IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./ITA No.1235 & 1709/AHD/2017

(निर्धारणवर्ष / Assessment Year: (2013-14)

(Virtual Court Hearing)

Krishnakumar Ramsinh Parmar, C-Twin Bunngalow 4, Manorath Residency, Gurudev Complex, Silvasa-396230.	**Vs.**	The Income Tax Officer, Silvassa Ward-Silvassa.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **ACFPP2308B**		
(Assessee)		**(Respondent)**
Chandrasinh Ramsinh Parmar, Parmarwadi, Sayli Road, Silvassa, Dadra & Nagar Haveli-3962310.	**Vs.**	The Income Tax Officer, Silvassa Ward-Silvassa.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AIYPP9167F**		
(Assessee)		**(Respondent)**

Assessee by : Shri Hiren R Vepari - CA
Respondent by : Ms Anupama Singla – Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 19/10/2020

घोषणाकीतारीख/Date of Pronouncement: 03/11/2020

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned two appeals filed by the different assessees, pertaining to the Assessment Year (AY) 2013-14, are directed against the separate orders passed by the ld. Commissioner of Income Tax (Appeals), Valsad [in short the "CIT(A)"] in Appeal No. CIT(A)/VLS/259/16-17/302 dated 07.04.2017 and CIT(A)/VLS/260/16-17 dated 07.04.2017 respectively, which in turn arise out of separate assessment orders passed by the Assessing Officer (AO) under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as the "Act"].

2. Since, the issues involved in these two appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA No.1235/Ahd/2017, Shri Krishnakumar Ramsinh Parmar, for

assessment Year 2013-14, have been taken into consideration for deciding the above appeals *en masse*.

3. The grievances raised by the assessee in ITA No.1235/Ahd/2017, (lead case) are as follows:

"(1) <u>Charge of Capital Gains:</u>
The learned Commissioner of Income tax (Appeals) erred in confirming charge of capital gains in respect of Alwara Lands which had no cost.

(2) <u>Determination of capital gain at Rs.33,85,312/-</u>

(i) On the facts and circumstances of the case and as per law, the learned Commissioner of Income-tax (Appeals) erred in holding that the half share of land received by the assessee from his sister Ranjanben Parmar which she admittedly held as stock-in-trade, on introduction of such land in the partnership firm by the assessee attracted provisions of section 45(3) of the Act in spite of the fact that the land so introduced continued to be stock-in-trade.

(ii) The assessee submits that the learned Commissioner of Income-tax (Appeals) was not justified in holding that the concept of stock-in-trade is specific to the individuals when in fact, unless converted into capital asset, it remains stock-in-trade.

(iii)The assessee further submits that when the learned Commissioner of Income-tax (Appeals) states that the nature of assets in the hands of the transferee will depend on nature of use of assets by the transferee and the transferee using it as stock-in-trade, what was introduced remains stock-in-trade as per his own statement.

(iv)Without prejudice to the above, the learned Commissioner of Income-tax (Appeals) was not justified in confirming the protective addition into substantive addition without issuing enhancement notice.

(3)<u>Miscellaneous;</u>
The assessee craves leave to add, alter or vary any of the grounds of appeal.

4. At the outset, Learned Counsel, Shri Hiren R. Vepari, informs the Bench that assessee does not want to press ground No.1, therefore, we dismiss the same. Ground No.3 raised by the assessee is general in nature therefore does not require adjudication.

5. In this appeal, ground No. 2 raised by the assessee is only the effective ground. Although the assessee has raised as many as four sub-grounds below the ground of appeal No.2, as noted above, however before the Bench, Learned Counsel, Shri Hiren R. Vepari, during the course of hearing has emphasized, by and large, only on one

issue which we are required to adjudicate in this appeal, which is: whether or not Land (asset) held as stock-in-trade in the partnership firm is a capital asset and would attract the provisions of section 45(3) of the Income Tax Act,1961 ?

6. The relevant material facts, qua the issue, as culled out from the material on record, are as follows. During the course of scrutiny proceedings, the assessing officer noticed that the assessee alongwith his brother received gift of 38,000 Sq. mtrs plot of land alongwith certain construction of building on the said land on 20.12.2012 from his sister Smt. Ranjnaben R, Parmar. Smt. Ranjnaben R. Parmar was owner of the land at Silvassa admeasuring 38,000 Sq. mtr which was converted into non-agricultural land in 2002-03. In financial year 2010-11, Smt. Ranjnaben R, Parmar was granted permission on 27.08.2010 for construction of 22 buildings/Apartments on 34,000 Sq. mtr of the said land. The Construction of building A was started on 1677 Sq. mtr of land out of 34,000 Sq. mtr of land in collaboration with the partnership firm M/s. Sai Enterprises (the assessee alongwith his brother Shri Chandrasinh Ramsinh Parmar are partners). As per registered gift deed dated 20.12.2012, Smt. Ranjnaben R. Parmar transferred the whole land parcel of 38,000 Sq. mtr to her two brothers, Shri. Krishnakumar R. Parmar (the assessee) and Shri Chandrasinh R. Parmar. After receipt of gift of land parcel, the assessee as well as his brother Shri Chandrasinh Ramsinh Parmar introduced 1677 Sq. mtr of land as capital contribution to the firm M/s Sai Enterprises in the current assessment year.

7. The assessee sought directions from the Addl. Commissioner of Income-tax, Vapi Range, Vapi on the additions proposed by the assessing officer, relying on the provisions of section 144A of the Income Tax Act. The Addl., CIT, Vapi Range, Vapi after giving opportunity of being heard to the assessee and considering various submissions made by the assessee before him, vide para-8 to para 9.1 of his order under section 144A of the Act dated 23.03.2016 has directed the assessing officer. The said directions issued by the Addl., CIT, Vapi Range, under section 144A of the Act is reproduced below:

"08. As per the findings given in para 05 and 06 above, it is very clear that Shri Ranjanben R. Parmar has on 27.08.2010 i.e. the date she was granted permission by the Chief Officer, Siivassa for construction of 22 Buildings/Apartments on 34000 Sq. Mtr at S. No. 24/2 1, 2 and 3 at Siivassa, converted her capital asset i.e. the NA land mentioned above, into Stock- in-Trade. At this point, the provisions of Sec. 45(2) of the Income Tax Act, 1961 would apply. The AO should note here that the Fair Market Value of the asset on the date of conversion which in this case is Rs.11,40,00,000/- i.e. the value as per the gift deed dated 20.12.2012 shall be deemed to be the value of consideration received or accruing, as a result of transfer of the capital asset. The indexed cost of acquisition would be as determined by the AO in his show cause notice dated 01.02.2016 i.e. Rs. 2,42,82,000/-.

08.1 Section 45(2) of the IT Act, 1961 also provides that the profits/gains accruing by way of conversion of the capital asset into Stock- in- Trade is chargeable to tax in the year in which the Stock- in- Trade is sold. In this case, as discussed in the paras above, Smt. Ranjanben R. Parmar has gifted the land at S. No.24/2, 1, 2 and 3 at Siivassa admg. 38000 Sq. mtr to her brothers, Shri Chandrasinh R. Parmar and Shri Krishnakumar R, Parmar equally, as explicitly mentioned on page 2 of the Registered Gift Deed. Automatically, alongwith the land, the constructed building, permission obtained, etc. will also pass on to Shri Krishnakumar R. Parmar and Shri Chandrasinh R. Parmar, equally.

08.2 In view of the details mentioned in para 08 and para 08.1 above, the AO will apply the provisions of section 45(2) of the I. T. Act, 1961 in the cases of Shri Krishnakumar R. Parmar and Shri Chandrasinh R. Parmar at the point of sate. Alongwith the gift of the land from Smt. Ranjanben R, Parmar, the liability of taxation of capital gain as per the provisions of section 45(2) of the I. T. Act has also duly passed on to them in all its scope and entirety. As the charging of capital gains under section 45(2) of the I. T. Act, 1961 is in the year which the Stock- in- Trade has been sold, the AO will bring to tax the capital gains in the year of sale, i.e. the year in which M/s. Sai Enterprises (in respect of 1677 Sq. Mtr, of land) and M/s. Sai Samarth Enterprises (in respect of 1677 Sq. Mtr. of land), has sold the Stock- in-Trade /booked the profit on sale as both the firms are seen to be following project completion method for offering the profit/income to tax. The AO will also ensure that the action as above is taken in respect of the remaining land of 34,000 Sq. Mtr. for which the building construction has been duly approved, as discussed in the paras above.

09. Now coming to the introduction of land as capital by Shri Krishnakumar R. Parmar and Shri Chandrasinh R. Parmar, the details of which have been discussed in paras 05, 06 & 10 above, the provisions of section 45(3) of the I. T, Act, 1961 would apply. The capital gain on transfer of the capital assets by a partner to a firm is chargeable to tax in the previous year, in which such transfer has taken place. The amount recorded in the books of accounts of the firm as the value of the capital assets is to be taken by the AO as full value of consideration received as a result of the transfer. The details in respect of such transfer by Shri Krishnakumar K. Parmar and Shri Chandrasinh R. Parmar to M/s. Sai Enterprises and M/s. Sai Samarth Enterprises are as per para 07 above. ***The AO may note that the transfer of capital assets by the partners is only at 1677 Sq. Mtr each in the aforementioned firms, out of 34,000 Sq. Mtr of land approved for construction of flats/apartments.*** *Similar action is required to be taken when Shri Krishnakumar R. Parmar and Shri Chandrasinh R. Parmar transfers the remaining land to any firm/AOP, etc. in future.*

09.1 The AO is directed to implement the instructions in para 09 above on PROTECTIVE BASIS. The instructions in para 08 will be Implemented by the AO on SUBSTANTIVE BASIS. "

8. Addition made by assessing officer on substantive basis:

In view of the direction given by the Addl. Commissioner of income Tax, Vapi Range Vapi, as noted above, the assessing officer held that assessee is liable to pay capital gain tax as per the clear cut provisions of section 45(2) of the Act on conversion of the land into Stock-in-Trade and the value of consideration would be the fair market value as on the date of conversion of the land into stock in trade. Thus, assessing officer computed long term capital gain on land admeasuring 1677 Sq. Mtrs, (which converted into stock in trade), as follows:

Sale value based on fair market value	Rs.50,31,000
Less: index cost 1677*75*852/100	Rs.10,71,603
Long term capital gain	Rs.39,59,397

Half share of the assessee Rs.19,79,699/-

Therefore, the amount of Rs.19,79,699/- (being share of assessee) was added under section 45(2) of the I.T. Act, to the total income of the assessee on substantive basis.

9. **Addition made by assessing officer on Protective basis:**

The assessing officer noticed that capital account for assessment year 2013-14, in M/s, Sai Enterprises, in which the assessee and his brother are partners, the land admeasuring 1677 Sq. Mtr had converted into Stock on 20.12.2012 and the same was transferred to the firm M/s. Sai Enterprise as his capital introduction in the firm and accordingly value of the same was taken at Rs.33,85,312/-. The assessing officer was of the view that introduction of land as capital by the assessee, would attract the provisions of section 45(3) of the Income Tax Act, 1961. The assessing officer also noted, vide para 11 of his order, that capital gain on transfer of the capital assets by a

partner to a firm is chargeable to tax in the previous year, in which such transfer has taken place. The amount recorded in the books of accounts of the firm as the value of the capital assets is to be taken as full value of consideration received as a result of the transfer. The transfer of capital assets by the partners is only at 1677 Sq. Mtr each in the aforementioned firms, out of 34,000 Sq. Mtr of land approved for construction of flats/apartments. Therefore, for the purpose of calculating the capital gain on transfer of land to the firm, the value recorded in the books has to be considered. The value recorded in the books was to the tune of Rs.33,85,312/-. In view of the direction given by the Addl. Commissioner of income Tax, Vapi Range Vapi, vide his order u/s. 144A dated 23.03,2016, the assessing officer made addition under section 45(3) of the Income Tax Act, to the tune of Rs.33,85,312/- on protective basis.

10. On appeal, the ld CIT(A) deleted addition made by assessing officer on substantive basis to the tune of Rs.19,79,699/-. The findings of the ld CIT(A) in respect of addition on substantive basis are as follows:

"After considering the findings of the assessing officer and submissions of the assessee, I find that the following facts emerge:-

(i) The factual matrix of the case indicates that Smt. Ranjnaben R. Parmar converted her agricultural land admeasuring 38,000 Sq. mtr into non-agricultural land in F.Y. 2002-03 and permission for development and construction on 34,000 Sq. mtr of the said land was obtained on 27.08.2010. Construction on 1677 Sq. mtr of land was started in collaboration with M/s. Sai Enterprises (Brothers of Ranjnaben R. Parmar-Shri Chandrasinh R. Parmar and Krishnakumar R. Parmar were partners). M/s. Sai Enterprises was appointed as manager/supervisor with profit sharing of 20%. On 20.12.2012, the land parcel of 38,000 Sq. mtr including the construction thereon was gifted to the two brothers - Shri Chandrasinh R. Parmar and Krishnakumar R. Parmar. The facts till this stage bring out that Smt. Ranjnaben R. Parmar transferred her stock in trade in the form of land of 38,000 Sq. mtr including the construction thereon till that date of 20.12.2012. Thus, the provision of sec.45(2) of the Act is applicable in the case of Smt. Ranjnaben R. Parmar for assessment year 2013-14. The provision of sec. 45(2) of the Act is a non-obstante clause starting with the phrase – "Notwithstanding anything contained in subsection (1)…….." meaning thereby that capital gain has to be computed even if not consistent with provision of sec. 45(1) of the Act. ***The provision of sec. 45(2) clearly mention that on conversation of capital asset to stock in trade of business carried on by a person will be chargeable to tax as capital gains in the previous year in which such stock in trade is "sold or otherwise transferred" by that person.*** *The AR of the assessee has argued that the stock- in- trade is gifted to the two brothers and therefore, this is not sale and no chargeable capital gain arises. The AR argued that capital gain charged when stock in trade introduced in the firm M/s. Sai Enterprise is ultimately sold as flats. This contention of the AR is not in accordance with the provisions of the Act due to following reasons:-*

(a) S. 45(2) of the Act states the stock-in-trade sold or otherwise transferred. The gift of land parcel in the current case amounts to "otherwise transfer" for Smt. Ranjnaben R. Parmar.

(b)Smt Ranjnaben R. Parmar has gifted the land parcel leading to transfer and hence capital gains on the whole transfer of land parcel of 38000 Sq. mtrs is chargeable to tax in A.Y. 2013-14 in her case.

Accordingly, I find that the direction of the Addl. CIT u/s. 144A of the Act, vide para 8 of his order dated 23.03.2016 is not accordance with the provision of the Act. The AO has computed capital gains of Rs.19,79,699/- u/s. 45(2) of the Act in the case of assessee by taking F.M.V. of 1677 Sq. mtr of land reduced by indexed cost of acquisition for 1677 Sq. mtr land. This is totally incorrect as there is no sale or otherwise transfer of any stock-in-trade by the assessee. The assessee received capital assets in the form of land parcel out of which 1677 Sq. mtr (half share each of the assessee and his brother) introduced as capital contribution in the firm and balance portion is lying in his capital account itself. Thus, the addition of Rs.19,79,699/- u/s, 45(2) of the Act in the case of assessee is not sustainable and the same is hereby deleted.

11. However, ld CIT(A) confirmed the addition of Rs.33,85,312/-, which was made by the assessing officer on protective basis. The ld CIT(A) also converted protective addition into substantive addition observing as follows:

"*(ii) With regard to capital gains of Rs.33,85,312/- taxed in the case of the assessee on protective basis as per direction u/s. 144A of the Act, I find that the AO as well as the Addl. CIT has misinterpreted the issues involved. The facts indicated that the assessee alongwith his brother received capital assets in the form of land parcel of 38,000 Sq. mtr including some construction thereon. This is nothing but capital assets in the hands of the assessee even though it was stock in trade in the hands of Smt. Ranjnaben R. Parmar.* ***The concept of stock in trade is specific to the individuals/persons carrying on the business who had converted their capital assets into stock in trade for exploiting the same for the purpose of business. Once this stock in trade is sold or transferred, the nature this assets in the hands of the transferee will depend on the nature of use of the assets by the transferee. For example, the manufacturing company of machinery will sale its machine as stock in trade whereas the purchaser may use the same as capital assets or stock in trade depending on whether the purchaser is using the machine for some production of goods or the machine is being used as a trading item. In the current case, the assessee received capital assets in the form of half shares of land parcel of 38,000 sq. mtr inclusive of construction thereon which was credited to his capital accounts.*** *Out of this capital asset of land, 1677 Sq. mtr of land was transferred by him as capital contribution to the firm M/s. Sai Enterprises in the current assessment year. AR of the assessee has accepted this fact in his submission that only 1677 sq. mtr land was introduced as capital contribution by the two partners and balance was lying in their capital accounts. Thus, for the assessee, the provision of sec. 45(3) of the Act will apply and capital gain on transfer of capital asset of 1677 Sq. mtr to the partnership firm M/s. Sai Enterprises (in which he was one of the partner) in the current assessment year will be chargeable to tax. There is no reason why this capital gain should be charged on protective basis. The capital asset is introduced by the assessee as capital contribution in the current assessment year. Thus, I do not agree with the direction given by the Addl. CIT u/s.144A of the Act. Accordingly, the capital gains computed at Rs.33,85,312/-u/s. 45(3) of the Act is hereby confirmed as substantial income of the current assessment year."*

12. Aggrieved by the order of the ld. CIT(A) in respect of substantive addition of Rs. 33,85,312/-, the assessee is in appeal before us.

13. Learned Counsel, Shri Hiren R. Vepari, vehemently contends that sub-section (2) of section 45 of the Act deals with the situation where 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. There is no tax liability in the hands of the assessee till the capital asset remains as stock-in-trade. The tax liability in the hands of the assessee would arise only when the assessee sales the stock-in-trade. Since, the assessee has not sold the stock-in-trade therefore no any capital gain arises in his hands. The ld Counsel also submits that stock-in-trade is not a capital asset, since it is one of the exclusions from the definition u/s.2(14) of the Act. This way, ld Counsel prayed the Bench that substantive addition of Rs. 33,85,312/- may be deleted.

14. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier paras nos.6 to 9 and is not being repeated for the sake of brevity.

15. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record. The main issue before us is that whether or not Land (asset) held as stock-in-trade in the partnership firm is a capital asset and would attract the provisions of section 45(3) of the Income Tax Act,1961 ? To adjudicate this issue, let us first analyze the relevant provisions of sub- section (2) of Section 45, sub-section (3) of section 45 and sub-section (14) of section 2 of the Income Tax Act 1961.

16. Sub- section (2) of Section 45 of the Income Tax Act reads as follows:

"45(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"

Having gone through the above provisions of sub-section (2) of section 45, we have noticed that where capital asset is converted into stock-in-trade and remains in stock-in-trade, till that point of time, there is no charge of capital gain. The charge of capital gain arises when such stock-in- trade is sold or otherwise transferred by the assessee. Now, at the point of conversion of capital asset into stock-in- trade that is, when part of the gifted land was introduced by assessee in M/s Sai Enterprises (partnership firm) as stock-in-trade, there is no charge of capital gain. As per plain language of sub-section (2) of section 45, transfer would take place when such stock-in- trade is sold by partnership firm (M/s Sai Enterprises). Since, the partnership firm (M/s Sai Enterprises) has not sold the stock-in- trade therefore no any capital gain would arise in the hands of the assessee.

17. Sub- section (3) of Section 45 of the Income Tax Act reads as follows:

"45(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 "

From the provisions of sub- section (3) of Section 45 of the Income Tax Act, it is clear that when a person transfers a capital asset to partnership firm in which he is a partner, by way of capital contribution, then it shall be chargeable to tax as his income of the previous year in which such transfer takes place. However, as per sub-section (2) of section 45, if such capital contribution is made by partner as stock-in-trade then

taxable event of capital gain would arise in the year in which such stock-in-trade is sold. Thus, sub-section (2) of section 45 carves out an exception to the above and deals with the situation where capital asset is converted into stock-in-trade. At that point of time, as per sub-section (2) of section 45 of the Act there is no charge of capital gain. The charge of capital gain arises when such stock-in- trade is sold.

In assessee`s case under consideration, we note that 1677 Sq. mtr of land was transferred by assessee as capital contribution, as a stock-in-trade, to the firm M/s. Sai Enterprises in the assessment year 2013-14. Since the capital asset is converted into stock-in-trade during the assessment year 2013-14, it will be treated as "transfer" under section 2(47) for the assessment year 2013-14 but charge of capital gain does not arise. The charge of capital gain arises when such stock-in- trade is sold. In other words, the Capital gain shall be computed on the assumption that the capital asset is transferred in assessment year 2013-14, however, by virtue of sub-section (2) of section 45 such capital gain will be taxable in the subsequent assessment year in which such stock-in-trade is sold. In the assessee`s case, the stock-in-trade is not sold in the assessment year 2013-14 therefore, there is no any liability on the assessee to pay tax in the assessment year 2013-14, the liability to pay tax will arise in subsequent year in which such stock-in-trade is sold by the assessee. Therefore taxable event or tax liability on the assessee arises on sale of such stock-in-trade .

18. Sub-section (14) of section 2 is reproduced below(To the extent relevant for our analysis) as follows:-

"2(14) 'capital asset' means:

(a) property of any kind held by an assessee, whether or not connected with his business or profession;

(b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992),

but does not include-

(i) any stock-in-trade [other than the securities referred to in sub-clause (b)], consumable stores or raw materials held for the purposes of his business or profession;"

It is s abundantly clear from the provisions of sub-section (14) of section 2 that stock-in-trade is not a capital asset. We note that in assessee`s case capital asset of land, 1677 Sq. mtr was transferred by assessee as capital contribution to the firm M/s. Sai Enterprises in the current assessment year which was treated by the firm as stock-in-trade. The said stock-in-trade is not a capital asset.

19. Now coming back to the facts of the assessee`s case in the light of the legal position on the issue “stock-in-trade”, as explained above. At the cost of repetition we state that the partnership firm M/s. Sai Enterprises was formed on the 14th day of February, 2011.An agreement was executed between Smt. Ranjenben R. Parmar and M/s. Sai Enterprises on 16-2-2011 whereby the owner Smt. Ranjanben R. Parmar had appointed M/s. Sai Enterprise as Manager/ Supervisor to develop the land admeasuring only about 1677 sq. mtrs as per terms and conditions mentioned in the said agreement. Smt. Ranjanben R. Parmar gifted the entire land admeasuring about 38000 sq. mtrs (including 1677 sq. mts) to her brothers Shri Chandrasinh R. Parmar and Krishnakumar R. Parmar. As Shri Chandrasinh R. Parmar and Krishnakumar R. Parmar were partners in the firm, M/s. Sai Enterprises, their capital account each was credited by Rs. 33,85,312/- being the value of land introduce as stock-in-trade. That is, land was held as stock-in-trade so gifted to Chandrasinh Parmar and Krishnakumar Parmar (assessee) which is introduced into the partnership firm with their capital accounts credited with Rs.33,85,312/- each.

The issue relates to applicability of capital gains on introduction of stock-in-trade by the assessee into the partnership firm, M/s Sai Enterprise where the assessee is a partner. We note that assessing officer had added this sum on protective assessment basis by treating it as capital asset based on the directions u/s.144A of the Act. On appeal, learned CIT(A) has confirmed the addition on substantive ground by holding that what was introduced by the assessee was capital asset and not stock-in-trade, hence provisions of section 45(3) becomes applicable.

20. Conclusion

Admitted facts in the assessee`s case are that the character of land when introduced as capital into the partnership, M/s. Sai Enterprises, was nothing but stock-in-trade. The stock-in-trade is not sold by the assessee in the assessment year under consideration, that is, assessment year 2013-14.

We note that sub-section (2) of section 45 deals with the situation where capital asset is converted into stock-in-trade. Where the owner of a capital asset converts the capital asset into or treats it as, stock-in trade of his business, there is no transfer and no gain under the general law, for a man cannot transfer his property to himself or to make gain out of himself. However, section 2(47) (iv)[as amended by the Taxation Laws (Amendment) Act, 1984 with effect from April 1, 1985], deems such conversion as transfer and section 45(2) [inserted by the same Act with effect from the same date], brings to tax in a singularly ill-suited language, stating that, 'the profits or gains arising from such 'transfer' in the accounting year in which the stock-in-trade is sold or otherwise transferred.

We note that as per provisions of sub-section (2) of section 45, where capital asset is converted into stock-in-trade, till that point of time, there is no charge of capital gain. The charge of capital gain arises when such stock-in- trade is sold by the assessee. Since, the partnership firm (M/s Sai Enterprises) has not sold the stock-in- trade therefore no any capital gain would arise in the hands of the assessee. As per sub-section (3) of Section 45 of the Income Tax Act, when a person transfers a capital asset to partnership firm in which he is a partner, by way of capital contribution, then it shall be chargeable to tax as his income of the previous year in which such transfer takes place. However, sub-section (2) of section 45 carves out an exception to the above and deals with the situation where capital asset is converted into stock-in-trade, that is, there is exception in sub-section (2) of section 45 of the Act. The exception is that the Capital gain shall be computed on the assumption that the capital asset is transferred in assessment year 2013-14. However, by virtue of sub-section (2) of section 45 such capital gain will be taxable in the subsequent assessment year in which such stock-in-trade is sold. In the assessee`s case, the stock-in-trade is not sold in the assessment year 2013-14 therefore, there is no any liability on the assessee to pay tax in the

assessment year 2013-14, the liability to pay tax will arise in subsequent year in which such stock-in-trade would be sold.

Considering the legal position as explained by us in the relevant provisions of sub-section (2) of Section 45, sub-section (3) of section 45 and sub-section (14) of section 2 of the Income Tax Act 1961 and taking into account the facts of the assessee`s case, we hold that Land (asset) held as stock-in-trade in the partnership firm is not a capital asset and would not attract the provisions of section 45(3) of the Income Tax Act,1961, hence we delete the addition of Rs. Rs.33,85,312/-.

21. In the result, the appeals filed by the assessees (in ITA No.1235/Ahd/2017 for AY.2013-14 & ITA No.1709/Ahd/2017 for AY.2013-14) are allowed.

Order is pronounced on 03/11/2020, as per Rule 34 of Income Tax Appellate Tribunal, Rule 1963.

Sd/- **(PAWAN SINGH)** **JUDICIAL MEMBER**	**Sd/-** **(Dr. A.L. SAINI)** **ACCOUNTANT MEMBER**

सूरत /Surat
दिनांक/ Date: 03/11/2020
Samanta, PS

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat