

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No. 221/RPR/2019  
निर्धारण वर्ष / Assessment Year : 2009-10

The Deputy Commissioner of Income Tax-2(1),  
Raipur (C.G.)

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Shri Varun Jain  
22-B, South Avenue, Choubey  
Colony, Raipur (C.G.).

PAN : AGGPJ1319R

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 222/RPR/2019  
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The Deputy Commissioner of Income Tax-2(1),  
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.....अपीलार्थी / Appellant

**बनाम / V/s.**

Shri Vaibhav Jain  
22-B, South Avenue, Choubey  
Colony, Raipur (C.G.)

PAN : AKBPS4207Q

.....प्रत्यर्थी / Respondent

Assessee by :Shri Amit M Jain, AR  
Revenue by :Shri Sanjay Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing :27.07.2022

घोषणा की तारीख / Date of Pronouncement : 23.09.2022

**आदेश / ORDER**

**PER RAVISH SOOD, JM:**

The captioned appeals filed by the department are directed against the respective orders passed by the CIT(Appeals)-I, Raipur, dated 05.08.2019, which in turn arises in both the case from the respective orders passed by the A.O under Sec.147 of the Income-tax Act, 1961 (in short 'the Act') dated 30.03.2015 for assessment year 2009-10. As common issues are involved in the aforementioned appeals, therefore, the same are being taken up and disposed off by way of a consolidated order. We shall take up the appeal in ITA No.222/RPR/2019 for the assessment year 2009-10 as the lead matter and the order therein passed shall apply mutatis mutandis for the purpose of disposing off the other appeal filed by the department

in ITA No. 221/RPR/2019. Before us the department has assailed the impugned order on the following grounds of appeal:

- “1. Whether on the facts of the case and in law, the CIT(A) was justified in deleting the addition of Rs.18,61,74,000/- on account of Short-Term Capital Gain arising out of transfer of the capital asset to the partnership firm as capital contribution, attracting the provisions of section 45(3) of the I.T. Act?
2. Whether on the facts of the case and in law, the CIT(A) was justified in deleting the capital gains of Rs.18,61,74,000/- arising out of the transfer of the capital asset to firm as capital contribution in its original value and revalued it at Rs.19,04,79,000/- immediately after the transfer, although the book value was a meager Rs. 43,05,000/- ?
3. Whether on the facts of the case and in law, the CIT(A) was justified in deleting the capital gains of Rs.18,61,74,000/- failing to observe the modus operandi adopted by the assessee in transferring the asset solely with the purpose to evade tax as pointed out by the AO?
4. Whether on the facts of the case and in law, the CIT(A) was justified in deleting the addition of Rs.18,61,74,000/- completely ignoring the provision of sec. 45(3) which was brought in by the Finance Act, 1987 to get over the effect of the judgment of the Supreme Court in the case of Sunil Saiddharthbhai Vs. CIT[1985]156 ITR 509/23 Taxman 14W?
5. The order of Ld. CIT (A) is erroneous both in law and on facts.
6. Any other ground that may be adduced at the time of hearing.”

2. Succinctly stated, the assessee, viz. Shri Vaibhav Jain had filed his return of income for the assessment year 2009-10 on 31.03.010, declaring an income of Rs.17,91,000/-. It was observed by the AO in the course of regular assessment proceedings in the case of the assessee for a subsequent year, i.e AY 2010-11 that the assessee

owned land admeasuring 1,38,530 sq. feet at Village: Tatiband, Raipur, which was shown on 31.03.2008 at a value of Rs. 30 lac under the head "fixed assets" in the balance sheet of M/s Vicon Projects, i.e a newly created /constituted partnership firm in which both the assessee and his brother Shri. Varun Jain were partners with an equal profit sharing ratio of 50% each. On the basis of the facts that had surfaced in the course of the aforesaid assessment proceedings, it was observed by the AO that the abovementioned land was revalued on 27.07.2008 by a registered valuer at Rs. 19,04,79,000/- (i.e 1,38,530 sq. feet @ Rs. 1,375/- per sq. feet) and the capital account of the assessee in the said partnership firm was increased by an amount of Rs. 12,20,80,500/-. It was observed by the AO that though there was an increment in the value of the 'capital asset' i.e land at Village: Tatiband, Raipur that was transferred by assessee by way of his capital contribution to the firm, viz. M/s Vicon Projects, but as the assessee had not offered such enhanced value to tax, therefore, his income chargeable to tax to the said extent had escaped assessment. Accordingly, the AO on the basis of his aforesaid belief reopened the case of the assessee for the year under consideration i.e AY 2009-10 under Sec. 147 of the Act.

3. Shorn of unnecessary details, the assessee a/w. his brother Shri Varun Jain had constituted a partnership firm, viz. M/s. Vicon Projects on 21.01.2008 with the object of carrying on the business as that of a colonizer, land developer, real estate dealer, builder, promoter, developer and contractor, wherein both of them had equal profit sharing ratio of 50% each. Both of the aforementioned persons i.e Sh. Vaibhav Jain (assessee) and Sh. Varun Jain in terms of Clause 5 of the partnership deed dated 21.01.2008 had during the year under consideration by way of their respective capital contributions transferred at book value (i.e at cost) certain lands situated at Village: Tatiband, Raipur to the aforesaid firm, viz. M/s Vicon Projects, in lieu of a corresponding credit of Rs.43.05 lac and Rs.23.98 lac in their respective capital accounts with the said firm. The Clause 5 of the partnership deed read as under:

“It is hereby agreed that above mentioned parties no.1 and 2 i.e. Shri Vaibhav Jain and Shri Varun Jain shall contribute piece of land, mentioned here in after against each of them, as their capital at the agreed value mentioned there-against.

Name of the partner	Location of land	Extent	Khasra No.	PH No.	Amount
Vaibhav Jain	Vill. Tatibandh Tahsil & Distt.	0.6 hectare	414/3	103	11,90,000/-
		0.182 hectare	414/13	103	6,40,000/-
		0.162 hectare	414/2	103	9,15,000/-
		0.162 hectare	414/15	103	9,20,000/-

	Raipur (C.G.)	0.162 hectare 0.181 hectare	414/16 429/96	103	6,40,000/-
Varun Jain	Vill. Tatibandh & Tahsil Distt. Raipur (C.G.)	0.182 hectare 0.226 hectare	414/14 414/12	103 103	6,40,000/- 17,58,200/-

That the above pieces of land so contributed by the respective parties, as their capital in partnership, shall hereinafter be regarded as exclusive property of the partnership firm within the meaning of section 14 of the Indian Partnership Act and the parties or their legal heirs or legal representatives shall not have any right, title or interest whatsoever in the said property either during the continuation of the partnership or thereafter. It is hereby further agreed that the partnership firm, on the said land, may develop, construct and in furtherance of the object of the firm may sale, lease out or dispose off it in the manner most beneficial to the firm. The partners may also contribute, in future, any such properties as their capital as may be agreed by the partners from time to time."

Accordingly, an amount of Rs.43.05 lac and Rs.23.98 lac was during the year under consideration credited in the respective capital accounts of S/sh. Vaibhav Jain (assessee) and Varun Jain. The land contributed by the aforesaid partners by way of their respective capital contributions were thereafter recorded in the name of the partnership firm in the revenue records maintained by the State Government., Page 23-24 of APB. Thus, at the close of the accounting year i.e. on 31.03.2008 the total value of land in question was reflected in the balance sheet of the partnership firm, viz. M/s. Vicon Projects at

Rs.67.03 lac. As site development expenses of Rs.16,44,800/- a/w. indirect expenses of Rs.2,24,315/- were thereafter incurred by the firm towards development of the aforesaid land, therefore, the total investment under the head "fixed assets" was shown in the balance sheet of the partnership firm at Rs.85,72,115/- on 31.03.2008.

4. Subsequently, during the period relevant to A.Y.2009-10 the aforesaid land was got revalued by the partnership firm, viz. M/s. Vicon Projects on 29.07.2008 at a value of Rs.25,08,64,000/-, viz. (i) land admeasuring 1,38,530 sq. ft that was contributed by way of capital contribution by Shri. Vaibhav Jain (assessee) @ 1375/- per share feet : Rs.19,04,79,000/- ; and (ii) land admeasuring 43916 per sq. ft that was contributed by way of capital contribution by Shri. Varun Jain @ Rs.1375/- per square feet: Rs.6,03,85,000/-. The revaluation reserve of Rs. 24,01,70,510/- was also accounted for by the aforesaid firm and the capital balance of both the partners, viz. S/sh. Vaibhav Jain (assessee) and Varun Jain (both having 50% share each in the partnership firm) were equally on the basis of their respective profit sharing ratios in the firm increased by an amount of Rs. 12,00,85,255/- each. On 29.07.2008 itself the capital account of

both the partners were split into two parts, viz. (i). Fixed capital : Rs. 6.27 crore; and (ii). Current account : Rs. 6.27 crore. Thereafter, the partnership firm, viz. M/s. Vicon Projects on 04.08.2008 was converted into a company, viz. M/s. Vicon India Developers Pvt. Ltd. under Chapter IX of the Companies Act, 1956. Both the partners were allotted equity shares against their fixed capital standing in the books of the partnership firm, while for their current capital was shown as unsecured loans. The land that was succeeded by the company was also recorded in the name of the company in the revenue records maintained by the State Government.

5. Considering the aforesaid chronology of events, it was observed by the A.O that the capital asset i.e. land at Village: Tatiband, Raipur was in fact transferred by Shri. Vaibhav Jain (assessee) and Shri Varun Jain by way of their respective capital contributions to the partnership firm for a consideration of Rs.25,08,64,000/-, as against the value that was considered by them in their respective returns of income i.e Rs. 67.03 lac, viz. (i). Shri. Vaibhav Jain (assessee) : Rs. 43.05 lac; and (ii). Shri. Varun Jain : Rs. 23.98 lac. On the basis of his aforesaid observations the AO worked out the suppression of the Short

term capital gain (STCG) in the hands of the assessee and his brother, as under :

Name of the partner	Value at which it was contributed as capital	Revaluation made by the firm	Difference
<b>Vaibhav Jain</b>	<b>43,05,000</b>	<b>19,04,79,000</b>	<b>18,61,74,000</b>
Varun Jain	23,98,000	6,03,85,000	5,79,87,000
Total	67,03,000	25,08,64,000	24,41,61,000

(emphasis supplied by us)

Accordingly, the A.O being of the view that the STCG of Rs.18,61,74,000/- had escaped assessment in the hands of the assessee, therefore, made an addition of the said amount vide his order passed u/s. 147/143(3) dated 30.03.2015 in his hands.

6. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). It was the claim of the assessee before the CIT(Appeals) that as he a/w. his brother had by their respective capital contributions transferred their share of land at Village : Tatiband, Raipur, a capital asset, to the partnership firm, viz. M/s. Vicon Projects that was constituted on 21.01.2008, therefore, as per the mandate of sub-section (3) of Section 45 of the Act the amount recorded in the books of account of the assessee firm as the value of

the said capital asset was for the purposes of Section 48 of the Act to be deemed to be the full value of consideration received or accruing as a result of the transfer of the same. It was, thus, the claim of the assessee that as he had by way of his capital contribution transferred a capital asset i.e land at Village: Tatiband, Raipur to the partnership firm, therefore, as per the mandate of section 45(3) r.w.s. 48 of the Act he had in the period relevant to AY 2008-09 validly adopted the amount recorded in the books of account of the firm of Rs. 43.05 lac as the value of the said capital asset, which was to be deemed to be the full value of consideration received or accruing to him as a result of the aforesaid transfer transaction. Apropos the revaluation of the aforesaid land (admeasuring 1,38,530 sq. ft) on the basis of the valuation report, dated 27.07.2008 at Rs.19,04,79,000/- (supra), it was submitted by the assessee that as the same was got done by the partnership firm and that too much subsequent to the transfer of the same by the assessee to the said firm, viz. M/s Vicon Projects, thus, it would have no bearing on the quantification of his tax liability under sub-section (3) of Section 45 of the Act. Elaborating on his aforesaid contention, it was submitted by the assessee that the amount of capital gain arising on the transfer of a capital asset by a person to a

firm in which he is **or** becomes a partner, 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, the full value of consideration received or accruing as a result of the transfer of the capital asset shall be the amount recorded in the books of account of the firm as the value of the capital asset. In sum and substance, it was the claim of the assessee that where a person who is or becomes a partner in a partnership firm, had by way of his capital contribution or otherwise, transferred a capital asset to a firm, then, the profits or gains arising on the transfer of the capital asset shall be charged to tax as his income of the previous year in which such transfer took place, and the value of consideration received or accruing as a result of the transfer of the capital asset shall be the amount recorded in the books of account of the partnership firm as the value of the capital asset. It was, thus, the claim of the assessee that as he by way of his capital contribution as a partner had transferred as on 21.01.2008 his share of land at Village: Tatiband, Raipur (admeasuring 1,38,530 sq. ft), a capital asset, to the partnership firm, viz. M/s. Vicon Project, therefore, the amount of Rs. 43.05 lac that was recorded in the books of account of the said firm as the value of the said capital asset on the

date of such transfer was rightly taken by him as the full value of consideration received or accruing as a result of the transfer of the same within the meaning of sub-section (3) of Section 45 of the Act.

7. The CIT(Appeals) after giving a thoughtful consideration to the contentions advanced by the assessee was persuaded to subscribe to the same. It was observed by the CIT(Appeals) that as in the case before him the assessee had transferred the capital asset i.e land at Village : Tatiband, Raipur at its book value (i.e at cost) and not at an increased value, therefore, the capital gain arising from the said transfer transaction was rightly shown at Rs. Nil. It was further observed by him that the value of the land in the balance sheet of the partnership firm, viz. M/s. Vicon Project had remained as such i.e. at Rs. 43.05 lac on 31.03.2008. It was further noticed by him that the revaluation of the aforesaid asset i.e. land at Village: Tatiband, Raipur that was got done by the firm on a subsequent date i.e. on 27.07.2008, would by no means have any bearing on the quantification of the amount of capital gain for the purpose of section 45(3) of the Act. It was further observed by him that the subsequent takeover of the partnership firm, viz. M/s. Vicon Projects by a company i.e. M/s. Vicon

Developers India Pvt. Ltd. on 04.08.2008 did not tantamount to a transfer u/s.47(xiii) of the Act. In so far the observation of the A.O that as per Sec. 2(47)(iv) of the Act the conversion of an asset into; or treatment of the same as stock-in-trade of business would constitute a transfer within the meaning of section 45(3) of the Act, it was observed by the CIT(Appeals) that the said view of the A.O was based on a misconceived fact as the partnership firm i.e M/s Vicon Projects had not converted any asset into stock-in-trade of its business. It was further observed by the CIT (Appeals) that as the capital asset i.e. land at Village: Tatiband, Raipur was transferred at book value (i.e at cost) by the assessee by way of his capital contribution to the partnership firm, viz. M/s. Vicon Project on 21.01.2008 i.e. on the same date on which the said firm was constituted and both the assessee and his brother Shri. Varun Jain had joined as a partner with equal 50% share each, therefore, the amount of capital gain was rightly shown at Rs. Nil. Accordingly, the CIT(Appeals) on the basis of his aforesaid observations vacated the addition made by the AO and allowed the appeal of the assessee.

8. The revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

9. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

10. Admittedly, it is a matter of fact borne from record that the assessee a/w. his brother Shri Varun Jain owned certain piece of land at Village : Tatiband, Raipur and held the same as a capital asset, as under:

**Shri Vaibhav Jain (assessee) :**

Date	Area ( Inhect)	(Rs.)
24.03.2007	0.182	6,40,000/-
19.03.2007	0.181	6,40,000/-
26.04.2007	0.162	9,20,000/-
17.04.2007	0.162	9,15,000/-
09.07.2007	0.600	11,90,000/-
	Total	43,05,000

**Shri Varun Jain :**

Date	Area ( Inhect)	(Rs.)
24.03.2007	0.182	6,40,000/-
17.01.2008	0.226	17,58,000
	Total	23,98,000/-

The aforesaid persons, viz. Shri Vaibhav Jain (assessee) and Shri Varun Jain had thereafter constituted a partnership firm, viz. M/s. Vicon Projects on 21.01.2008 with multi-facet objects, viz. carrying on the business as that of a colonizer, land developer, real estate dealer, builder, promoter, developer and contractor. As noticed by us hereinabove, both the aforementioned persons as per Clause 5 of the partnership deed, dated 21.01.2008 had by way of their respective capital contributions transferred their land holdings at Village: Tatiband, Raipur to the aforesaid partnership firm on 21.01.2008. Admittedly, the aforesaid land holdings i.e. land at Village: Tatiband, Raipur were transferred by the aforementioned persons, viz. Shri Vaibhav Jain (assessee) and Shri Varun Jain to the aforementioned partnership firm at its book value i.e. at cost on which the same were acquired by them, viz. (i) Mr. Vaibhav Jain (assessee): Rs.43.05 lac; and (ii) Shri Varun Jain: Rs.23.98 lac. The claim of the aforementioned persons of having transferred their respective land holdings i.e. land at Village : Tatiband, Raipur at its book value to the partnership firm can safely be gathered from a perusal of their respective “capital accounts” as appearing in the books of account of M/s. Vicon Projects, Page 22 of APB. Also, the said factual position is fortified on a perusal

of the balance sheet of the assessee firm on 31.03.2008, Page 20 of APB.

11. Undeniably, the assessee firm had thereafter on 29.07.2008 got the aforesaid land at Village : Tatiband, Raipur revalued at amount of Rs.25,08,64,000/-. The revaluation reserve of Rs. 24,01,70,510/- was also accounted for by the aforesaid firm and the capital balances of both the partners, viz. S/sh. Vaibhav Jain (assessee) and Varun Jain (both having equal 50% share in the partnership firm) were equally increased by an amount of Rs. 12,00,85,255/- each. On 29.07.2008 itself the capital account of both the partners were split into two parts, viz. (i). Fixed capital : Rs. 6.27 crore; and (ii). Current account : Rs. 6.27 crore. Thereafter, the partnership firm, viz. M/s. Vicon Projects was on 04.08.2008 under Chapter IX of the Companies Act, 1956 converted into a company, viz. M/s. Vicon India Developers Pvt. Ltd. Both the partners were allotted equity shares against their fixed capital standing in the books of partnership firm, while for their current capital was shown as unsecured loans. The land that was succeeded by the company was also recorded in the name of the company in the revenue records maintained by the State Government.

12. Apropos the aforesaid chronology of events involving transfer of the capital asset i.e land owned by Shri. Vaibhav Jain (assessee) and Shri. Varun Jain by way of their respective capital contributions to the partnership firm on 21.01.2008; revaluation of the land by the partnership firm and crediting of the revaluation reserve in the capital accounts of the partners in their respective profit sharing ratios; and conversion of the partnership firm into a company, viz. M/s Vicon Developers India Pvt. Ltd., we confine ourselves to the controversy in hand i.e as to whether or not Shri. Vaibhav Jain (assessee) and Shri. Varun Jain had rightly quantified the amount of capital gain on transfer of the capital asset i.e. land at Village: Tatiband, Raipur by way of their respective capital contributions on 21.01.2008 to the partnership firm, viz. M/s Vicon Projects?

13. Before adverting any further we deem it fit to cull out the provision of sub-section (3) of Section 45 of the Act, which reads as under:

“(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.”

On a perusal of the aforesaid statutory provision, it transpires that where a person transfers a capital asset to a firm, in which he is or becomes a partner, by way of his capital contribution or otherwise, then, the same shall be chargeable to tax as his income of the previous year in which such transfer takes place and, for the purposes of quantifying the amount of capital gain u/s.48 of the Act, the amount recorded in the books of account of the firm 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. Accordingly, for the purpose of computing the amount of capital gain on transfer of a capital asset by an assessee to a firm in which he is or becomes a partner, the amount recorded in the books of account of the firm shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset. In the case before us, it is a matter of fact borne from record that Shri. Vaibhav Jain (assessee) and Shri Varun Jain had as on 21.01.2008 by way of their respective capital contributions transferred their lands situated at

Village: Tatiband, Raipur to M/s Vicon Projects (supra), a partnership firm in which both of them were partners with equal 50% share each. The value of the aforesaid capital asset, viz. land situated at Village: Tatiband, Raipur was recorded in the books of account of the firm on 21.01.2008 at an amount of Rs. 67.03 lac, viz. (i). Shri. Vaibhav Jain (assessee): Rs. 43.05 lac; and (ii). Shri. Varun Jain : Rs. 23.98 lac, and in lieu thereof credit of the corresponding amount was given in the capital accounts of the said respective partners. As claimed by the Id. AR and, rightly so, as per the mandate of sub-section (3) of Sec. 45 the aforesaid amount recorded in the books of account of the partnership firm as the value of the aforesaid capital asset, viz. land situated at Village: Tatiband, Raipur was to be deemed to be the full value of consideration received or accruing as a result of the transfer of the capital asset by the aforesaid partners to the firm, which was chargeable to tax as their income of the previous year in which such transfer took place i.e AY 2008-09. In so far the observation of the A.O that the partnership firm, viz. M/s. Vicon Projects had thereafter got the aforesaid land revalued at Rs.25,08,64,000/- on 29.07.2008, and had transferred the revaluation reserve to the respective capital accounts of the aforementioned partners, viz. Shri Vaibhav Jain

(assessee) and Shri Varun Jain, the same in our considered view will have no bearing on the quantification of the amount of capital gain under sub-section (3) of Section 45 of the Act. Our aforesaid view that computing of capital gain on transfer of the capital asset i.e land situated at Village : Tatiband by the assessee to the partnership firm, viz. M/s Vicon Projects cannot be divorced from the point of chargeability of the same i.e the date on which the said capital asset was so transferred is fortified by the judgment of the Hon'ble Supreme Court in the case of Navin Jindal Vs. Asst. CIT (2010) 320 ITR 708 (SC). It was observed by the Hon'ble Apex Court that for the purpose of section 48 of the Income-tax Act, 1961, which deals with the mode of computation of capital gains, one has to keep in mind the important principle, namely, that chargeability and computation have to go hand in hand. It was further observed by the Hon'ble Court that computation of capital gain is an integral part of chargeability under the Act. For the purpose of clarity the relevant observations of the Hon'ble Apex Court are culled out as under :

“For the purpose of section 48 of the Act, one must keep in mind an important principle, namely, that chargeability and computation have to go hand in hand. In other words, computation is an integral part of chargeability under the Act.”

On the basis of the aforesaid settled position of law, we are of the considered view that the attempt on the part of the AO to divorce the chargeability of capital gain on transfer of the capital asset under consideration, i.e land situated at Village: Tatiband, Raipur under Section 45 of the Act from the mode of computation of capital gain as contemplated in Section 48 of the Act, i.e, by referring to events falling much subsequent to the point of chargeability, viz, (i). revaluation of the capital asset by the partnership firm; and (ii). conversion of the partnership firm into a company, are not only as deliberated by us at length hereinabove irrelevant to the issue under consideration, but in fact clearly militates against the aforesaid settled position of law so laid down by the Hon'ble Apex Court in the case of Navin Jindal (supra), i.e chargeability and computation of capital gain has to go hand in hand. Also, we concur with the view taken by the CIT(Appeals) that the conversion of the partnership firm into a company, viz. M/s. Vicon Developers India Pvt. Ltd., being an even subsequent to the culmination of the transfer transaction, therefore, would have no bearing on the quantification of the amount of capital gain under sub-section (3) of Section 45 of the Act in the hands of the aforesaid persons, viz. S/sh. Vaibhav Jain (assessee) and Shri. Varun Jain.

14. We, thus, in terms of our aforesaid observations concur with the view taken by the CIT(Appeals), who on the basis of his well reasoned order had rightly concluded that as the assessee and his brother Shri Varun Jain had by way of their respective capital contributions transferred their land holdings situated at Village : Tatiband, Raipur at book value/cost to the partnership firm i.e. M/s. Vicon Projects, therefore, the capital gain arising from the transfer transaction was to be strictly computed as per the mandate of sub-section (3) of Sec. 45 of the Act, viz. (i). the profit or gains arising from the transfer of the capital asset was chargeable to tax as the income of the assessee of the previous year in which such transfer took place, i.e AY 2008-09; and (ii). that the amount recorded in the books of account of the partnership firm as the value of the capital asset on the date of transfer shall be deemed to be the full value of consideration received or accruing as a result of the transfer of the capital asset.

15. On the basis of our aforesaid observations, we herein conclude, that as per the mandate of sub-section (3) of Sec.45 of the Act, viz. (i). the profit or gain arising from transfer of the capital asset under consideration i.e land situated at Village: Tatiband, Raipur by the

assessee by way of his capital contribution to the partnership firm, viz. M/s Vicon Projects shall be chargeable to tax as his income of the previous year in which such transfer took place i.e Assessment Year 2008-09; and (ii). that for the purposes of Section 48 the amount of Rs. 43.05 lac recorded in the books of account of the partnership firm, viz. M/s Vicon Projects as the value of the aforesaid capital asset on the date of its transfer by the assessee to the partnership firm i.e on 21.01.2008, shall be deemed to be the full value of consideration received or accruing as a result of the transfer of the said capital asset.

16. Before parting, we may herein observe that the reliance placed by the department on the judgment of the Hon'ble Supreme Court in the case of Sunil Siddharthbhai Vs. CIT (1985) 156 ITR 509 (SC) would not assist its case in context of the issue in hand before us. The aforesaid judgment was rendered by the Hon'ble Apex Court in the context of a case before them for A.Y.1974-75 i.e. prior to the insertion of section 45(3) vide Finance Act 1987. w.e.f. 01.04.1988. It was observed by the Hon'ble Apex Court that where a partner of a firm makes over a capital asset which was held by him to a firm, as his contribution towards capital, then, though there would be a transfer

of the capital asset within the terms of Section 45 of the Act, because the exclusive interest of the said partner in such personal asset is reduced on its entry into the firm, however, as the corresponding credit entry made in his capital account in the books of account of the partnership firm is merely a notional entry and does not represent true value of consideration received on the transfer of asset, therefore, the computation machinery incorporated in the scheme relating to determination of the charge provided in Section 45 would fail, and resultantly the said transfer transaction would fall outside the scope of capital gains taxation altogether. The Hon'ble Apex Court while so adjudicating had relied on its earlier judgment in the case of CIT Vs. B.C. Srinivasa Setty (1981) 128 ITR 294 (SC). However, as observed by us hereinabove, sub-section (3) of Section 45 of the Act was made available on the statute vide the Finance Act 1987 w.e.f. 01.04.1988 to undo the effect of the aforesaid judgment of the Hon'ble Apex Court in the case of Sunil Siddharthbhai (supra.).

17. As in the case of the assessee before us the provisions of section 45(3) were very much operative, therefore, we are of the considered view that the quantification of the capital gain arising on the transfer

of the capital asset i.e. land situated at Vill: Tatiband, Raipur by the assessee by way of his capital contribution to the firm would be strictly regulated by the said statutory provision. On the basis of our aforesaid deliberations, we are of a considered view that the observation of the Hon'ble Supreme Court which were rendered in context of the case before them i.e. prior to insertion of sub-section (3) of Section 45 of the Act, would, thus, not assist the case of the revenue before us.

18. As regards the observation of the CIT(Appeals) that though the taking over of the business of the partnership firm, viz. M/s. Vicon Projects by a company i.e. M/s. Vicon India Developers Pvt. Ltd. would not involve any capital gain as per Section 47(xiii) of the Act, we concur with the said view of the CIT(Appeals) (though subject to a cumulative satisfaction of the conditions contemplated in the "proviso" to Section 47(xiii) of the Act), but are of the considered view that as the said issue would only be relevant qua a transfer transaction by a firm to a company and would have no bearing on the quantification of the amount of capital gain on the transfer of the capital asset i.e. land situated at Vill : Tatiband by the assessee by way of his capital contribution to the firm, viz. M/s. Vicon Project as on 21.01.2008,

therefore, the same is totally irrelevant in context of the controversy in hand.

19. Accordingly, finding no infirmity in the view taken by the CIT(Appeals) who had rightly vacated the addition of short-term capital gain of Rs.18,61,74,000/- made by the A.O in the hands of the assessee, we uphold his order. Thus, the **Grounds of appeal No.(s) 1 to 4** raised by the revenue are dismissed in terms of our aforesaid observations.

20. **Grounds of appeal No.(s) 5 & 6** being general in nature are dismissed as not pressed.

21. In the result, appeal of the revenue in ITA No.222/RPR/2019 for the A.Y. 2009-10 is dismissed in terms of our aforesaid observations.

**ITA No.221/RPR/2019**  
**A.Y.2009-10**

22. As the facts and the issue involved in the present appeal remains the same as were there before us in the aforementioned appeal of Shri. Vaibhav Jain (brother of the assessee) in ITA No.222/RPR/2019 for assessment year 2019-10, wherein the facts involved in the present appeal had also been discussed at length by us, therefore, our order

therein passed while disposing off the said appeal shall apply mutatis-mutandis for disposing off the present appeal in ITA No.221/RPR/2019 for the assessment year 2009-10. In this case also, we uphold the order of the CIT(Appeals) on the same terms and observations as were recorded by us while adjudicating the revenue's appeal in ITA No.222/RPR/2019 for assessment year 2009-10.

23. In the result, the appeal of the revenue in ITA No.221/RPR/2019 for the assessment year 2009-10 is dismissed in terms of our aforesaid observations.

24. In the combined result, both the appeals of the revenue are dismissed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-  
**ARUN KHODPIA**  
**(ACCOUNTANT MEMBER)**

Sd/-  
**RAVISH SOOD**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 23<sup>rd</sup> September, 2022

\*\*SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.