

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM
आयकर अपील सं./ITA No.97/RPR/2018
(Assessment Years: 2013-2014)

Income Tax Officer-1, Raigarh	Vs	M/s Sumit Global Pvt. Ltd., Near Nirmal Lodge, Mal Godown Road, Raigarh
PAN No. :AAOCS 8271 J		

AND

Cross Objection No.10/RPR/2018
(Arising out of ITA No.97/RPR/2018)

(निर्धारण वर्ष / Assessment Year :2013-2014)

M/s Sumit Global Pvt. Ltd., Near Nirmal Lodge, Mal Godown Road, Raigarh	Vs	Income Tax Officer-1, Raigarh
PAN No. :AAOCS 8271 J		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Veekaas S Sharma, CA
राजस्व की ओर से /Revenue by	:	Shri V.K.Singh, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	06/06/2023
घोषणा की तारीख/ Date of Pronouncement	:	09/08/2023

आदेश / ORDER

Per Arun Khodpia, AM :

The revenue has filed this appeal against the order passed by the CIT(A)-1, Jabalpur, dated 23.03.2018 for the assessment year 2013-2014. The assessee has also filed cross objection supporting the order of the Id. CIT(A).

2. The revenue in its appeal has raised the following grounds :-

1. *Whether in the facts and circumstance and in law, the Ld. CIT(A) is justified in deleting the addition of Rs. 7,79,92,514/- made by the AO being the short term capital gains, while the AO recorded his findings that the land sold was not an agricultural land?*
2. *Whether on the facts and circumstances of the case and on the points of the law Ld. CIT(A) was justified in deleting the addition of Rs. 7,79,92,514/- while the AO recorded his findings that the land was not used for agricultural purpose and as per land*

records the same was shown as "Matashi" land and barren land?

3. *Whether in the facts and circumstances and in law, the Ld. CIT(A) is justified in deleting the addition of Rs. 7,79,92,514/- while the AO recorded his findings that the assessee did not declare any agricultural income from the said land?*
4. *Whether in the facts and circumstances and in law, the Ld CIT(A) is justified in deleting the addition of Rs. 7,79,92,514/- holding that the sale executed by the assessee was null & void while the assessee had declared the sale in the return of income and had not reversed the transactions?*
5. *Whether in the facts and circumstances and in law, the Ld CIT(A) is justified in deleting the addition of Rs. 7,79,92,514/- as the assessee received consideration in the form of shares in the purchaser company and the said consideration was not reverted back in the return of income filed by the assessee?*
6. *The order of the Ld CIT(A) is erroneous both in law and on facts.*
7. *Any other ground that may be adduced at the time of hearing of appeal.*

3. Brief facts of the case are that the assessee is a company arranging funds for Rashi Steel and Power Ltd. Bilaspur through its Director Shri Rakesh Jindal, who is one of the directors in both the companies. The assessee company filed its return of income electronically on 17.09.2013 declaring its total income at Rs. Nil, which was duly processed u/s.143(1) of the Act. Subsequently, the case of assessee company was selected for scrutiny though CASS. During the course of assessment proceedings, the assessee submitted its audit report, copy of acknowledgement of return of income, computation of income and bank statements, which were examined by the AO. The AO found that the assessee during the year under consideration has earned

the short term capital gain from the transaction of sale of agricultural land of Rs.7,79,92,514/- after incurring some expenses for this transaction and on this income from short term capital gain, the assessee has claimed exemption of entire amount of Rs.7,79,92,514/-, being sale of agricultural land. However, the AO did not accept the contention of the assessee observing that the land sold by the assessee company is not an agricultural land, hence, the sale proceeds received from the transfer of such land is not eligible for the exemption. Accordingly, the AO added the total profit received by the assessee company of Rs.7,79,92,514/- from the transaction of the non-agricultural land treating the same as income of the assessee from the short term capital gain i.e. its business income for the year under consideration.

4. Against the said order of AO, the assessee preferred appeal before the CIT(A) and the CIT(A) deleted the addition holding therein, altogether on a different aspect of the case, that since the land transferred was purchased from fraudsters based on forged documents, the transaction of sale was at nullity, consequently, no transfer of impugned land has been taken place on 22.10.2010 and no capital gain has accrued to the assessee on account of this transfer. Thus, the Id. CIT(A) has deleted the addition made by Ld AO and allowed the appeal of the assessee on this issue.

5. The Ld. CIT-DR , pertaining to the sole controversy of the appeal that the land transferred by the assessee company to M/s. Rashi Steel & power Ltd. during the year was not eligible for exemption available on the transaction of the sale of agricultural land, and an addition of Rs.7,79,92,514/- was made by the Ld. A.O treating the income from transfer as short term capital gain (STCG), has submitted that during the assessment proceedings, the Ld. AO noticed that the assessee had credited an amount of Rs.7,80,31,900/- as profit from the sale of agricultural land and in the computation of income this amount has been claimed as the exempted income. When the assessee was asked to explain the nature of land sold along with the details of the purchaser to whom the land has been sold. Also, the assessee was requested to explain that why not the land acquired by it would not be treated as its business assets rather than the capital assets. In response, the assessee submitted that the agricultural land purchased earlier was his capital assets and therefore, the income generated from sale of such land is assessee's income from capital gain. The land was purchased by the assessee on 27.10.2010 at Rs.83,02,000/- and the said land was transferred by the assessee to M/s. Rashi Steel & Power Ltd. during the year under consideration at Rs.8,70,00,000/- which was adjusted against the share issued to the assessee by M/s. Rashi Steel & Power Ltd. The assessee has considered the difference in sale consideration and cost of acquisition as its STCG from transaction of land and has claimed the

exemption of entire amount of Rs.7,79,92,514/- on account of sale of agricultural land.

6. The Ld. CIT-DR further submitted that the Ld. A.O on perusal of the memorandum of association of the company observed that the company has no object regarding to performing of any agricultural activities. It is also observed by the Ld. AO that the assessee company has not produce any evidence to substantiate agricultural activities conducted by the company at any point of time. It is also revealed by the Ld. AO that the assessee company had not shown any agricultural income during the year under consideration or previous year. This itself proves that the assessee company has not carried out agricultural activities. The A.O further deputed one Inspector to conduct enquiries in this respect, whereby the report of the Inspector also reveals that the land is a "Matasi Land" which equal to Barran land. As per report of the Inspector, no agricultural activities were carried out by the company on this land. As per the Ld. AO while going through the 22 Bindu report of Patwari which is a part of the registered document dated 18.10.2010 at point No.7 of the said report clearly shows that the land is a barren land. Also, at Point No.13 it is discernible that the purpose of the sale/purchase is shown as "other". All these facts shows that land sold by the assessee company is not an agricultural land. It was further submitted by the Ld. CIT-DR that capital asset transferred by the assessee company attracts the capital gain. Since the holding of the company of the said land was for

approximately 11-12 months i.e. less than 36 months, therefore, profit from sale of such land is chargeable to tax in the hands of the assessee company as STCG. Since land was not used for any agricultural activities in previous two years, the A.O has rightly observed that profit arising from the transaction of sale of such land was not eligible for exemption under the provisions of the Income Tax Act, thus, had made an addition of Rs.7,79,92,514/- in the hands of the assessee company.

7. The Ld. CIT-DR further submitted that on a perusal of the order of the Ld. CIT(Appeals) wherein additional evidence were submitted by the assessee a/w altogether new narrative pertaining to the impugned transaction of sale of land that land so sold was purchased by the assessee from Mr. Amit Chowhan and others who have fraudulently entered their names into the land revenue records and have become legal heir of Shri Basant who was original/real owner of the land. On this aspect, remand report was also called for from the A.O, therein, the Ld. AO has commented that since the land was purchased by the assessee company from fraudsters who were not real legal heirs of Shri Basant, therefore, the transaction of sale was reversed by the assessee company. However, return in the A.Y.2013-14 was not revised by the assessee company. The A.O was also mentioned in his remand report at Para 5 that the assessee has reversed entries pertaining to receipt of shares from M/s. Rashi Steel and Power Ltd., Bilaspur. However, the copy of the audit report and reversal of entries of shares allotted by the M/s. Rashi

Steel and Power Ltd. for A.Y.2016-17 was filed by the assessee but it has neither filed return of income for A.Y.2017-18 nor filed audit report for the said period on the site of the Ministry of Corporate Affairs (MCA), therefore, authenticity of the audit report could not be verified by the A.O. As the assessee has not revised exempt income claimed till date of remand report hence, the claim of exemption of income received in the year under dispute could not be accepted. In such circumstances, the claim of the assessee that as the land was agricultural land, therefore, income from transfer of such land was exempted or claim of the assessee that the land purchased/sold was a disputed land having bad title in the hands of seller is not sustainable. It was submitted by the Ld. DR that as per the copy of revenue records submitted by the assessee in its paper book at Page 43 having copy of order of the proceedings before the Land Revenue Court of Naya Paridhar, Tehsildar, Sub-Divisional Officer (R) which was started from 01.04.2010 i.e. relevant to A.Y.2010-11 whereas, transaction of sale or transfer of property has taken place in the A.Y.2013-14. This clearly shows that the assessee was very much in knowledge that the property sold to M/s. Rashi Steel and Power Ltd. was a disputed property but this fact was not brought to the knowledge of the A.O neither computation of income, accounts of the assessee company, audit report of the assessee company or income tax return filed by the assessee company for A.Y.2013-14 have revealed any such information on record. It was, therefore, copiously clear that the assessee has tried to claim exemption on sale/transfer of its land by showing it as agricultural land but

the same was not found acceptable by the A.O and has made addition. Later on, the assessee has come up with all new facts which were never brought to the notice of the A.O, \ has attempted to make its case to evade legitimate taxes. With such contention, the Ld. CIT-DR submitted that the order of the CIT(Appeals) based on facts on which the Ld. AO has offered a remark that additional evidence submitted by the assessee are not inspiring any confidence, therefore, authenticity of the same needs to be verified. However, the CIT(Appeals) has ignored such contention of the A.O and had decided the issue based on submissions of the assessee, without making any further enquiry or without any direction to the Ld. AO to make any such enquiries, the order of the CIT(A) was cryptic, erroneous against the principle of natural justice, therefore, the same needs to be set-aside and addition made by the A.O deserves to be restored.

8. The Ld. CIT-DR alternatively submitted that in case plea of the assessee regarding forgery while purchasing the impugned land by the assessee was to be believed then the onus is on the assessee to prove by substantiating the matter supporting with corroborative evidences such as what legal action the assessee had preferred against such fraudsters and once the transaction was found as null and void, how the same dealt with in the books of the assessee company as well as Rashi Steel and Power Ltd., the buyer, all such issues was are subject to further

verification, therefore the matter should be restored to the file of the A.O for verification of the same.

9. Contradicting the submissions of the Ld. CIT-DR, the Ld. AR for the assessee has submitted its written submission in the form of synopsis which reads as under:

“1. Facts in brief:

1.1 The assessee filed the return of income and claimed exemption on account of profit on sale of agricultural land, the assessee had credited the sale proceeds in the books of accounts and disclosed profit on sale of agricultural land in the Profit and Loss Account, the copy of ITR Acknowledgement dated 17.09.2013 is placed on Page No. 1 of the Paper Book, the Computation of Total Income is placed on Page No. 2 to 3 of the Paper Book. The copy of Audited Financial Statements of the assessee for the F.Y 2012-13 is placed on Page No. 4 to 11 of the Paper Book.

1.2 The assessee had purchased land through the registered conveyance deed dated 27.10.2010, copy whereof is placed on Page No. 23 to 34 of the Paper Book.

1.3 The assessee entered into sale agreement with Rashi Steel & Power Limited on 20.09.2011, copy of agreement for sale between the assessee and Rashi Steel & Power Limited is placed on Page No. 19 to 22 of the Paper Book.

2. The assessee purchased the land vide registered purchase deed from the following persons:-

S.No.	Name of the person
1.	Shri Amit
2.	Shri Ganesh
3.	Smt. Rupali
4.	Smt. Anita

All the aforesaid persons had got their names entered in the Land Reve records fraudulently by claiming themselves to be the Legal Heirs of Shri Basant in whose name the aforesaid property was registered.

3. The real owners of the aforesaid property were following:-

S.No.	Name of the person
1.	Shri Basant Kumar (Living Person)
2.	Shri Praveen Kumar
3.	Smt. P Raghunath Raji Bhai

4. The case was registered before the Land Revenue Court, the copy proceedings before the Land Revenue court is placed on Page No. 38 to 46 the Paper Book, kind attention is invited to Page No. 43 and 46 of the Paper Book.

5. The real owners have attempted to lodge FIR against the aforesaid fraudster and also against the assessee which is evident from Page No.47 of the Paper Book where the name of assessee figures out in serial No. 6 and copy of order passed by the Additional Sessions Judge, Bilaspur dated 03.05.2013 is placed (on Page No. 47 to 51 of the Paper Book).

6. The assessee reversed the profit on sale of land due to cancellation of agreement which is evident from the Audited Financial Statements of the assessee for the financial year ended 31.03.2017, copy whereof is placed on Page No. 52 to 64 of the Paper Book, kind attention is invited to Page No. 60 to 62 of the Paper Book.

7. No one can give a title better than what he himself has:-The investment made by the assessee in property never became capital asset as defined in Section 2(47) of the Income Tax Act, 1961 because of the defective title and as a result the assessee was not holding any asset and hence, investment could not be construed as a capital asset based on the dictum that no one can give a title better than what he himself has.

8. Can an amount be taxed merely because the assessee offered it for taxation: No

Reliance is placed on following Judicial Pronouncements :-

Sl. No.	Title	CITATION	AUTHORITY	Following page No of CCL
1.	Addl. CIT Vs. Mumbai International Airport (P) Ltd.	(2017) 53 ITR-Trib 169 (Mumbai)	Hon'ble ITAT Mumbai Bench 1-29	1-29
2.	Rajiv Biswas Vs. Union of India & Ors.	(2022) 6 NYPCTR 1105 (Cal)	Hon'ble High Court of Calcutta	30-35

9. Mere registration of sale deed is not conclusive:-

Reliance is placed on following Judicial pronouncement:-

Sl. No.	Title	CITATION	AUTHORITY	Following page No of CCL
1.	Hira Lal Ram Dayal Vs. CIT	(1980) 122 ITR 461 (P & H)	Hon'ble High Court of Punjab & Haryana	36-38

10. No income accrued to the assessee as the agreement with Rashi Steel & Power Limited stood cancelled:-

Reliance is placed on following Judicial pronouncement:-

Sl. No.	Title	CITATITON	AUTHORITY	Following page No of CCL
1.	CIT Vs. Lok Housing & Construction Ltd.	(2015) 93 CCH 171 (Mum HC) (2015) 232 TAXMAN 159 (Bombay)	Hon'ble High Court of Mumbai	39-44

11. No capital asset was held by the assessee as defined u/s 2(14). Therefore, there could be no "transfer" as defined u/s 2(47) of the Income Tax Act, consequently no income accrued u/s 5 r.w.s. 45 of the Income Tax Act.

Reliance is placed on following Judicial Pronouncements:-

Sl. No.	Title	CITATITON	AUTHORITY	Following page No of CCL
1.	Godhra Electricity Co. Ltd. Vs. CIT	(1997) 225 ITR 746	Hon'ble Supreme Court of India	45-54
2.	Poona Electric Supply CO. Ltd. Vs. CIT	(1965) 57 ITR 521	Hon'ble Supreme Court of India	55-62

12. Revenue not to be misguided by any window dressing of account:-

Reliance is placed on following judicial pronouncements:-

Sl. No.	Title	CITATITON	AUTHORITY	Following page No of CCL
1.	M/s. Karnataka Soap & Detergent Ltd. Vs. CIT	ITA No.257/2007 c/w. 266/2007 c/w. 63/2011	Hon'ble High Court of Karnataka	63-84
2.	CIT Vs. M/s. Karnataka Soap & Detergent Ltd	ITA No.257/2007 dated 16.11.2015	Hon'ble Supreme Court of India	85

Prayer :

It is prayed that the order passed by the Learned CIT (Appeal) may kindly be confirmed."

10. The Ld. AR also submitted chronological history of the case wherein, forgery has taken place when the land was purchased by the assessee company and the same was either transferred/sold to M/s. Rashi Steel & Power Ltd. which reads as under:

Chronological history of the case

Si. No.	Event date	Relevant document placed on following Page No. of the Paper Book	Remarks
1	01.04.2010	Complaint filed by the real owner namely Shri Basant Kumar (POA holder - Shri Narendra Kumar) etc, before Tehsildar, Bilaspur, kind attention is invited to proceedings before the Court of Additional Tehsildar vide order sheet entry dated 01.04.2010 placed on Page No. 38 of the Paper Book.	On 18.09.2009, the fraudsters namely Smt. Anita and others namely Shri Amit, Shri Ganesh and Smt. Rupali had fraudulently got their names entered in the revenue records as the owners of the property by virtue of being the legal heirs of deceased Basant, for cancellation of the same and rectification of mistake, the real owner namely Shri Basant and Narendra Kumar had filed a suit before the Court of Additional Tehsildar, Seepat which is evident from order sheet entries placed on Page no. 38 of the Paper Book.
2	27.10.2010	Assessee purchased the land vide registered conveyance deed from fraudsters namely Smt. Anita and others who were relatives of deceased Basant who was not the actual owner of the property.	Copy of the registered conveyance deed where name of the fraudsters is appearing as the sellers is placed on Page No. 23 to 34 of the Paper Book.
3	20.09.2011	Sale agreement was entered into between the assessee and Rashi Steel & Power Limited dated 20.09.2011.	Copy of the agreement to sale is placed on Page No. 19 to 22 of the Paper Book, thus, no sale deed was registered in favour of Rashi Steel & Power Limited and the sale was recognised in the books of accounts of the assessee merely on the basis of sale agreement which is an unregistered document as the same was not got registered.

4.	FY 2016-17	Assessee reversed the accounting entry in its books of accounts in the F.Y 2016-17.	Copy of the audited financial statements of the assessee pertaining to F.Y. 2016-17 is placed on page No. 52 to 64 of the Paper Book, kind attention is invited to Page No. 61 being Schedule No. 4 from which it is evident that the profit recognised on sale of land in the F.Y. 2011-12 was reversed by debiting the same to reserves and surplus.
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11. The Ld. AR relied on the order of the CIT(Appeals) and has further submitted that since the transaction of purchase of sale/transfer of the asset was void ab initio as observed by the Ld. CIT(Appeals) in his order wherein the observations of the CIT(Appeals) on the issue reads as under:

“2. In the GOA Nos. 1 to 6, the addition of capital gain of Rs. 7,79,92,524/- was made which is dealt with as under:-

(I) The assessee is a Private limited company. The assessee has agreed to sale on 20.09.2011 agriculture land admeasuring 41.42 acres at Village Parsada district Bilaspur to M/s Rishi Steel and Power Ltd. against issue of share of that company in favour of assessee company. Since the assessee was of the opinion that the agriculture land was not capital asset hence it has not offered to tax capital gain in its return of income.

(ii) The assessee has purchased the land sold to M/s Rishi Steel and Power Ltd vide registered sale deed dated 27.10.2010 from Shri Amit (son of Shri Basant), Shri Ganesh (Son of Shri Basant), Smt Rupali (daughter of Shri Basant) and Smt Anita (wife of Shri Basant). Subsequently it was found that Shri Amit and Others the seller of the impugned land fraudulently got their name transferred in the revenue record claiming to be the legal heir of Shri Basant. Whereas Shri Basant Kumar, Shri Praveen Kumar and Smt Raji Bai are the real owner of the property and they are residing in

Hyderabad. Since the registered sale deed executed in the favour of the assessee was forged documents hence the name of Shri Basant, Shri Praveen and Smt Raghunath Raji Bai was re-entered in revenue record. In support of this the assessee has filed the copy of proceeding before land revenue court of Naya Paridhar Tehsildar Sub-divisional Officer (revenue). The real owner has also filed criminal complaint against Shri Amit and others including the assessee company. Further the M/s Rishi Steel and Power Ltd. has threatened the assessee to forfeit the shares allotted and in response to the letter of M/s Rishi Steel and Power Ltd.

the assessee vide letter dated 07.09.2016 has requested M/s Rishi Steel and Power Ltd. to forfeit the share.

(iii) It is established principle of law that forgery is nullity. A person cannot get title over a property by forged document. In the case of the assessee, the sale deed executed in favour of the assessee on 27.10.2010 by Amit and others is a forged document. For this reason, the assessee never had any title over the impugned land sold to M/s Rishi Steel and Power Ltd. Accordingly the assessee cannot transfer this land to M/s Rishi Steel and Power Ltd. Further the assessee in response to letter of M/s Rishi Steel and Power Ltd. has requested them to forfeit the shares allotted by that company to the assessee company. For this reason I am of the view that no transfer of impugned agriculture land has taken place on 22.10.2010 and no capital gain has accrued to the assessee on account of this transfer. Accordingly the assessee is not liable to pay capital gain of Rs.7,79,92,514/- accrued as result of transfer of land to M/s. Rishi Steel and power Ltd.

(iv) In result these grounds of appeal are allowed.”

12. The Ld. AR on the basis of the aforesaid written submission had advanced certain contentions on behalf of the assessee as under:

A. That an amount cannot be taxed in the hands of the assessee only because the same was offered by the assessee for taxation. On this contention the Ld. AR has placed reliance on the following judicial pronouncements:

(i) Addl. CIT Vs. Mumbai International Airport (P) Ltd. (2017) 53 ITR_Trib 169 (Mumbai)

Held : Passenger service fee collected by the assessee, an airport operator, from the passengers is meant to be utilised only to meet the security related expenses of the concerned airport as per the rules and orders issued by MOCA and the surplus, if any, is to be mandatorily transferred to AAI and, therefore, the said amount cannot be characterised as 'income' under s. 2(24), s. 5 or any other provisions of the Act: further, it is a case of diversion of income by overriding title and hence it is not taxable in the hands of the assessee.

(ii) Rajeev Biswas Vs. Union of India & Ors, (2022) 6 NYPCTR 1105 (Cal)

Held : Section 9, read with sections 5 and 10(6)(viii), of the Income-tax Act, 1961 and article 15 of the OECD model tax convention - Income - Deemed to accrue or arise in India (Income from employment - Others) - Assessment year 2012-13 - Whether salary accrued to assessee, a non-resident seafarer, for services rendered outside India on a foreign ship would not be included in its total income merely because it was mistakenly shown by assessee to have accrued in India while filing its return of income - Held, yes

- Whether, therefore, such foreign income received by assessee was to be excluded under section 10(6)(viii) - Held, yes [Paras 3 and 7] [In favour of assessee]

B. The second contention of the Ld. AR pertaining to registration of the document that mere registration of sale deed is not conclusive. Reliance was placed by the Ld. AR to the following decision:

(i) Hira Lal Ram Daya; Vs. CIT (1980) 122 ITR 461 (P & H)

Held :

1. While evidentiary value has to be attached to a registered document, the said document cannot be a final word in the matter. Capital gains accrue only on sale or any other transfer of capital asset. If the assessee, even in the face of the registered deed, is able to prove by cogent evidence and satisfy the Tribunal that no sale, in fact, took place, the Tribunal has 'to necessarily conclude that there was no capital gain. The Tribunal may come to its independent conclusion that the sale was genuine on facts but it has to take into consideration the material placed before it. If the sale deed is held to be final, the income-tax authorities will be debarred from looking into as to how much sale consideration passed under the transaction outside the law. The factum of sale and the sale proceeds are the real questions to be determined by the income-tax authorities.

2.The Tribunal had, accordingly, erred in refusing to examine the material put before it to prove that the sale was a sham transaction.

C. The next contention of the Ld. AR was that no income accrued to the assessee as the agreement with Rashi Steel and Power limited stood cancelled.

On this context, the reliance was placed by the Ld. AR to the following decision:

(i) CIT Vs. Lok Housing & Construction Ltd. (2015) 93 CCH 171 (Mum HC):

Held : Subsequent to cancellation of agreement of sale of land, assessee filed its revised return declaring nil income, since income had not accrued to assessee in real sense, no hypothetical income of assessee could be brought to tax.

D. The Ld. AR further submitted that No capital asset was held by the assessee as defined u/s 2(14). Therefore, there could be no "transfer" as defined u/s 2(47) of the Income Tax Act, consequently no income accrued u/s 5 r.w.s. 45 of the

Income Tax Act. In support of his aforesaid contention, the Ld. AR relied on the following judicial pronouncements:

(i) Godhara Electricity Co Ltd. Vs. CIT (1997) 225 ITR 746 (SC)

Held : Section 5 of the Income-tax Act, 1961 - Income - Accrual of - Assessment years 1969-70 to 1972-73 - Assessee-company a licensee to generate and supply electricity to its consumers, from 1963 enhanced tariff - Suit was filed by consumers which was decreed against assessee ultimately - Supreme Court decided dispute in favour of assessee-company in 1969 - During pendency of litigations assessee though accounting for enhanced tariff could not recover same and even after decisions in its favour in view of Government's advice assessee was prevented from realising amounts in question - Ultimately, company was taken over by Government and later transferred to Electricity Board - Whether in above circumstances, since assessee was not able to collect enhanced charges, necessary entries made in its books of account represented only hypothetical income and it could not be brought to tax as it did not represent income which had really accrued even though assessee-company was following mercantile system of accounting - Held, yes

(ii) Poona Electric Supply Co. Ltd. Vs. CIT (1965) 57 ITR 521 (SC)

Held : Section 28(i) of the Income-tax Act, 1961 [Corresponding to section 10(1) of the Indian Income-tax Act, 1922] - Business income - Chargeable as - Assessment years 1953-54 and 1954-55 - Whether where an assessee maintained his accounts on mercantile basis, accrued liability and estimated expenditure which it would incur in discharging same could be deducted from income of accounting year in which said liability accrued - Held, yes - Assessee electric supply company claimed deduction of certain amounts from its taxable income as they were credited to 'consumers' Benefit Reserve Account to be distributed to its consumers in form of rebate - Whether since amount credited to consumer's Benefit Reserve Accounts was a part of excess amount paid to it and reserved to be returned to consumers did not form part of assessee real profits and in order to arrive at its taxable income from business under section 10(1) of 1922 Act, amounts in question had to be deducted - Held, yes

13. With such contentions, Ld AR of the assessee submitted that it is the facts on record that the transaction of purchase should be treated at nullity since the title transferred to the assessee by the seller at the time of purchase of land itself was bad and no one can transfer a better title to others than the title he himself possesses. With such submissions Ld AR submitted that Ld CIT(A) had

rightly adjudicated the issue in favour of assessee and thus the same needs to be sustained.

14. We have heard the rival contentions, perused the material available on records and case laws relied upon. We are of the opinion that, contentions raised by the Ld AR on behalf of the assessee are not worth considering in view of facts of present case without examining certain material aspects which goes to the root of the issue, has a substantial impact, which were not substantiated before us to reach at a lawful decision, are subject to verification by the revenue authorities. Such material issues are culled out as under:

- (a) What is the status of legal case registered before that land revenue court, whether the revenue court has decided the issue and treated the transaction of purchase by the assessee company as null and void.
- (b) What legal course of action assessee company has preferred against the alleged fraudsters on being come to know that it was forged.
- (c) Assessee's claim that the profit of sale of land due to cancellation of agreement is substantiated by furnishing the copy of Audited Financial Statements of the assessee for the FY ended on 31.03.2017, veracity and authenticity of such documents, which the Ld AO has doubted while furnishing the remand report before the Ld CIT(A), thus, are subject to verification with the supporting evidence.

(d) Assessee's general contentions based on certain case laws cannot accepted, unless the same are under the identical facts and circumstances, which the assessee was squarely failed to demonstrate.

15. In backdrop of aforesaid observations, since these substantial questions were not looked into by the Ld CIT(A), the order of Ld CIT(A) cannot be sustained, thus we set-aside the same. However, in the interest of justice to adjudicate the issue in light of the facts and in accordance with law, we are of the considered opinion to restore the matter back to files of Ld AO for verification of facts with consideration of aforesaid aspects of the issue and to decide afresh. Reasonable opportunity of being heard and to submit the necessary evidence to be provided to the assessee. In the result appeal of the revenue is partly allowed.

16. Since present appeal of revenue in ITA 97/RPR/2018 is partly allowed in terms of our observations herein above Cross-Objection No. 10/RPR/2018 filed by the assessee in support of the order of Ld CIT(A) becomes infructuous and thus dismissed.

17. In the combine result appeal of the revenue is partly allowed and Co of the assessee is dismissed.

Order pronounced in the court on 09/08/2023.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated /08/2023

Prakash Kumar Mishra, Sr.P.S(on tour) / TLP Sr. PS (on tour)

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT,
Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur