under consideration, what is relevant is the definition of transfer under the Income Tax Act, 1961 and not under the Transfer of Properties Act, 1882 or under any other law for the time being in force. In this regard, it was submitted as under:-

(a) Section 2(47) of the Income tax Act, 1961 defines transfer. As per clause (vi) of this section, transfer in relation to a capital assets includes any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of person or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment, of any immovable property. Further section 45(3) of The Income Tax Act, 1961 provides that 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.

(b) From the combined reading of the section 2(47) read with section 45(3), it is clear that when a capital asset owned by a partner is contributed to the firm, there is transfer in the previous year in which such capital asset is contributed in the firm and for the purpose of computation of capital gain, the amount recorded in the books of the firm as the value of the capital assets is deemed to be the full value of consideration.

(c) In the present case, the partner Shri Lal Chand Meena has contributed the land owned by him to the firm on 01.03.2006 on entering the partnership with Sh. Mukesh Meena. Both the partners contributed their land to the firm at cost. Thus, there is a transfer of land by the partners to the firm in assessment year 2006-07 and therefore at this recorded value only the capital gain is chargeable to tax in the hands of the partner in that assessment year. Therefore, no capital gain can be charged on the basis of sale deed executed by the partner in favour of the firm on 26.07.2007 falling in AY 2008-09 in as much as the transfer of land by the partner to the firm under the Income Tax Act is completed in AY 2006-07 and not in AY 2008-09.

(d) It is a settled law that the meaning of word defined in the Act should prevail throughout. Where the statue defined a particular word, the same should, unless the context otherwise requires, be construed in the same manner and be given the same meaning [209 ITR 824(Pat)]. The meaning given in any other law cannot be imported in defining that expression under the Income Tax Act. Therefore once there is a definition of transfer under the Income Tax Act and also the mechanism of computation of capital gain on such transfer is prescribed, the reference to any other Act cannot be made for ascertaining meaning of transfer. Therefore only because a sale deed was executed by the partner in respect of capital assets already contributed by them to the firm, at subsequent point of time, it would not mean that the year of transfer would be shifted from the year of contribution to the year of execution of sale deed. Hence on the basis of sale deed executed by the partners in favour of the firm on 26.07.2007, no capital gain liability can be fastened on the partners in AY 2008-09. If the date of execution of sale deed is considered as date of transfer, section 2(47)(v)/(vi) as also sec. 45(3)/(4) would become otiose and in such cases no tax liability can be fastened on an assessee even when there is an agreement to sale coupled with the possession or enabling the enjoyment of such property to other person.

(e) The lower authorities have given much emphasis to the application/ affidavit/ samarpannama filed by both the partners to the JDA to presume that they were the owners of the land till the sale deed is executed by them in favour of firm. The emphasis so given is incorrect and without appreciating the entire facts on the records. In the sale deed at page 3 , it has been clearly mentioned that the said land was transferred by them to the firm and possession of the land was also given to the firm and only to remove any legal doubt, sale deed is being

executed by them in favour of the firm. All other document filed before the department also proves that the assessee has already contributed the land to the firm in A.Y. 2006-07. Therefore, it cannot be presumed that the assessee has transferred the land to the firm in the year under consideration and therefore no capital gain arises in the hands of the assessee in the year under consideration. Even after execution of sale deed, the JDA vide letter dated 13.12.2007 has intimated the firm that transfer of land in the name of the firm in its record is only for getting approval of map etc. and not in respect of legal ownership over the land.

(f) It may be noted that as per section 14 of Indian Partnership Act, 1932, the property of the firm includes all property and rights and interest in property originally brought into the stock of firm, or acquired, by purchase or otherwise, by or for the firm or for the purpose and in course of business of firm, and includes also the goodwill of the business. Therefore any individual property owned by a partner and contributed to the firm becomes the firm's property and individual does not remain the exclusive owner of such property. In case of Add.CIT Vs. Manjeet Engineering Industries [154 ITR 509] (Del.) and in case of CIT vs. A.V BhanojiRao [142 ITR 706] (AP) it is held that no particular mode or form is provided for bringing in a separate property into the stock of the firm by a partner and no deed whatsoever, registered or otherwise is required to be executed by the partner for doing so. It may be noted that after the land under consideration became the property of the firm, steps were taken by the firm to change the land use from agriculture to resorts in the revenue records to develop the resorts over this land. All the payment regarding conversion of land was made by the firm. Therefore, sale deed executed by the assessee on 31.07.2007 in favour

of the firm M/s Crystal Park Resorts is only to legalize the title of the land in the name of the firm in the revenue records.

(g) Under the Income tax Act, 1961, no tax can be imposed on a person unless the transaction falls in the four corners of taxability under the Act. In present case, AO has considered the date of execution of the sale deed as the date of transfer ignoring the fact that on the date the sale deed is executed, the assessee has no right or claim in the said land as the land become the property of the firm though held in the name of the partner. Therefore, on execution of the sale deed, in the facts of the case, there is no transfer of land by the assessee to the firm in AY 2008-09 under the provisions of The Income Tax Act, 1961 as the land already stood transferred to the firm in AY 2006-07. Hence, no capital gain is chargeable to tax u/s 45 of the Income tax Act in the year under consideration.

5.1 The AO for considering the date of transfer as 31.07.2007 has referred to the decision of Hon'ble Supreme Court reported in 340 ITR 1. This decision was given in context of The Transfer of Properties Act, 1882, Indian Stamp Act, 1899 and The Registration Act, 1908. In that context, it was held that the registered deed of conveyance is the only mode of legal transfer. This decision is not in context of the Income Tax Act, 1961 and therefore not applicable. In the present case, the partner of the firm only to give a legal title of the land owned by it, which is already contributed and transferred by them to the firm, has executed the sale deed so that the firm becomes the legal owner in the revenue records. However, this does not mean that under the Income Tax Act, 1961, the land is not transferred by the assessee to the firm on 01.03.2006 when he impressed upon his land to the firm as his capital contribution. Further the decision of Madras HC reported in 166 ITR 207 which pertains to AY 1976-77, where the High Court held that no transfer is involved in the conversion of individual property into the partnership property

but this case has no application after the insertion of clause (vi) to section 2(47) and section 45(3) by Finance Act, 1987 w.e.f. 01.04.1988.

5.2 The another objection made by the AO is that the transfer made by the assessee on 01.03.2006 is not valid in the eyes of law as a person belonging to the ST community cannot transfer an agriculture land to a person belonging to a non ST community. It may be noted that on 01.03.2006 when the partnership firm was constituted it comprised of two partners both of whom belonged to the ST community. Thus, there is a valid transfer of the land to the firm by the assessee. The assessee thereafter, on behalf of the firm changed the use of land from agriculture to commercial (resorts/hotels/motels) and after such conversion fresh lease deed was drawn on 13.07.2007. Thus before the sale deed was executed by the assessee to make the firm a legal owner in the revenue record, there was a valid transfer of the land owned by him to the firm on 01.03.2006. Further the observation of the AO that the transfer of land by assessee to the firm is not confirmed in the absence of filing return by the assessee for AY 2006-07 is irrelevant in as much as the firm has filed the return for AY 2006-07 on due date where this fact is disclosed. The assessee has not filed the return as his income was below the maximum amount chargeable to tax and he has no capital gain tax liability as the contribution of land by him to the firm was at cost.

5.3 The AO has also made an allegation that the transaction between the assessee and the firm on the basis of partnership deed dated 01.03.2006 is sham and not genuine. Such allegation of the AO is baseless and without any substance. The Supreme Court in McDowell's case 154 ITR 148 relied by the AO has held that tax planning is legitimate provided that it is within the framework of law. Again the SC in case of Azadi Bachao Andolan 263 ITR 706 after considering the McDowell's case held that one could not accept the

submission that an act which is otherwise valid in law can be treated non est merely on the basis of some underlined motive supposedly resulting in some economic detriment or prejudice to the national interest. Again the SC in case of Vodafone International Holdings BV Vs. UOI 341 ITR 1 has held that the legal fiction cannot be expanded by interpretation, particularly if such interpretation transforms concept of chargeability. It is the task of the court to ascertain the legal nature of the transaction and by doing so it has to look at the entire transaction as whole and not adopt a dissecting approach. The burden is on the revenue to show that a transaction has been effected to achieve a fraudulent, dishonest purpose, so as to defeat the law. In view of these decisions, the contribution of land by assessee to the partnership firm as his capital contribution in terms of section 45(3) of The Income Tax Act, 1961 cannot be regarded as a sham and non-genuine transaction.

5.4 Otherwise also, section 50C is a deeming section to provide that for the purpose of section 48 the value assessed/adopted by stamp duty authorities on transfer of a capital asset being land or building would be regarded as full value of consideration. Simultaneously section 45(3) is also a deeming section to provide that where a person transfer his capital asset to the firm in which he becomes a partner as capital contribution, for the purpose of section 48, the amount recorded in the books of the firm shall be deemed to be the full value of the consideration. Section 50C does not override section 45(3). Therefore, in the present case deeming fiction of section 45(3) which is more specific to the assessee's case is applicable and not the deeming fiction of 50C. In view of this legal proposition also no capital gain can be assessed in the hands of the assessee by substituting the amount recorded in the books of the firm by the value adopted by the Stamp Duty authorities for the purpose of levy of the stamp duty.

5.5 The Ld. CIT(A) wrongly presumed that transaction dated 1.03.2006 showing the transfer of land as capital contribution is not genuine as had it been a genuine transfer u/s 45(3), then the same capital asset cannot be transferred subsequently by way of any other mode. In holding so, he ignored that under the Income Tax Act, 1961, there is no restriction that once a immovable property is contributed to the firm as capital contribution, resulting into a transfer, the sale deed for that property cannot be executed in the name of the firm. There is no material with the CIT(A) to conclude that the firm is not genuine and existed only on papers. The fact that the firm took steps to change the use of land from agricultural to resorts in the revenue records and that the JDA vide letter dated 13.12.2007 has also recognized the transfer of land in the name of the firm shows that the firm is genuine and is existing not only on paper but is genuinely constituted to carry on the business of real estate, development of land, running of guest houses, hotels, motels and resorts, etc & other tourism related activities.

In view of above and the specific definition of transfer given in section 2(47) read with section 45(3), no capital gain can be assessed in the hands of the assessee and therefore the addition made by the AO and confirmed by the Ld. CIT(A) be deleted.

6. The ld DR vehemently argued the matter and relied on the order of the lower authorities. He submitted that subsequent to formation of partnership firm and transfer of land, the assessee alongwith Shri Mukesh Kumar Meena filed an application u/s 90B of Rajasthan Revenue Act alongwith affidavit and indemnity Bond before the Jaipur Development Authority (JDA) claiming absolute ownership on such land and further by way of sale deed dated 31.07.2007sold the land to M/s Crystal Park Resorts for a sale consideration of Rs. 7244987/- having market value of Rs. 17354452/-. Accordingly as per

AO the real transfer of land for levy of capital gain was on 31.07.2007 when the land was sold for sale consideration of Rs.7244987/-. As per AO if the land has genuinely been transferred to the firm on 01.03.2006 then the assessee would not have been owner of the land subsequent to such transfer and the fact that the assessee has filed an affidavit showing the absolute ownership subsequent to 01.03.2006 on such land itself indicated that the earlier transfer of land to the firm was not a genuine transfer and these transactions were sham transactions.

6.1 Further, he relied upon the decision of Lucknow Bench of ITAT in case of Carlton Hotel (P) ltd 35 SOT 26 (Luck) (URO) and submitted that where a capital asset is contributed by a partner to a firm u/s 45(3) but such capital asset is assessed at a higher value for stamp duty purchases u/s 50C, capital gain is to be calculated with reference to the value so assessed u/s 50C and not at the value recorded in the books of accounts u/s 45(3).

7. Regarding the above decision in case of Carlton Hotel (P) ltd referred by the ld. DR, the ld AR submitted that in the above judgment, the partner contributed the capital asset as his capital contribution on 01.03.2004 falling in A.Y. 2004-05 at recorded value of Rs. 7.82 crores and the AO however worked out the capital gain u/s 50C by considering the assessable value. In these facts, the Hon'ble ITAT held that there is transfer u/s 45(3) in A.Y. 04-05 but as there is no registration of transfer under the Registration Act and no stamp duty has been paid, sec. 50C cannot be invoked and thus appeal is allowed in favour of the assessee. In course of this judgment, Hon'ble ITAT in para 23 held that where a transfer covered u/s 45(3) is sought to be registered by thefirm and the stamp duty is paid, then, provision of sec. 50C could be invoked even if the case is covered u/s 45(3).

7.1 In the case of the assessee, the land was contributed by him to the firm on 01.03.2006 falling in A.Y. 06-07. Thus, there is a transfer u/s 45(3) in A.Y. 06-07 itself. In this year, there is no registration of transfer under the Registration Act and no stamp duty was paid. Therefore, the subsequent registration in A.Y. 08-09 would not shift the date of transfer and therefore even as per the above decision, there is no liability of capital gain in the hands of the assessee in A. Y. 08-09.

7.2 It was further submitted it is a well-known rule of interpretation that in a case where a general as well as a specific section is applicable, the specific provision will overrule the general provision. Examining the facts of the case with this rule, section 45(3) or sec. 50C, whichever is the specific provision, should overrule the other section. Though, in the case of Carlton Hotel (P.) Ltd. Vs. ACIT (2010) 35 SOT 26 (Luck.) (Trib.), it was held that section 45(3) is a general provision and section 50C is a specific provision, however, this is an erroneous conclusion. While section 50C is specific to a class of asset (land and building), section 45(3), though is general as far as the class of assets is concerned, it is specific to a category of transition (contribution of capital by partner to a firm). Therefore, when sec. 45(3) covers specific category of transaction, Sec. 50C which is for specific class of asset, cannot override sec. 45(3). This aspect is not considered in the said decision.

7.3 Section 45(3) was introduced in 1987, with the objective to overrule the Supreme Court decision in Sunil Siddharthbhai vs. CIT 156 ITR 0509, which stated that since it was impossible to evaluate the consideration acquired by the partner when he brings his personal asset in the partnership firm as contribution to capital, they are unable to calculate the capital gain and tax the same. Section 45(3) states that the amount recorded in the books of accounts of the firm as the value of capital asset, i.e. the amount credited in

the partner's capital account shall be deemed to be the value of consideration received. Hence, as per section 45(3), capital gain should be charged on the difference between such value and the cost (in case of Short Term Capital Gain)/ indexed cost (in case of Long Term Capital Gain of such land to the partner.

7.4 Section 50C states that where the consideration received or accrued as a result of transfer of a land or building or both is less than the value adopted or assessed or assessable for the purpose of Stamp Duty (Stamp Duty Valuation), then the Stamp Duty Valuation will be deemed to be the full value of consideration received/accrued for the purpose of calculating capital gain tax. Section 50C was introduced to deal with the unaccounted money generated by under-reporting of sale price.

7.5 Thus, section 50C was introduced to deal with unaccounted money generated by underreporting of the sale price. In sec. 45(3), where a partner contributed his capital asset to the firm, the amount recorded in the books is deemed to be the fall value of consideration received or accruing as a result of the transfer. Therefore, question of generation of unaccounted money by underreporting of sale price do not arise for consideration. Hence, considering the legislative intent of section 45(3) vis-a-vis sec. 50C, it is incorrect to held that sec. 50C would override section 45(3).

7.6 It is further submitted that by Finance Bill, 2016, Sec. 50C is proposed to be amended w.e.f. 01.04.2017 to provide that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of

consideration for such transfer. In this case, the amount of consideration was determined on 01.03.2006 and therefore the value adopted or assessed on this date can only be taken as full value of consideration even u/s 50C. this amendment being a beneficial amendment to avoid unintended hardship has to be given a retrospective effect as held by Supreme court in case of CIT Vs. Vatika Township Pvt. Ltd. 367 ITR 466 wherein in 33 of this order it was held that legislations which modify accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect. However, if legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally and where to confer such benefit appears to have been the legislators object, then the presumption would be that such legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. In view of above discussion, the addition made by AO and confirmed by the Ld. CIT(A) on account of LTCG in the hands of the assessee for A.Y. 08-09 is not as per law and the same be deleted.

8. We have heard the rival contentions and perused the material available on record. There is no dispute on the fact that the assessee alongwith Shri Mukesh Kumar Meena has constituted a partnership firm on 01.03.006 in the name and style of M/s Crystal Park Resorts in which the assessee contributed land measuring 2.13 hectares as capital contribution at the cost of Rs.63,62,450/-. There is also no dispute on the fact that a part of the land costing Rs 43,13,980 so contributed as capital contribution in the partnership firm was subsequently registered in the name of M/s Crystal Park Resortsthrough sale deed dated 26.07.2007 registered on 31.07.2007 for sale consideration of Rs. 43,13,980 equivalent to cost to the assessee and the value as reflected as capital contribution in the books of the partnership firm.

It is also not in dispute that total sale consideration in the sale deed has been mentioned as Rs 72,44,987 which relates to land belonging to the assessee and Shri Mukesh Kumar Meena and the market value for stamp duty purposes has been determined at Rs. 1,73,54,452/- and which has been considered by the AO for the purposes of invoking section 50C to the extent of Rs. 1,15,63,635/- towards assessee's share in the sale consideration.

9. Firstly, it would be relevant to refer to the provisions of section 2(47) of the Act where the transfer of capital asset has been given a wider meaning including but not limited to transfer by way of executing a registered conveyance deed. It reads as under:

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

(i) the sale, exchange or relinquishment of the asset ; or

(ii) the extinguishment of any rights therein; or

(iii) the compulsory acquisition thereof under any law ; or

(iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment ;or

(iva) the maturity or redemption of a zero coupon bond; or]

(v) 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 53A of the Transfer of Property Act, 1882 (4 of 1882) ; or

(vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any

immovable property.

Explanation 1.—For the purposes of sub-clauses (v) and (vi), "immovable property" shall have the same meaning as in clause (d) of section 269UA.

Explanation 2.—For the removal of doubts, it is hereby clarified that "transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India.

10. Now we refer to the provisions of section 45(3) of the Act which have been specifically brought on the statue book to bring to tax these type of transactions where a partner brings in his capital asset and contribute the same as his share in the capital of the partnership firm. The sub-section (3) to section 45 which was inserted by the Finance Act 1987 w.e.f. 01.04.1988 reads as under:-

"(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."

11. The object and intent of the legislature behind introduction of these provisions have been explained by way of CBDT Circular no. 49 dated 22.09.1987 as under:-

"24.1 One of the devices used by assessee to evade tax on capital gains is to convert an asset held individually into an asset of the firm in which the individual is a partner. The decision of the Supreme Court in Kartikeya V. Sarabhai V. CIT [1985] 156 ITR 509 has set at rest the controversy as to whether such a conversion amounts to transfer. The Court held that such conversion fell outside the scope of capital gain taxation. The rationale advanced by the Court is that the consideration for the transfer of the personal asset is indeterminate, being the right which arises or accrues to the partner during the subsistence of the partnership to get his share of the profits from time to time and on dissolution of the partnership to get his share of the profits from time to time and on dissolution of the partnership to get the value of his share from the net partnership assets.

24.2 With a view to blocking this escape route for avoiding capital gains tax, the Finance Act, 1987 has inserted new sub-section (3) in section 45. The effect of this amendment is that profits and gains arising from the transfer of a capital asset by a partner to a firm shall be chargeable as the partner's income of the previous year in which the transfer took place. For purposes of computing the capital gains, the value of the asset recorded in the books of the firm on the date of the transfer shall be deemed to be the full value of the consideration received or accrued as a result of the transfer of the capital asset."

12. On reading of above referred provisions, it is clear that the profits or gains arising from the transfer of a capital asset by a person to a firm in which

he becomes a partner, by way of capital contribution, shall be chargeable to tax as his income of the previous year in which such transfer takes place. In other words, the year in which the asset is transferred by way of capital contribution shall be the year of transfer which shall be considered for the purposes of determining the taxability of such transaction. In the instant case, the land has been transferred by the assessee by way of his share of capital contribution in the firm on 1.3.2006 falling in the financial year 2005-06 relevant to assessment year 2006-07. Accordingly, the taxability arising on transfer of such land shall arise in the AY 2006-07. Further, the value at which such capital asset is recorded in the books of the firm on the date of the transfer shall be deemed to be the full value of the consideration received or accrued as a result of the transfer of the capital asset. In the instant case, the value so recorded in the books of the firm is Rs.63,62,450/- which is liable to tax in AY 2006-07 in the hands of the assessee, subject to necessary deductions in respect of cost of acquisition, etc.

13. Another related issue that arise for consideration is whether there is any specified mode of transfer of capital asset into the firm that has been prescribed under the provisions of the Act. In this regard, the ld AR has drawn our reference to the decision of Hon'ble Rajasthan High Court in case of CIT vs. Amber Corporation reported in 127 ITR 29, Hon'ble Delhi High Court in case of Add.CIT Vs. Manjeet Engineering Industries reported in 154 ITR 509 and Hon'ble Andhra Pradesh High Court in case of CIT vs. A.V BhanojiRao reported in 142 ITR 706 wherein it was held that no particular mode or form is provided for bringing in a separate property into the stock of the firm by a partner and no deed whatsoever, registered or otherwise is required to be executed by the partner for doing so. It would therefore be relevant to refer to these decisions as under:

13.1 In case of **CIT vs. Amber Corporation**, the Hon'ble Rajasthan High Court has held as under:

"Now remains question No. 1 for our determination. Mr. Mehta, learned counsel for the revenue, has contended that the transfer of the share by one of the partners in the firm consisted of an immovable property which under the Transfer of Property Act, being admittedly for a value more than Rs. 100, required registration. It is contended that in the absence of registration no such transfer could be given effect to, and the property known as Rambagh Palace cannot be considered to have been contributed towards the assets of the partnership in the absence of registration. It is, thus, contended that the question of depreciation on such property does not arise at all and the same cannot be taken into consideration. On the other hand, Mr. Gupta, learned counsel for the assessee, has contended that the transfer is not required to be registered under the Indian Registration Act. There was no provision under the Partnership Act or under the Indian Registration Act requiring such transfer to be registered. It was not a transfer at all under the provisions of the Transfer of Property Act. Reliance is placed on Firm Ram Sahay Mall Rameshwar Dayal v. Bishwanath Prasad, AIR 196,3 Pat 221, and Sudhansu Kanta v. Manindra Nath, AIR 1965 Pat 144.

Section 14 of the Indian Partnership Act reads as under:

"14. Subject to contract between the partners, the property of the firm includes all property and rights and interest in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm."

Thus, from the reading of the above provision it would be quite clear that all property and rights and interests which the partners may have brought into

the common stock as their contribution to the common business are parts of the; partnership property. Even if a property contributed by one partner be an immovable property, no document registered or otherwise, is required for transferring the property to the partnership. We are in agreement with the view taken by the Patna High Court. This court also, as already observed above, in CIT v. Amber Corporation [1974] 95 ITR 178 approved the above decision of the Patna High Court, though the point was not directly for decision before them. In the circumstances mentioned above, in our view, the question No. 1 is answered in the affirmative."

13.2 In case of **Add.CIT Vs. Manjeet Engineering Industries**, the Hon'ble Delhi High Court has held as under:

Whereas the Transfer of Property Act provides for different modes of transfer of property, it is not exhaustive of the modes of transfer of property. There may be a mode other than those as mentioned in the Transfer of Property Act by which property may be lawfully transferred by its owner in favour of another. Throwing of coparcenary property by a coparcener into the hotchpot of the HUF is one such recognised mode of transfer. Section 14 of the Partnership Act embodies another such provision. Section 14 of the Partnership Act is in that sense a special provision and it cannot be said to be in derogation of or in conflict with any provision of the Transfer of Property Act, viz., *section 5 or 54 thereof. As per section 14 of the Partnership Act the contribution by a partner of his separate immovable property by throwing the same into the stock of the partnership firm has the effect of transferring the partner's share therein to that of the firm. No particular mode or form is provided for so bringing in separate property of the partner into the stock of the firm and no deed whatsoever, registered or otherwise, is required to be executed by the partner for doing so. There is ample authority in support of this view.*

13.3 In case of **CIT vs. A.V BhanojiRao**, the Hon'ble Andhra Pradesh High Court has followed Hon'ble Rajasthan High Court decision in case of Amber Corporation(supra) and has held as under:

"On behalf of the Revenue, it is strenuously contended before us that the transfer was effected only in terms of the conveyance deed dated January 29, 1972, and not during the accounting year 1969-70. According to the learned standing counsel, the transfer could be made only by a duly registered document which was executed on January 29,1972, and the transfer could not have been made otherwise during December, 1969, or in terms of the partnership deed dated May 16, 1970. We do not find any substance in this submission. It is enough if reference is made to the following observations made by the Supreme Court in Narayanappa v. Bhaskara Krishnappa, AIR 1966 SC 1300 (p. 1304, Col. 2) :

"The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done, whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. As already stated, his right during the subsistence of the partnership is to get his share of profits from time to time as may be agreed upon among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges."

The aforesaid decision of the Supreme Court has been followed by the Rajasthan High Court in CIT v. Amber Corporation [1974] 95 ITR 178 and CIT v. Amber Corporation [1981] 127 ITR 29. In the first of these two cases, the assessee was a partnership firm coexisting of Maharaja Man Singh and his four sons who carried on a hotel business at Jaipur. The four sons, who owned the Rambagh Palace, treated the palace as forming part of the common stock of the firm. The partnership deed provided that on the dissolution of the firm, the palace should revert to the four sons in equal shares at its written down value as appearing is the books of account of the partnership. In the returns filed for the two assessment years 1959-60 and 1960-61, the firm claimed depreciation on that palace. The learned judges held that once the palace was treated as forming part of the common stock of the partnership, the partnership became entitled to claim depreciation on that building. In the second of the cases, the learned judges were dealing with a similar claim for depreciation made for the assessment year 1961-62. It was contended that in the absence of registration, no such transfer could be given effect to and the property known as Rambagh Palace cannot be considered to have been contributed towards the assets of the partnership in the absence of registration. The learned judges held (p. 32):

"Even if a property contributed by one partner be an immovable property, no document, registered or otherwise, is required for transferring the property to the partnership."

13.4 The legal proposition that emerges is that Section 14 of the Indian Partnership Act, 1932 clearly shows that all property and rights and interests which the partners may have brought in the common stock as their contribution to the common business are parts of the partnership property. Even if a property contributed by one partner be an immovable property, no document, registered or otherwise, is required for transferring the property to the partnership. Therefore, the impugned partnership deed under which

partners contributed immovable property as their capital towards its assets, did not require registration.

14. Per contra, the ld CIT DR has referred to the decision of Hon'ble Supreme Court in case of **Suraj Lamp and Industries Pvt Ltd vs State of Haryana and another** 340 ITR 1. In that case, the Hon'ble Supreme Court has held as under (Head notes):

"A SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in Asha M. Jain *v.* Canara Bank - *94 (2001) DLT 841, that the "concept of power of attorney sales have been recognized as a mode of transaction" when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/WILL transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions, to the extent they recognize or accept SA/GPA/WILL transactions as concluded transfers as contrasted from an agreement to transfer, are not good law. [Para 15]*

Immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized a valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of section 53A. Such transactions cannot be relied upon or made the basis for mutations in Municipal or revenue records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that

an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales. [Para 16]

It has been submitted that making declaration that GPA sales and SA/GPA/WILL transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship. [Para 17]

It is the well-settled legal position that SA/GPA/WILL transactions are not 'transfers' or 'sales' and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents affected parties from getting registered deeds of conveyance to complete their title. The said 'SA/GPA/WILL transactions' may also be used to obtain specific performance or to defend possession under section 53A. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by development authorities. However, if the documents relating to 'SA/GPA/WILL transactions' has been accepted and acted upon by the DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision. [Para 18]

However, aforesaid observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a Power of Attorney empowering the

developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Aforesaid observations regarding 'SA/GPA/WILL transactions' are not intended to apply to such bona fide*/genuine transactions. [Para 19]"*

15. We are of the view that as far as the judgment of the Hon'ble Supreme Court in the case of Suraj Lamp & Industries (P.) Ltd. (supra) is concerned, it is altogether in different context. There is no dispute with regard to the proposition that transfer of an immovable property having value of more than Rs.100/- can only be completed by way of registered sale deed, as contemplated in section 17 of the Registration Act. This judgment deals with the concept of power of attorney, lease, licence etc. Definition of expression "transfer" provided in section 2(47) is more wider than in the general law. As we have held above, the provisions of section 2(47) of the Act where the transfer of capital asset has been given a wider meaning including any transaction which has the effect of transferring or enabling the enjoyment of the immovable property and is not limited to transfer effected by way of executing a registered conveyance deed only. Further, the provisions of section 45(3) has been brought on the statue book to bring to tax transactions relating to transfer of capital asset by a partner to the firm. It is a cardinal rule of interpretation that the provisions should be read in a manner that it should not make the provisions otiose. If we were to read the provisions of section 45(3) limited to cases where the property is transferred by way of registered conveyance deed, then it will take away large number of transactions, as in the instant case, out of the tax net which the legislature has specifically intended to be brought in tax net and which is precisely the reasons for the insertion of sub-section (3) to section 45 of the Act.

16. In light of above, we are of the view that the taxable event has happened in the year of transfer of capital asset by way of capital contribution which happens to be financial 2005-06 relevant to assessment year 2006-07 and the provisions of section 45(3) are clearly attracted. The subject transaction shall therefore be exigible for capital gains tax in the assessment year 2006-07 in terms of the provisions of section 2(47) read with section 45(3) of the Act

17. We now refer to the provisions of section 50C, which has been invoked by the AO while bringing to tax the subject transaction, to examine whether the said provisions are applicable in the instant case. Section 50C reads as under:

"(1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer."

18. Before we examine the applicability of section 50C, it would be relevant to understand the context and background of entering into the sale deed dated 26.07.2007 and getting the same registered with the Stamp duty authorities in the financial year 2007-08 relevant to impunged assessment year 2008-09. In this regard, the ld AR has submitted that in order that the firm can develop the resorts over this land, the land use was required to be changed from agriculture to resorts in the revenue records and all these formalities were completed by the assessee along with the other person in

whose name the property was registered in the revenue records, even though the same have been contributed to the firm. However, all expenditure relating to such conversion was borne by the partnership firm.After all these formalities were completed, change of land use was permitted and a patta was given by JDA to them on 13.07.2007 and to have a legal title of the firm on such land, both these persons executed a sale deed on 26.07.2007 in favour of the firm. It was further submitted that in this sale deed, the fact that the land was already transferred by both these persons to the firm M/s Crystal Park Resorts is specified and it is also clarified that the sale deed is executed with the object of removing any legal doubts and our reference was drawn to the following narration in the sale deed placed at page 26 of APB which reads as under .

> *" यह है कि उक्तवर्णित रिसोर्ट (मोटल) प्रयोजनार्थ रूपान्तरित भूमि प्रथम पक्ष विक्रेता के स्वंय की मिल्कियत की है, जिसको प्रथम पक्ष विक्रेता ने एक फर्म क्रिस्टल पार्क रिसोर्टस खोलकर उसमें स्थानान्तरित कर दी है एंव कब्जा भी फर्म सम्हाल दिया है, लेकिन कानूनी दृष्टि से स्थानान्तरण के सम्बन्ध में किसी भी प्रकार के संशय को दूर करने के उदेदशय से इस विक्रय पत्र के माध्यम से आज प्रथम विक्रेता ने उक्त रिसोर्ट (मोटल) प्रयाजनार्थ रूपान्तरित 24238.95 वर्गगज या 20266.18 वर्गमीटर जिसको कि संलग्न स्वत्वों सहित मुबलिग 7244987 रू (अक्षरे बहत्तर लाख चंवालीस हजार नौ सौ सित्यासी रू)के बदले द्वितीय पक्ष क्रेता के हित में कतई विक्रय कर दिया है तथा विक्रय प्रतिफल की सम्पूर्ण राशि फर्म की पुस्तको में जमा खर्च द्वारा प्रथम पक्ष विक्रेता ने द्वितीय पक्ष क्रेता से पूर्व में ही प्राप्त कर ली थी, अब प्रथम प्रक्ष विक्रेता को द्वितीय पक्ष क्रेता से विक्रय मूल्य की राशि में से कुछ भी प्राप्त करना शेष नही रहा है।"*

19. Having considered the provisions of section 50C and the sale deed executed by the assessee dated 26.07.2007 with the firm M/s Crystal Park Resorts, we are of the view that the provisions of section 50C cannot be invoked in the instant case. The reasons for the same are as follows. Firstly, as we have held above, the taxable event for transfer of land is the year in which the land was contributed to the firm in terms of section 45(3) of the Act. The

said taxable event cannot be shifted either by the assessee or the Revenue, by virtue of entering into or taking into account, a subsequent sale deed in respect of the same capital asset in a subsequent year. This will make the provisions of section 45(3) otiose. Secondly, the sale deed is between the same parties for the same property and for the same consideration at which the property was initially contributed as share capital in the firm. The sale deed clearly stipulate that the land has already been transferred and possession handed over to the firm and the reason why the same has been executed is to avoid any doubts or confusion from a legal standpoint regarding the title over the land in the revenue records. Therefore, in substance, it is the same transaction and not a new or amended transaction in any case and a transaction, which is already subject to taxability under section 45(3) of the Act, cannot again be brought to tax under provisions of section 50C of the Act. Thirdly, section 50C is applicable where the consideration received or accruing as a result of transfer of a capital asset is less than the value adopted or assessed by the stamp duty authority in respect of an asset which has been transferred during the year. In the case of the assessee, the land was contributed by the assessee to the firm on 01.03.2006 falling in A.Y. 06-07. Thus, as we have held above, there is a transfer u/s 45(3) in A.Y. 06-07 itself and in that year, there was no registration of transfer under the Registration Act, no stamp duty was adopted, assessed or paid. Merely on account of the fact that there is a subsequent registration of the sale deed in the year under consideration, the valued assessed by the stamp duty authorities cannot be substituted for the valued recorded in the books of the partnership firm.

20. We have also gone through the decision of Carlton Hotels (supra) cited by the ld DR, it doesn't support the case of the Revenue, rather it supports the case of the assessee. The relevant findings are as under:

"24. We are of the considered view that section 45(3), section 50C and section 55A operate in different spheres and they can be invoked when conditions laid down in those sections are satisfied. Invoking of power contained in one of these sections does not come into conflict with each other. As mentioned above, provisions of section 50C can be invoked when there is a registration of transfer under Registration Act and stamp duty is paid for the purposes of registering the sale. If the transfer by way of sale is not registered under Registration Act and no stamp duty is paid then section 50C cannot be invoked. Section 55A, on the other hand, empowers the Assessing Officer to refer the property under transfer to a DVO if he has material on record on the basis of which he forms an opinion that value declared by the assessee as per estimate of the registered valuer is less than its fair market value or fair market value is more by certain percentage to what is declared by the assessee as sale consideration, or there are other relevant factors which necessitated the Assessing Officer to refer the capital asset under transfer to the DVO. Section 55A can be invoked for the purpose of this chapter. On the other hand, where a transfer covered under section 45(3) is sought to be registered by the firm and stamp duty is paid by the parties then provisions of section 50C could still be invoked even that case may be covered under section 45(3). In our considered view, in that case, provisions of section 45(3) would not be applicable but it is only section 50C which can alone be invoked as there is a registration of sale deed under Registration Act. Thus, where a sale transaction is registered by paying stamp duty then it is only section 50C which can operate. In that situation, section 50C would override section 45(3). Section 45(3) is a general provision and section 50C is a special provision which would override section 45(3) if the sale deed is sought to be registered by paying stamp duty. But where such registration does not takes place by paying stamp duty that case would only be covered under section 45(3) and therefore, value recorded by the firm in

its books would only be the full value of consideration for the purposes of computing capital gains.

25. In the present case, there is admittedly no registration of the transfer under Registration Act and no stamp duty has been paid. Therefore, provisions of section 50C cannot be invoked. The case is therefore, covered only under section 45(3)."

21. In light of above discussions and in the entirety of facts and circumstances of the case, the provisions of section 45(3) are attracted and provisions of section 50C are not held applicable. The taxable event has happened in the year relevant to assessment year 2006-07 when the assessee,by virtue of entering into a partnership deed dated 1.03.2006, transferred his land to the partnership firm namely M/s Crystal Park Resorts by way of his capital contribution and the same was recorded in the books of the partnership firm.

22. Now, coming to the second issue as to whether once a land is deemed to be transferred to the firm by way of capital contribution by a partner u/s 45(3) of the Income Tax Act, 1961, the subsequent registration of such land in the name of the firm to give a legal title to it could lead to a belief that earlier transfer was non-genuine and the earlier transaction should therefore be disregarded.

23. As we have stated above, the provisions of section 2(47) have been expanded by the legislature to include cases where there is transfer of possession in favour of and enjoyment over the property by the buyer even without entering into a conveyance deed. Thus, entering into a conveyance deed is not the sole mode of transfer and at the same time, there are other modes of transfer which are also recognised, as in the present case by virtue

of section 45(3) of the Act. There is therefore a distinction between the transfer under the provisions of the Act and the transfer as per the Transfer of the Property Act. The intent and purpose of entering into the conveyance deed is to enforce parties's respective rights and obligations, in relation to the transfer of an immovable property, which are governed by and subject to the laws relating to immovable property, and not guided by the Income tax laws. The parties to a transaction are therefore, well within their rights to enter into a subsequent conveyance deed even when the same transaction has been held to be in nature of transfer under the provisions of section 2(47) of the Act and there is nothing in the income tax law which prohibits the same. Therefore, in the instant case, as a general proposition, once a land is deemed to be transferred to the firm by way of capital contribution by a partner u/s 45(3) of the Income Tax Act, 1961, the subsequent registration of such land in the name of the firm to give a legal title to it could not lead to a conclusion that earlier transfer was non-genuine and the earlier transaction should therefore be disregarded.

24. Now, in order to examine the contention raised by the Revenue on merits that transaction between the assessee and the firm on the basis of partnership deed dated 1.3.2006 is sham and not genuine, we refer to the constitution of the partnership firm, contribution of land by the assessee as his capital contribution, the tax filings and events subsequent to entering into the partnership. There is no dispute on the fact that the assessee along with Shri Mukesh Meena constituted a partnership firm in the name & style of M/s Crystal Park Resorts vide deed of Partnership dt. 01.03.2006 to carry on the business of real estate, development of land, running of guest houses, hotels, motels and resorts, etc & other tourism related activities. Both these partners contributed their agriculture land at village Harwar, Tehsil Amer as their capital contribution. The assessee contributed 2.1358 hectare of his

agriculture land to the firm at a cost of Rs. 63,62,450/- and Sh. Mukesh Meena contributed 1.12 hectare of his agriculture land to the firm at cost of Rs. 29,31,007/-. The tax return of the partnership firm M/s Crystal Park Resorts for A.Y. 2006-07 was filed on 30-10-2006 wherein this fact has been disclosed. This land continued to remain the asset of the firm and disclosed to the Revenue in the tax return for AY 2007-08 filed on 31.07.2007 and in the tax return for AY 2008-09 filed on 26.07.2008.The constitution of the partnership firm M/s Crystal Park Resorts changed from time to time. On 1st December 2006, M/s Crystal Park Resorts Pvt. Ltd. was introduced as a partner. On 21st of July 2007, Shri Bharat Raj Bhandari and Shri Kamlesh Bhandari were introduced as partner. On 4th day of August 2007, Shri Lal Chand Meena retired from the firm.Thus, as on 31.03.2008, M/s Crystal Park Resorts Pvt. Ltd., Shri Bharat Raj Bhandari, Shri Kamlesh Bhandari and Shri Mukesh Meena were partners in this firm.In order that the firm can develop the resorts over this land, it was necessary that the land use is changed from agriculture to resorts in the revenue records. Therefore, since the land in the revenue records were in name of the partners, both the partners filed application and affidavits to the Jaipur Development Authority for change of land use from agriculture to resorts purposeu/s 90B of the Rajasthan Land Revenue Act, 1956. Thereafter, through the court order dt. 14.03.2007**,** the said land surrendered to the JDA was allotted back to both these persons after change of land use and a patta was given by JDA to them on 13.07.2007. All these activities were supported by the partnership firm and the expenditure relating to such conversion was borne by the partnership firm. After all these formalities, to have a legal title of the firm on such land, both these partners executed a sale deed on 26.07.2007 in favour of the partnership firm. All these facts doesn't therefore support the case of the Revenue as the change of land use is critical for carry out any further activities towards building and developing the resort and necessary actions

have been taken in that regard. Further, if the Revenue has any concerns regarding the genuineness of the partnership firm or its activities, the necessary action could have been taken against the partnership firm. However, there is nothing to suggest any action taken by the Revenue in all these years.

25. Further, as we have held above, the Revenue is well within its rights to tax the contribution of land in the assessment year 2006-07 in the hands of the assessee. It is also an admitted fact that the assessee didn't file its individual tax return for the year 2006-07. The ld AR has submitted that the reasons why the assessee has not filed his return of income was that his income was below the maximum amount chargeable to tax and he has no capital gain tax liability as the contribution of land by him to the firm was at cost. It is also a fact that the firm has been regular in filing its tax returns where the said transaction has been duly disclosed and the Revenue is thus privy to such transaction. The fact that the transaction is tax neutral as claimed by the assessee and the assessee has failed to file its return of income for assessment year 2006-07 cannot be held against the assessee by holding that the whole transaction was sham and not genuine. The assessee is well within his rights to arrange his affairs well within the four corners of law and so long as, its acts and affairs are in compliance with the law, even where it is held to be tax neutral, the same cannot be the basis for doubting the genuineness of the transaction.

26. In light of above discussions and in the entirety of facts and circumstances of the case, the addition of Rs 72,49,655 on account of short-term capital gains in the hands of the assessee is hereby deleted. In the result, ground no. 1 of the assessee's appeal is allowed.

27. In respect of ground No. 2, brief facts of the case are that the AO observed that assessee has deposited Rs.1,33,314/- for allotment of JDA Patta and Rs.8,290/- on account of lease money. No explanation in this regard was filed. He, therefore, made addition of Rs. 1,41,604/- u/s 69C of the I.T. Act, 1961 as unexplained expenditure.

28. Being aggrieved the assessee carried the matter before the Ld. CIT(A) who has confirmed the addition of Rs.1,29,385/- by giving the following findings:-

"As per AO, the assessee incurred Rs.1,41,604/- on account of lease rent etc. for obtaining 'Patta' from JDA and as source of such expenses was not explained, therefore, the AO treated the same to be unexplained expenditure u/s 69C of IT Act. On the other hand, the appellant case is that the total expenditure of Rs.1,29,385/- was incurred and that the expenditure was incurred by the firm M/s Crystal Park Resort and not the assessee. In this connection, the appellant also filed copy of ledger account of M/s Crystal Park Resort wherein cash payment of Rs.48,478/- and Rs.72,717/- on 21.04.2007 is shown. In this connection, it may further be noted that the necessary 'Patta' from the JDA was obtained by the assessee and therefore the expenditure was to be incurred by the assessee and not the firm. Moreover, even from the firm's account, the source of such amount is not explained. However, as the total expenditure was only for Rs.1,29,385/- and not Rs.1,41,604/-, therefore, the addition to the extent of Rs.1,29,385/- is confirmed. The appellant gets relief of Rs.12,219/-."

29. The AR of the assessee submitted that the firm has deposited Rs. 1,21,195/- (48,478+72,717) on 21.04.2007 to JDA towards lease money as is mentioned on the lease deed. This is duly recorded in the books of the firm. Further, Rs. 8,290/- is deposited on 13.07.2007 duly recorded in the books of firm. Thus, the total expenditure of Rs.1,29,385/- is duly recorded in the books of accounts of the firm, the source of which is verifiable from its books of accounts. There is no material with the CIT(A) to allege that the source of this amount is not verifiable from the books of accounts of the firm. In any

case, when assessee has not incurred the expenditure on payment of the said amount, there cannot be any addition in the hands of the assessee. In view of above, the addition made by the AO and confirmed by the CIT(A) be deleted.

30. The ld AR has contended that the total expenditure of Rs.1,29,385/- is duly recorded in the books of accounts of the firm, the source of which is verifiable from its books of accounts. Further, the assessee has not incurred the expenditure on payment of the said amount, there cannot be any addition in the hands of the assessee. The subject addition is accordingly deleted and ground no. 2 of the assessee is allowed.

31. In respect of ground no. 3, brief facts of the case are that the assessee declared agriculture income of Rs. 60,000/-. The AO observed that no details regarding production of agriculture produce or supporting bill/voucher has been furnished. Accordingly, he treated the agriculture income declared by the assessee as income from other sources and made addition for the same.

30. Being aggrieved, the assessee carried the matter before ld. CIT(A) confirmed the addition by holding that it is a settled law that in respect of agricultural income which is an exempted income, the onus is on the assessee to prove that such agricultural income was genuinely earned. The assessee has failed to prove the earning of agricultural income for Rs.60,000/- either before the AO or during the appellate proceedings. Therefore the AO has rightly taxed the income as income from other sources. Accordingly the addition is made by the AO was confirmed.

32. The ld AR submitted that it is to be noted that the AO has not raised any query nor given an opportunity to explain the agriculture income declared by the assessee in the return. The assessee is having 5 bigha of agriculture land.

The agriculture income shown by the assessee is reasonable considering the land holding. Otherwise also, the lower authorities have not brought any evidence to show that assessee is having any other income which is shown in the shape of agriculture income. In view of above, the addition confirmed by the Ld. CIT(A) be deleted.

33. We have gone through the contentions of both the parties and pursued the material available on record. The ld CIT(A) has stated that the assessee has failed to prove the earning of agricultural income for Rs.60,000/- either before the AO or during the appellate proceedings and has failed to discharge the onus cast on the assessee to prove that such agricultural income was genuinely earned. We agree with the said findings of the ld CIT(A) which remain uncontroverted before us. Hence, ground no. 3 of assessee's appeal is dismissed.

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

Order pronounced in the open court on 27/6/2017.

Sd/-	Sd/-
(KUL BHARAT)	(VIKRAM SINGH YADAV)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

Jaipur
Dated:- 27/06/2017

Santosh

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

1. अपीलार्थी/The Appellant- Shri Lalchand Meena, S/o Sh. Pratap Meena, Village Dhamsiya, Via Kukas, Tehsil-Amer, Jaipur
2. प्रत्यर्थी/ The Respondent- The ITO, Ward 7(3), Jaipur
3. आयकर आयुक्त/ CIT–III, Jaipur
4. आयकर आयुक्त(अपील)/The CIT(A)-III, Jaipur

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No.515 /JP/2015)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar.