

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING]

BEFORE SHRI AAKASH DEEP JAIN, VICE PRESIDENT
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER.

ITA No. 4465/DEL/2018 [A.Y 2013-14]

M/s AJB Developers Pvt Ltd
201, Vipps Centre 2, Community Complex
Masjid Moth, Greater Kailash - 11
New Delhi.

Vs. The Dy. C.I.T.
Circle - 2(1)
New Delhi

PAN: AAFCA 1721 Q

(Applicant)

(Respondent)

Assessee By : Ms. Ananya Kapoor, Adv

Department By : Ms. Alka Gautam, Sr. DR

Date of Hearing : 15.03.2022

Date of Pronouncement : 15.03.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
CIT[A] - 32, New dated 17.01.2018 pertaining to Assessment Year 2013-
14.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in upholding the disallowance of long term capital loss claimed by the assessee on sale of land and further treating the same as short term capital gain.

3. At the very outset, the ld. counsel for the assessee stated that the impugned issues have been decided by this Tribunal in assessee's own case in Assessment Year 2014-15 in favour of the assessee and against the revenue. It is the say of the ld. counsel for the assessee that the transaction of the sale partly took up in Assessment Year 2013-14 and was partly in Assessment Year 2014-15.

4. The ld. DR could not bring any distinguishing decision in favour of the revenue.

5. We have carefully considered the orders of the authorities below. Fulcrum of the quarrel revolves around the sale of land which was converted as stock in trade into non-current investment which was subsequently sold on which the assessee computed income under the

head 'capital gains'. The Assessing Officer treated the same as business income.

6. A similar quarrel arose in Assessment Year 2014-15 and on identical set of facts, this Tribunal in ITA No. 7368/DEL/2018 vide order dated 27.05.2019 has considered this issue at para 6.6 of its order after referring to various judicial decisions held as under:

"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. Finding parity in the facts, respectfully following the decision of the co-ordinate bench [supra], we direct the Assessing Officer to treat the sale of capital asset under the head 'capital gains'

8. In the result, the appeal of the assessee in ITA No. 4465/DEL/2018 is allowed.

The order is pronounced in the open court on 15.03.2022.

Sd/-

[AAKASH DEEP JAIN]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 15th March, 2022.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	