

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'A' : NEW DELHI)

**BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.7233/Del/2018, A.Y. 2015-16

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| ACIT, Circle-30(1), New Delhi | Vs. | M/s. AVA landmark LLP 39, Upper Ground Floor, Punjabi Mohalla, Zamrudpur, New Delhi-110048 PAN : ABBFA7300B |
| (APPELLANT) | | (RESPONDENT) |

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| Revenue by | Sh. Ishtiyaque Ahmed, CIT-DR |
| Assessee by | Sh. Sushil Wadhwa, CA |

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| Date of hearing: | 08.08.2022 |
| Date of Pronouncement: | 23.08.2022 |

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been filed by the Revenue against order dated 18.01.2018 in appeal no. 256/2017-18 for the assessment year 2015-16 passed by Commissioner of Income Tax (Appeals)-10, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld.

F.A.A.’) in regard to the appeal before it arising out of assessment order dated 31.12.2017 u/s 143(3) of the Income Tax Act, 1961 passed by ITO, Ward 30(4), New Delhi (hereinafter referred to as the Assessing Officer ‘AO’).

2. Assessee had filed return of income for A.Y. 2015-16 declaring an income of Rs. 82,000/-. Since the assessee was formed on 9th February, 2015 by conversion of the company M/s. Ava Landmark Pvt. Ltd., a private limited company registered under the companies Act, 1957. The capital assets held by erstwhile company transferred to assessee as LLP were considered as transfer and the Assessing officer made addition of Rs.11,37,40,244/- to the return income on allegation of non-compliance of Section 47(xiii b) of the Act. However, the Ld. CIT(A) observed that there is no violation of the provisions of Section 47 (xiii b) (e) of the Act and allowed the appeal. The revenue is in appeal before the Tribunal raising following grounds :-

1. *“Whether in law & facts and circumstances of the case, Hon’ble CIT(A) was correct in holding that assessee has not violated conditions enumerated in section 47(xiii b)(e) and therefore is eligible for exemption u/s 47(xiii b) of the Act, ignoring fact that assessee had declared receipt of Rs. 1,20,00,000/- from the sale of plot in A.Y. 2013-14.*
2. *“Whether in law & facts and circumstances of the case, Hon’ble CIT(A) was correct in holding that profit on sale of plot by assessee in A.Y. 2013-14 (shown under investment since A.Y. 2010-11) had been rightly declared as LTCG and not business income when admittedly assessee was in business of builders, colonizers, estate developers, town planners to purchase and sale of free hold or other house property, building, land etc.*
3. *The Ld. CIT(A) grossly erred in deleting addition of short term capital gain of Rs.11,37,40,244/- on conversion of company into LLP.*

4. *The appellant craves, leave to add, alter or amend any of the grounds of appeal before or during the course of hearing of the appeal.”*

3. Ld. DR submitted that the Ld. CIT(A) has fallen in error in deleting the addition made by Ld. AO and submitted that the objects of the two entities was different.

4. On the other hand Ld. AR submitted that the AO has recalculated the value on basis of all the assets and submitted that the investments in plot have been wrongly considered to be stock- in- trade.

5. It can be observed that the grounds no. 1 to 3 are inter-connected and are primarily concerned with controversy that if the profit on sale of plot by assessee is LTCG or business income. In this regard it can be observed that admittedly in the previous years of assessment, the plot was shown by the assessee as investment and the Ld. AO has accepted the same. Thus, the disputed transaction of sale of the plot was rightly held as LTCG by the Ld. CIT(A). Ld. AO had fallen in error in expanding the definition of turnover to extent of including capital gains in the turnover for ascertaining that threshold limit of Rs. 60 lakhs, is maintained by assessee to get benefit of Section 47(xiiiib) of the Act. There is no substance in the grounds as raised.
The Appeal is dismissed.

Order pronounced in the open court on 23rd August, 2022.

Sd/-

**(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 23rd.08.2022

Binita, SR.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI