

3. Brief facts of the case are that the AO was receipt of information that the assessee sold land whose market value was Rs. 1,89,00,000/- but admitted only Rs. 94,73,798/- in its return of income. Hence, a notice was issued u/s 148 and the scrutiny assessment was completed on 22/03/2016 assessing the LTCG at Rs. 1,32,49,337/- and STCG of Rs. 12,98,317/-, by observing as under:

"I have carefully considered the arguments of the assessee and I am of the considered view that the assessee cannot adopt the market value as on 01.04, 1981 for the following reasons:

a. The land was allotted to Mis Veena Industries, which is a proprietary concern of Smt. C. Raj Kumari, Hence, the date of possession by Smt. Raja Kumari cannot be treated as date of possession of land by the assessee-firm.

b. It is only the date of conversion of proprietary concern Mis Veena Industries to a partnership firm Mis Veena Industries. Consequently taking over the land as a asset of the firm could said to be date of possession by the firm. The firm was formed w.e.f, 01.041986. This could be date of transfer of land in the name of the firm. Hence the year of acquisition and rate of the acquisition reflected in the balance sheet of the assessee as on 01.04.1986 would be the cost of acquisition in the hands of the assessee firm

Therefore, the cost of acquisition and indexed cost of acquisition has been worked out accordingly. Revaluation of asset cannot be taken as cost of acquisition

I am also of the opinion that originally the land was transferred to the firm at the time of conversion of proprietary concern to partnership firm i.e, on 01.04.1986. Accordingly, the year of acquisition and rate of the acquisition reflected in the balance sheet of the assessee as on 01.04.1986 would be the cost of acquisition in the hands of the assessee firm

Accordingly, the capital gains is re-worked out by taking cost of ad at Rs 108467/ - as admitted by the assessee in its books of accounts as on 31/03/2007. The year of acquisition is treated as financial year 1986-87.

Total land sold during the F. Y 2007-08 is 1890 Sq. Yards. Out of this 1468 Sq. yards was appearing in the books of the firm as on 01.04.1986, balance 422 sq. yards was purchased by the firm during F.Y. 2005-06 for Rs. 2620. Accordingly the capital

gains on sale of 1468 Sq. Yards is treated as Long term capital gains and capital gains on sale of 422 Sq. Yards is treated as short term capital gains. Also as per return of income for the A. Y 2008-09 the firm has treated the sale value of the shed @ Rs. 1526202."

4. When the assessee preferred an appeal before the CIT(A), the CIT(A) confirmed the order of AO.

5. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

"1. On the facts and in the circumstances of the case, the order of Commissioner (Appeals) upholding the order of AO treating the Appellant as proprietary concern is erroneous, illegal and unsustainable in law.

2. The Commissioner (Appeals) erred in sustaining the AO's order in assessing LTCG at Rs.1,32,49,937 and STCG at Rs.38,76,608 rejecting the Appellant's contentions. The authorities below failed to appreciate that Appellant-Partnership Firm has succeeded to the business of proprietary concern and since the asset in question was acquired before 01.04.1981, the Appellant had the option to adopt the fair market value as on 01.04.1981 in respect of the asset in question.

Tax effect: Rs. 26,60,587 for LTCG @ 20.08%

Tax effect: Rs.12,09,502 for STCG @ 31.2%

3. The authorities erred in holding that the Appellant-Partnership firm has become the owner of the land on conversion of proprietary concern to partnership firm in the year 1986, and in adopting the value of land shown in the books as on 01.04.1986. The Authorities below failed to appreciate that the possession of land was given to MIs. veena Industries on 20.11.1973 and that the proprietary concern was succeeded by appellant partnership firm by induction of partners.

4. The authorities below failed to appreciate that Appellant has correctly opted to adopt the value of land at fair market value as on 01.04.1981 according to the value assigned by the approved valuer as the partnership firm succeeded to the business of the proprietary concern.

5. *The authorities below erred in holding that the land to the extent of 422 sq.yards is purchased in the financial year 2005-06."*

6. When this appeal is taken up for hearing, Id. counsel for the assessee submitted that the issue involved in this appeal is squarely covered against the order of ITAT in assessee's own case for AY 2007-08 in ITA No. 923/Hyd/2016 vide order dated 11/05/2018, a copy of which is filed on record.

7. The Id. DR, on the other hand, besides conceding with the submissions of the Id. counsel for the assessee relied on the orders of revenue authorities.

8. Considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. As submitted by the Id. counsel for the assessee, the issue in dispute is squarely covered against the assessee in its own case by the order of ITAT in AY 2007-08 (supra), wherein the Tribunal (SMC-Bench) has held as under:

"22. I have carefully considered the rival submissions and perused the record. No doubt, the Learned Counsel for the Assessee relied upon several decisions with regard to the expression "succession" but the issue as to whether it was a case of succession or not depends upon the facts of each case. In the instant case, no doubt Mis. Veena Industries, as a proprietary concern carried on the same business which was succeeded by the assessee-firm and to that limited extent it can be said that the firm succeeded to the proprietary concern. But it is intriguing to note that the sale deed categorically mentions that APIIC is the owner of the said land and in fact the sale deed prescribes Rs. 15,0001- as a sale consideration towards cost of the land, including development charges. Since this land cannot be utilised for any other purposes other than for industrial purposes, probably the land cannot be transferred I passed on from the previous possessor to the partnership firm and therefore, there was a need for the assessee-firm to purchase the land, free from all encumbrances, from APIIC. In other words, the land can only be allotted to persons who are engaged in the activity of manufacture or intended to carry on the old business. In a nutshell, the vacant land cannot be said to be the land owned by the previous owner. The Learned

Counsel for the Assessee relied upon several case law which only speaks of succession of business and they do not refer to a specific land which was previously in the possession of M/ s. Veena Industries proprietary concern as a licence holder but it has no rights to transfer the said land, whenever there was a change of constitution. In the instant cases, the land appears to have been handed over to the partners collectively by virtue of a sale deed entered into in 1990, on payment of Rs. 15,000/- only. We are only concerned with the value of the land and not with regard to the structures which are constructed by the previous occupant of the said land. In order to appreciate as to whether APIIC has a right to withhold the property from a manufacturer whenever there is a change of the constitution of the Members manning the business, one has to refer to the rules prescribed thereunder but nothing has been placed before me except the sale deed which merely indicates that though the vacant possession was delivered to M/s. Veena Industries (earlier owned by proprietary concern) on 20.11.1973, the same M/s. Veena Industries had to purchase the property by reconstituting itself as a partnership firm, for a sum of Rs. 15,000/-. Under these circumstances, I am of the view that the order passed by the Ld. CIT(A), on this aspect, does not call for any interference. Since cost as on 07.08.1990 has to be taken into consideration, the other contentions of the assessee regarding fair market value as on 01.04.1981 etc., need not be considered.”

Moreover, when the assessee preferred an appeal before the Hon’ble Jurisdictional High Court against the order of ITAT, the Hon’ble High Court upheld the order of ITAT dismissing the appeal of the assessee vide ITTA No. 428 of 2018, judgment dated 10th September, 2018.

8.1 Respectfully following the decision of the coordinate bench of this Tribunal, we uphold the order of CIT(A) and dismiss the grounds raised by the assessee on this count.

9. In the result, appeal of the assessee is dismissed.

Pronounced in the open Court on 4th December, 2019.

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Hyderabad, Dated: 4th December, 2019

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Copy to:-

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- 2) *ITO, Ward – 11(3), Hyderabad.*
- 3) *CIT(A) – 5, Hyderabad.*
- 4) *Pr. CIT - 5, Hyd.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*