

**आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER  
AND  
HON'BLE MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.493/Ind/2017  
Assessment Year: 2014-15**

ACIT-2(1) Ujjain (Revenue)	<b><u>बनाम/</u></b> Vs.	M/s. Raman Soman & Co. 610 Sethinagar, Ujjain (Respondent)
PAN: AAQFR7352G		
Revenue by	Shri V. J. Boricha, Sr. DR	
Respondent by	Shri S.S. Deshpande & Bhavesh Nerkar, CAs	
<b>Date of Hearing:</b>	<b>24.01.2019</b>	
<b>Date of Pronouncement:</b>	<b>. 02.2019</b>	

**आदेश / O R D E R**

**PER MANISH BORAD, A.M:**

This appeal by Revenue pertaining to A.Y. 2014-15 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-Ujjain, (in short 'CIT(A)'), dated 24.08.2017 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on

21.12.2016 by ACIT-2(1), Ujjain. The Revenue has raised following grounds of appeal:

*“Whether on the facts and in the circumstances of the case, Ld. CIT(A) has erred in directing to take income of Rs.2,79,73,681/- as Long Term Capital Gain instead of income from business without appreciating the fact that the intention of the assessee was to develop a hotel on the said commercial plot and assessee is in construction and real estate business.”*

2. Brief facts as culled out from the records are, that the assessee is a partnership firm engaged in the business of sale/purchase of plots and construction of buildings etc. Income of Rs.2,79,73,681/- declared in e-return of income filed on 29.11.2014. Notices u/s 143(2) & 142(1) of the Act were duly served upon the assessee. Case selected for scrutiny under CASS. The Ld. AO observed that the assessee has disclosed long term capital gain of Rs.2,79,73,681/- from sale of Plot No. C-4 at Kshipra Vihar Scheme, Ujjain. The assessee claimed it as sale of capital asset whereas assessing officer was of the view that plot was commercial in nature, therefore, the profit from sale should be treated as business income. The Ld. AO further observed that the non-implementation of an originally envisaged business activity cannot change the nature of profit as long term capital gain and therefore, the assessee

is not eligible for benefit of taxation @ 20% as applicable to Long Term Capital Gain and accordingly assessed the impugned amount of gain as business income.

3. Aggrieved assessee preferred an appeal before the Ld. CIT(A) and succeeded.

4. Now the revenue is in appeal before the Tribunal.

5. Ld. Departmental Representative vehemently argued supporting the order of assessing officer.

6. Per contra Ld. Authorized Representative for the assessee relying on the decision of Coordinate Bench in the case of DCIT vs. Kanchan Bag in ITANo.632/Ind/2014 dated 25.09.2018 submitted that the assessee firm purchased Plot No. C-4 at Kshipra Vihar Scheme, Ujjain on lease. The said plot was allotted for the purpose of construction of hotel/showroom as specifically stated in clause 1 & 5 of the lease deed. The land was not allowed to be used for any other purposes. The assessee did not do any construction activity on the said plot since the Ujjain Development Authority did not provide the clear approach

road as there was an adverse possession on the front side of the plot. This plot of land was not part of the stock-in-trade and it was purely a capital asset which was purchased for the construction of hotel and therefore, the gain from sale of the plot has been rightly claimed as long term capital gain.

7. We have heard the rival contentions and carefully perused the record placed before us. The issue raised by the revenue revolves around the profit of Rs.2,79,73681/- from sale of plot at Ujjain. Assessee has claimed it as long term capital gain from sale of capital asset being a plot purchased for construction of hotel. The assessing officer has treated it as business profit because the plot was originally purchased for business purposes only. When the assessee preferred an appeal before the Ld. CIT(A) against the order of assessing officer, the Ld. CIT(A) allowed the grounds raised by the assessee holding that the profit of Rs.2,79,73,681/- has been rightly claimed as long term capital gain from sale of plot of land which was purchased for the purpose of construction of hotel/showroom, observing as follows:

**“Ground No.1 & 2:-** Through these grounds of appeal the appellant has challenged the treating of income amounting to Rs.2,79,73,681/- as business income instead of long term capital gain. The appellant has purchased the plot of land for the purpose of construction of hotel/showroom. Therefore, the intention or the appellant was to treat the plot of land as capital asset. The appellant has taken the plot on lease from UDA for the specific purpose or construction or hotel/showroom. The AO treated the income as business income merely on the clauses of partnership deed. Therefore, whatever income arises from sale of capital asset is only in the form or long term capital gain. The appellant held the plot of land from 2002 to 2014. The appellant has not divided the plot and selling the same as stock-in-trade. The appellant had to sale the plot of land because construction of hotel was not materialized.

The facts of the case are that the appellant firm WRS constituted for carrying on the business or construction, sale purchase of plots, construction or buildings and sale thereon, dealing in stone chips, bolders, murrum and other building material taking the contract for construction. It also stipulates to carry on with the mutual consent any other business which is profitable to the partnership firm. The firm was constituted vide a deed of partnership dated 01.04.2001. it is also to be mentioned here that the firm has purchased the land in 2002 for hotel/showroom. Alter purchase or this land, due to non-removalbe of encroachment in the nearby area, the hotel/showroom construction cannot be carried out. The land was sold in the year 2014. From the above it is clear that the firm held the plot or land for 13 years. It was not possible to carry out business or hotel/showroom in the plot of land for the above cited reason. Although the firm, had purchased the land but the same had not been developed as it was intended in the partnership deed. The appellant does not have any license to develop the colony and sale the plot in pieces. In the present case, there was no activity such as in the nature of improvements on the lands, for instances, by laying drainage line, electricity, leveling or construction of roade which shows intention of the firm to develop the land. The sale or land cannot be treated as business. From the date or purchase till date or sale, no such activity has been carried on which proves that it is the business activity. The land has been sold in the same form in which it is purchased. In view of the above facts, the AO's action of treating the sale of land as business income is not tenable. The AO is directed to take income of Rs.2,79,73,681/- as long term capital gain instead of assessing income

*from business. Therefore, the appeal on these grounds is allowed.*

8. On perusal of records and finding of Ld. CIT(A), we find that the assessee firm came into existence on and from 01.04.2001. It entered into a lease agreement effective from 11.01.2002 for plot no. C-4 at Kshipra Vihar Scheme, Ujjain. Subsequently, during F.Y. 2009-10 purchase deed was registered for a (premium) value of Rs.13,03,230/- and an annual lease rent of Rs.26,064/-. There are certain legal bindings which are stipulated in the sale of the said plot by the Ujjain Development Authority and the said plot was allotted only for the construction of the hotel or showroom as specifically stated in clause 1 & 5 of the said lease deed. This plot of land cannot be used for any other purposes except for hotel or showroom. Thereafter due to absence of a clear approach road to the plot of land, the hotel project of the assessee could not take off and it was thereafter decided to sale the plot. It is not the case of the revenue that the plot of land was a part of stock-in-trade and the amount invested in the plot of land has been shown under the head of fixed assets.

9. In similar set of facts Coordinate Bench has adjudicated the similar issue in the case of DCIT vs. Kanchan Bag

(supra) holding that the gain from sale of such capital asset not hold as stock-in-trade should be subject to tax as applicable for long term capital gain.

10. We, therefore, respectfully following the decision of Coordinate Bench in the case of DCIT vs. Kanchan Bag(supra) and in the given facts and circumstances of the case, are of the considered view that the alleged plot of land being a capital asset and not stock-in-trade and no business activity has been carried out on it, gain from sale thereof is to be taxed @ 20% as applicable to long term capital gain. No interference is therefore, called for in the finding of Ld. CIT(A) which stands affirmed.

11. In the result, ground no.1 in appeal of the Revenue stands dismissed.

*Order was pronounced in the open court on .02.2019.*

(KUL BHARAT)  
JUDICIAL MEMBER

(MANISH BORAD)  
ACCOUNTANT MEMBER

Indore; दिनांक Dated : /02/2019

*Patel, P.S./नि.स.*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard  
file.

By order  
**Assistant Registrar**