

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**

**AND**

**SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER**

**ITA No. 642/MUM/2024 (A.Y. 2013-14)**

<b>Income Tax Officer-10(2)(3)</b> Room No-212, Aayakar Bhavan M.K. Road, Mumbai-400020	V.	<b>Abdul Rahim Suleman Ghaswala</b> 142/48, Ghaswala Estate S.V. Road, Jogeshwari(W) Mumbai – 400102  <b>PAN: AALPG9087A</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	:	<b>Shri S.M. Makhija &amp; Ms. Manisha Ghind</b>
<b>Department Represented by</b>	:	<b>Shri Ajay Chandra</b>
<b>Date of conclusion of Hearing</b>	:	<b>29.05.2024</b>
<b>Date of Pronouncement</b>	:	<b>29.05.2024</b>

**ORDER**

**PER NARENDRA KUMAR BILLAIYA (AM)**

1. This appeal by the revenue is preferred against the order dated 27.12.2023 by National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] pertaining to A.Y. 2013-14.

**2.** The solitary grievance of the revenue is that the Ld. CIT(A) erred in deleting the addition of ₹.13,96,40,040/- on account of capital gain under section 45(3) of Income-tax Act, 1961 (in short "Act").

**3.** Briefly stated the facts of the case are that the assessee filed his return of income on 11.09.2013 declaring a total income of ₹.7,89,630/-. The said return was declared as invalid by CPC, Bangalore as the ITR-V was not forwarded for verification. Subsequently, during the course of the scrutiny assessment proceedings in the case of Abdul Rahim Suleman & Others for the A.Y. 2013-14 it was found that Abdul Rahim Suleman Ghaswala had introduced the capital in the firm in which he is a partner in the form of the land amounting to ₹.13.96 Crores. The Assessing Officer was of the opinion that this amount is taxable in the hands of the assessee as per section 45(3) of the Act. Since the assessee has not offered any capital gains in his return of income notice under section 148 of the Act was issued and served upon the assessee and the assessment was completed by making the addition on account of Long Term Capital Gain amounting to ₹.13,96,40,040/-.

**4.** Assessee challenged the addition before the Ld. CIT(A). It was strongly contended that in the case of Co-owner Abdulsattar Suleman

Ghaswala, the Ld. CIT(A) has deleted the addition, the revenue preferred the appeal before the Tribunal, Mumbai Bench and the Coordinate Bench in ITA No. 1658/MUM/2023 for the A.Y. 2013-14 held that according to provisions of section 45(3) of the Act, no addition could have been made in A.Y. 2013-14 in the absence of transfer of any capital asset in this year.

**5.** Since the assessee is part owner of the impugned property. We are of the considered view that the decision of the Coordinate Bench in the case of other co-owner Abdulsattar Suleman Ghaswala apply mutatis-mutandis. The relevant findings of the Coordinate Bench read as under: - .

*"012. We have carefully considered the rival contention and perused the orders of lower authorities. In this case admittedly transfer took place in AY 2011-12, It did not happen in AY 2013-14 as per finding of Id AO also.*

*013. Section 45 (3) provides that :-*

*[(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.]*

014. As the year of chargeability as per section 45(3) is the „year in which transfer takes place“. The AY in which transfer took place is AY 2011-12 and not the impugned Ay in which assessment is made. On this sole reason, the appeal of the Id AO fails.

015. Further Decision relied up on of ITAT by the Id CIT (A) has been upheld by Honourable High court Principal Commissioner of Income-tax, Kolkata-1 V Blue Heaven Griha Nirman (P.) Ltd.\* [2022] 135 taxmann.com 3 (Calcutta)/[2022] 285 Taxman 663 [SLP dismissed [2023] 154 taxmann.com 17 (SC)/[2023] 295 Taxman 11 (SC) holding as under :-

"9. For the purpose of deciding whether the substantial questions of law as suggested arise for consideration, it would suffice to refer to the case of the assessee who is the respondent in ITAT No. 250 of 2017, the lead case. The assessee filed their return of income for the relevant assessment year (A.Y- 2008-09) declaring loss of Rs. 58,885/-. The assessee along with three other companies was a partner in a partnership firm under the name M/S. Salapuria Soft Zone. As amongst the three partners, two are assesses in ITAT No. 164 of 2017 and ITAT No. 239 of 2017 respectively. The income declared by the assessee was on account of the share of exempt profit from the partnership firm M/s. Salapuria Soft Zone. The return was processed under section 143(1) of the Act.

10. Subsequently, proceedings under section 147 of the Act were initiated and notice dated 3-11- 2011 was issued under section 148 of the Act. The reasons for reopening was that the partnership firm M/S. Salapuria Soft Zone had revalued its assets and transferred the revalued reserve to its partners' account and the assessee being a partner had received certain sum of money on account of such revaluation reserve. Therefore, the Assessing Officer opined that he had reasons to believed on examination of record that the above has escaped assessment within the meaning of section 147 of the Act. The assets which were the subject matter was a large tract of land measuring about 3,19,086 sq. ft. owned by one M/s. I Gate Global Solutions Ltd. The said land was advertised for sale. The assessee company along with the two other companies namely M/s Command Construction Private Limited and Blue Haven Griha Nirman Private Limited, the assessee in (ITAT No. 164 of 2017) offered to purchase for a sum of Rs. 16,94,34,666/-. Subsequently the price was increased to Rs. 22,36,79,266/- on the basis that the said land measured 3,19,08 sq. ft. in contrast with the original measurement of 3,12,092 sq. ft.

*An agreement was entered into on 14-6-2004 and it appears that the re-measurement of the area was done and it was found that correct extent was only 3,12,092 sq. ft., therefore, the final price stood fixed at Rs. 21,87,76,492/- and supplementary agreement dated 28-12-2004 was entered into. The three companies paid the agreed sale consideration and possession was handed over. The Deed of Sale was executed and registered in their favour on 30-3-2005. The guideline value for the purpose of stamp duty as fixed by the Government at the relevant time was Rs. 260/- per sq. ft. and the purchase price paid by the three companies was Rs. 701/- per sq. ft. The total cost of the land paid by the three companies, inclusive of stamp duty and registration charges was Rs. 24,54,54,125/-. The land was purchased with a proposal to develop an industrial park and the three companies accounted for the said land so purchased as "work in progress" and reflected it under "Current Assets" in their balance sheet.*

*11. On 9-1-2006, these three companies and another company M/s. Wellgrowth Griha Nirman Private Limited. (the assessee in ITAT No. 239 of 2017) formed the partnership firm namely M/S. Salapuria Soft Zone and the three companies transferred the said land to the partnership firm. The fourth company (the assessee in ITAT No. 239 of 2017) was to arrange the finance required for development of the land. Each of the said three companies had 10% share in the profit/loss and the fourth company's share was 70%. The partnership business was deemed to have commenced from 1-4-2005. By supplementary deed of partnership dated 13-3-2006 between the four partners (companies) provided that the partnership firm M/S. Salapuria Soft Zone was entitled to avail a loan/credit facilities from commercial banks/financial institutions by mortgaging the movable and immovable properties. The firm, M/S. Salapuria Soft Zone, obtained the loan/credit facilities to the tune of Rs. 250 crores. The transfer effected by the three companies in favour of the firm was at cost and such cost was the amount recorded in the books of account of the firm for the year ended 31-3-2006, as the value of the said land with corresponding credit to the capital accounts of each of the said three companies. Accordingly, the capital account of the assessee (respondent in ITAT No. 250 of 2017) was credited Rs. 8,15,00,000/-. The firm M/S. Salapuria Soft Zone accounted for the said land as work in progress and reflected it under "Current Assests" in its balance sheet. The completed industrial park was leased out during March 2008. On 30-3-2008 the firm converted the land, building and its*

*amenities which were shown as inventory in its account into fixed assets. On 31-3-2008 the land and building were revalued in order to reflect the market value of the land and building in the books of account with a view to justify the bank loan of Rs. 250 crores. The amount of revaluation was credited to the "Current Account" of the four partners (three assesseees before us and M/s. Command Constructions Private Limited) in their profit sharing ratio. Thus the current account of each of the said three companies as well as the fourth company was credited. The amount which was credited in the accounts is not of much relevance for us. The above factual position is not in dispute.*

*12. The Assessing Officer while examining the return in the assessment which was reopened was of the view that the credit to the "Current Asset" of the assessee in the partnership firm M/s. Salapuria Soft Zone gives rise to income chargeable to tax. The Assessing Officer in the reassessment proceedings held that bringing of land into the firm by way of inventory without crediting partners capital account and without bringing it as fixed asset cannot be considered as capital contribution by the partners during the financial year ended March 31, 2006. The land was contributed by the three companies during the previous year ended March 31, 2008 relevant to the assessment year 2008-09 by way of capital contribution when it was converted into fixed assets from inventory by the firm. The Assessing Officer held that section 45(3) was applicable in respect of such transfer made during the previous year relevant to the assessment year 2008-09. It was further held that the revaluation figure recorded in the books of accounts in the firm M/s. Salapuria Soft Zone as on March 31, 2008 was to be deemed as full value of consideration received or accruing as a result of transfer of the capital asset by way of capital contribution. Further the revaluation amount was the profit which accrued to the three companies (assesseees before us) and each of them was liable to be taxed on one-third of such profit as short term capital gains. Further, the Assessing Officer pointed out that the land was grossly undervalued till it was part of inventory in the books of accounts of the firm to avoid the market value of the land being taken into consideration and consequently to avoid higher taxes on capital gains in the hands of the assessee company.*

*13. Thus, the Assessing Officer concluded that the revaluation amount was real profit and not notional and the firm was taxable in respect of its profits but the revaluation*

*profit was not disclosed by it as its income for the assessment year 2008-09 and no tax was paid thereon. Thus, the three assesses were made liable for tax on its share of revaluation profit. With the above reasoning the assessment was completed. The assessee carried the matter on appeal to the Commissioner of Income-tax Appeal [CIT(A)] firstly questioning the validity of the reassessment proceedings apart from the merits of the matter. The CIT(A) held that even if the case made out in the reasons recorded by the Assessing Officer is accepted, no belief could have been entertained by the Assessing Officer that any income in respect of which the partner was chargeable to tax had escaped assessment, and therefore held that the Assessing Officer acted without jurisdiction by issuing notice under section 148 of the Act. With regard to the merits of the matter, the assessee contended before the CIT(A) that the transfer of the land by the three companies to the partnership was by way of capital contribution during the financial year ended March 31, 2006 relevant to the assessment year 2006- 07. The other transfer was given effect in the accounts of the partners for the year ended March 31, 2006. The assessee's balance sheet and profit and loss account for the financial year showed that the land is "work in progress" under "Current Asset" which was transferred to the firm M/s. Salapuria Soft Zone as capital contribution. It was contended that the finding of the Assessing Officer that the partners' capital account were not credited during the financial year ended March 31, 2006 for their capital contribution by way of bringing in the said land is contrary to facts. The said land was brought in by the partners as inventory/current assets and it does not in any way alter the fact that the partners had in fact brought in the land into partnership business as their capital contribution. Further, by relying on the books of account of the firm M/s. Salapuria Soft Zone for the previous year ended March 31, 2006, it was demonstrated that the receipt of the said land by the firm was by way of capital contribution from the three assesseees as also the value thereof with corresponding credit to the partners' capital account. Further it was contended that the firm upon receipt of the said land during the financial year ended March 31, 2006 also accounted for it as "Current Asset". The partners transferred the said land at cost and there was no profit in the hands of the partners upon transfer of the said land to the firm. Therefore, it was contended that section 45(3) of the Act was inapplicable. It was further contended that after the firm received the land as the capital contribution, it was developed by infusing substantial funds during the financial*

*year 2005-06 and thereafter. It was only on March 30, 2008 the firm converted the developed land including construction thereon as inventory into "fixed assets" and thereafter on March 31, 2008 revalued it with consequent credit to the partners' "Current Account". Further it was contended that section 45(3) of the Act did not come into operation for the assessment year 2008-09 and by reason of conversion of the developed land and building into fixed asset by the firm or due to revaluation by the firm of the asset so converted during the previous year ended March 31, 2008. Further it was pointed out that the section 45(3) of the Act is applicable in the year of transfer by the partner of his capital asset to the partnership firm by way of capital contribution and in the case at hand the year of transfer was financial year ended March 31, 2006 and the Assessing Officer was not justified in invoking section 45(3) which had no application in the assessment year 2008-09 or for the assessment year 2006-07. The assessee also placed reliance on the circular issued by the CBDT subsequent to the insertion of sub-section (3) in section 45 of the Act bearing Circular No. 495 dated 22-9-1987. Thus, it was contended that there was no transfer of any capital asset by the assessee to the said firm during the previous year, relevant to the assessment year 2008-09 for section 45(3) to apply and therefore, the question of resorting to a device to avoid tax under section 45(3) does not arise. The assessee further contended that the finding of the Assessing Officer that the land was grossly undervalued till it was part of the inventory in the books of the firm M/s. Salapuria Soft Zone is wholly without any basis. There was no under valuation of the land when it was held by the said firm as inventory. By relying to the decision of the Hon'ble Supreme Court in Chainrup Sampatram v. CIT [1953] 24 ITR 481, it was contended that for accounting purposes, the stock is valued at cost or market price whichever is lower and the market value is taken only when it falls below cost. Further it was submitted that the three companies paid Rs. 21,87,76,492/- for purchasing the said land which was more than two and half times the guideline value fixed by the Government for stamp duty purposes at the relevant time. Further it was contended that the entire area underwent major development and became a premium destination for IT and ITES and several IT parks and SEZ zones and also high end residential projects were developed in the year. The area which was revalued was in a Gram Panchayat, was brought under the limits of the Municipal Corporation of Bangalore and it carried out various developmental activities by constructing flyovers under passes etc. water supply and sewerage*

*facilities were provided and the FAR ratio of construction of buildings was also increased on account of the road width of 150 feet.*

*14. Subsequently the land price in the area continued to rapidly rise and the state government kept on revising the guideline value for stamp duty purpose thrice. The assessee contended notwithstanding such price rise, in accordance with the accounting principles, the land held as inventory could only be shown at its costs. The revaluation of the asset by the firm was justified by contending that it was to bring it in line with the current market value of the land and building and for justifying the bank finance obtained by the firm to the tune of Rs. 250 crores. Thus, it was submitted that the revaluation was not the colourable device. Other factual details with regard to the loan availed by the firm were also placed for consideration.*

*15. The CIT(A) accepted the contention raised by the assessee. After examining the factual issues it specifically held that revaluation of an asset is not a business transaction resulting in any pecuniary gain which can form subject matter of taxation. Ultimately by a well reasoned order, the CIT(A) allowed the appeal filed by the assessee. Aggrieved by the same, the revenue preferred the appeal before the tribunal. The tribunal firstly considered the validity of the reopening of the assessment under section 147 of the Act. After elaborately considering the facts the tribunal held that, if at all any income accrues or arises owing to such revaluation, it is an issue which had to be dealt with in the assessment of the firm M/S. Salapuria Soft Zone which is the separate taxable entity. After noting the facts the tribunal held that in terms of the section 10 (2A) of the Act partners' share in the total income of the firm is not to be included in the total income of the partner. Therefore, it was held that there was no reason for initiating proceedings under section 147 of the Act. With regard to the applicability of section 45(3) of the Act, the tribunal after considering the books of accounts of the firm recorded the following factual findings :—*

*The books of account of the said firm for the financial year ended March 31, 2006 clearly reflected the receipt of the said land by it by way of capital contribution from three of its partners as also the value thereof with corresponding credit to the partners' capital accounts. The land upon purchase was shown by the said three companies as part of their current assets. The said firm upon receipt of the said*

land during the financial year ended March 31, 2006 also accounted for it as a current asset. The partners transferred the said land at cost. As such, there was no profit in the hands of the partners upon transfer of the said land to the said firm. Section 45(3) of the Act is applicable only in respect of a capital asset. The said provision has no application in the instant case since what was transferred by the partners was a current asset and not a capital asset. Section 45(3) of the Act did not come into operation for the assessment year 2008-09 by reason of conversion of the developed land and building into fixed assets by the said firm or due to revaluation by the said firm of the asset so converted during the previous year ended March 31, 2008. Section 45(3) of the Act is applicable in the year of transfer by the partner of his capital asset to the partnership firm by way of capital contribution. In the instant case, the year of transfer was the financial year ended March 31, 2006. The ITO was wholly unjustified in invoking section 45(3) which had no application in the assessment year 2008-09 or for that matter in the assessment year 2006-07. Even otherwise, section 45(3) seeks to determine the capital gains with reference to the value of the asset recorded in the books of account of the firm. The value so recorded is statutorily deemed to be the full value of consideration received or accruing to the partner as a result of the transfer of the capital asset to the firm. Thus, section 45(3) does not seek to substitute by any other figure the value agreed between the partners at which the asset is transferred by a partner to the firm.

16. With regard to the revaluation, tribunal reappreciated the facts which were considered by the CITA. With regard to the development of the area in question, as to how there was steep rise in the value of the properties and the state government revised the guideline value for the purpose of stamp duty several times between 2004-07 and after noting the price rise the tribunal held notwithstanding the said fact in accordance with the accounting principles the land held as inventory was shown at its cost and therefore it cannot be said that under valuation was done by the assessee as alleged by the Assessing Officer.

17. Further more on facts the tribunal agreed with CIT(A) that after conversion of inventory into fixed asset the firm revalued the developed land including construction thereon in order to bring it in line with the current market value to justify the business assistance secured by the firm from the banks to extent of nearly Rs. 250 crores. Therefore, on facts

*the tribunal concluded that the revaluation was not a colourable device.*

*18. Further more on facts it was held that there was no withdrawal by the partners from capital accounts and therefore there cannot be any income liable to tax in their hands.*

*19. After having given our anxious consideration to the entire matter we find that a thorough examination of the factual position has been done by the CIT(A) and the tribunal as well. We find no questions of law, much less substantial questions of law arises for consideration in this appeal. In the result, the appeals are dismissed. No costs."*

*016. Therefore respectfully following the decision of Honourable High court and also on plain reading of the provision of section 45 (3) of the Act , no addition could have been made in AY 2013-14 in absence of transfer of capital assets in this year."*

**6.** Respectfully following the findings of the Coordinate Bench (supra), we do not find any reason to interfere with the findings of the Ld. CIT(A).

**7.** In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 29<sup>th</sup> May, 2024

**Sd/-/-**  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

Mumbai / Dated 29.05.2024  
Giridhar, Sr.PS

**Sd/-/-**  
**(NARENDRA KUMAR BILLAIYA)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**