

आयकर अपीलीय अधिकरण, "पटना" न्यायपीठ पटना
IN THE INCOME TAX APPELLATE TRIBUNAL
"PATNA" BENCH, PATNA

(Heard from Kolkata Benches through web-based video conferencing platform)

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

&

SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 205/Pat/2018

Assessment Year: 2015-16

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| ACIT, Circle-4, Patna | Vs | Shri Suresh Kumar Rupam Tower Kankarbagh Main Road Patna - 800020 [PAN : ADJPK6521A] |
| अपीलार्थी/ (Appellant) | | प्रत्यर्थी/ (Respondent) |

C.O. No. 03/Pat/2022

Assessment Year: 2015-16

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| Shri Suresh Kumar Rupam Tower Kankarbagh Main Road Patna - 800020 [PAN : ADJPK6521A] | Vs | ACIT, Circle-4, Patna |
| अपीलार्थी/ (Appellant) | | प्रत्यर्थी/ (Respondent) |

| | |
|---------------|---------------------------|
| Assessee by : | Shri Alok Kumar, Advocate |
| Revenue by : | Smt. Rinku Singh, CIT D/R |

सुनवाई की तारीख/Date of Hearing : 03/04/2024

घोषणा की तारीख/Date of Pronouncement : 27/06/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER:

The present appeal is preferred by the revenue against the order of the learned Commissioner of Income Tax (Appeals) - 2 (hereinafter the "ld. CIT(A)") dated 14/06/2018, passed u/s 250 of the Income Tax Act, 1961 ("the Act"), for Assessment Year 2015-16. The assessee has filed cross-objection bearing C.O. No. 03/Pat/2022.

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

"1. The Ld. CIT(A) erred in deleting addition of Rs.5,39,15,000/- on account of sale proceed of residential units as per section 28(iv) of the Income Tax Act, 1961.

2. *The ld. CIT(A) erred in deleting addition of Rs.10,32,40,650/- made by the A.O. on account of valuation of investment in construction of commercial tower namely Rupam Tower at circle rate holding that no business activity has been carried out by the assessee.*
3. *Any other grounds taken at the time of hearing.*

2.1. The revenue has raised the following additional grounds of appeal:-

- (i) *Ld. CIT(A) has erred in allowing deduction u/s 54F on the gain of transfer of lands as arose to the assessee.*
- (ii) *Ld. CIT(A) erred in holding Rupam Tower as Residential House and has erred in allowing deduction u/s 54 to the LTCG arising to the assessee.*
- (iii) *Ld. CIT(A) erred in accepting the claim of the assessee regarding the cost of construction of the Rupam Tower building. He also erred in accepting the actual period of construction of the building."*

3. The assessee has raised the following grounds of appeal in cross-objection:-

1. *For that the grounds of cross objection hereto are without prejudice to each other.*
2. *For that in the facts and circumstances of the case, the learned CIT(A) is fully justified in deleting the addition of Rs. 5,39,15,000/- made by the Assessing Officer on account of alleged sale proceeds of Residential Units by resorting the provisions of section 28(iv) of the I. T. Act, 1961. The learned CIT(A) passed the order after full appreciation of the facts of the case and after application of judicial mind. The learned CIT(A) called for Remand Report from the Assessing Officer but the Assessing Officer did not respond to the Remand Report inspite of reminders having been given by the learned CIT(A). It is hereby submitted that the order of the learned CIT(A) does not call for any inference.*
3. *For that in the facts and circumstances of the case, the learned CIT(A) is fully justified deleting the addition of Rs. 10,32,40,650/- made by the Assessing Officer on account of alleged / impugned investment in construction of Rupam Tower. The Assessing Officer has taken imaginary and hypothetical value (Rate) of Rupam Tower. The Assessing Officer has erred in coming to the conclusion that the assessee has derived the effective benefit over the Rupam Tower. The learned CIT(A) passed the order after full appreciation of the facts of the case and after application of judicial mind. The learned CIT(A) called for Remand Report from the Assessing Officer but the Assessing Officer did not respond to the Remand Report inspite of reminders having been given by the learned CIT(A). It is hereby submitted that the order of the learned CIT(A) does not call for any inference.*
4. *For that the value of flats sold by the assessee was much depreciated on account of going various litigations. It is submitted that the circle municipal value shown in the sale deed is merely for the limited purpose calculation of stamp duty by the state government. The assessee was engaged in legal dispute over the title of the immovable property in question. Due to dispute attached to the property the assessee did not get good deal. The*

capital gains is to be calculated on the price stated in Registered Sale Deed of the flats. The assessee prays accordingly.

5. *For that the learned ACIT, Circle - 4, Patna has no jurisdiction over the assessee's case and as such appeal filed by ACIT, Circle - 4, Patna is infructuous and vitiated in law.*

6. *For that the assessee craves leave to urge, add or alter any other ground or grounds of this cross objection."*

4. Brief facts of the case as culled out from the records are that the assessee is an individual and he e-filed his income tax return for Assessment Year 2015-16 on 30/03/2016 declaring total income of Rs. 49,88,720/-. Case selected for scrutiny through CASS under limited scrutiny criteria *"to examine the sale of property in ITR being less than the sale consideration reported in Form 26QB and substantial increase in capital in a year"*. The Id. Assessing Officer after examining the records as well as the information in his possession noticed that the assessee owned a plot of land and he entered into a land development agreement on 28/04/2010 with his neighbor, namely, Dr. A.B. Prasad, owning the another piece of land. Subsequently, another land development agreement was jointly entered into by the assessee and Dr. A. B. Prasad with M/s. Kashyap Homes Pvt. Ltd. (in short 'M/s. KHPL') on 09/06/2011 to develop the land owned by them. M/s. KHPL agreed to develop the residential project and give certain flats as consideration to both the land owners. The residential complex is named as *"Vishwamohini Complex"*. The Id. Assessing Officer also noticed that the assessee also owned another piece of land nearby the land used for constructing Vishwamohini Complex. In this other land, the assessee made investment and constructed *"Rupam Tower"* which is a

commercial-cum-residential building and five floors of Rupam Towers are rented out to M/s. Vasan Healthcare Pvt. Ltd. and in the residential portion, the assessee is residing. Based on this information and observation of other details, showcause notice issued on 19/12/2017, asking the assessee as to why not the sale consideration received in the form of seven flats located at Vishwamohini Complex be treated as business receipt since the assessee is engaged in business of land development and construction work. The assessee was also asked to reply about the huge investment in “Rupam Tower project”. Further the Id. Assessing Officer also asked the assessee to explain as to how he is entitled to exemption/deduction u/s 54F of the Act. In reply, the assessee submitted that the agreement entered into between him and Dr. A.B. Prasad on 28/04/2010 was never acted upon. The assessee and Dr. A.B. Prasad approached the developer M/s. KHPL and it was agreed that against the land owned by both these persons, M/s. KHPL will construct a residential complex and give certain flats as agreed in the agreement to both the land owners. It was also submitted that the fair market value (FMV) of land as on the date of entering into development agreement, has to be considered as deemed sale consideration of land and after reducing the cost of land, the long term capital gain arising therefrom would be subject to exemption u/s 54F of the Act for the investment in residential flat at Vishwamohini Complex. It was also submitted that the investment in Rupam Tower is only Rs.1.26 Crores (approx.), and the source for the same is mainly from the sale of flats located at Vishwamohini Complex as well as

other funds available with the assessee. However, the Id. Assessing Officer after making various discussions about the first development agreement dt. 24/08/2010 and thereafter another agreement date 09/06/2011 and also considering the square feet rate of flats given to the assessee by the developer, took a view that the assessee has entered into business project and the gain arising from converting the land and sale of flats is purely business receipts and, therefore, the assessee is not entitled to any indexed cost benefit nor is entitled to any deduction/exemption u/s 54F of the Act. The Id. Assessing Officer also calculated the investment in Rupam Tower on the basis of prevailing circle rate and ignored the valuation report given by Registered Valuer. In all, for the flats located at Vishwamohini Complex received as consideration by the assessee of the Id. Assessing Officer after giving the benefit of cost of acquisition of the land, made addition of Rs.5,39,15,000/- as business receipt not declared by the assessee. Secondly, for the cost of construction of commercial tower, namely, Rupam Towers, the Id. Assessing Officer applied the prevailing circle rate and observed that unspecified/unascertained expenditure amounting to Rs. 10,32,40,650/- has been made by the assessee out of the undisclosed sources. The crux of the observation of the Id. Assessing Officer are summarised at para 12 to 13.1. of the assessment order and the same is reproduced below:-

"12. The assessee entered into registered joint development agreement with builder in the year 2011 (Copy available on record) wherein the value of land measuring 15802 sq.ft. which included 10100 sq.ft. of the assessee & 5702 sq.ft. of Dr Akhour B Prasad was considered at Rs 2,14,07,000 by the sub- registrar. The assessee has claimed that "the exchange value of the land of the assessee per sq. ft comes to Rs

1,36,82,490 (i.e Rs. 2,14,07,000 / 15,802 sq.ft. x 10,100 sq.ft.). Total carpet area of the seven flats received by the assessee is 8200 sq.ft. and the exchange value per sq. ft comes to Rs 1668.60/- which shall be considered as the cost of the flat in the hands of the assessee." However, the contention of the assessee is mis-leading. It is not the case that market value was adopted as per the provisions of Section 45(2) of the Income Tax Act, 1961 on conversion of investment into stock-in-trade because no such value of stock in trade was declared in the return of income for the year A.Y. 2014-15 or 2015-16 for that matter it is considered only fair that after introduction of tax on capital gains on sale of investment, the assessee should pay tax on such capital gains, with reference to the market value adopted for computing the business income arising to the assessee from investments or personal assets converted to stocks. But the assessee has not done any such exercise, no capital gains have been declared on such conversion, no converted value of stocks were declared in any of the return of income; and no declarations and compliances; whatsoever, were made by the assessee. Therefore, the actual land value of the assessee was only Rs.21,07,504 for the total of 10,100 sq.ft. contributed by the assessee. Total built up area of the residential tower (Vishwamohini Complex) came to be measured at 28,566 square feet. Out of this the assessee received 8,200 sq.ft. According to the sale deed dt. 18.07.2014 for flat number 403 with built up area of 1312 sq ft, the circle rate is specified at Rs. 86,26,000/-. The value of this built up area according to the prevalent circle rate comes at Rs. 6,575 per sq. ft. X 8,200 i.e. Rs. 5,39,15,000/-. The assessee has neither declared any aspect of this venture nor accounted for this business in the mercantile manner of accounting. Therefore, the benefits of the assessee are calculated on cash basis.

12.1 Apart from that the assessee has also developed the commercial tower namely M/s Rupam Tower / Rupam House on the main road side on this piece of land. Total construction area of the said commercial tower was measured to be 15,702 square feet. As far as the incurrance of expenditure for the ready-for-fitment structure is concerned, the assessee has not furnished any details/documents to prove the quantum of actual incurrance as well as identification of the source of funds for the same. Against such unspecified / unascertainable expenditure out of undisclosed sources, the assessee has derived benefit of ownership of a commercial tower measuring 15,702 sq. feet commercial space in the Rupam Tower / Rupam House. The value of the same as per prevailing circle-rate for commercial space at the said place is Rs. 6,575/- per sq feet. Therefore, the assessee has derived this benefit valued at Rs. 6,575/-X15,702 i.e. Rs. 10,32,40,650/-.

13. The provisions of Section 28(iv) of the Income Tax Act, 1961 are hereby reproduced as under:

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" -

(i)

(ii)

(iii).....

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

13.1 Therefore, the value of the above benefits (out of which some of the part was converted into money by virtue of as many as two sale deeds registered during the year under consideration) is arrived at Rs. 5,39,15,000+ 10,32,40,650/- i.e. Rs. 15,71,55,650/-. Against the same the assessee incurred expenses/divested capital assets to the tune of Rs.21,07,504/-. Therefore, the effective benefit comes at Rs. 15,50,48,146/- This amount of Rs. 15,50,48,146/- is hereby added back to the total income of the assessee for the year under consideration as per the discussion made in preceding paragraphs.

[Addition 15,50,48,146]"

5. Aggrieved the assessee preferred appeal before the Id. CIT(A) and filed various details which were placed before the Id. Assessing Officer also, asserting the fact that the assessee did not enter into any business transactions for the purpose of constructing the flats at "Vishwamohini Complex" and transactions are purely in the nature of capital gain where the assessee had first given the land to the developer M/s. KHPL vide agreement dt. 09/06/2011 and thereafter received seven flats in consideration. However, out of these seven flats assessee sold only two flats during the year and has duly offered capital gain in the income tax return. He also submitted that the consideration received from sale of two flats at Vishwamohini Complex has been applied for constructing commercial and residential building at Rupam Towers. He also submitted five floors of commercial building at Rupam Towers were semi-finished and were given on lease and all the remaining expenses for completing the building and its designing has to be incurred by the tenant, lease holder, namely, Vasan Healthcare Pvt. Ltd.. He also submitted that the assessee is entitled to exemption/benefit u/s 54/54F of the Act, firstly

for the investment in residential flat at Vishwamohini Complex so far as the capital gain earned from converting land and secondly against the capital gain earned from one of the flats sold during the year, assessee is entitled to deduction u/s 54 and 54F of the Act for the residential house constructed at Rupam Tower. Working of capital gain was also filed and also a copy of the valuation report was furnished indicating that the investment in Rupam Tower was only Rs. 1,66,25,000/- and Rs.1,28,63,311/- was spent during financial year 2014-15 and remaining in the subsequent financial year. It was thus prayed that the assessee should not be treated as engaged in business and the sale consideration from sale of flats at Vishwamohini Complex should be subjected to capital gain provisions and secondly, it was submitted that the Id. Assessing Officer has erred in treating the investment in Rupam Tower at Rs.10,32,40,650/- which is merely on surmises and conjectures without any evidence in possession of the Id. Assessing Officer and the cost estimated by the registered valuer should only be considered for the purpose of calculating the investment in Rupam Tower. Based on these details and submissions, the Id. CIT(A) found sufficient merit in the contention of the Id. Counsel for the assessee and gave substantial relief to the assessee mainly holding that the assessee has not entered into any business agreement with M/s. KHPL, the assessee is entitled to deduction u/s 54/54F of the Act for the value of flat received in consideration for developing the land. So far as the capital gain from sale of Flat No. 401 & 403 at Vishwamohini Complex is concerned, the Id. CIT(A) held that

the capital gain from sale of Flat No. 401 falls under the category of short term capital gain and that from sale of flat No. 403 at Rupam Tower will fall under long term capital gain and, therefore, benefit u/s 54F of the Act would be available only against the sale consideration of sale of Flat No. 403. The Id. CIT(A) also held that the Id. Assessing Officer has exaggerated the cost of investment made in Rupam Tower without having any substance nor making any enquiry and even without making reference to the DVO. The Id. CIT(A) has further held that the stamp duty value/circle rate is only for the purpose of capital gain as per the provisions of Section 50C of the Act and cannot be taken as a basis for calculating the cost of construction.

6. Aggrieved, the revenue is now in appeal before this Tribunal raising various grounds of appeal which mainly includes the ground relating to deletion of addition of Rs.5,39,15,000/- made by the Id. Assessing Officer u/s 28(iv) of the Act and deletion of addition of Rs.10,32,40,650/- made by the Id. Assessing Officer on account of valuation of cost incurred for constructing Rupam Tower. The revenue has also raised additional grounds challenging the finding of the Id. CIT(A) allowing the benefit u/s 54F of the Act on the gain of development of land and Section 54 for the investment in residential house in Rupam Towers.

7. The Id. CIT D/R, vehemently argued referring to various observation of the Id. Assessing Officer and also took us through the written submissions filed on 28/11/2022 and the relevant part of the written submissions placed by the Id. D/R are reproduced below:-

“In the assessment made by the assessing officer, he considered construction of both the complexes as adventure in nature of trade u/s 28(iv) by the assessee and made additions of

1. *Rs. 5,39,15,000/- for the 7 flats received by the assessee in the Viswamohini residential Complex and*
2. *Rs. 10,32,40,650/- as undisclosed trading stock for the entire Rupam Tower commercial complex.*

The CIT(A) in his order discussed four main grounds as follows:

1st Ground: Whether the activity constitutes business? Held No

2nd Ground: Calculation of Capital Gains: Held as follows:

- (i) *LTCG took place on 09-06-2011 in respect of transfer of land to get the residential flats, but is chargeable in A/Y 2015-16 u/s 45(2)*
- (ii) *This capital gain is fully deductible u/s 54F*
- (iii) *STCG arose on sale of one flat out of the 7 flats received by the assessee, which took place on 31-05-2014*
- (iv) *LTCG arose on sale of one flat out of the 7 flats received by the assessee, which took place on 18-07-2014*
- (v) *For calculation of CG as per (iii) and (iv) above, sec 50C is applicable*

3rd Ground: Applicability of deductions u/s 54 and 54F Held as follows:

- (i) *LTCG on transfer of land for getting 7 flats is deductible u/s 54F*
- (ii) *LTCG on transfer of flat on 18-07-2014 is deductible u/s 54*

4th Ground: Construction of Rupam Chambers as undisclosed stock: Held as follows: Accepted assessee's claim that the investment in Rupam Tower is completely explained as made out of sale of two flats and receipt of advance from another party for sale of a third flat which took place in the immediately following F/Y.

Being aggrieved The Department filed an appeal.

1. *It is submitted that the legislature through introduction of a new provision of sec 45(5 A) w.e.f. A./Y 2017-18, has made it clear that the gain of land owner through JDA is to be taxed as Capital Gains. Through another amendment made in that provision w.e.f. 01-04-2018 it has made further clear that CG will arise on the date of issue of Completion Certificate by the competent authority and the amount of CG will be the total sum of cash compensation received and the stamp duty value of the completed structure as received by the land owner less the indexed cost of acquisition of the land.*

2. *Since the present case is prior to A/Y 2017-18, it is submitted that AO is justified in not taking the transaction through JDA as leading to Capital Gains. The conduct of assessee of first pooling the land with neighbor, then constructing a commercial complex on the front portion of the land and then involving a developer to build a residential complex having approximately 24 flats clearly establishes his business intent. The construction activity taken up on such a large scale is clearly an adventure in the nature of trade with profit motive. The stand of the AO for*

treatment of these transactions as business adventure receipt is based on the first JDA dated 28-04-2010 which was drawn between the assessee as builder and his neighbor as land giver. It is also to be pointed out that the part of erection of commercial complex named Rupam Tower remained unchanged in the second and subsequent agreements. So, it was definitely adventure in nature of trade.

3. *The CIT(A) held that the first agreement can be held as non-est due to nonperformance. He held that the subsequent agreement and the supplementary agreements were the actual agreement of contract which was accepted by all the three interested parties. Therefore, the gain on transfer of land for the residential complex is nothing but capital gain on part of the assessee. However, even the land pooling and subsequent construction of Rupam tower is based on first agreement and also noted in second agreement dated 09.06.2011. Hence, the first agreement has been acted upon in reality.*

4. *Regarding construction of Rupam Tower, the CIT(A) held that this too cannot be treated as a business venture as the assessee is using a part of it as residence and the balance part is also given on lease from which lease rent received is disclosed as Income from House Properties as the Lessor has undertaken to construct interiors as per its requirement to run a hospital and is also maintained by them. However, the Rupam Tower has been constructed as commercial complex and completed before 09.06.2011. Merely the fact that the assessee later gave it on lease or used a part as residence cannot change its nature.*

5. *Lastly the CIT(A) was also satisfied that the cost estimated by the AO for construction of the Rupam Tower was the exaggerated and explanation of the assessee that the construction of Rupam Tower was out of revenue generated by sale of three flats in the residential complex; is acceptable to him. It is noteworthy that the flats of Vishwamohini complex were received and sold by the assessee in A.y.2015-16, while Rupam Tower was already completed in A.Y. 2011-12.*

6. *Further, he held that LTCCG on transfer of land in lieu of flats arose in A/Y 2012-13 on registration of the JDA on 09-06-2011 but chargeable in A/Y 2014-15 as per sec 45(2). This provision is not applicable in A.Y.2015-16.*

7. *He further erred in holding that such CG is fully covered by deduction u/s 54F as in lieu of the capital gain, the assessee had made investment of equal amount of sum in a residential property. He followed the Anand Basappa caselaw. Factually, the ratio of Anand Basappa was overturned w.e.f. A/Y 2015-16 itself when the word "a" was replaced by the word "one" residential house through the amendment in the provision of sec 54 and also of sec 54F. Even the action of the assessee also clearly shows that the seven flats altogether did not account for a single unit as the assessee himself was negotiating, contracting and selling the units of flats separately as is evident from the facts of the case. Therefore, the assessee should have been denied the benefit of sec 54F altogether or at best can be allowed for only one of the seven flats.*

8. *The CIT(A) held that the LTCCG on sale of one residential unit as sold on 18-07-2014 should get the benefit of sec 54 as invested in Rupam Tower where on the 5th floor the assessee himself is residing. Now the section clearly states that the*

gain is to be invested in one residential house. Now again, Rupam Tower is a commercial building as clearly stated in the agreements and also as per the sanctioned plan of PMC. That the fact that the assessee is occupying only one floor of the basement, ground and 5 floors cannot change the character of the building from commercial to residential. The performance of the assessee by leasing out ground and 4 floors to a fully commercial entity, also suggested that the building is mainly used for commercial purpose. The CIT(A) at one hand, held all seven distinct residential units as one residential house in the residential building, but, on the other hand, completely overlooking the integral nature of Rupam Tower, held Rupam Chamber as residential building; since only one floor is used by the assessee as his residence. This is unacceptable and if the Rupam Tower is held as a commercial building (which is actually is), the assessee cannot get any benefit u/s 54 on the LTCG arising out of sale of one residential flat on 18-07-2014.

9. The assessee before the CIT(A) submitted a valuation report of a Registered Valuer on civil construction cost of Rupam Tower, where the valuer held as follows:

- (a) Basement constructed in F/Y 2013-14 at a cost of Rs. 9,00,000/-
- (b) Ground and 4 floors constructed in F/Y 2014-15 at a cost of Rs. 1,20,00,000/-
- (c) 5th floor constructed in F/Y 2015-16 at a cost of Rs. 37,25,000/-

The CIT(A) had accepted this valuation of the RV and held that the construction cost as submitted by the assessee is acceptable and well explained as being financed by the sale proceeds of flats in the residential complex. He has erred in his decision. Now, even if we consider that the cost estimated by the AO is erroneous, the following facts are on record.

- (a) As per second para on internal Page 6 of supplementary agreement dated 14-03-2014,

the proposed multistoried commercial building complex has been constructed and completed (from the basement to fifth floor) in accordance with the said sanctioned plan is standing by the name of Rupam Tower..... Therefore, the claim of the assessee as supported by the valuation report that the construction of Rupam Tower took place in F/Y 2013-14, 14-15 and 15-16 is blatant lie and LD CIT(A) completely erred in the facts of the case

- (b) At numerically marked para 2 at internal page 7 of the supplementary agreement, the assessee agreed to pay Rs. 2000/- per square ft of built up area as compensation to his neighbor for getting 226 sq ft of extra built up area than his legitimate due in the Residential complex. In-stead of blindly accepting the construction cost as claimed by the assessee and the concocted valuation report of the RV made only to suit assessee's stand, the CIT(A) should have reasonably estimated the construction cost at the same rate agreed by the assessee to pay compensation to the neighbor. In such case, construction cost of Rupam Tower should have been reasonably estimated at Rs. 3,50,00,000/- for completion of construction of Rs. 17,500 sq ft of built up area in Rupam Tower, within F/Y 2013-14; instead of accepting the sum of Rs. 1,28,63,311/- as claimed by the assessee. In

such case the investment made by the assessee was beyond explanation as out of sale proceeds of residential flats.

10. In view of the above, it is requested that the order of the CIT(A) may be set aside."

8. On the other hand, the Id. Counsel for the assessee has heavily supported the finding of the Id. CIT(A) and also placed a short synopsis on various issues raised in the revenue's appeal and the same reads as follows:-

"1) The respondent being owner of a piece of land entered into an agreement with an another land lord Dr. A.B. Prasad who has a piece of land adjoining to the land of the assessee on 28.04.2010 to construct a residential complex, which was not executed and became void as terms of agreement was not fulfilled.

2) Thereafter, the respondent made a land development agreement with a builder / developer namely Kashyap Green Homes Pvt. Ltd. on 09.06.2011 to Construct the residential complex on the said land of both land lords as original agreement of 28.04.2010 was not executed and performed and it was also agreed under the said agreement that the assessee shall be able to seek help of others in case of need for the construction of the purposed building complex.

Further, the builder made a tripartite supplementary agreement regarding share distribution of flats with both the land lords i.e. assessee and Dr. A.B. Prasad and builder itself on 12.03.2014 on the basis of land development agreement of dated 09-06-2011. The Facts regarding the terms of the original development agreement of dated 28.04.2010 was not executed which was clearly mentioned in the share distribution supplementary agreement of dated 12.03.2014 and mentioned on page -9 of CIT (A) order.

Therefore, it confirms that the assessee was not engaged in business of real estate. Hence, whatever the income arose after transferring of land to developer or after selling of flat is a capital gain and computed according to that provision of the Act.

3) The assessee and other land lord A.B. Prasad has got 50% share of flats each in lieu of relinquishment of their land as 7 flats measuring 8210 sq.ft. and 5 flats measuring 6073 sq.ft. respectively and developer's (Kashyap Green Homes Pvt. Ltd.) share is 12 flats Of 14,283 sq.ft. It is pertinent to mention that as per the first agreement dated 28.04.2010 between the assessee and the land lord Dr A.B. Prasad, that Dr A B Prasad will get about 7500 Sq Ft. of built up area as per FAR was calculated 2.5. But according to executed agreement of dated 09.06.2011 and final tripartite supplementary agreement the FAR was achieved as 2.27 and accordingly built up area was distributed among both the land lords and builder. It confirms that the distribution of built up area was not performed according to terms and conditions of first agreement of dated 28.04.2010.

CIT(A) called for Remand report as well as AO's comments 3 times but AO neither send remand report nor appear but send the case record before CIT(A). (Page-17- appeal order) Issue of Addition of Rs. 5,39,15,000/- (Gr. No-1)

4) The A.O. has considered assessee's share of flat in building received from builder in lieu of relinquishment of his land measuring as 8210 sq.ft., as business income of the assessee u/s 28 (iv) of the Act on the ground that he has made an agreement on 28.04.2010 to construct the residential complex which was clearly not executed and performed as mentioned in the share sharing supplementary agreement and calculated the income of the assessee at the rate of circle rate of a flat which was sold by the assessee during the year @ 6575/- per sq.ft., amounting to Rs. 5,39,15,000/- (6575/- x 8200). It is pertinent to mention that the assessee got his share of built up area measuring 8210 sq.ft. while A.O. has calculated on 8200 sq.ft. The A.Q. treated as stock in trade. (Page-21 para-12).

5) Findings of Ld. CIT(A) is on page 22. Issue of stock in trade is discussed after relying on CIT vs Ashok Kapur (HUF)213 CTR 0241 (2007). Accordingly, Ld. CIT(A) has judiciously given findings that it is clear case of capital gain rather business income in part of the assessee since terms of the agreement of dated 28.04.2010 was not executed. (Appeal order - on page-24 , 3rd para and on page 37,2nd para.)

6) Issue of Rs. 10,32,40,650/- (Gr. No.- 2)

7) The assessee has constructed a commercial cum residential building of G+5 Floor namely Rupam Tower on his southern side land and regarding sanction of map it is clearly mentioned in the page 4 of development agreement of 09.06.2011 that map for both building will be applied and passed jointly.

8) The source of construction of this building was met by selling the 3 residential flats (2 flats during the year under consideration and one flat was registered during next financial year.)

9) The Ground+4 floors of this Rupam Tower constructed by the assessee was let out to Vasan Eyecare Pvt. Ltd. and it is mentioned in the lease agreement (available with AO) that only unfinished frame structure has to be given to the lessee. The 5th floor was constructed for his residential purpose and residing in this.

10) The A.O. has valued the construction of this building at the circle rate of the flat which was sold by the assessee i.e @ 6575/- per sq.ft amounting to Rs. 10,32,40,650/- and added as business income. '(Para 12.1 on page 22 of A.O.'s order)

11) Deleted by CIT(A). Appeal findings on page-43 wherein it was found by Ld. CIT that valuation report, balance sheet was available in case record which reveals that most of the expenses made through bank.

Issue of Section 54F (Additional Gr. No. -1)

12) After considering the capital gain as per land development agreement made between builder and land lords, section 54F is applicable and after relying on the judgement in CIT us Geeta Duggal 357 ITR 153 (Del) whole capital gain arose due to getting residential flats is exempted. (2nd para on page 38 in Appeal order) .

While, AO did not consider this provision since he considered as business income. (Para-7 on page 19 in AO order).

13) As per the assessment order assessee did not disclose in ITR but assessee submitted during scrutiny that the capital gain arised at the time of execution of development agreement is exempted u/s 54F so has not mentioned in the ITR and has relied on the CBDT Circular No. - 014 (XL - 35) of dated 11.04.1955, for claiming exemption during assessment proceedings.

Issue of Section 54 (Additional Gr. No. -2)

14) The assessee sold the 2 flats from his share of flats during the year under consideration.

15) Evidences w.r.t. residential floor (5th Floor) of Rupam Tower, such as Property Tax receipt & SAS issued by Patna Municipal Corporation was submitted before AO (mentioned in para 8.1 on page 20 of A.O.'s order) and also submitted before Hon'ble bench through mail on 18 08-2023.

CIT (A) findings on page 43 from para 3 to page 44,

16) Issue under limited scrutiny w.r.t. difference in actual value of sold flat vis-a-vis stamp duty value. CIT (A) applied the provision of section 50C and directed to compute capital gain accordingly after recording the findings under last 2 para on page 38 of appeal order.

8.1. The Id. Counsel for the assessee also placed reliance on the following decisions:-

- (i) CIT vs. Gita Duggal reported in 357 ITR 153 (Del.)
- (ii) CIT vs. D. Ananda Basappa reported in 309 ITR 329 (Kar.)
- (iii) CIT vs. Narsimhan (PV) [1990] 181 ITR 101 (Mad.)
- (iv) Amit Kumar Bansal vs. ITO, Ward-1, Raigargh in ITA No. 130/RPR/2013; Assessment Year 2009-10

9. We have heard rival contentions, perused the material placed before us, gone through the case-law relied upon by both the sides as well as the findings of the lower authorities. The revenue has challenged the finding of the Id. CIT(A) on the following four issues:-

- (i) Deletion of addition of Rs. 5,39,15,000/- made u/s 28(iv) of the Act.

(ii) Deletion of addition of Rs. 10,32,40,650/- for alleged unexplained investment in Rupam Towers.

(iii) The Id. CIT(A) erred in giving benefit of deduction u/s 54F of the Act for the investment in residential flats at Vishwamohini Complex and;

(iv) The Id. CIT(A) erred in giving benefit of Section 54 of the Act for investment in residential floor at Rupam Tower.

10. Even at the cost of repetition, we would like to put the facts in brief. The assessee owned a piece of land at Patna. He along with his neighbor, Dr. A. B. Prasad planned for developing the land and entered into an agreement of development dt. 28/04/2010. It has been claimed that this agreement dt. 28/04/2010, was not acted upon. Thereafter, the assessee and Dr. A.B. Prasad, approached the developer M/s. KHPL for land development and vide agreement dated 09/06/2011, M/s. KHPL, constructed complex, namely, Vishwamohini Complex. In consideration of giving its land the assessee received seven flats of which two flats bearing no. 401 & 403 were sold during the year. During the year assessee also made an investment for constructing a building, namely, Rupam Towers. For the purpose of earning income from rent from the Rupam Towers, five floors were given on lease for carrying out commercial activities to Vasan Eye Care Pvt. Ltd., and that too is claimed that only unfinished frame construction was completed and on the top of the complex residential portion constructed in which the assessee resides. He also claimed that against Flat No. 403, sold during the year, assessee

deserves benefit u/s 54 of the Act for investment in residential house at Rupam Tower.

10.1. Now, so far as residential flats at Vishwamohini Complex received as consideration against giving rights for development of land for constructing Residential complex. The Id. Assessing Officer firstly held that the assessee is carrying out business activity of constructing the flats and it has partly acted upon the agreement dt. 28/04/2010 and secondly the sale consideration of flats received from developer M/s. KHPL was estimated and after giving deduction of cost of land the addition at Rs.5,39,15,000/- has been made. So was the allegation of the Id. Assessing Officer that the assessee has carried out business activity of converting the land into a residential project, the Id. CIT(A) has held in favour of the assessee observing as follows: -

"I have considered the issue. I have also gone through the assessment order, the submissions of the appellant, the various case laws quoted in the same as well as the material on record.

The appellant initially entered into a land development agreement on 28.04.2010 with his neighbour Dr. A. B. Prasad who has a piece of land adjoining to the land of the appellant to construct a residential complex on agreement on amalgamated land and subsequently made another 09.06.2011 with builder M/s Kashyap Green Homes Pvt. Ltd. who developed/constructed the residential building on proportionate basis. Further, by a tripartite supplementary agreement on 12.03.2014 regarding share distribution of flats the builder Kashyap Green Homes Pvt. Ltd. had delivered respective share of flats to both the la d lords i.e. appellant and Dr. A.B. Prasad separately and directly and retained his share of flats itself. In the agreement dated 09.06.2011 made between the appellant and the builder, it is not mentioned that the first agreement of dated 28.04.2010 became void but it is mentioned in Para 5 on page 4 of supplementary agreement of dated 12.03.2014 that the agreement of 2010 was not executed.

Considering the above factual position, it is apparent that the appellant had not constructed the multi storied building. The terms and

condition of first agreement made between the appellant and Dr. A.B. Prasad was not executed as within 90 days plan was not passed or two floor of building within one year from the date of approval of plan was not constructed,

The second agreement dated 09.06.2011 was entered into, between the appellant and the builder Kashyap Green Homes Pvt. Ltd. but indirectly it was also the agreement between Dr. A B Prasad the first land owner, Suresh Kumar the appellant and the builder Kashyap Green Homes Pvt. Ltd. because all the three person acted upon second agreement, since as per terms and condition of this second agreement dated 09.06.2011, a tripartite supplementary agreement dated 12.03.2014 giving the distribution/ share in the Project of all three parties, was executed between all three parties without any dispute.

Further it is apparent that according to the supplementary agreement of share distribution dated 12.03.2014, final delivery/ possession of share of Flats are decided on the terms and condition of agreement which itself is regulated by the agreement dated 09.06.201 | and not by the first agreement dated 28.04.2010.

At the time of entering into the third agreement in 2014, Dr. A.B. Prasad has not raised any dispute in terms of the agreement dated 09.06.2011 which was signed by the appellant and the builder. In effect this substantiates the contention of the appellant that the agreement of 2011 was in the knowledge and with the approval of Shri A.B. Prasad and therefore the agreement of 2010 entered into between him and Dr. A.B. Prasad stood cancelled.

It is on record that

(a) The project was initiated and completed by the builder Kashyap Homes Pvt. Ltd.

(b) The sharing of the flats/area was done in accordance with a tripartite agreement duly entered into by all 3 parties in 2014 including Dr. A.B. Prasad.

(c) The agreement of 2014 was itself a supplementary agreement to the agreement entered into between the appellant and builder in 2011 and is regulated by the same.

(d) The supplementary agreement of 2014 mentions on Page 4 Para 4 & 5 that the agreement of 2010 was not executed and performed and this bears the signature of Dr. A.B. Prasad. Given these facts, the logical conclusion that can be drawn is that the original agreement of 2010 became void and thus the actual nature of the activity of the appellant viz, a viz, Dr. A.B. Prasad is that of a facilitator and not of business.

This is also supported by the ratio of the decision of the Hon'ble Supreme Court in the case of Padma kumara & Ors. Vs. Dasayyan & Ors.

Vide (Civil Appeal No(S). 3570 of 2015 arising out of S.L.P. (C) No.1169 of 2008.

The A.O. has failed to appreciate this significant point and instead erroneously held on to the original agreement t of 2010 as the basis of the project.

The view of the AO that "the claims of not doing any realty business is a blatant lie because all the documentary as well as circumstantial evidence prove that the assessee entered into an adventure in the nature of developing real-estate and deriving benefits/earning/incomes therefrom" lacks strength due to the fact and evidence available on record and discussed above. This is also supported by the order of the Hon'ble Delhi High Court in CIT Vs. Ashok Kapur (HUF) Cited 213 CTR 024 (2007).

I therefore, hold that the appellant himself is just one of the three parties to the transaction related to the Project and therefore the transfer of his land is not in the nature of business activity and instead will attract Capital Gain as per Law."

10.2. From perusal of the finding of the ld. CIT(A) and also on going through the details before us, we find that the assessee has never acted upon the agreement dt. 28/04/2010 and the residential project, namely, Vishwamohini Complex was initiated and completed by the builder M/s. KHPL and assessee only received seven flats as consideration against giving land for developing to M/s. KHPL. We also note that a tripartite supplementary agreement was entered into on 12/03/2014 it was again stated that the agreement dated 28/04/2010 was not executed and all the activity for developing the project has been made as per the agreement dated 09/06/2011. Thus, we fail to find any infirmity in the finding of the ld. CIT(A) holding that the assessee is just one of the three parties of the transactions and it was merely transfer of land for the purpose of developing a project but it was not a business activity carried out by the assessee because

the activity relating to development of land and constructing the project was the sole responsibility of M/s KHPL and, therefore, the transactions of transferring the land, receiving the flats in consideration and subsequent sale of two flats would be taxed as per the capital gain provisions under the Income Tax Act.

11. Now we take up the issue relating to addition made at Rs.5,39,15,000/-. The ld. Assessing Officer only to the basis of total square feet of the flats received by the assessee and applying the circle rate calculated the total value of seven flats at Rs.5,39,15,000/- and treated it as a business receipt. We, however, notice that the ld. CIT(A) after holding that the assessee has not done any business transactions, calculated the capital gain into two portions. Firstly, capital gains arising from transfer of land vide agreement dated 09/06/2011 and secondly, capital gains arising from sale of flat nos. 401 & 403. We find it necessary to reproduce below the finding of the ld. CIT(A) which has been arrived at after dealing with the factual aspect and the details filed by the assessee and the same reads as follows:-

“Ground No. 4 & 5 of the appellant are related and interlinked and therefore are being discussed together. A perusal of the assessment order gives that the appellant has submitted various costs and sale consideration of the land as well as flats during the course of assessment proceedings. These include, the cost of land of the appellant 09.06.2011 which is determined at Rs. 1,36,82 duty value on that date. The appellant has further mentioned that the actual cost of acquisition of land was Rs. 21,07,504/-.

These details were examined by the A.O. during the course of assessment proceedings and are duly mentioned in Para 12 of the assessment order. However, the A.O. has incorrectly concluded the discussion by utilizing these figures for determining business income u/s 28(iv) of the Act and has made an addition of Rs.5,39,15,000/- by multiplying the built up area of

8210 sq. ft. received by the appellant with Rs.6575/- which is the circle rate of a flat.

As discussed with respect to Grounds of the correct inference is to determine capital gain treat the same as business income.

In respect of the capital gain arising out of submission of the appellant made during the course of these proceedings was examined. It has been submitted that the on 09.06.2011 is Rs. 33,18,220/- and 1,03,64,270/-. This working has been done by taking the sale consideration at the stamp value rate as on the date of transfer

The appellant has further contended that no capital gain is payable on this amount as the whole of capital gain is exempt under sec. 54F. In support of his case as well as the ratio given by the Hon'ble HC New Delhi in the case of Geeta Duggal 357 ITR 153 which is quoted as under:-

" That "the expression 'a residential house' should be understood in a sense the word 'a' should not be understood to indicate a singular " number the court interpreted the word 'a residential house' to mean any residential house in contradistinction to any commercial house property. Consequently, tax payer were able to claim L.T.C.G. tax exemption by investing in more than one house property. However, an amendment was made to the Act which replaced 'a residential house' with one residential house with effect from 01/04/2015."

Applying the above pronouncement on the facts of the case of the appellant it is evident that the appellant has received a residential house comprising of 7 units (8210 sq. ft. of built up area) in lieu of his share of land and the value or the investment in the said residential complex is Rs.1,36,82,490/- as per the value of development agreement, since LTCG arose on 09.06.2011 and possession was received on 12.03.2014 in AY 2014-15. I am, therefore, of the opinion that the appellant will get the benefit of section 54F. Therefore, the appellant is entitled to exemption of Rs.1,36,82,490/- u/s 54F of the Act as against the LTCG amounting to Rs.1,03,64,270/- arising due to land transferred to builder on 09.06.2011.

On the issue of calculation of Capital gains arising out of the sale of flats, it was noted that 2 flats no.s 401 (built up area 1114 sq. ft.) and 403 (built up area 1312 sq. ft. were sold by the appellant.

The appellant has sold flat No. 401 on 31.05.2014. The date of acquisition of this flat will be the same as the date of transfer of land i.e. 9/6/2011. Therefore the period of investment will be less than 36 months and will attract STCG. Similarly, the appellant has sold flat NO. 403 on 18.07.2014. The date of acquisition of this flat will be the same as the date of transfer of land i.e. 9/6/2011. Therefore the period of investment will be more than 36 months and will attract LTCG.

As regards the value of sale consideration of the said flat, although the appellant had sold the flats below the FMV i.e. on litigation of title but no reference has been taken from the DVO. The AO mentioned this in his assessment order that the appellant had requested for reference to DVO but the appellant has not made the course of these proceedings.

I am therefore of the view that provisions of s squarely attracted in this situation and direct the Assessing Officer to compute the STCG for flat no. 401 and LTCG for flat no. 403 as provided Act and indexed cost of acquisition claimed by the cost of acquisition per sq. ft. on the basis of the land value of Rs. 1,36,82,490/- and built up area of 8210 sq. ft. received in lieu of this land.

As regards the appellant's claim that the LTCG on the sale of flat no 403 is exempt as per provisions of Sec 54 of the Act, it is on record that the appellant is residing in the 5th floor of multi storied Commercial cum residential building namely Rupam Tower which has been constructed out of the funds available to the appellant. Further the appellant relied upon the order of the Hon'ble Madras High Court in the case of CIT vs. Narsimhan (PV) [1990] 181 ITR 101 (Mad) where the Hon'ble High Court has held that "the assessee sold his residential property and invested the capital gain within the stipulated time in the construction of new floor on another house owned by him, was entitled to exemption under section 54."

Further, during the appellate proceedings the appellant provided a copy of a Valuation Report prepared by a registered valuer. The appellant further contended that on the basis of this valuation report of registered valuer, investment in construction of residential floor on the 5th floor of Rupam Tower comprising built up area of 2500 sq. ft is Rs. 31,25,000/-. The same was made available to the AO for comments but none was furnished.

I am inclined to accept the appellant's contention regarding exemption being available u/s 54 of the Act on the LTCG on the sale of Flat no 403. I therefore rely upon this report and direct the AO to consider that investment in construction of residential floor on the 5th floor of Rupam Tower may be calculated on the basis of this report and thereafter give the benefit of exemption u/s 54 of the Act, 1961 on the LTCG arising on the sale of Flat No. 403. As regards, the STCG arising on account of sale of Flat No. 401, the same shall be subject to tax as per the relevant provision of the Act and the addition of Rs. 5,39,15,000/- made under Sec. 28(iv) is deleted."

12. Now from perusal of the above finding and also considering the details placed before us, we find that on 09/06/2011 vide agreement with M/s. KHPL, the land was given to M/s. KHPL for developing it

into a residential complex. The cost of acquisition of the land is undisputedly at Rs.21,07,504/- and for the purpose of calculating long-term capital gain the index cost of acquisition of the plot of land as on 09/06/2011 comes to Rs.33,18,220/-. The fair market value of the land as on the date of transfer of land i.e., 09/06/2011 as per the prevailing circle rate comes to Rs.1,36,82,490/- which thus finally gives rise to net long-term capital gain at Rs. 1,03,64,270/-. Now, whether the assessee is liable to pay any capital gain on long term capital gain of Rs.1,03,64,270/-. The assessee has claimed that he is eligible for exemption u/s 54F for seven units of residential flats received from the developer. In view of the judgement of the Hon'ble Delhi High Court in the case of *Geeta Duggal 357 ITR 153*, we find merit in the finding of the Id. CIT(A) that long-term capital gain from transfer of land as on 09/06/2011, has been applied for purchasing the residential house at Vishwamohini Complex and since the total sale consideration i.e., the FMV of the land has been applied for getting the seven flats, the assessee is entitled to deduction u/s 54F of the Act at Rs.1,03,64,270/-. This finding of the Id. CIT(A) needs no interference.

12.1. Further as regards the two flats bearing no. 401 & 403 sold during the year, the date of acquisition of flats can be considered as 09/06/2011 because it is on this date on which the agreement was entered into with the developer. Now, flat no. 401 has been sold on 31/05/2014 and since the date of acquisition of flat is 09/06/2011, the assessee has held this flat for less than 36 months and, therefore, it will attract short-term capital gain, for which necessary directions have

already been given by the Id. CIT(A) to the Id. Assessing Officer for calculating the short term capital gain from sale of flat no. 401 after giving deduction for cost of acquisition as per the square feet rate of land taking the FMV at Rs.1,36,82,490/-. So, this finding of the Id. CIT(A) also needs no interference.

12.2. As regards the sale of flat no. 403 which is held by the assessee for more than 36 months, the capital gain would fall under the category of long-term capital gain. Further since the assessee made investment in the residential house at Rupam Tower, within the parameters prescribed u/s 54 of the Act, it deserves the benefit u/s 54 of the Act for the cost of investment in the residential portion of the 5th floor of Rupam Towers which also needs to be calculated by the Id. Assessing Officer based on the valuation report of Rupam Towers. Thus, with these directions as given by the Id. CIT(A) we are inclined to hold that the Id. CIT(A) made no error in deleting the addition of Rs.5,39,15,000/- by not treating it as a business receipt liable for addition u/s 28(iv) of the Act and has rightly held it to be falling under the category of capital gain. Thus, Ground No.1 and additional Ground No. 1 & 2 of the revenue are dismissed.

13. Now, we take up Ground No. 2 raised by the revenue deletion of addition of 10,32,40,650/- made by the Id. Assessing Officer for alleged investment in construction of Rupam Tower from undisclosed sources. We observe that the Id. CIT(A) after considering the valuation report of the estimated cost incurred for the construction of Rupam Towers and also taking into account the sale consideration received from sale

of Flat no. 401 and 403 at Vishwamohini Complex, held that the Id. Assessing Officer has grossly erred in calculating the cost at circle rate. Finding of the Id. CIT(A) on this issue reads as follows:-

"I have considered the issue. I have also gone through the assessment order, the submission of the appellant, assessment folder as well as material on record. It is on record that the appellant has constructed commercial cum residential building Rupam Tower out of the funds available to the appellant. It is also on record that the appellant has let out ground plus four floors to Vasan Eye care Pvt. Ltd. as unfinished and is occupying the fifth floor for residential purpose for himself. It is also duly mentioned in the agreement of 2011 that the construction of Rupam Tower shall be done by the appellant himself out of his own funds/sources.

Further the A.O. in Para 5.2 concludes that the contention of the appellant regarding self occupation of 2 floors of Rupam Tower is a "false statement" but brings no evidence for this conclusion on record. Instead in Para 8.1 the A.O. states that ".....it is surprising that the assessee built up huge capital of multi-crores of rupees through investment in a multi-storey property (Rupam Tower having five commercially used floors, rented out to a corporate) and two floors for self-occupation....."

A perusal of the assessment order shown that the A.O. had directed the appellant to furnish original bills & vouchers of expenses incurred in construction of Rupam Tower. However the same were not furnished.

Instead, the assessment folder on page no. - 508 mentioned that the appellant had submitted the balance sheet at on 31.03.2015 in which investment in Rupam Tower is shown at Rs. 1,59,38,311/- and further on page no. - 302 break-up of Rs. 1,59,38,311/- (Rs.1,28,63,311/- + advance of Rs.30,75,500/-) is available which also gives the details of expenses made, mostly through bank.

Further, these expenses of construction are also supported by the valuation report prepared by the Registered valuer arid provided by appellant during this proceedings as valuer has valued the construction cost at Rs. 1,66,25,000/- till 31.03.2016. The source of investment in construction of Rupam Tower was met from the side consideration of 2 flats and advance taken of one flat which was registered on 01.04.2015.

The A.O. has applied the stamp duty circle rate of the flats as the cost of construction and has made an addition u/s 28(iv) of the Act of Rs. 10,32,40,650/- by multiplying the total built up area of 15702 sq. ft. By Rs. 6575/-which is the circle rate of a flat.

This is neither logical nor based on any substance or enquiry done by the A.O. as indicated from record. He has also not made any efforts as indicated on record to verify the investment claimed in the Balance sheet or the details of the expenses as available on his referred. He has neither made any reference to the DVO for valuation of the property or for the purpose of determining the investment in the same nor commented upon the valuation report prepared by a registered

valuer and submitted by the appellant. The stamp duty/circle rate is only for the purpose of determining Capital Gains as per provision of section 50C of the I.T. Act, 1961 and can not be taken as cost of construction on assumptions.

Accordingly the addition of Rs. 10,32,41,650/- on account of valuation of investment in construction of Rupam Tower at circle rate is deleted as it is held that no business activity has taken place."

14. We on going through the above finding and also going through the valuation report placed at page 53 to 58 of the paper book note that the valuation report has been done by a Government registered valuer who has valued the construction cost of Rupam Tower having basement+ground+4 Floors as commercial and top floor as residential and vide report dt. 10/04/2018, the total cost is estimated to be Rs.1,66,25,000/- of which some part has been spent during the financial year 2013-14 at Rs.9,00,000/-, Rs.37,25,000/- having been incurred for financial year 2015-16 and Rs.1.20 Crores during financial year 2014-15. The assessee had already shown the investment in construction during the year at Rs.1,28,63,311/-. The source of the same is available in the regular financial statement filed by the assessee and major source of the sum is from sale of flat no. 401 and 403 during the year. Therefore, since the cost incurred by the assessee is marginally higher than the cost estimated by the registered valuer, we fail to find any justification in the imaginary value adopted by the Id. Assessing Officer at Rs.10,32,40,650/- and that too without any basis, and not conducting any enquiry and without referring to any other record. Therefore, since the addition made by the Id. Assessing Officer is on account of alleged unaccounted investment made in construction of Rupam Tower is on surmises and conjectures and

without any logic, Id. CIT(A) has rightly held in favour of the assessee and deleted the addition of Rs.10,32,40,650/-. Thus, finding of the Id. CIT(A) needs no interference. Accordingly, Ground No. 2 raised by the assessee is also dismissed.

15. Other grounds raised by the revenue are general in nature.

16. So far as the cross-objection raised by the assessee is concerned, the ground nos. 1 to 4 are merely in support of the finding of the Id. CIT(A) and since we have already confirmed the findings of the Id. CIT(A), the ground nos. 1 to 4 raised by the assessee in the cross-objection have become infructuous.

16.1. Ground No. 5 of the cross-objection challenges the jurisdiction of the Id. Assessing Officer over the assessee's case. We find that the Id. Counsel for the assessee has not advanced any arguments on this issue. Even otherwise, we fail to find any merit in this ground because the Id. Assessing Officer has acted well within the limited scrutiny criteria and the additions made in the assessment order are emanating from the reasons for selecting the case of limited scrutiny and, therefore, this Ground raised by the assessee is dismissed.

17. In the result, appeal of the revenue is dismissed and cross-objection filed by the assessee is partly allowed.

Order pronounced in the Court on 27th June, 2024 at Kolkata.

Sd/-

(SONJOY SARMA)
JUDICIAL MEMBER

Kolkata, Dated 27/06/2024

**SC Sp/2*

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

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

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

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Assistant Registrar
आयकर अपीलीय अधिकरण
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