

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 722/JP/2018
निर्धारण वर्ष/Assessment Years : 2014-15

Income Tax Officer, Behror	बनाम Vs.	M/s Stanford Developers, Near R. C. Motors, Village- Janak Singh Pura Post-Jonaycha, Tehsil- Neemrana, Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACHFS 3932 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Rajeev Sogani (CA)
राजस्व की ओर से / Revenue by : Sh. Sanjay Dhariwal (CIT)

सुनवाई की तारीख / Date of Hearing : 02/09/2022
उदघोषणा की तारीख / Date of Pronouncement: 07/10/2022

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the Revenue aggrieved from the order of the Commissioner of Income Tax (Appeals)-22, Alwar [Here in after referred as Ld. CIT] for the assessment year 2014-15 dated 06.03.2018 which in turn arises from the order passed by the ITO, Ward- Behror passed under Section 143(3) of the Income tax Act, 1961 (in short 'the Act') dated 30.12.2016.

2. Aggrieved from the order of the Id. CIT(A) revenue has marched this appeal on the following grounds;

- “1. On the fact and circumstances of the case and in law Ld. CIT(A) erred in deleting the addition of Rs. 5,59,28,300/- made by the AO on account of unexplained new capital introduced in the firm without appreciation the material facts of the case.
2. On the fact and circumstances of the case and in law Ld. CIT(A) erred in deleting the addition of Rs. 16,09,09,900/- made by the AO on account of unexplained other liability booked in the firm without appreciation the material facts of the case.”

3. Succinctly, the fact as culled out from the records is that E return declaring Nil income was filed on 20.11.2016 for the year under consideration. During the year under consideration, the assessee firm was working as a real estate developer (Builders). The case was selected under limited scrutiny through CASS. Notice u/s 143(2) was issued on 23.09.2015 by the undersigned, which was duly served upon the assessee fixing the case for hearing on 29.09.2015. In compliance to notice issued, AR of the assessee firm attended the assessment proceedings from time to time and produced requisite information and documents. The AR of the assessee submitted books of account consisting of cash book, bank statement, sale deed, computation of income and copy of ITR, bills and vouchers which were examined on test check basis and the facts of the case were discussed with him.

3.1 The assessee has introduced new capital of Rs. 6,62,50,000/- during the year under consideration. During the course of assessment proceedings, the AR of the assessee vide para (ii) of this AO's order sheet entry dated 04.11.2016 was asked to produce, partner of the assessee firm, for verification of capital introduced during the year with source of this capital. And vide para (iv) of AO's order sheet entry dated 04.11.2016 the AR of the assessee firm was asked about other liabilities of Rs. 19,19,50,000/- which the assessee firm has shown and to verify the source of the investment from Shri Ram Chandra. Thus, the Id. AO has raised two issue and the same is discussed by him in his order and the related facts is also discussed here in below for the sake of brevity of the facts of the case on hand.

4. The assessee has introduced new capital of Rs 6,62,50,000/- during the year under consideration. During the course of assessment proceedings, the AR of the assessee vide para (ii) of his office note sheet dated 04.11.2016 was asked to produce Sh. Ram Chandra Gurjar, Partner of the assessee firm, for verification of capital introduced during the year with source of this capital. And vide para (iv) of AO's office note sheet dated 04.11.2016, the AR of the assessee firm was asked about other liabilities of

Rs. 19,19,50,000/-, which the assessee firm has shown and to verify the source of that investment from Sh. Ram Chandra. In response to this, the AR of the assessee firm has filed his reply dated 04.11.2016. the relevant portions of which is being reproduced as under:

"Mr. Ram Chandra Gurjar is a partner of the firm. He invest his land in the fo costs amounting to Rs. 26,50,00,000/- Out of which 25% of the total cost of la treated as his capital in the firm and the remaining 75% he receives from the firm future as per the terms of the joint venture deed. And the second thing about the cap gain arisen from the transfer of land to the firm. In this context we are clarifying at the time of transfer the said land was the agriculture land that's why there were caital gain arise on that transaction after the transaction of transfer the land was converted in to residential land"

5. Later, vide office note sheet dated 18.11.2016 the assessee was asked to furnish the justification as to why the capital gain should not be levied on transfer of land into firm as stock. In this regard, the AR of the assessee firm furnished his reply dated 25.11.2016, which is being reproduced as under

"As per discussion you have asked about the treatment of the land transferred to the firm by Mr. Ram Chandra Gurjar and you have asked that why the capital gain tax will not imposed upon Mr. Ram Chandra Gurjar. Now we are telling you the complete history of the land transferred.

The said land was acquired by Mr. Ram Chandra Gurjar in between 2001-2006 copies of the purchase deed is already provided to you during the previous hearing. At The time of purchase the land was an agricultural land. After that the land was converted in to the non agriculture (Resort) with effect from 31 May 2006. In the conversion order it was mentioned that if the converted land was not used for the purpose or which it was converted than it will be suo moto reconvered in to agriculture(copy of order attached). So as per the conditions of the conversion order the land was not used for the resort purpose that why it was reconvered in to the agriculture land with effect from 01 June, 2008. After that the

land was transferred to the assessee during the financial year 2013-14. So we are of the opinion that the capital gain tax cannot be imposed on this transaction."

6. The reply of the AR of the assessee was considered and was not found tenable by the assessing officer. The Id. AO was of the view that the assessee has not furnished the documents in support of his investment as capital assets of Rs.6,62,75,000/- and other liability of Rs.19,19,50,000/- shown in the name of Sh. Ram Chandra Gurjar. As mentioned above the assessee has submitted introduction of the capital by Ram Chandra Gurjar was in form of agricultural land belongs to him and also further furnished the documents of agricultural land acquired by him. For justification of value taken by the assessee firm, a letter to the Sub Registrar Neemrana was issued for furnishing the details of cost/ valuation of agriculture land which was introduced as capital assets in firm by the partner of the assessee in this regard the Sub Registrar, Neemrana provided the DLC rates of agricultural land with effect from 06.09.2013. As per details provided by the Sub Registrar, Neemrana the value of agriculture land (Sinchit) situated at Junaksinghpur Neemrana is Rs 79,59,000/- per bigha. As per DLC rate the total value of agriculture land 5.20 Bigha comes to Rs. 4,13,86,800/- out of which value of 25% share as per sub registrar valuation is comes to Rs. 1,03,46,700/- whereas the partner of the Shri Ram Chandra Gurjar has

taken the value of his share 25% shown as per balance sheet of Rs 6,62,75,000/- as huge fictitious value shown by the assessee. Pursuance to the record and reply of the assessee it is found that even has claimed the value adopted as per joint venture with firm. In this regard, the **neither produced joint venture agreement nor produced any documents regarding valuation of agriculture land transfer in to firm as capital assets** during the year under consideration. The details of the value of agriculture land share 25% of total land 5.20 Bigha adopted by the assessee and the value determined by the Sub Registrar, Neemrana is as under:-

i)	The value of land taken by the assessee	Rs. 6,62,75,000
ii)	The value of land as per sub registrar, Neemrana	Rs. 1,03,46,700

		Rs. 5,59,28,300

The Id. AO noted that it appears that it is nothing but reply for the sake of reply from the assessee which is far from the truth. In view of these facts the Id. AO noted that the capital introduced by the assessee to the tune of the Rs. 5,59,28,300/- remains unexplained and added to the total income of the assessee for the year under consideration. Accordingly, an addition of Rs. 5, 59,28,300- is made to the total income of the assessee on account of

unexplained capital introduced in the form of new capital for the year under consideration.

7. The assessee firm has also booked as other liabilities of Rs 19,19,50,000/- as per balance sheet submitted during the year under consideration. During the course of assessment proceedings, the assessee was asked vide AO's office note sheet dated 04.11.2016 as per para (iv) that the assessee firm was shown other liabilities of Rs.19,19,50,000/- verify source of that investment from Shri Ram Chandra, partner of the firm. In this regard, the AR of the assessee firm has filed his reply dated 04.11.2016. He has submitted that the value adopted by the firm on transfer of agricultural land by Shri Ram Chandra Gurjar, Village- Janaksinghpura, Neemrana who is one of the partner of the firm. The reply of the AR of the assessee was considered and not found fully tenable by the Id. AO. As the assessee has not furnished the documents in support of his investment shown as other fictitious liability of Rs.19,19,50,000/-. As mentioned above the assessee has submitted the introduction of that liability as against the transfer of the agriculture land belongs to him and also further furnished the documents of agriculture land acquired by him during the F.Y. 2001-02 to F.Y. 2005-06. As regard source of that other liability from transfer of

agriculture land no documentary evidence of valuation of cost and justification as to the value of amount declared by the assessee in his balance sheet may be considered. As per value provided by the Sub Registrar, Neemrana the value of total agriculture land(Sinchit) transferred is Rs 79,59,000/- per bigha As per the DLC rate the total value of agriculture land 5.20 Bigha comes to Rs. 4,13,86,800/- out of which 75% share has booked as other liability which valued is Rs.3,10,40,100/- whereas the partner of the assessee firm Shri Ram Chandra Gurjar has booked an amounting to Rs.19,19,50,000/- as other liability to the assessee firm 75% as per balance sheet as huge fictitious value shown by the assessee to manipulate the avoiding the tax liability in the case. The details of the value of agriculture land adopted by the assessee and the value determined by the Sub Registrar, Neemrana is as under:-

i)	The amount shown as other liability	Rs.19,19,50,000
ii)	The value of land as per sub registrar, Neemrana	Rs. 3,10,40,100

	Excess valued taken by the assessee s other liability in the firm	Rs.16,09,09,900

The Id. AO noted that it is nothing but reply for the sake of reply from the assessee which is far from the truth. In view of these facts the fictitious

other liability shown by the assessee to the tune of the Rs. 16,09,09,900/- remains unexplained fictitious other liability and added to the total income of the assessee for the year under consideration. Accordingly, an addition of Rs 16,09,09,000 is made to the total income of the assessee on account of unexplained capital introduced in the form of new capital for the year under consideration.

8. Aggrieved from the order of the assessing officer, the appeal was preferred by the assessee before the Commissioner of Income Tax, Appeals-22, Alwar. On both the issue the Id. CIT(A) has given their finding which is reiterated here in below for the sake of brevity of the facts:

Finding of the Id. CIT(A) on Issue No.1

"5.5 I have perused the assessment order as well as remand report of the AO, submissions and cross reply made by the appellant. Following facts have emerged;

1. That the assessee firm has come into existence by way of a partnership deed signed on 25/02/2013 where Sh. Dharam Vir and "Sh. Ram Chander came together as partners and form the firm under the name of M/s Stanford Developers.
2. That the firm is created to carry on the business of builders and developers of properties and civil construction.
3. That the partners will have stake in the firm in the ratio of 75%:25% between Sh. Dharam Vir and Sh. Ram Chander.
4. That in pursuant to the partnership deed, a joint venture agreement was signed between the firm M/s Stanford Developers and Sh. Ram Chander vide agreement dated 10/06/2013.

5. That as per the joint venture agreement it was decided that Sh. Ram Chander, owner of the land situated at Village Neemrana will contribute 12,500 sq. meters land to the firm and this will include 10,000 sq. meters of land for which Sh. Ram Chander had obtained the license to develop it as a resort.

6. That the total value of land contributed by Sh. Ram Chander was valued at Rs.26.5 crores. That out of this value, an amount of Rs. 6,62,50,000/- was contributed as partners capital and remaining amount of Rs. 19,19,50,000/- stands as liability in the hand of firm which the partner Sh. Ram Chander will get back in due course.

7. That during the course of assessment proceedings, the A.O has got the DLC rate of the property contributed by Sh. Ram Chander from the Sub- Registrar, Neemrana. As per the DLC rate the value per bigha was determined at Rs.79,59,000/-. The A.O has taken the DLC value of the property to determine the capital introduced by way of contribution of the said property at Rs. 1,03,46,700/- and thereby making addition of Rs. 5,59,28,300/- as excess value introduced in the partner's capital as unexplained capital introduced.

8. That the appellant has submitted that nowhere in the Act has given liberty to A.O to make an addition on account of higher valuation than the DLC and construing the difference in valuation between the DLC rate and the valuation as per books of accounts as unexplained. In this regard the appellant has cited the provision of section 45(3) of the Act where, the Act has given importance to the valuation taken in the books of accounts rather than the DLC value. The appellant has also cited Hon'ble ITAT, Mumbai Bench judgment in the case of M/s Chirayu Estate Dev. Pvt. Ltd. ITA No.263/Mum/2010 in favour of its claim.

9. That the appellant has further submitted that the capital introduction by way of land has been fully explained in the hand of the firm and hence no addition can be made in the firm's hand.

10. That during the appellate proceedings the appellant has claimed that the copy of joint venture agreement was never called for by the A.O hence was not submitted. Now the same has been submitted as additional evidence under Rule 46A of the It Rules, 1962. The appellant's plea was considered and the evidence is taken on record. The same was forwarded to the A.O for his examination and comments. The A.O has submitted the remand report vide letter dated 09/08/2017 which has been considered and the appellant's cross reply dated 01/09/2017 was also considered.

5.6 I have considered the above mentioned facts of the case. In this ground of appeal, the basic issue is the valuation of land contributed as capital by one of the partner Sh. Ram Chander. The A.O has taken the value as per prevalent DLC rate where as the partner has introduced the value of the land at a mutually accepted valuation which is much higher than the DLC rate. In this regard, the provision of the Act as per sub-section 3 of section 45 of the Act reads as under;

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.

In this section, the Act has made it very clear that when an asset is introduced as capital in the firm then the value recorded in the books of accounts shall be deemed to be the full value of consideration. In this case, the value of the asset as recorded in the books of accounts is Rs.6,62,50,000/-. Therefore, A.O is not justified in taking the DLC value rather the value as recorded in the books of accounts. Even otherwise, I do not see any justification in holding the higher value of the land asset introduced as partner's capital as unexplained investment in the hand of the firm.

I have also taken into consideration various obligation to be fulfilled by the partner Sh. Ram Chander with respect to the land assets committed to the partnership firm. It is not only the market value of land but also the conversion charges which has been borne by Sh. Ram Chander. Thus, there are 3 aspects to be taken into account while deciding about the correct valuation of the land transferred to the firm;

1. Market value as per the DLC rate Rs. 5,59,28,300/-.
2. Conversion charges amounting to Rs. 5,31,59,347/
3. Various obligations to be discharged by Sh. Ram Chander as per the JV agreement. As per the JV agreement following obligations are also to be discharged. The relevant part of the JV agreement is reproduced as under;

AND WHEREAS since the project is going to cost in more than 500.000.000/ cores approx, therefore, under the Partnership Deed, both the parties are proposed to invest as per their shares in the partnership Firm and thus the second party has agreed to vest his 12,500 sq. mtrs, land (including that of 10.000 sq. mtrs. land of which the permission to develop the Resort has already been obtained by the second party) (HEREINAFTER CALLED AND REFERRED TO AS "SAID LAND") in the Partnership firm and the first party has agreed that after the land will be vested in the Partnership firm, the first party will make all expenditure to develop the said land into a Group housing/commercial, retail and service apartment as his property and the investment in this joint venture shall be made in the Partnership firm as per Partnership Deed dated 25-02-2013

1.1 That the second party shall vest his 12,500 sq. mtrs. Land in the partnership firm as his share of investment in the Partnership firm in terms of the Partnership Deed and also assure to take the appropriate steps to change the name in the revenue records of the said land from his name to Partnership name i.e. M/s. STANFORD DEVELOPERS.

1.2 That since the cost of the said land is more than the share of the second party therefore, it has been agreed by the parties to the present IV that the excess investment of the second party be refunded back to him and for this purposes the value of the said land has been assessed to Rs. 265,000,000/-.

1.3 That the first party, in addition to the development on the said land as agreed hereinabove shall also pay a sum of Rs. 198.750,000/- (Rupees Nineteen Core Eighty Seven laces and Fifty Thousand only) to the second party. However, the balance of the value of the land money shall be treated as investment/share of the second party in the partnership firm in terms of the partnership deed. The manner partnership firm shall be the sole and exclusive owner of the said land with all payments to the second party by the first party shall be made in the following manner.

2.3 That after vesting the said land into partnership firm, the said land will become the exclusive domain of the partnership firm and no individual including the second party can claim any kind of right, title or interest in respect of the said land. The proprietary rights.

2.4 That once the said land will be vested into partnership and it becomes the exclusive domain of partnership firm, the right to part with possession, to sell or to create third party interest in any manner of the

said land will only be vested with the partnership firm and no partner in its individual capacity can do so until or unless there is a written consent by the other partner in this regard.

3.2 That it has been agreed and assured by the second party that he shall obtain the permission to develop the said land into Group Housing/commercial, retail and service apartment within one month from the date of the execution of the present deed of JV.

3.3 That it has been agreed and assured by the second party that he shall obtain the relevant permission from the forest authorities, revenue authorities, state authorities and center authorities to remove and/or transfer the plants and trees already in existence in the said land.

5.1 That all the taxes payable in surrendering the license to develop the Resort over 10,000 sq mtrs. Land in the name of second party shall be borne by the second party. 5

5.2 That all the taxes payable in obtaining/procuring the license to develop the Group Housing/commercial, retail and service apartment on the said land shall be paid and borne by the second party

5.7 After due consideration of facts mentioned above along with the provision of section 45(3) of the Act, judicial rulings as stated above and facts of the case including JV agreements and obligations there in, the A.O's action of making addition of Rs.5,59,28,300/- as unexplained investment in the hand of the appellant firm is not justified. Accordingly, the addition is deleted and the appellant's ground of appeal on the issue is allowed."

Finding of the Id. CIT(A) on Issue No.2

"6.3 I have perused the assessment order as well as submissions made by the appellant. Following facts have emerged;

1. That as per the joint venture agreement it was decided that Sh. Ram Chander, owner of the land situated at Village Neemrana will contribute 12,500 sq. meters land to the firm and this will include 10,000 sq. meters of

land for which Sh. Ram Chander had obtained the license to develop it as resort.

2. That the total value of land contributed by Sh. Ram Chander was valued at Rs.26.5 crores. That out of this value, an amount of Rs. 6,62,50,000/- was contributed as partners capital and remaining amount of Rs. 19,19,50,000/- stands as liability in the hand of firm. which the partner Sh. Ram Chander will get back in due course.

3. That during the course of assessment proceedings, the A.O has got the DLC rate of the property contributed by Sh. Ram Chander from the Sub-Registrar, Neemrana. As per the DLC rate the value per bigha was determined at Rs.79,59,000/-. The A.O has taken the DLC value of the property to determine the value of at Rs. 3,10,40,100/- and thereby making addition of Rs. 16,09,09,900/- as excess value introduced in the partner's liability in the books of accounts as unexplained.

4. That the appellant has submitted that nowhere in the Act has given liberty to A.O to make an addition on account of higher valuation than the DLC and construing the difference in valuation between the DLC rate and the valuation as per books of accounts as unexplained. In this regard the appellant has cited the provision of section 45(3) of the Act where, the Act has given importance to the valuation taken in the books of accounts rather than the DLC value. The appellant has also cited Hon'ble ITAT, Mumbai Bench judgment in the case of M/s Chirayu Estate Dev. Pvt. Ltd. ITA No.263/Mum/2010 in favour of its claim.

5. That the appellant has further submitted that the capital introduction by way of land has been fully explained in the hand of the firm and hence no addition can be made in the firm's hand.

6. That during the appellate proceedings the appellant has claimed that the copy of joint venture agreement was never called for by the A.O hence was not submitted. Now the same has been submitted as additional evidence under Rule 46A of the It Rules, 1962. The appellant's plea was considered and the evidence is taken on record. The same was forwarded to the A.O for his examination and comments. The A.O has submitted the remand report vide letter dated 09/08/2017 which has been considered and the appellant's cross reply dated 01/09/2017 was also considered.

6.4 I have considered the above mentioned facts of the case. In this ground of appeal, the basic issue is the valuation of land contributed as capital and other credits by one of the partner Sh. Ram Chander. The A.O has taken the value as per prevalent DLC rate where as the partner has introduced the value of the land at a mutually accepted valuation which is much higher than the DLC rate. In this regard, the provision of the Act as per sub-section 3 of section 45 of the Act reads as under;

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.

In this section, the Act has made it very clear that when an asset is introduced as capital or otherwise in the firm then the value recorded in the books of accounts shall be deemed to be the full value of consideration. In this case, the value of the asset as recorded in the books of accounts is Rs.26.5 crores that includes Rs. 19,19,50,000/- as liability in the hand of the firm. Therefore, A.O is not justified in taking the DLC value rather the value as recorded in the books of accounts. Even otherwise, I do not see any justification in holding the higher value of the land asset introduced as partner's capital as unexplained investment in the hand of the firm. Further, the valuation of an asset is based on the market value and also the perceived escalation in the valuation of the property particularly if the property is slated to be exploited as a business asset. In this case, the A.O while taking the valuation of the land asset as per DLC rate has lost sight of the fact that the partner Sh. Ram Chander has also got license to develop the property as a resort which naturally would fetch a much higher intrinsic value than what has been given by the Sub Registrar as per the prevalent DLC rate. In fact, the appellant has incurred an expenditure of Rs.5,31,59,347/- (as mentioned in the remand report submitted by the A.O) towards conversion charges. I have also taken into account various obligations to be fulfilled by the appellant as per the JV agreement, which also has to be taken into account while a valuation is arrived for the land assets contributed by the appellant (relevant part of the JV agreement is reproduced at para 5.6 above).

6.5 After due consideration of facts mentioned above along with the provision of section 45(3) of the Act, judicial rulings as stated above and facts of the case including JV agreements and obligations there in, the A.O's action of making addition of Rs.16,09,09,900/- as unexplained liability in the hand of appellant firm is not justified. Accordingly, the addition is deleted and the appellant's ground of appeal on the issue is allowed.”

9. Aggrieved from the order of the Commissioner of Income Tax, Appeals-22, Alar the revenue has marched this appeal merely on the two grounds as listed here in above para 2. The Id. DR appearing on behalf of the revenue submitted that the assessee has introduced his land as capital and the same value adopted by the firm is pure arbitral and there is no basis of amount recorded in the books. Not only that why the same is accounted as capital and other liability and there is no mention of the value of the consideration to paid in the joint venture agreement and the amount to be credited in the books as capital and as other liability. The joint venture agreement was never produced before the Id. AO even though the assessee was given show cause notice. The Id. AO in the remand proceedings mentioned both these aspects that exact value and its basis of the value to be accounted is not mentioned in the joint venture agreement. Thus same was not considered by the Id. AO in the remind proceedings and objected to the submission of those evidence before the d. CIT(A). The Id. CIT(A) has considered the various terms of the joint venture agreement

and considered the value as proper and allowed this joint venture agreement and was considered by the him is against the provisions of the law and assessee has submitted these evidence after thought and the same cannot be relied upon as the accounting aspect is not mentioned in the joint venture agreement and the also the basis of the payment of the consideration arrived at is not discussed in the joint venture agreement. The Id. DR further drawn our attention to the partnership deed dated 25.02.2013 where in there is no mention or reference of the assessee taking the land into the books of the firm and the consideration flowing there upon is also not referred in the partnership deed executed between the partners. The Id. DR further pointed out the Joint Venture agreement is dated 10.06.2013 whereas the partnership deed is dated 25.2.2013. There is no basis how the value of the land is arrived at. The Id. DR further submitted that the Id. CIT(A) has granted the benefit of section 43(5) without verifying the fact that the assessee has **accounted the said assets as current assets and not as capital assets**. Not only that the assessee claims that the land is agricultural land then as per provision of section 2(14) the capital assets exclude the agricultural land and when the assets is not capital asset the benefit of section 45(3) given by the Id. CIT(A) is not in **accordance with the law** and the therefore, the findings of the Id. CIT(A) is

erroneous on law as well as on facts. The Id. DR drawn our attention to the submission of the assessee [as extracted in the assessment order page – 3] which is reiterated here in below for the sake of brevity :

The said land was acquired by Mr. Ram Chandra Gurjar in between 2001-2006 copies of the purchase deed is already provided to you during the previous hearing. At The time of purchase the land was an agricultural land. After that the **land was converted in to the non agriculture (Resort)** with effect from 31 May 2006. In the conversion order it was mentioned that if the converted land was not used for the purpose or which it was converted than it will be suo moto reconvered in to agriculture (copy of order attached). So as per the conditions of the conversion order the land was not used for the resort purpose that why it was **reconverted in to the agriculture land with effect from 01 June, 2008**. After that the land was transferred t the assessee during the financial year 2013-14. So we are of the opinion that the capital gain tax cannot be imposed on this transaction."

Based on these observation the Id. DR argued that it is not cleared as to whether the land in question was agricultural land or non-agricultural land. This fact is not clear from the facts placed on record so far in this proceeding and the issue of land as agricultural land or non-agricultural land is important to decide the benefit sought by the assessee u/s. 45(3) of the Act and therefore the same is required to be verified and for that the same may be set a side to decide this issue in accordance with the law. The Id. DR further submitted that the land is over valued so the provision of section 28(iv) may be considered to charge the overvalued amount and these aspects is also not seen by the Id. CIT(A) or AO in this case. He has

further requested that the appropriate direction be given in the matter and it is within the power of the ITAT to interpret the excess amount added by AO is in accordance with the provision of section 28(iv) of the Act and requested to give necessary directions.

10. Per contra, the Id. AR of the assessee not disputed the facts relied upon by the Id. DR and mentioned in the assessment order. The Id. AR of the assessee that the department is not appreciating the fact that the valuation of land is between two unrelated parties and the same cannot be a basis of dispute. If the land instead of introduction of capital asset be a sale then whether the higher capital gain is an objectionable to the revenue? Since, the parties are in free economies and have agreed to the price between two unrelated parties cannot be a basis of dispute. The Id. AR of the assessee relying on the finding of Id. CIT(A) t page submitted that the Id. CIT(A) has considered the additional evidence, remand report and various other facts of the transaction, terms of joint venture deed, future obligations of the parties and payment terms of the price agreed in the joint venture agreement which is associated with the risk of payment. The Id. AR of the assessee further submitted that the law is silent about the capital assets as well as non-capital assets. The Id. AR of the assessee further

submitted that since the assessee has not introduced any money in the books of the firm then the provision of section 68 is not be applicable and cannot be added in the hands of the firm. After considering all these aspects he has considered the transaction as genuine and benefit of the provision of section 45(3) has been correctly granted by a well-reasoned order. As regards the applicability of section 28(iv) the Id. AR of the assessee submitted that these provisions were never referred in the proceeding before the lower authorities and therefore, at this stage the same is not subject matter of the appeal. The Id. AR of the assessee further submitted that the benefit is in exercise of capital introduced in the firm and not the value of benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession and therefore, even on facts the provision is not applicable.

11. We have considered the rival contentions, perused the material available on record and also gone through the findings of the lower authorities recorded in their respective orders. The bench noted that the grievance of the revenue is that the assessee has introduced the land in the firm books at price of Rs. 26,50,00,000/- as against the DLC rate value of Rs. 4,13,86,800/- and thereby the same is accounted as capital contribution

as well as other liability and thereby the value is created much more than the DLC rate in the books of the firm. The Id. AO has added the excess amount of the capital and other liability and the Id. CIT(A) has deleted the said addition considering the valued adopted by the firm in accordance with the provision of section 45(3) and deleted both the additions. Aggrieved from the said order revenue is in appeal that the excess amount introduced as capital and other liability is unexplained money. We have heard the contentions of the both the parties as length and also persuaded the provision of section 2(14), 45(3) and 28(iv) of the Act. The same is extracted here in below for the sake of brevity to decide the issue on hand:

Section 45(3)

(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.

Section 2(14)

(14) "capital asset" means—

- (a) property of any kind held by an assessee, whether or not connected with his business or profession;
- (b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- 7[(c) any unit linked insurance policy to which exemption under clause (10D) of section 10 does not apply on account of the applicability of the fourth and fifth provisos thereof,]

but does not include—

- (i) **any stock-in-trade** [other than the securities referred to in sub-clause (b)], consumable stores or raw materials held for the purposes of his business or profession ;
- (ii) personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him, but excludes—
 - (a) jewellery;
 - (b) archaeological collections;
 - (c) drawings;
 - (d) paintings;
 - (e) sculptures; or
 - (f) any work of art.

Explanation 1.—For the purposes of this sub-clause, "jewellery" includes—

- (a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;
 - (b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel;
- (iii) **agricultural land in India**, not being land situate—
 - (a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand ; or
 - (b) in any area within the distance, measured aerially,—
 - (I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or
 - (II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or
 - (III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.

Explanation.—For the purposes of this sub-clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;

- (iv) 6½ per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government;
- (v) Special Bearer Bonds, 1991, issued by the Central Government ;
- (vi) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetisation Scheme, 2015 notified by the Central Government.

Explanation 1.—For the removal of doubts, it is hereby clarified that "property" includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.

Explanation 2.—For the purposes of this clause—

- (a) the expression "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD;
- (b) the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

Section 28(iv)

Profits and gains of business or profession.

28. The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession",—

- iv) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession ;

12. As the issue orbited around the land introduced in the firm and the same is accounted as capital and other liability of the partner of the firm. First of all we have not been the satisfactory proof whether the impugned land was an agricultural land or not? If the land is considered as non-agricultural land than the same is not accounted as capital assets in the firm's books. Whether the excess amount accounted in the books are chargeable in accordance with the provision of section 28(iv) is also not considered by the AO by passing a speaking order while making the addition in this case. All these issues require an examination of facts of the impugned land for which we believe that the opportunity is required to be

given in the interest of justice to both the parties to take into consideration their respective arguments for which is necessary records to show the land was agricultural land or non-agricultural land is not clear before us. The Id. AR of the assessee not placed on records in rebuttal of the arguments of this argument. Moreover, the arguments of the Id. DR on the provision of section 45(3) read with section 2(14) is also not examined in the absence of the evidence on record. As section 2(14) specific exclude the capital assets being agricultural land whereas section 45(3) deals with the capital assets and Id. CIT(A) have not examined this issue even though the issue was before him and it is appearing in his order. Thus, when agricultural land introduced in the firm under section 45(3) is not in capital asset then how the benefit of section 45(3) can be given to the assessee firm, there is no clear finding in the assessment order whether the land is agricultural land or not and therefore Assessing Officer is directed examine this aspect afresh and decide as to whether in the year of the transfer the land was agricultural land and thereby examine the applicability of the provision of and decided the issue after giving property opportunity to the assessee. In terms of these observation the appeal filed by the revenue is allowed for statistical purpose.

In the result, appeal of the revenue is allowed for statistical purpose.

Order pronounced in the open Court on 07/10/2022.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 07/10/2022

*Ganesh Kumar

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Income Tax Officer, Behror
2. प्रत्यर्थी / The Respondent- M/s Stanford Developers, Alwar
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 722/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar