

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. & SHRI L.P. SAHU, A.M.

ITA.No.7386/Del./2018
Assessment Year 2014-2015

M/s. AJB Developers Pvt. Ltd., Pinnacle Business Tower, 10 th Floor, Suraj Kund, Faridabad. Haryana. PIN-121001 PAN AAFCA1721Q	vs.	The DCIT, Circle – 2 (1), New Delhi.
(Applicant)		(Respondent)

For Assessee :	Shri Salil Kapoor, Advocate.
For Revenue :	Shri P.V. Gupta, Sr. D.R.

Date of Hearing :	25.04.2019
Date of Pronouncement :	27.05.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-32, New Delhi, Dated 17.01.2017 for the A.Y. 2014-2015.

2. The facts of the case are that the assessee company has filed return of income declaring income of Rs.73,140/-. However, the tax has been paid under section 115JB of the I.T. Act 1961 at book profit of Rs.7.19 crores.

The case was selected for scrutiny. The assessee company was engaged in the business of builders, Colonizers, estates developers, town planner, architects, engineers, electrical, civil and maintenance contractors and infrastructure development. During the course of assessment proceeding, it was noticed that the assessee company has sold the land which was converted in capital assets from 06th April 2012 and earlier the land was held as stock in trade. Further, it was noticed that the assessee company has shown the income under long term capital gain/loss with indexation, whereas the profit from selling the land should have been taxed as short term capital gain. The assessee company was asked why the income shown under the long term capital gain/loss should not be treated as short term capital gain and taxed as business income because the period of holding the land as capital (asset) is less than 36 months.

2.1. The assessee filed written reply before A.O. which is reproduced in the assessment order in which assessee submitted that the land sold during the F.Y. 2013-14 relevant to A.Y. 2014-15 was procured during F.Y. 2006-

2007/2007-2008. Accordingly the land sold during A.Y. 2014-15 was held for more than 36 months. The Assessee Company was holding the assets as capital assets and not as stock-in-trade. The sale of capital asset is assessable as capital gain/loss under the provisions of Section 45 of the Income Tax Act, 1961. The assessee has not sold the stock-in trade, hence, the same cannot be treated as business income. This fact is also demonstrated from the balance-sheet of the assessee company where the land remained unsold as on 31.03.2014 amounting to Rs. 25,26,62,106/-, and the same is reflected as non-current Investment. It was also submitted that the book profit earned on sale of land amounting to Rs.7.22 crores have been duly shown in P & L A/c under the head "Extra Ordinary Item". The Long Term Capital Loss works out to Rs.17,88,28,787/- after computing the indexed cost of such land as per the provisions of I.T. Act, 1961. However, the long term capital loss has not been claimed in the income tax return due to late filing of the income tax return. The assessee company has computed the tax liability under section 115JB of the

I.T. Act (MAT) on the book profit of Rs.7.22 crores earned on sale of land and has duly discharged its tax liability. Similar explanation have been submitted in last year assessment proceedings i.e. A.Y. 2013-14.

2.2. The A.O. however, did not find the explanation of assessee to be satisfactory. The A.O. noted that assessee has claimed that sale of capital assets (land) is assessable as long term capital gain/loss under the provisions of Section 45 of the Income Tax Act, 1961. To make such claim, the basic test to qualify is, whether the asset was a long term capital asset. The A.O. referred to section 2(14) of the Act and observed that definition of "capital asset" itself clearly states that property of any kind whether connected to business or not but specifically excludes any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession. In the present case, the assessee had held the asset as stock in trade and converted it into capital asset on 06.04.2012. From 06.04.2012 the period of holding of capital asset would be less than the prescribed limit. Therefore, it is to be treated as short term capital

asset. The A.O. relied upon the Order of ITAT, Chennai Tribunal in the case of Lohia Metal Pvt. Ltd., vs. ACIT and also decision of Hon'ble Delhi High Court in the case of CIT vs. Splender Construction. The A.O. was, therefore, of the opinion that assessee's claim of long term capital loss of Rs.18,52,85,788/- on sale of land is wrong as the period of holding the capital asset is less than 36 months. Therefore, the capital loss/gain on sale of land is drawn without indexed cost of acquisition. As per the details provided by the assessee company, the assessee company has short term capital gain of Rs.7,22,29,231/- on the sale of land, therefore, it was assessed as such as short term capital gain and tax was charged at the rate applicable on normal business income. The A.O. accordingly made the addition of Rs.7,22,29,231/-.

3. The addition was challenged before the Ld. CIT(A). The Ld. CIT(A) recorded the facts of the case in the impugned order that assessee company had selected certain lands for procurement at Vallah and Verka bye-pass near Amritsar, Punjab in the F.Y. 2006-2007 and the same was shown in

stock in trade in the books of account of the assessee company. In view of the Notification dated 11.11.2004 of the Ministry of Defence, Government of India, no construction was permissible/possible as the lands were situated within 1000 yards from the Vallah Ammunition Dump. On 07.12.2006, it entered into a MOU with Ansal Housing and Constructions Ltd (AHCL) through which, it intended to and agreed to transfer its rights, title and interest in the aforesaid land to AHCL for an agreed consideration. However, in July 2008, when FIRs were lodged at Vallah and Verka Police Stations by the Army seeking demolition of structures already built (In view of the MoD Notification) AHCL refused to honour scheduled payments as per the MOU. Later on, obtained an interim injunction on 03.07.2009 from Hon'ble Delhi High Court against disposing of any of the assessee's movable/immovable assets and the matter was finally dismissed by the Hon'ble Delhi High Court vide order dated 29.05.2012 holding that the matter was beyond its jurisdiction. While AHCL challenged the aforesaid order, yet it entered into a Memorandum of

Settlement dated 19.11.2012 and pursuant to a Joint Application by AHCL and the Assessee in the Delhi High Court, it was disposed of vide order dated 23.11.2012. Till this time, land was reflected as stock-in-trade in the books of the assessee company as land was being procured for transfer to AHCL. It was only on 06.04.2012, the assessee passed a Board Resolution, pursuant to which, required entries were passed in its books of account during F.Y. 2012-2013 relevant to A Y. 2013-14 treating the said land as non-current investment. Thereafter, part of the land was sold in A Y. 2013-14 and assessee claimed long term capital gains on the said sale of land in the relevant A.Y.2013-14. During the year under consideration also, part of the aforesaid land has been sold and on the said sale, the assessee company has claimed long term capital gains. However, the A.O. held that the period of holding for the purpose of computation of capital gains can be taken from the date of conversion of stock in trade into investment because stock in trade was converted into investment on 06.04.2012.

3.1. The written submissions of the assessee company is reproduced in the impugned order in which the assessee submitted that the A.O. has failed to consider that given the nature of the land, on which no construction was possible and the circumstances of the case, the land could not have been held as stock-in-trade and possessed the character of a capital asset from the very beginning. Book entries are not relevant to the matter in issue. The assessee explained the difference between the stock-in-trade and capital asset. The assessee submitted that since no construction was permissible as per the Notification of Ministry of Defence, Government of India, therefore, the character of the land remained as capital asset. Therefore, book entries are not relevant. The assessee relied upon Judgment of Hon'ble Supreme Court in the case of CIT vs. Canara Bank Ltd., 63 ITR 328 (SC). The assessee also relied upon Judgment of Hon'ble Delhi High Court in the case of DLF Housing and Construction vs. CIT 141 ITR 806 (Del.). The assessee also relied upon Judgment of the Hon'ble Supreme Court in the case of Kedarnath Jute Manufacturing Co. Ltd., vs. CIT AIR

1971 SC 2145. The assessee also relied upon Judgment of Hon'ble Supreme Court in the case of Union of India vs. Azadi Bachao Andolan [2003] 263 ITR 706 (SC) in which it was held that "*the principle of substance over form to determine the real characteristics of a transaction is to be considered.*" It was submitted that A.O. failed to appreciate the question in the cases referred to by him in the assessment order was that when a stock in trade is converted to a capital asset, should the period for which it was held as stock-in-trade be included in computing the total holding period. However, the question in the present case is entirely different as the assessee does not contend that the period for which it was held as stock-in-trade needs to be included. On the contrary, it was submitted in the present case, that irrespective of the entry in the books of accounts, the asset was always in the nature of a capital asset and had acquired the status of a capital asset from the date of purchase because as per Notification of the Ministry of Defence (supra), assessee was barred by raising any construction activity therein.

3.2. The Ld. CIT(A), however, did not accept the contention of the assessee and noted that land remains as stock in trade in the books of account of the assessee from the date of the acquisition itself. This land was converted into investment in A.Y. 2013-2014. On perusal of the Board Resolution of the assessee company, it was observed that these investments were previously shown as stock in trade which were converted into capital asset. Therefore, the Ld. CIT(A) following his order for A.Y. 2013-2014 rejected the claim of assessee and dismissed the appeal of assessee.

4. The Learned Counsel for the Assessee reiterated the submissions made before the authorities below. He has submitted that these lands were held as stock in trade. However, after execution of MOU between assessee and Ansals and at the time of submitting the proposed design plans before the authorities, it was learnt that the said parcel of land was situated within 1000 yards of Military Ammunition Dump, due to which, no construction could be carried out on the same land due to restriction from the Army and Notification to that effect. Further, the Army on or

around July, 2008 restrained Ansals at Vallah and Verka Police Stations seeking demolition of the adjacent structure already built and owing to this M/s. Ansal stopped making the payment as per the terms of MOU and asked for the refund of the amount paid. They have also obtained injunction from Hon'ble Delhi High Court. Therefore, it was clear that the subject business activity proposed to be carried out over the said parcel of land could not be done because of the complaints lodged by the Army and the Ansal had obtained stay order from the Hon'ble Delhi High Court. Therefore, these lands were converted into from stock in trade into capital asset/non-current investment. Ultimately, the Hon'ble Single Judge of the Delhi High Court vide Final Judgment dated 29.05.2012 dismissed the petition filed by Ansal and they have preferred an appeal before the Division Bench of the Hon'ble Delhi High Court and during the pendency of the same, Settlement was arrived at, whereupon, it was agreed that assessee would transfer part of the subject parcel of the land, in proportion to Rs.34 crores received by the assessee. The income of these

amounts of Rs.34 lakhs was booked upon completion of conveyance of the land as capital loss, part of which was during A.Y. 2013-2014 and balance during A.Y. 2014-2015 in appeal. The assessee claimed long term capital loss on account of transfer of the land. The findings of the A.O. are illegal because the capital asset was acquired way back in F.Y. 2006-2007, therefore, the benefit of indexation should have been allowed from the date of acquisition in F.Y. 2006-2007. Learned Counsel for the Assessee submitted that money received by the assessee from Ansal was shown as loan in the books of account as it was clear that no development of land will take place and no business activity will be carried on at all. The period of holding to be reckoned from date of acquisition. Learned Counsel for the Assessee relied upon Order of ITAT, Chennai Bench in the case of Vinny Sawhney vs. ITO ITA.No.993/Chennai/2015, Dated 19.02.2016. He has submitted that A.O. did not consider nature of the land because of the Notification issued by the Ministry of Defence and stay granted by the Hon'ble Delhi High Court. He has submitted that book

entries are not relevant and relied upon Judgment of the Hon'ble Supreme Court in the case of Canara Bank Ltd., (supra) and Judgment of Hon'ble Delhi High Court in the case of DLF Housing and Construction Pvt. Ltd., (supra). Learned Counsel for the Assessee referred to PB-2 which is Notification of Ministry of Defence Dated 11.11.2014. PB-14 is injunction order granted by Hon'ble Delhi High Court Dated 03.07.2009. PB-38 and 39 are the details from A.Y. 2006-2007 to 2015-2016 to show that assessee has earned agricultural income and from A.Ys. 2010-2011 to 2015-2016 assessee has shown agricultural income from same land in the return of income. Details of the same are also filed to show that land was not used for any business purposes. He has submitted that no construction have been done on the property in question. Therefore, merely because land was shown as stock in trade in the books of account was not relevant. Even after grant of stay, the assessee could not have done any construction in the property. Therefore, the period was more than 36 months at the time of sale of the property. He has, therefore, submitted, in

these circumstances, the property in question could never be considered as stock in trade. It was capital asset on which assessee rightly claimed long term capital gains/loss. He has further submitted that assessee has not taken any steps for development of the property in question. He has, therefore, submitted that orders of the authorities below may be set aside and claim of assessee may be allowed.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that land was kept as stock in trade in the books of account. When land was purchased by the assessee, the Notification of the Ministry of Defence was in force. Therefore, land was treated as stock in trade. The assessee converted the stock in trade into capital asset on 06.04.2012, therefore, up to the date of sale, the period was less than 36 months. Therefore, it was correctly treated as short term capital gains, on which, tax was rightly charged on normal business income.

6. We have considered the rival submissions. It is not in dispute that assessee company is engaged in business of builders, Colonizers, estates developers, town

planner, architects, engineers, electrical, civil and maintenance contractors and infrastructure development. The assessee procured the land in question at Vallah and Verka, Amritsar in F.Y. 2006-2007/2007-2008. The assessee entered into MOU with AHCL, through which, it intended to and agreed to transfer its rights, title and interest in the aforesaid land to AHCL for an agreed consideration. However, in July, 2008, FIR was lodged at Vallah and Verka Police Station by Army seeking demolition of the structure already built in view of Ministry of Defence Notification Dated 11.11.2004. Thus, AHCL refused to honour further demand as per MOU Dated December, 2006. The assessee filed copy of the Notification dated 11.11.2004. The same reads as under :

“In exercise of powers conferred by Section 3 of the Works of Defence Act, 1903 (& of 1903), the Central Government hereby declares that it is necessary to impose the restrictions specified in clause (b) of Section 7 of the said Act upon the use and enjoyment of the land described in the

Schedule below, being land lying in the vicinity of Valla Ammunition Dump, District Amritsar in the State of Punjab, in order that the said land may be kept free from buildings and other obstructions from the date of publication of this notification.

2. *A sketch plan, of the land may be inspected in the office of Deputy Commissioner, Amritsar, in the State of Punjab.*

SCHEDULE

All the land comprised in the area lying within the distance of one thousand yards from the crest of the outer parapet of the works of defence, namely, Valla Ammunition Dump, District Amritsar in the State of Punjab.”

6.1. The lands of the assessee admittedly falls within the distance of the above Notification and as such, assessee shall have to keep the land free from building and other constructions from the date of publication of this Notification. This Notification was in force when assessee procured the impugned land and as such, assessee was

bound by the Notification of Ministry of Defence. No business activity thus could have been carried out in the impugned land. The assessee could not have carried out any construction or business activity as a Builder or Colonizers. The AHCL refused to make any further payment and obtained injunction from the Hon'ble Delhi High Court through which assessee was restrained from disposing of the movable/immovable assets of the company vide Order dated 03.07.2009. Thus, in view of the above Notification of the Ministry of Defence and Judgment of Hon'ble Delhi High Court, assessee could not have done any activity in the impugned land for any business purposes. Learned Counsel for the Assessee has also filed the details at pages 38 and 39 of the PB to show that because of the above circumstances, the assessee earned agricultural income through the impugned lands. It would strengthen the submission of the assessee that impugned land was never intended for any business purposes because of the above restrictions noted above. In these circumstances, the question that has to be considered is, Whether book entries

made in the books of account of the assessee showing the impugned land as stock in trade would be relevant ? or Whether it was rightly considered by the assessee as capital asset ? It is well settled Law that book entries are not determinative of income of assessee. When the question is, Whether receipt of money is taxable or not, or Whether certain deductions from that receipts are permissible in Law or not, the question has to be decided according to principles of Law and not in accordance with the Accounting Practice. It is also well settled Law that income tax does not recognize hypothetical or notional income which is not received or accrued to the assessee. We rely upon the Judgments of Hon'ble Supreme Court in the case of Sutlez Cotton Mills Ltd., vs. Commissioner of Income Tax, West Bengal (1979) 116 ITR 1 (SC), in which it was held as under:

“It is now well settled that the way in which entries are made by an assessee in his books of account is not determinative of the question whether the assessee has earned any profit or

suffered any loss. The assessee may, by making entries which are not in conformity with the proper principles of accountancy, conceal profit or show loss and the entries made by him cannot, therefore, be regarded as conclusive one way or the other. What is necessary to be considered is the true nature of the transaction and whether in fact it has resulted in profit or loss to the assessee.”

6.2. The Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd., 227 ITR 172 (SC) in which it was held as under :

“Book entries are not determinative of income of assessee. When the question is, whether a receipt of money is taxable or not, or whether certain deductions from that receipts are permissible in Law or not, the question has to be decided according to the Principles of Law, but not in accordance with the Accounting Practice”.

6.2. The Honorable Supreme Court in the case of CIT, Mysore vs. Canara Bank Ltd., (1967) 63 ITR 328 (SC) held as under :

“The respondent-bank had opened a branch in Karachi on November 15, 1946. After the partition of India in 1947, the currencies of the two Dominions of India and Pakistan continued to be at par until there was a devaluation of the Indian rupee on September 18, 1949. On that date the respondent had a sum of Rs.3,97,221 at the Karachi branch belonging to its head office. As Pakistan did not devalue its currency the parity between the Indian rupee and the Pakistan rupee ceased to exist. The exchange ratio between the two countries was not determined until February 27, 1951. The bank did not carry on any business in foreign currency and even after it was permitted to carry on business in Pakistan currency on April 3, 1951, it carried on no foreign exchange business. The Appellate Tribunal found that the

money was lying idle in the Karachi branch and was not utilised in any banking operation even within Pakistan. The State Bank of Pakistan granted permission on July 1, 1953, and two days later the bank remitted the amount to India and in view of the difference in values of the currencies made a profit of Rs. 1,73,817. The question was whether this amount was a revenue receipt:

Held, on the facts, that the appreciation of the money did not arise in the course of any trading operation. Assuming that the amount of Rs.3,97,221 was originally stock-in-trade, when it was blocked and sterilised and the bank was unable to deal with that amount, it ceased to be its stock-in-trade and the increase in its value owing to exchange fluctuation was a capital receipt.

If by virtue of exchange operations profits are made during the course of business and in connection with business transactions, the excess

receipts on account of conversion of one currency into another would be revenue receipts. But if the profit by exchange operations comes in, not by way of business of the assessee, the profit would be capital.

Held also, that as the statements of case were agreed to by the parties, and the Commissioner did not challenge in the High Court the finding that the monies were lying idle in the Karachi branch of the bank, and further conceded before the High Court that there was no evidence that the blocked balance was in fact employed by the Karachi branch for internal banking operations in Pakistan or for its business in Pakistan and other foreign currencies, it was not permissible for the Commissioner, in the appeal before the Supreme Court, to challenge the findings of fact in the statement of case or to produce additional evidence in the Supreme Court for controverting those findings.”

6.3. The Hon'ble Supreme Court in the case of Godhra Electricity Co. Ltd., 225 ITR 746 held as under :

“Under the Act, income chargeable to tax is the income that is received or is deemed to be received in India in the previous year relevant to the year for which assessment is made or the income that accrues or arise or is deemed to accrue or arise in India during such year. The computation of such income is to be made in accordance with method of accounting regularly employed by the assessee. If income does not result at all there cannot be a tax even though in bookkeeping an entry is made about a hypothetical income which does not materialize.”

6.4. Considering the facts of the case in the light of above decisions, it is clear that even if assessee company has shown the impugned land as stock in trade in the books of account, but, there was a complete bar on assessee as per the Notification of the Ministry of Defence (supra) to raise any construction therein and as such assessee could

not have done any business activity on the aforesaid land in question. Therefore, merely because impugned land have been shown as stock in trade in the books of account would not be relevant. It's true character appears to be of capital asset in nature and in case it is transferred subsequently, only capital gain/loss shall have to be computed in accordance with Law. The land was acquired in F.Y. 2006-2007/2007-2008 No business activity have been shown to have been done by assessee on property in question. No construction is carried out in the impugned land. The assessee earned agricultural income and no steps have been taken to develop the land in question. The ITAT, Chennai Bench in the case of Vinny Sawhney vs. ITO (supra) held that *“first, date of acquisition has to be treated as date of acquisition of capital asset and when actual date of sale is beyond 36 months from the date of original acquisition, the asset has to be treated as long term capital asset”*. The findings of the Tribunal in this case in paras 4 to 6 are reproduced as under :

“4. We have considered the rival submissions on

either side and perused the relevant material available on record., “short-term capital asset” is defined in Section 2(42A) of the Act as follows:-

“short-term capital asset” means a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer.”

The assessee acquired the land at VGP Golden Beach Layout on 20.12.2006 for a total consideration of Rs.41,25,160/-. Initially the property was sold as stock-in-trade and the same was subsequently converted into capital asset during the year 2009. The assessee sold the property on 21.01.2010 and claimed the profit on sale of the land as long term capital gain by taking the acquisition of the land as on 20.12.2006. The question arises for consideration is whether the profit on sale of land has to be assessed as long term capital gain or short term capital gain? If the date of acquisition of the property is taken as 20.12.2006, then the profit has to

be treated as long term capital gain. If the date of acquisition of the property is taken as 01.04.2009, the date on which the land was converted into capital asset, then it has to be treated as short term capital gain.

4. *We have carefully gone through the decision of Pune Bench of this Tribunal in Kalyani Exports (supra). The Pune Bench, by majority opinion, found that irrespective of the character of the asset at the point of acquisition, be the “capital asset” within the meaning of 2(14) of the Act or not, the cost of acquisition of the asset has to be treated on the date on which the property was actually acquired. The Tribunal has also found that the asset cannot be acquired first as non-capital asset at one point of time and again as capital asset at different point of time. The Tribunal further observed that there can be only one acquisition of asset, i.e. when the assessee acquired it for the first time irrespective of the character at that point of time. In fact, the Tribunal has observed as follows:-*

“19. On a careful consideration of the issue, my answer to the first question is in the affirmative. The matter appears to me to be concluded by the judgment of the Hon'ble Bombay High Court in Keshavji Karsondas', case (supra). It was held therein that an asset cannot be acquired first as a non-capital asset at one point of time and again as a capital asset at a different point of time. There can be only one acquisition of an asset and that when the assessee acquires it for the first time, irrespective of its character at that point of time. It was therefore, held that what is relevant for the purpose of capital gains is the cost of acquisition and not the date at which the asset became a capital asset. The decision of the Gujarat High Court in Ranchhodbhai Bhaijibhai Patel's case (supra) was followed by the Bombay High Court. In the decision of the Gujarat High Court, it was held that

the only condition to be satisfied for attracting section 45 is that the property transferred must be a capital asset at the date of transfer and it is not necessary that it should have also been a capital asset at the date of acquisition. The Bombay High Court also held that the words "the capital asset" in section 48(ii) are identificatory and demonstrative of the asset, intended only to refer to the property that is the subject of capital gains levy and not indicative of the character of the property at the time of acquisition. It was clearly held that there cannot be two dates of acquisition of the same asset one as non-capital asset and again as capital asset. The earlier judgments of the Supreme Court in Bai Shirinbai K. Kooka's case (supra) and Miss. Bhun Badabhoy Kapadia's case (supra) were noticed by the Bombay High Court and held to be of no relevance to the question. Towards the end of the

judgment, the Bombay High Court observed that a similar view has also been taken by the High Courts of Madras, Karnataka, Kerala and Punjab & Haryana.

20. In my view, the matter having been concluded by the judgment of the Hon'ble Bombay High Court, which is the jurisdictional High Court, the contention of the assessee that the shares having been purchased in 1977 March, it must be allowed the option of the substituting the fair market value as on 1-4-1981, must be upheld. I am unable to appreciate the distinction sought to be made by the Ld. Sr. DR on the ground that the decision cannot be applied to a case where the asset has become a capital asset by the act of assessee (say, by conversion, as in the present case) and it must be confined to a case where the asset has become a

capital asset by legislative intervention. The true ratio of the decision is that there is only one point of acquisition of an asset and the cost on that date has to be reckoned, irrespective of the character of the asset at that point of time, be it capital asset within the meaning of section 2(14) or not. If that is the true ratio and I firmly believe it is then the question whether it became a capital asset by the act of the assessee or by an amendment to the law is, in my humble opinion, irrelevant."

5. *In view of the above, the first date of acquisition, i.e. 20.12.2006, has to be treated as date of acquisition of capital asset. The actual date of sale of the property is 21.01.2010, which is beyond 36 months from the date of original acquisition. Hence, the asset has to be treated as long term capital asset. Therefore, the profit on sale of such land has to be treated as long term capital gain. Hence the assessee is eligible for deduction*

under Section 54F of the Act subject to the compliance with the conditions prescribed in Section 54F of the Act. In view of the above, we are unable to uphold the order of the lower authority. Therefore, the orders of the lower authorities are set aside. The Assessing Officer is directed to treat the profit on sale of the land as long term capital gain and examine whether the assessee has complied with the conditions prescribed in Section 54F of the Act. If the assessee has complied with the conditions prescribed in Section 54F of the Act, then the assessee is eligible for deduction under Section 54F of the Act.

6. In the result, the appeal of the assessee is allowed.”

6.5. The Hon'ble Delhi High Court in the case of DLF Housing and Construction Pvt. Ltd., vs. CIT 141 ITR 806 (Del.) held as under :

“These observations, in our opinion, are quite apposite in the instant case inasmuch as it is beyond the pale of controversy that the assessee took no steps to develop the land in question and carve out plots as sites for houses, etc. On the contrary, the farm account of the assessee shows that substantial amounts were spent on the agricultural farm and income therefrom was also received. It may be that the layout plan for West Rajouri Garden which had been submitted by the assessee earlier to the DDPA for sanction was not approved and the assessee realised that there was no prospect whatsoever of the scheme in question being sanctioned. All the same the fact remains that no step was taken towards development of the land in dispute and it retained its agricultural nature even at the time of its acquisition by the Government. This is a vital circumstance which cannot be lost sight of for determining whether profits are assessable as

those arising out of a venture in the nature of a trade or it was merely appreciation of the capital investment. "A trader may acquire a commodity in which he is dealing for his own purposes, and hold it apart from the stock-in-trade of his business. There is no presumption that every acquisition by a dealer in a particular commodity is acquisition for the purpose of his business ; in each case the question is one of intention to be gathered from the evidence of conduct by the acquirer and his dealings with the commodity"— (CIT vs. Madan Gopal Radhey Lal [1969] 73 ITR 653 (SC). Even the fact and circumstance that the entry with respect to the excess amount received by the assessee by way of compensation has been shown under the head "Stock-in-trade" will have no effect to negative its being a capital receipt by sale of agricultural land. Agricultural income does not loss right to exemption merely because it can be brought under one or other of the heads of the

income set out in section 6 of the Act. It is nobody's case that purchase and sale of agricultural land as such was the business or one of the trading activities of the assessee. Indeed, the fact that agricultural operations were being carried on in the land in question throughout would warrant the inference that it was yielding Income and, as such, it was being dealt with as a capital Investment. Capital is the source of income and income is the fruit of capital, Judging from this aspect also, it is difficult to hold that the lands in question partook of the nature of stock-in-trade.”

6.6. The assessee, therefore, rightly contended that findings of the A.O. is incorrect because the capital asset was acquired way back in F.Y. 2006-2007 which is accepted by the A.O, as such, on date of sale period of holding would be beyond 36 months. Therefore, benefit of indexation should be allowed as the asset was acquired way back in F.Y. 2006-2007. Considering the facts and circumstances of the case, it is clear that impugned land remain as capital

asset because of the peculiar facts and circumstances of the case noted above as per Notification of the Ministry of Defence (supra). Therefore, on account of transfer of the same to AHCL by way of Settlement of the Dispute in the Hon'ble Delhi High Court, the assessee correctly offered the same as long term capital gains/loss as per Law. The Orders of the authorities below thus are not sustainable in law.

7. Learned Counsel for the Assessee, alternatively also submitted that since Ansal obtained an injunction in July, 2009, therefore, the same would also be beyond 36 months and as such, it would support the explanation of assessee that land in question was capital asset in nature. In that event the book entry made on 06.04.2012 would not be relevant. We agree with the alternate contention of the Learned Counsel for the Assessee that when everything was brought to the notice of the Court and it came to the knowledge of both the parties that no business activity or construction could be carried out in the impugned land and Hon'ble Delhi High Court granted injunction in July, 2009,

therefore, from that date it would be very clear that impugned land would not be having character of stock in trade. Therefore, alternative contention of assessee is also accepted. In view of the above facts, we set aside the orders of the authorities below and delete the entire addition. Appeal of assessee is allowed.

8. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 27th May, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'A' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.