

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री रमित कोचर, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No.1420/Chny/2015

निर्धारण वर्ष /Assessment Year: 2002-03

The Union Company(Motors) Private Limited
No. 20, Kavignar Bharathidasan Road, Opp. To SIET College, Teynampet, Chennai-600018

v. The Assistant Commissioner of Income-tax, Company Circle-III(3), Chennai-600034

(अपीलार्थी/**Appellant**)

[PAN: AAACU5630M]

(प्रत्यर्थी/**Respondent**)

Assessee by

: Mr. R.Balasubramaniam and Ms. Mayail Nickane, Advocates

Assessee by

: Mr. J. Pavitharankumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 18.12.2019

घोषणा की तारीख /Date of Pronouncement

: 18.12.2019

आदेश / ORDER

PER RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal filed by assessee is directed against appellate Order dated 30.03.2015 passed by learned Commissioner of Income Tax (Appeals)-11, Chennai (hereinafter called "the CIT(A)"), in New ITA no. 120/CIT(A)-11/2013-14(Old IT Appeal No.1534/13-14) for assessment Year (ay) 2002-03, the appellate proceedings before learned CIT(A) had arisen from assessment order dated 29.12.2007 passed by learned

Assessing Officer (hereinafter called "the AO") u/s.143(3) of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The assessee has raised as many as fourteen grounds of appeal in memo of appeal filed with Income Tax Appellate Tribunal, Chennai(hereinafter called " the tribunal) but when this appeal was taken up for hearing , the effective grievance of the assessee as was strenuously argued by learned counsel for the assessee is that while framing assessment order , the AO has not complied with provisions of Section 45(2) of the 1961 Act and learned CIT(A) also did not accepted the contentions of the assessee and merely confirmed the assessment order passed by the AO while adjudicating appeal of the assessee. It is explained by learned counsel for the assessee that provisions of Section 45(2) of the 1961 Act starts with a non-obstante clause that notwithstanding anything contained in Section 45(1) of the 1961 Act, the profits and gains arising from transfer by way of conversion by the owner of capital asset into , or its treatment by him as stock in trade of a business carried on by him shall be chargeable to tax as his income of the previous year in which such stock in trade is sold or otherwise transferred by him and for the purposes of Section 48 of the 1961 Act, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset. It will be profitable at this stage to extract provisions of Section 45(2) of the 1961 Act as were in statute during relevant period , which are reproduced hereunder :

"[(2) Notwithstanding anything contained in sub-section (1), the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into, or its treatment by him as stock-in-trade of a business carried on by him shall be chargeable to income-tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him and, for the purposes of section 48, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.]"

As is emerging from records and as argued by learned counsel for the assessee before the Bench, the assessee happened to be owner of some land situated at 113-114, Anna Salai, Chennai-60002 which is claimed to be owned by assessee for several decades. The assessee entered into a joint development agreement with two associate companies on 28.04.1994 for development of these plots of land into a multi storeyed office complex and out of the total constructed area of 396900 square feet, the assessee was entitled to 148010 square feet together with proportionate undivided interest in land and 96 reserved car parks. Accordingly, the assessee started selling the office complex every year. The assessee has during previous year 2001-02 relevant to impugned ay: 2002-03 has converted the undivided interest in land as stock in trade. The learned counsel for the assessee submitted before the bench that the assessee has of its own computed capital gains of Rs. 14,30,11,600/- at the time of conversion of capital asset into stock in trade and made entries in its books of accounts. However, the AO has interpreted the same that the assessee has admitted to pay tax on this capital gains on

sale of building , which it is explained is an error on the part of the AO as the assessee never sold the entire building but merely converted entire building into stock-in-trade in its books of accounts during the year under consideration. It was explained that merely on conversion of capital asset into stock in trade in its books of accounts, the liability to capital gain will definitely arise and get crystalized but the payment of same gets postponed and has to be paid when the said assets are sold by the assessee. It is explained that the AO brought to tax entire capital gains in the year under consideration merely on conversion of the capital asset into stock-in-trade . The assessee explained that out of its share of 148010 square feet to be received under joint development agreement , the assessee has only sold 29740 square feet during the year under consideration and accordingly the AO has rightly brought capital gains arising on sale of 29740 square feet of office complex to tax in the impugned assessment year under consideration, but it is explained by learned counsel for the assessee that the AO erred in also bringing to tax capital gains arising on entire 148010 square feet of share of the assessee merely on conversion of said 148010 square feet of share of assessee of office complex into stock-in-trade which has led to double taxation of the same income. It is explained that when in subsequent year(s) the assessee sold its share of office complex , it had voluntarily offered to tax income arising from capital gains as per Section 45(2) of the 1961 Act. Thus, in nut-shell it is explained that by bringing to tax entire capital gains which arose on mere conversion of capital asset into stock in trade in

impugned previous year 2001-02 relevant to ay: 2002-03, the authorities below have violated provisions of Section 45(2) and again bringing the same capital gains to tax when assessee's share is sold , has led to taxing the same income to tax twice which is not permissible under the provisions of the 1961 Act. The learned counsel for the assessee also raised a feeble plea before the Bench that the assessee is not engaged in the business of real estate but the fact remains that the assessee has manifested its intention of converting capital asset being office complex into stock-in-trade and accordingly passed necessary entries in books of accounts where manifestation of its intention to undertake activities of real estate by selling its share in a systematic manner is loud and clear. It is settled position that even an adventure in the nature of trade will also constitute business which may be a single activity as in this case of selling its share of office complex . Thus, this plea of the assessee is rejected. The learned DR on its part has submitted that matter can go back to the file of the AO for denovo assessment. We have heard both the parties and perused the material on record. We find merit in the contention of the assessee that in case the capital asset is converted into stock in trade, then provisions of Section 45(2) of the 1961 Act will come into play . The capital gains arising from such conversion on the date of conversion has to be brought to tax when the transfer/sale of such asset took place. Thus by merely converting capital asset into stock-in-trade , the liability to capital gains on the date of conversion shall definitely arise but the same gets postponed and is to be paid in the assessment year when such asset is

sold/transferred. Any excess/shortfall beyond the full value of consideration adopted for purposes of computation of capital gains on the date of conversion is to be brought to tax as business income(loss) of the year when such asset is sold/transferred. The provisions of Section 45(2) creates a deeming fiction and it has to be given full play. As is explained by learned counsel for the assessee, what has happened is that the AO has brought to tax entire capital gains arising on conversion of capital assets into stock in trade on mere conversion in previous year 2001-02 relevant to impugned ay: 2002-03, as well the same capital gains is also brought to tax when such asset was finally sold/transferred in subsequent years which has led to taxing the same income twice in the hands of the assessee which is not permissible. However, the contentions of the assessee need verification by the AO on a comprehensive basis along with all connected issues with respect to this property and accordingly computation of income chargeable to tax for the year under consideration. Thus, the entire matter is restored to the file of the AO for passing denovo assessment order after due verification of the entire spectrum of chargeability to tax of the capital gains or other income arising out of this property at Anna Salai, share of assessee under joint development, share of the assessee, retaining of share by developers who are associated companies and its impact on income of the assessee, treatment in books of accounts, basis of claim of depreciation on this property made by the assessee and/or other issues related / connected thereto with this property having bearing on assessing correct income in

the hands of the assessee for the year under consideration , as in our considered view the matter connected with this property including , inter-alia, car parking is to be seen comprehensively as they are inter-woven and integrated and cannot be adjudicated in isolation dehors several claims made by assessee such as offer of capital gains in return of income filed, credit of capital gains in books of accounts, claim of depreciation on such assets while computing income of the assessee for the impugned ay: 2002-03 which is under consideration before us . Thus, all contentions are kept open and needed verification by the AO for computing income of the assessee for the impugned ay: 2002-03. The AO is directed to pass speaking and reasoned order, after conducting necessary verifications . The assessee is directed to lead all evidences before the AO connected with joint development of its property at Anna Salai etc and fir assessing of correct income by the AO in the hands of the assessee for impugned ay. The assessee is also directed to lead evidences that the same income has been taxed twice firstly at the time of conversion of capital asset into stock in trade as well at the time of sale of such asset . It will also be open for the AO to verify computational aspect of capital gains claimed to be arrived at by assessee at the time of conversion of capital assets into stock in trade on the basis of which the entries were passed in books of accounts by the assessee and offered to tax in the year under consideration by assessee w.r.t. sale of office complex in the year under consideration . Thus, with aforesaid directions , we restore the aforesaid entire issue's to the file of the AO for framing denovo assessment.

Needless to say that the AO shall give proper and adequate opportunity of being heard to the assessee in denovo assessment proceedings in accordance with principles of natural justice in accordance with law and all evidences/ explanations filed by assessee in denovo set aside assessment proceedings will be admitted by the AO and be decided on merits in accordance with law. We order accordingly.

3 In the result, the appeal filed by assessee in ITA No.1420/Chny/2015 for ay: 2002-03 is allowed for statistical purposes.

Order pronounced in Open Court on this day of 18th December, 2019 in Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(रमित कोचर)

(RAMIT KOCHAR)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 18th December, 2019.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF