

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH.YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.4997/Del/2010
Assessment Year: 2007-08

DCIT Central Circle -12 New Delhi	Vs.	Karma Lakelands Pvt. Ltd. 5, Green Avenue Vasant Kunj Delhi PAN No. AACCK0480H
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Surender Pal, CIT (DR)
Respondent by	Sh. Ashok Khurana, CA

Date of hearing:	14/06/2022
Date of Pronouncement:	16/06/2022

ORDER

PER N. K. BILLAIYA, AM:

This appeal filed by the revenue is preferred against the order of the CIT(A)-1, New Delhi dated 13.08.2010 for A.Y. 2007-08.

2. The grievance of the revenue read as under :-

1. *The order of the Ld. CIT (Appeal) is not correct in law and facts.*

2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and facts in deleting the addition of Rs. 12,27,36,985/- made by the AO by holding that no capital asset was transferred by the assessee.*
 3. *On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and facts in inferring that no property is transferred to M/s. Unitech Ltd. but it was only a symbolic possession of a land for specific purposes.*
 4. *On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and facts in inferring that the agreement entered into with M/s Unitech was without consideration, inspite of the fact that the assessee has taken advances of Rs. 24 Crores from the collaborator without any interest against Golf Course Club, duly reflected in Schedule-7 of the audited balance sheet.*
 5. *On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and facts in inferring that no stock in trade is transferred within the meaning of section 45(2) of the Act, inspite of the fact that the assessee had itself taken the advances from the public amounting to Rs. 4.70 Crores against booking of villas and chalets, duly reflected in schedule-7 of the audited balance sheet.*
 6. *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.*
3. Representatives of both the sides were heard at length. Case record carefully perused.
 4. Briefly stated the facts of the case are that in the notes to the accounts of F.Y. 2005-06 of the assessee, it is mentioned that

out of 221.13 acres of land the company has revalued 158.04 acres of land and the same has been converted from fixed assets to stock in trade and shown in the current assets. It was also mentioned that land pertaining to villas and other activities are revalued and are considered as stock in trade while the land pertaining to the Golf course is not revalued and considered as a capital asset.

5. During the course of the scrutiny assessment proceedings the AO came to know that the assessee and Unitech Limited entered into an agreement on 16.02.2004 for joint development of the property. The AO was of the opinion that capital gains accrued to the assessee on account of the conversion of the land from fixed assets to stock in trade and invoking the provisions of section 45 (2) of the Act. The AO was convinced that a transfer of capital assets has taken place as per agreement Unitech has also been given the right to develop, design and maintain a retail Mall of 2 lac square feet on revenue sharing basis with assessee and it has been given sole and exclusive responsibility of the project including the Golf Cottages and complete operational freedom for all these, assessee would be paid a certain amount of money

according to Revenue sharing formula appended to the agreement.

6. The AO was of the further belief that exclusive rights that the assessee enjoyed in the capital assets have been reduced by at least 50% in favour of Unitech and Unitech has taken possession over the land in part of performance of this agreement. Thus, for all practical purposes an irrevocable transfer of rights has taken from assessee to M/s. Unitech and the capital assets stands, "otherwise transferred" within the meaning of Section 45 (2) of the Act. The AO accordingly computed the addition at Rs.12,27,36,985/-.

7. Assessee strongly assailed the assessment before the CIT(A). It was strongly contended that the AO has wrongly interpreted the agreement between the assessee and Unitech and further erred in invoking the provisions of section 45 (2) of the Act.

8. After considering the facts and the submissions the CIT(A) was of the opinion that no consideration is determined for such agreement and there is no intention of the assessee to make this agreement as agreement to sale of such land. It is only after marketing and finding prospective buyer of the piece of land the

sharing of the revenue shall accrue as per the agreement. The CIT(A) was convinced that pass only an agreement to develop and market the project and the agreement is irrevocable in case the other party does not fulfill the terms and conditions as per agreement and is not able to market the project successfully within the agreed time framed. The CIT(A) further observed that the agreement is not agreement for sale and is without consideration and nothing has happened during the previous year relevant to the assessment year under consideration which can transpire the proposition of otherwise transferred of the land in stock in trade and become taxable as long term capital gain u/s.45 (2) of the Act and went on to delete the impugned addition.

9. We have carefully perused the orders of the authorities below. The undisputed fact is that nothing has happened during the year under consideration, the impugned land was converted into stock in trade in earlier assessment year. It is not in dispute that the agreement between the assessee and Unitech is not an agreement for sale and it is not in dispute that there is no consideration. In our opinion where assessee converted his land

into stock in trade and thereafter a development agreement was entered into by the assessee with the developer, the capital gain arising from the conversion of land into stock in trade is assessable in the previous order in which the property is sold by the assessee and not in the year of development agreement. Considering the facts of the case in hand in totality, we are of the firm belief that the assessee has not transferred his right to Unitech there is no transfer of any right in title or interest in stock in trade during the year under consideration and hence no income accrues to the assessee we, therefore, decline to interfere with the findings of the CIT(A). The appeal filed by the revenue is accordingly dismissed.

The order is pronounced in the open court on 16.06.2022.

Sd/-
(YOGESH KUAMR US)
JUDICIAL MEMBER

*NEHA, Sr. Private Secretary

Date:-16.06.2022

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	14.06.2022
Date on which the typed draft is placed before the dictating Member	16.06.2022
Date on which the typed draft is placed before the Other member	16.06.2022
Date on which the approved draft comes to the Sr.PS/PS	16.06.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	16.06.2022
Date on which the fair order comes back to the Sr. PS/ PS	16.06.2022
Date on which the final order is uploaded on the website of ITAT	16.06.2022
Date on which the file goes to the Bench Clerk	16.06.2022
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	