IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, DELHI

BEFORE SHRI ANIL CHATURVEDI, AM &
SHRI N. K. CHOUDHRY, JM

I.T.A. No. 8520/Del/2019
Assessment Year: 2008-09)

ACIT Circle-8(2) Room No. 194, 1st Floor, C.R. Building, New Delhi-110002.	Vs.	**M/s ECE Industries Ltd.** 28/A, ECE House, KG Marg, New Delhi-110001. **PAN No. AAACE1936C**
(Appellant)	:	**(Respondent)**

Appellant by	:	Shri Harpal Singh Kharab, Sr. DR
Respondent by	:	Shri Ajay Wadhwa, Adv. & Ms. Ragini handa, CA
Date of Hearing	:	21.03.2023
Date of Pronouncement	:	20.06.2023

O R D E R

Per N. K. Choudhry, Judicial Member:

The Revenue Department/Appellant herein has preferred this appeal against the order dated 27.08.2019 impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals)-34, New Delhi {in short 'Ld. Commissioner)'} u/s 143(3) of the Income Tax Act 1961 (in short 'the Act') for AY 2008-09.

2. In the instant case, the Assessee-company being engaged in the business of manufacturing equipments for power transmission and distribution, declared its income at Rs. 25,21,57,813/- by filing its return of income on dated 26.09.2008, which was selected for scrutiny under the CASS.

3. The AO observed that during the Financial Year (FY) 2007-08 (A.Y. 2008-09) a search and survey operations under section 132 and 133A of the Act, were carried out by the Deputy Director of Income Tax (Investigation) Unit-XI (3), Hyderabad, respectively in the premises of Janapriya Engineers Syndicate Ltd. and M/s S.P. Real Estate Developer (P) Ltd. on 19.02.2008, wherefrom a Developer Agreement-cum-GPA dated 21.09.2007 entered into with the Assessee by the said companies, was found and seized, according to which the Assessee-company was having a plot of land admeasuring 67824 sq. yards of land situated at Fateh Nagar, Hyderabad, which was purchased long back in 1965 and the Assessee had entered into Agreement cum-GPA dated 21.09.2007 with the above two concerns, according to which the Assessee agreed to receive the following amounts from M/s S.P. Real Estate Developers (P) Ltd. in lieu of transfer of the said land.

S.No.	***Amount receivable towards***	***Amount***
1	*Towards reimbursement of cost, charges & taxes incurred on the said land since date of purchase of said land of 67,824 sq. yards*	*Rs. 13,50,00,000*
2	*Towards cost of site development, construction of boundary walls & for services like consultancy for technical financial and other administrative matters-*	*Rs. 16,72,00,000*
3	*Towards cost of land of 67,824 sq. yards*	*Rs. 28,36,525/-*

3.1 The AO further observed that the possession of land has been handed over by the Assessee to the aforesaid companies in terms of agreement dated 21.09.2007. The Assessee is not entitled to any share in the constructed area, as both the aforesaid companies have agreed to share entire constructed area between themselves and as per agreement, agreed to pay to the Assessee a sum of Rs. 30,50,36,525/- in total as consideration amount. The entire land is developed and constructed by Janapriya Engineers Syndicate Ltd. and therefore, it is evident that the sum of Rs. 30,50,36,525/- paid/payable to the Assessee is only for the transfer of the land. Consequently, the AO vide letter dated 22.10.2010 asked the Assessee to explain, as to why the amount of Rs. 30,50,36,525/- should not be treated as

sale consideration of the plot of land and brought to tax under the head "Long Term Capital Gain" (in short 'LTCG') while applying the provisions of section 2(47(v), 45 and 53 of the Act.

3.2 In response to the aforesaid letter dated 22.10.2010, the Assessee vide letter dated 29.10.2010 replied/claimed as under:

> *"The Assessee as per the terms of Agreement-cum-GPA dated 21.09.2007, initially received Rs. 13.50 Crores and handed over the possession of the land to the said concerns. The said companies also issued post dated cheques of the remaining amount along with Bank Guarantee to the Assessee.* ***Consequent to Agreement, the Assessee also raised a bill of Rs. 15 Crores towards the services + Rs. 1,87,40,000/- as service tax paid thereon, which was duly deposited in the Government Account and therefore a sum of Rs. 15 Crore was accounted for in the books of revenue and full tax thereon was paid to the Revenue/Department.*** *The developers thereafter did not comply with the terms of agreement including dishonouring of the post dated cheques, not providing any Bank Guarantee as agreed in the agreement and making construction in violation of the Urban Land (Ceiling and Regulation) Act, 1976 (in short "ULC" Act).*
>
> *Consequently, the Assessee cancelled the agreement by giving notices and also filed a Civil Suit for getting back possession of the land including certain other interim reliefs and went upto the Hon'ble High Court and Hon'ble Apex Court and then again to the lower Court and before the Hon'ble High Court of Andhra Pradesh."*

3.3 The AO by perusing the reply/claim of the Assessee and the information received from DDIT (Inv.) Unit-11(3), Hyderabad, observed and held as under as under:

> *"That the Assessee has sold the land as per agreement and in pursuance to which the aforesaid companies have taken possession of the land and commenced the construction activity which is going on in full swing. The legal notice issued by the Assessee has not reached its logical and in first round of litigation up to the Hon'ble Supreme Court and has not been able to get back the land. Court has also not given any stay on the construction activity, hence, the transfer of land of* 67824 *sq. yard which is in the possession of the developer on which the construction activity is going is treated to be completed during the FY 2007-08 relevant to AY 2008-09 i.e. the year under consideration. The copy of statement of the Managing Director of the above concerns as forwarded by DDIT (Inv.) Unit-11(3), Hyderabad also strengthen the view of the Revenue ……."*

> *That in view of the above discussion, it is crystal clear that the transfer of the land took place during the year under consideration only. The land was originally purchased in the year 1965 so as to determine the LTCG the Fair Market Value (in short 'FMV') of the land is required to be determined as on 01.04.1981, hence, a Commission under section 131(1)(d) of the Act was issued to the DDIT (Inv.) asking to enquire the FMV as on 01.04.1981.* ***The Joint Sub-Registrar-1, Hyderabad (South) vide his letter dated 20.11.2010 has intimated that the Market Value of the land as on 01.04.1981 was at Rs. 60 per sq. yard, which is accepted to determine the FMV of the entire land on***

01.04.1981 for the purpose of computation of Capital Gain.

3.4 The AO consequently, considered the sale value of the land as Rs. 30,50,36,525/-and adopted the FMV of the land 60/- per sq. yards on the basis of report of Joint Sub-Registrar, Hyderabad (South) *{wherein the Market Value of the land was intimated @ Rs. 60/- per sq. yard}* and determined the FMV at Rs. 40,69,440/- {67,824 sq. yards. X Rs. 60/- per sq. yard), which resulted into indexation cost of acquisition to the tune of Rs. 2,24,22,614/- (40,69,440/- X 551/100).

3.5 Resultantly , the AO computed the LTCG to the tune of Rs. 28,25,77,386/- and also rejected the alleged claim of deduction of "service tax " of Rs. 187,40,000/- paid in Govt. Department and made the addition of Rs. 2,53,601/- on account of excess set off of losses.

4. The Assessee being aggrieved, in addition to challenging the other addition on account of excess set off of losses made by the AO which is not under consideration before us, also challenged the making of (i) an addition of Rs. 28,25,77,386/- under the head "LTCG" in respect of the land sold by the Assessee to the aforesaid two companies and (ii) not allowing deduction of service tax amounting to

Rs. 1,87,40,000/- while computing capital gains arising out of alleged transfer of subject land, during the relevant AY.

4.1 The Assessee before the Ld. Commissioner in the Appellate proceedings, at the initial stage, contested the actions of the AO and reiterated its claim as raised before the AO, however, at later stage agreed for considering the whole amount of Rs. 30,50,36,525/-received from the aforesaid companies, being sale value of land as LTCG, which was accepted and considered as LTCG accordingly .

4.2 The Assessee however, contested the adopting of the FMV value @ Rs. 60/- per sq. yard by the AO *on the basis of the letter dated 20.11.2010 of the Joint Sub-Registrar, Hyderabad (South) wherein the Market Value of the land was intimated @ Rs. 60/- per sq. yard*. The Assessee also claimed that during the assessment proceedings before AO, it had submitted a report dated 27.10.2010, wherein the Joint Sub-Registrar, Hyderabad (South) intimated the FMV of the land as on 01.04.1981 @ Rs. 150 per sq. yard.

5. The Ld. Commissioner in order to verify the said letter/report dated 20.11.2010 directed the AO to call for the report from DDIT (Inv.), Hyderabad and submit the remand report.

5.1 The AO in response, relied upon the aforesaid letter/report dated 20.11.2010 of the Joint Sub-Registrar for adopting the FMV at Rs. 60 per sq. yard for determining the capital gain and after calling information from Joint Sub-Registrar, Hyderabad (South) u/s 133(6) of the Act, vide letter dated 12.06.2019 informed that Jt. Sub Registrar stated that the market value of scheduled property at serial no. 74/P & 75/P situated at Borabhandha Fatehnagar, Ashok Marg, Hyderabad as on 01.04.1981 was Rs. 60 per sq. yard for commercial and Rs. 20 per sq. yard for residential, as per value register in its office.

6. The copy of the remand report was provided to the Assessee, who by filing rejoinder claimed that in the report dated 27.10.2010 filed by the Assessee before the AO, the same Joint Sub-Registrar, Hyderabad (South) has certified the FMV of the land as on 01.04.1981 at Rs. 150 per sq. yard. The AO neither confronted the enquiry related to FMV made from Joint Sub-Registrar, Hyderabad, nor offered any comment on the valuation report dated 27.10.2010 submitted by the Assessee and therefore, the Assessee after adopting the cost of acquisition as on 01.04.1981 at Rs. 150 per sq. yard, consequently calculated the LTCG at Rs. 23,04,03,464/-.

7. The Ld. Commissioner by considering the peculiar facts and circumstances observed as under:

That the AO has conducted the enquiry and obtained the report from Joint Sub-Register, Hyderabad but has not confronted the said report to the Assessee. On examining the assessment record, the report dated 20-11-2020 which was relied upon by the AO, could not be found and therefore the remand report was called from the AO by calling the report from DDIT (Inv.) and to enquire about the authenticity of the certificate/report dated 27-10-2010 submitted by the Assessee as well.

The AO has not offered any comment on the valuation report submitted by the Assessee. There are two reports available from the same authorities in respect of the FMV of the property as on 01.04.1981 and the AO has not brought any evidence on record to prove that valuation certificate submitted by the Assessee is not genuine. The Assessee claimed that the AO cannot use any enquiry or statement recorded behind the back of the Assessee and without confronting the same to the tax payer, in view of the decision of the Hon'ble Apex Court in the case of Andaman Timber Industries (242 ITR 204). As per the provisions of the Act, the AO is empowered to ascertain

FMV of the capital assets by referring the valuation of asset to the Valuation Officer as per provisions of section 55A of the Act, if the AO is of opinion that the value so claimed by the Assessee is less than FMV, but here in this case the AO has not made any reference under section 55A to Valuation Office, but adopted the FMV as on 01.04.1981 on the basis of the certificate issued by Joint Sub-Registrar, Hyderabad. The Assessee has also filed one Government Approved Valuer's certificate, according to which FMV as on 01.04.1981 was Rs. 180 per sq. yard. There is merit in the contention of the Assessee, as the AO has not confronted the enquiry to the Assessee and not examined the authenticity of the certificate furnished by the Assessee, he cannot use any enquiry or statement reported behind the back of the Assessee and no reference was made by the Assessee to the Valuation Officer under section 55A for ascertaining the FMV of the capital asset,.

7.1 The Ld. Commissioner ultimately on the aforesaid observations, determined the FMV of the land in question @ 150 per sq. yard in place of Rs. 60 as adopted by the AO, for working out the capital gain and resultantly sustained the addition to the tune of Rs. 23,04,03,464/- only, out of Rs. 28,25,77,386/-, which resulted into deletion of the addition of Rs. 5,21,73,922/-.

8. The Revenue Department being aggrieved also challenged the deletion of the addition 5,21,73,922/-and reducing the capital gain from Rs. 28,25,77,386/- to Rs. 23,04,03,464/-. The Ld. Departmental Representative (Ld. DR) at the outset claimed that the AO before adopting the FMV Value, thoroughly considered the peculiar facts and circumstances and the claim of the Assessee as well as the report of the Joint Sub-Registrar, Hyderabad (South), who vide letter dated 20.11.2010 intimated the Market Value of the land @ Rs. 60 per sq. yard as on 01.04.1981 and therefore decision of AO in adopting the FMV value of the property under consideration, is liable to be restored.

9. On the contrary, the Assessee refuted the claim of the Revenue/Department and vehemently supported the decision of Ld. Commissioner in adopting the FMV @ Rs. 150/- per sq. Yard. The Assessee further stated that for ascertaining the FMV of the capital asset for the purpose of computation of Income from Capital Gain, the AO can make further valuation of capital asset by referring to a Valuation Officer, in case there is a variation in the FMV adopted by the Assessee in accordance with the estimate made by the registered valuer. In any other case, if the FMV of the asset exceeds the value of the asset as claimed by the Assessee by more than such percentage of the value of the asset so

claimed or by more than such amount as may be prescribed in this behalf or that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do so. Therefore, in the provisions of section 55A of the Act, the parameters for determining the FMV of the capital asset, are prescribed. Consequently the AO is not empowered to call for the report directly from the Joint Sub-Registrar, Hyderabad (South) as done in this case, as per the dictum laid down by the Hon'ble Apex Court in the case of Smt. Amiya Bala Paul Vs. CIT (2003) 262 ITR 407 (SC) to the effect ***"that power of enquiry entrusted to an Assessing Officer under Sections 133 (6) and 142 (2) does not include the power to refer the matter to the Valuation Officer for an enquiry by him"***. Consequently the valuation adopted by AO at all is un-sustainable.

10. We have given thoughtful consideration to the peculiar facts and circumstances of the case and the rival submissions of the parties. Ground no. 1 raised by the Revenue Department mainly relates to the adopting of value @ Rs. 150 per sq yard for determining the FMV of the property under consideration by sidelining the report dated 20.11.2010 of the Joint Sub-Registrar, Hyderabad (South) wherein the FMV of the land has been intimated @ Rs. 60 per sq. yard, which was relied upon by the AO and

consequently deletion of addition of Rs. 5,21,73,922/- out of capital gain of Rs. 28,25,77,386/-.

10.1 The consideration of Rs. 30,50,36,525/- as sale value of land is not in dispute, as the Assessee agreed for consideration of the same as LTCG in the Appellate proceedings before the Ld. Commissioner. The Assessee only contested the ascertainment of the FMV, which was adopted by the AO @ Rs. 60 per sq. yard as per the report dated 20.11.2010 of the Joint Sub-Registrar, Hyderabad (South) who has intimated the FMV of the land @ Rs. 60 per sq. yard. The Assessee before the Ld. Commissioner not only contested the consideration of the report 20.11.2010 referred to above but also claimed that it has also during the assessment proceedings also submitted a report dated 27.10.2010 issued by the Joint Sub-Registrar, Hyderabad (South) wherein as on 01.04.1981, the FMV of the land under consideration was intimated @ Rs. 150 per sq. yard.

10.2 The Ld. Commissioner in order to ascertain the real picture and to resolve the controversy, not only forwarded to the AO, the report 27.10.2010 submitted by the Assessee during the assessment proceedings and relied upon in the Appellate Proceedings, but also called for the assessment records to examine the report dated 20.11.2010 of the Joint

Sub-Registrar, Hyderabad (South) which was made a base for determining the FMV @ 60 per sq. yard by the AO. However in the assessment record, such report dated 20.11.2010 could not be found. Therefore the Ld. Commissioner by considering the peculiar facts to the effects *"that the AO in the remand report neither disputed nor offered any comment on the valuation report submitted by the Assessee report dated 27.10.2010 (supra) wherein as on 01.04.1981 the FMV of the land was intimated @ Rs. 150 per sq. yard, and also not confronted the enquiry related to FMV made from the Joint Sub-Registrar, Hyderabad (South) and also made no reference under section 55A of the Act to the Valuation Officer for ascertaining the FMV of the capital asset under consideration*," adopted the FMV value @ Rs. 150 on the basis of Report/letter dated 27.10.2010 (supra) filed by the Assessee. We also observe that even otherwise nothing reflects from the orders passed by the authorities below that before considering the Valuation Report dated 20.11.2010 as relied upon by the AO, the same was either confronted by giving any opportunity to the Assessee.

On the aforesaid analyazations, we do not have any hesitation to hold that the Ld. Commissioner before coming to conclusion not only thoroughly considered the peculiar facts and circumstances of the case but also taken into

account the rival claims of the Assessee and the AO qua Valuation Reports of Joint Sub-Registrar, Hyderabad (South) and therefore, determined the FMV @ Rs. 150 per sq. yard, which in our consideration opinion is justifiable and thus cannot be faulted with. Resultantly, we do not find any perversity, impropriety and/or illegality in determining the FMV @ Rs. 150/- by the Ld. Commissioner and consequently deleting the addition of Rs. 5,21,73,922/ and therefore **Ground no.1** of the appeal stands dismissed.

11. Coming to the **Ground no. 2,** which relates to deletion of disallowance of Rs. 1,87,40,000/- made by the AO on account of alleged "service tax", we observe that the Assessee before the AO claimed that during the relevant AY, the Assessee has raised an invoice of Rs. 15 Crores with service tax of Rs. 1,87,40,000/- on the developers qua consultancy/ advisory services rendered during the year and therefore, the amount of service tax payable to the tune of Rs. 1,87,40,000/- on the aforesaid invoice amounting to Rs. 15 Crores, was also deposited with the Service Tax Department (Govt.). Further, the Assessee offered the aforesaid amount of Rs. 15 Crores as the revenue receipt in its return of income and therefore, it is entitled to get deduction of such amount of Rs. 1,87,40,000/- while

computing capital gains on the transfer of subject land under section 45 r.w.s 2(47) (v) of the Act.

12. The AO rejected the said disallowance/claim of the Assessee by holding as under:

> *That the Assessee's submission that the amounts received from the developers represents service charges which is on a/c of services to be provided to the developers is not correct in view of the statements of the Directors of the developer company. Further, the Assessee has not submitted any documentary evidence so as to prove the nature of services being rendered by the Assessee to the above developers and* ***further it is accepted by the Assessee company vide its letter dated 29.10.2010 the contents of which enumerated on page 11 of this order that the Assessee has neither incurred nor claimed any expenses in connection with the deal****. Undoubtedly, the amount received represents part payment of the sale consideration of the land which is chargeable to tax under the head capital gain. Further, the Assessee claimed that the service tax paid against the amounts received from both the developers should be added to the cost of the land or it is reduced from the full value of sale consideration of the land on the ground that a service tax has been paid in connection with the deals relating to the plot of land. The Assessee's argument has been considered and is found to be not acceptable on the ground that while computing the capital gain u/s 48 of IT Act only two kinds of expenditure is allowed to be deducted from the full value of sale consideration:-*
>
> 1. *Expenditure incurred wholly and exclusively in connection with such transfer.*
> 2. *The cost of acquisition of the asset and the cost of any improvement thereto.*

> ***The Service Tax paid by the Assessee is not an expenditure.*** *The Assessee has collected it from the developers and deposited in Government account which is in no way related to the transfer of the capital asset. The service tax was collected on a'c of alleged rendering of some kind of services and consideration received on a/c of the services has been credited in the P&L a/c as other income and not as capital gain.* ***Hence, the claim of the Assessee is rejected."***

13. The Assessee also challenged the said disallowance in first appeal before the Ld. Commissioner, who by considering the copy of challan in support of payment made to Govt. Account and the fact that the service tax is paid in connection with the transfer of property and therefore, allowable from total consideration as cost, directed the AO to allow the payment of service tax of Rs. 1,87,40,000/- in computation of LTCG, as the expenses incurred in connection with the transfer of property.

14. The Ld. DR before us specifically raised the issue that the Assessee neither provided any services to the developers/aforesaid companies nor the companies reimbursed any costs to the Assessee (M/s ECE Industries Ltd.) for the proposed project at Fathenagar, as it is clear from questions no. 9 & 10 which were asked to the

Managing Director of the companies by the DDIT (Inv.), Hyderabad on dated 14.05.2008, which reads as under:

Question No. 9	**:**	*Please furnish details of consultancy services received from M/s ECE Industries Ltd.*
Answer	**:**	*We are not liable to receive any consultancy services from M/s ECE Industries Ltd. We do not have any agreement with M/s ECE Industries Ltd. for consultancy services.*
Question No.10	**:**	*Please furnish the details of the costs incurred by M/s ECE Industries Ltd. for the above project at Fathenagar, which are reimbursed by M/s. Janapriya Engineers Syndicate Ltd.*
Answer	**:**	*No, we have not reimbursed any costs incurred by M/s ECE Industries Ltd, for the proposed project at Fathenagar. As per the Agreemnts , all approvals and all costs have to be incurred by M/s Janapriya Syndicate Ltd. There is no reimbursement of costs to M/s ECE Industries Ltd.*

14.1 The Ld. DR further submitted that for computing the capital gain, only two kinds of expenditures are allowed to be deducted from the full value of sale consideration as prescribed in section 48 of the Act, but not otherwise.

15. On the contrary, the ld. AR claimed that the Assessee duly provided the consultancy services to the developer/aforesaid companies and therefore, raised the invoice dated 18.03.2018 to the tune of Rs. 16,87,40,000/- including Rs. 15 Crores as consultancy/advisory services rendered and Rs. 1,87,40,000/- as service tax on the above consultancy/advisory service @ 12.36%. Consequently the Assessee vide challan dated 26.03.2008 (pages no. 84 & 85 of Paper Book) deposited the said amount of Rs. 1,87,40,000/- in Govt. account , which strengthen the claim of the Assessee for rendering the consultancy/advisory services. The Ld. AR further claimed that without paying the service tax in the Government Department, the completion of the agreement was not possible and if the Assessee would not have paid the Govt. dues in the form of service tax then the agreement executed between the parties would not have been acted upon. The Ld. AR further claimed that in view of the judgment **(278 ITR 240 & 123 ITR 94)** wherein the Hon'ble Court allowed the deduction of litigation expenses and liquidity damages, therefore the expenses claimed in this case is also allowable.

16. We have given thoughtful consideration to the peculiar facts and circumstances and rival claims of the

parties. The Assessee, claimed to has provided consultancy services and consequently raising the invoice of Rs. 15,00,000,00/- along with Service tax of Rs. 1,87,40,000/-. We during the course of argument of this case asked the Assessee specifically, as to what kind of consultancy/ advisory services, the Assessee has rendered in connection to which the invoice dated 18.03.2008 was raised and vide challan dated 26.03.2008 the service tax was deposited and as to whether the Assessee has initiated any legal proceedings for recovery of such alleged service tax amount. The Assessee neither substantiated its claim qua providing of any alleged consultancy service nor submitted any document(s) in order to show that it has initiated any legal proceeding(s) for recovery of such 'service tax' from the said companies but infact by agreeing before the Ld. Commissioner for consideration of the total amount of Rs. 30,50,36,525/- received *(including Rs. 15,00,00,000/- which was earlier shown and claimed as consultancy services for technical, financial and other administrative matters)* as LTCG in toto, diluted its claim of providing any kind of consultancy/advisory services.

Even from the reply of the Managing Director of the aforesaid companies to the Question Nos. 9 & 10, it is very much clear that the aforesaid companies did not receive any

consultancy/advisory services from the Assessee and as per the agreement, all the approvals have been taken by M/s Janapriya Engineers Syndicate Ltd. in relation to the proposed project at Fateh Nagar, Hyderabad and therefore there is no reimbursement of any cost to the Assessee.

The Assessee though before us also repeatedly contended *"that without paying the service tax in the Government Department, the completion of the agreement was not possible and if the Assessee would not have paid the Govt. dues in the form of service tax then the agreement executed between the parties would not have been acted upon"*, however failed to substantiate the same, as to how and in what manner payment of "service tax" was vital for the sale of land.

Thus in any sense, the amount of Rs. 1,87,40,000/- allegedly deposited as "service tax" for providing technical advisory services, do not warrant any deduction on this count.

16.1 However, whatsoever the circumstances may be, as the Assessee accepted the entire consideration amount of Rs. 30,50,36,525/- as LTCG including Rs. 15 Crore which may be inadvertently or because of wrong advice or

colorable device as alleged by the ld. DR, treated as "consultancy services" and initially offered as income and consequently paid taxes thereon and on the said amount also paid the service tax of Rs. 1,87,00,000/- @ 12.36% and consciously deposited the same in the Govt. Account, hence, the same cannot be segregated from the total capital gain.

In our considered view, the nomenclature of the service tax paid in this case may not be correct but its germane of sale consideration of Rs. 15 Crores, which was later on offered as part of total capital gain, therefore, if will not allow the deduction of said amount of Rs. 1,87,40,000/- which is otherwise deposited in Govt. Account, then the same shall not only amounts to double jeopardy but shall also cause injustice. Consequently in our considered opinion, the Assessee's claim qua expenditure of Rs. 1,87,40,000/- is allowable, not being "service tax" paid for rendering the "consultancy services" as claimed but not substantiated, but infact being originated from the sale consideration of Rs. 15 Crores, which was ultimately offered to tax as LTCG by the Assessee and therefore can be construed part of total sale consideration and is allowable as deduction under section 48(i) of the Act. Resultantly, **Ground no. 2** raised by the Revenue Department is also dismissed.

17. In the result, appeal filed by the Revenue Department stands dismissed.

Orders pronounced in the open court on 20.06.2023.

Sd/-	*Sd/-*
(Anil Chaturvedi)	(N. K. Choudhry)
Accountant Member	Judicial Member

SK, Sr.PS.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Delhi
4. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Delhi