



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
HYDERABAD 'A' BENCH, HYDERABAD**

**BEFORE S/SHRI A .MOHAN ALANKAMONY, ACCOUNTANT MEMBER  
AND CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**ITA No.451/Hyd/2020**

Assessment Year : 2015-16

M/s. Kyori Infrastructure Pvt Ltd., C/O. P Murali & Co., CA, 6-3-655/2/3, Samajiguda, Hyderabad	Vs.	DCIT, Circle-2(1), Hyderabad
PAN/GIR No.		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri P.Murali Mohan Rao, AR  
Revenue by : Shri B.Bala Krishna CIT (DR)

**Date of Hearing : 13/10/ 2021**  
**Date of Pronouncement : 24/01/2022**

**ORDER**

**Per Bench**

This is an appeal filed by the assessee against the order u/s.263 of the Act of the Pr. CIT-2, Hyderabad dated 26.2.2020 for the assessment year 2015-16.

2. Facts of the case are that the assessee company is engaged in the business of construction and infrastructure activity. It filed the return of income for assessment year 2015-16 on 30.9.2015 declaring total income at Rs.15,58,050/-. The case was taken up for scrutiny and the assessment was completed u/s.143(3) of the Act on 27.12.2017 with the assessed income at Rs.15,58,050/-.

3. Thereafter, the Pr. CIT-2, Hyderabad examined the assessment records of the assessee and noticed that the assessed has sold a property situated at Konada village of Vijayanagaram district for a consideration of Rs.11,92,18,880/- to M/s. Aahagan Properties Pvt Ltd., on 21.1.2015 registered with SRO, Bhogapuram. He observed that the above land sold was actually converted into stock in trade from fixed assets during the financial year 2013-14 valued at Rs.6,55,16,976/- and included in the closing stock as on 31.3.2014. As per section 45(2) of the Act, wherever a capital asset is converted into stock in trade by an assessee, it is deemed as transfer of capital asset and capital gains on such transfer is chargeable to tax in the year in which such stock in trade is sold or otherwise transferred. As the assessee has sold the stock in trade during the financial year 2014-15, the assessee is liable for capital gains on conversion of capital asset to stock in trade in assessment year 2015-16. Since the assessee sold the stock in trade acquired at a cost of Rs.6,55,16,976/- for a consideration of Rs.11,92,18,880/-, the assessee is also liable to offer income on the difference amount of Rs.5,37,01,904/- (Rs.11,92,18,880 – Rs.6,55,16,976) under the head "income from business or profession". He observed that although the above issues were available on record, the Assessing Officer did not examine the same while completing the assessment u/s.143(3) of the Act. This action of the AO has led to the assessment order erroneous and prejudicial to the interest of the revenue.

4. Accordingly, Pr. CIT issued show cause notice u/s.263 dated 14.1.2020 was issued to the assessee proposing to set aside/revise the assessment order. In response to show cause notice, the assessee has challenged the jurisdiction of CIT for revision under both legal grounds and factual grounds. The Pr. CIT observed that the Assessing Officer has never called for or examined the issues i.e. chargeability of capital gains as per section 45(2) of the Act. Therefore, the Pr. CIT set aside the assessment order and directed the AO to pass fresh assessment order after taking into account the followings:

- i) To compute capital gains on conversion of capital asset into stock in trade @Rs.6,55,16,976/- (made in F.Y. 12013-14) to be assessed in A.Y. 2015-16 i.e. the A.Y relevant to the sale on such stock in trade) sold for Rs.11,92,18,880/- as per provisions of section 45(2) of the Act.
- ii) To compute business income on sale of property for Rs.11,92,18,880/- after examining the basis for valuation of closing stock as on 31.3.2015 at Rs.47,75,35,609/-."

5. Ld A.R. of the assessee in his written submissions, stated as follows:

"The appellant is into the business of constructions and infrastructure activity and accordingly during the FY 2013-14 converted the fixed assets i.e. land valued at Rs. 6,55,16,796/- into the stock in trade for the purpose of business. The said fact can be established from the financial statements and Annual Report for the FY 2013-14. Later, in the FY 2014-15 appellant sold part of the land at Rs. 11,92,18,880/- and same has been offered as revenue from sale of inventory in schedule 2.12 of the financial statement page no. 37 of paper book -2 filed before Hon'ble ITAT. It is also pertinent to mention here that assessee company has offered the sale proceeds as business income as part of business activity and thus, the assessee has not offered the same under the head capital gains mainly because entire stock in trade is not sold wherein the unsold part of land is still held as stock in trade, reference can be made from page no. 36 - schedule 2.9 (inventory) of the paper book-2 filed before Hon'ble ITAT 2.1 No capital gain earned

during the AY 2015-16 as the unsold part of land is held under stock in trade:

In this connection, it is further submitted that in the present case the assessee has incurred loss on sale of part of the land and thereby no gain arose during the AY 2015-16, this being the fact the assessee has not offered the loss. Further, the Ld. PCIT has erred in invoking the provisions of capital gain without considering the fact that tire order passed by the Ld. AO U/s 143(3) is neither prejudicial to the revenue nor the same is erroneous.

The Id. PCIT ought to have considered that provisions of section 263 cannot be invoked in a case where there is no loss to the revenue. In the present case, it can be duly established that there is no loss to the revenue and hence the order made U/s 263 is void ab initio.

In this regard, we would further like to submit that as per section 45(2) of the Act, when asset is converted by its owner as stock-in-trade, the Capital gain on the same will arise only when the entire stock-in-trade is sold. For your kind reference, we hereby enclosing the extract of section 45(2) of the Act:

"Section 45(2) of the Act":

*"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."*

A plain reading of the provisions of section 45(2) of the Act, it is clear that the profits and gains arising from the transfer by way of conversion of a capital asset into 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, for the purpose of section 48, there is no mention about the sale of part of the capital asset converted into stock-in-trade to be considered as income towards capital gains. Further, it is also clear that the profits or gain arising from transfer of asset 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. Moreover, the appellant has also admitted the part of the sale of stock-in-trade as his business income. Hence, the action of the Pr CIT - 2 for proposing the income from capital gains is against to the principles of accounting standards, is against to the

provisions of section 45, 47 and 48 of the Act, which thus deserves to be dropped. In support of the above, reliance is placed on the following case laws. . [2010] 133 TTJ 595 (Chennai), IN THE ITAT, CHENNAI BENCH 'A' R. Gopinath (HUF) v. Assistant Commissioner of Income-tax. Thus, we would like to submit that provisions of Capital gain do not arise towards the land which has been converted into the stock. Thus the addition made in respect of short term capital gain and long term capital gains requires to be deleted.

Wrongly invoking Provisions of section 45(2) and section 263 of the Act; Further it is submitted that invoking provisions of section 45(2) of the Act towards capital gains is not sustainable and is deserved to be dropped for the following reasons:-

- a) That as per the provisions of section 45(2) of the Act, there is no mention about the sale of part of the capital asset converted into stock-in-trade to be considered as income towards capital gains, arising from transfer of asset 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;
- b) That the first ingredient to charge capital gains under section 45(2) of the Act is that there has to be the element of the profits or gains arising from the transfer by way of conversion of capital asset or its treatment by him as stock-in-trade of his business;
- c) That the asset - viz., pooling of lands the asset was accounted as stock-in-trade during the assessment year 2014-15;
- d) That, during the AY 2015-16, the Assessee has actually incurred loss on the sale of part of land, the same be tabulated below, as follows:

<b>Statement of Gain / Loss</b>		
<b>Particular</b>	<b>Total Amounts(86.39acres )</b>	<b>Per acre Amount</b>
Land (86.39 acres )	Rs. 6,55,16,976	Rs. 7,58,386.11
Cost of further Improvements for 86.39 acres	Rs. 52,86,58,606	Rs.61,19,442.13
total cost	Rs. <b>59,41,75,582</b>	Rs. 68,77,828.24
<b>Less:</b> sale proceeds (30.79 ACRES)	Rs. <b>11,92,18,880</b>	Rs. 38,72,000.00
<b>Gain / Loss</b>		<b>Rs.-30,05,828.24</b>

In our case the provision u/s.45(2) cannot be applicable because die each acre land sold at capital loss of Rs.30,05,828.24/-the total loss for sold the

30.79 acres land is Rs.9,25,49,451.63 The assessee not claimed the capital loss in the return.

e) That the Assessee has rightly offered the sale proceeds as part of income in the financial statements for the FY 2014-15 - reference can be made to page no. 37 of paper book -2 (schedule 2.12) tiled before your honours.

f) Thus, where the assessee has rightly disclosed the sale proceeds alongwith the cost incurred towards sale of part of the land in its financial statements being part of assessment records, invoking provisions of section 263 is not tenable.

g) That the appellant would like to submit that, the assessee has sold the part of the stock-in-trade converted, during the year under consideration, which clearly shows that the provisions of section 45(2) are not applicable.

2.3 In view of the above, it is submitted that invoking provisions of section 45(2) and section 263 of the Act by proposing the addition towards capital gains is not correct in the case of assessee company."

6. Reiterating the written submission, Id A.R. submitted that section 45(2) of the Act cannot be applicable because each acre land sold at capital loss of Rs.30,05,828.24 and the assessee cannot claim the capital loss in the return. Id A.R. also submitted that the assessee has rightly offered the sale proceeds as part of income in the financial statement and has rightly disclosed the sale proceeds as part of land in its financial statement being part of assessment records and thus, invoking of revisionary power u/s.263 of the Act is not applicable to the present case. Id A.R. also pointed out that the assessee had sold part of stock in trade (converted) during the year under consideration, which clearly shows that the provisions of section 45(2) of the Act are not applicable and the Id. Pr. CIT was not justified in

invoking revisionary powers u/s.263 by proposing addition towards capital gain in the hands of the assessee.

7. Replying to above, Id CIT DR supported the order of the Ld Pr. CIT. Ld CIT DR submitted that as per provisions of section 45(2) of the Act, the profits or gains arising from the transfer of property 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. Therefore, Id. Pr. CIT was right in invoking the revisional provisions u/s.263 of the Act. Ld CIT DR strenuously contended that the assessee is misleading and misguiding the revenue authorities by stating that only a part of land converted was sold during the relevant financial period, therefore, the provisions of section 45(2) of the Act cannot be applied to the case of the assessee because although sub-section(2) of section 45 of the Act does not explain a situation when a part of land is sold but it is also not mentioned thereon that in case of conversion of a capital asset into stock in trade of a business carried on by the assessee chargeable to income tax as his income of previous year in which such stock-in-trade is sold or otherwise transferred. Therefore, in a

situation, when a part of stock has been sold then the calculation of profit or gains arising from transfer of capital asset by way of conversion into stock-in-trade would be charged to tax partially in the hands of the in the year where the part of land has been sold.

8. Placing rejoinder to above, Id A.R. submitted that the interpretation of provisions of section 45(2) of the Act by CIT DR is misplaced, therefore, the order of Pr. CIT u/s.263 of the Act may kindly be set aside and quashed.

9. On careful consideration of the rival submissions, first of all, we may point out that the controversy in this case revolves around the applicability of sub-section(2) of Section 45 of the Act to the case of the assessee, wherein, the assessee has sold a part of land, which was converted from capital asset to stock-in-trade during the preceding financial period. We find it beneficial to reproduce sub-section(2) of Section 45, which reads as follows:

“Sub-section(2) of Section 45 - 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.

10. In our humble understanding, sub-section(2) of Section 45 of the Act provides that the profits or gains arising from the transfer of asset 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 in the hands of the assessee 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](#), i.e. for the purpose of calculation of capital gains accrued to him from such conversion of capital asset into stock in trade. It has also been provided that for the purpose of calculation of capital gains u/s48 of the Act, the fair market value of the assessee 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. This provision does not provide a situation where the assessee has sold a part of converted capital asset into stock in trade but at the same time, we also observe that it is also not the intention of the legislature that if the assessee is transferring a part of converted capital assets during preceding financial period, then the revenue authorities has to wait till the transfer of entire converted stock in trade for the purpose of taxing capital gains accrued to the assessee on conversion of capital asset

into stock in trade. Therefore, respectfully following the principles that the right income should be taxed in the right hands in the relevant financial period, we are of the considered view that in a case also where the assessee transfers a part of converted capital asset then also profits or capital gain would be chargeable to tax in the hands of the assessee partially pertaining to part of land or property sold during relevant financial period and same shall be chargeable to tax in the previous year in which such part of stock in trade is sold or otherwise transferred by taking a fair market value on the date of such transfer or treatment shall be deemed to be full value of the consideration received or accrued to the assessee, as a result of transfer of capital asset. In the present case, undisputedly rather admittedly, the assessee has transferred part of converted capital asset into stock in trade during the relevant financial period and the AO has failed to make any enquiry in this regard and to tax the same in the hands of the assessee partially pertaining to the part of land sold during the year. No enquiry has been conducted by the AO during the assessment proceedings in this regard, hence, it is clear case of no enquiry. Therefore, the Id. PR. CIT assumed valid jurisdiction to review the assessment order u/s.263 of the Act and the Pr. CIT was right and brandy in treating the assessment as erroneous so far as prejudicial to the interest of the revenue. We are unable to see any ambiguity, perversity in the order of Id Pr. CIT, which is hereby confirmed.

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

Order pronounced u/s. 34(4) of I.T.A.T.Rules, 1963 on 24/01/2022.

Sd/-  
**(A .MOHAN ALANKAMONY)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(CHANDRA MOHAN GARG)**  
**JUDICIAL MEMBER**

Hyderabad ; Dated 19/01/2022.  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant : M/s. Kyori Infrastructure Pvt Ltd., C/O. P Murali & Co., CA, 6-3-655/2/3, Samajiguda, Hyderabad
2. The Respondent. DCIT, Circle-2(1), Hyderabad
3. The CIT(A)-, Hyderabad
4. Pr.CIT-2, Hyderabad
5. DR, ITAT, Hyderabad
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT,Hyderabad**