आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri Manjunatha, G. Accountant Member and
Shri K. Narasimha Chary, Judicial Member

आ.अपी.सं /**ITA No.469/Hyd/2023**
(निर्धारण वर्ष/Assessment Year: 2018-19)

SHREE ESTATES HYDERABAD PAN:ADIFS9997B	Vs.	Income Tax Officer Ward 14(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri M.V. Prasad, CA	
राजस्व द्वारा/Revenue by::	Shri Kumar Pranav, CIT(DR)	
सुनवाई की तारीख/Date of hearing:	09/07/2024	
घोषणा की तारीख/Pronouncement:	31/07/2024	

आदेश/ORDER

Per Manjunatha, G. A.M

This appeal filed by the assessee is directed against the order dated 2.08.2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2018-19.

2. The brief facts of the case are that the assessee M/s. Shree Estates is a partnership firm registered under the Indian Partnership Act, 1932 on 19.05.2017 with 3 Partners M/s. CMG holdings Pvt Ltd and Mallikarjun Raju Chamarthi and

Vallagayahri Chamarthi as its Partners. The firm has been subsequently reconstituted vide amended partnership deed dated 8.11.2017 with 6 Partners. The assessee filed its return of income for the Asst. Year 2018-19 on 30-03-2019 declaring total income of Rs. 1/-. The case was selected for scrutiny to verify substantial increase in capital in a year. During the course of assessment proceedings, the Assessing Officer called upon the assessee to furnish the necessary capital account of partners and explain the substantial increase in partners' capital account. In response, the assessee submitted that the partnership was formed with the capital contribution of land parcels by the 2 partners viz, CMG Holdings (P) Ltd and Mallikarjun Raju Chamarthi totaling to 6 acres 19 ½ guntas and Rs.1.00 lakh contributed by Ms. Valligayahri Chamarthi. The firm had subsequently availed secured loan of Rs.14,14,38,779/- from Mr. G.V. Ramana Reddy, Smt. A Sandhya Reddy and Smt. G. Sunita Reddy vide loan agreement dated 12.04.2017. Later, the lenders to safeguard their interest joined as minority partners with no capital contribution in the appellant firm. The firm has subsequently revalued the land held by it in its books of account upwards to the tune of Rs.12,56,24,460/-, thereby increasing the value of the land. The said revaluation amount was credited to the capital account of the partners. Later, three partners namely Shri G.V.Ramana Reddy, Smt. A Sandhya Reddy and Smt. G. Sunita Reddy have converted their loans given to the firm into capital account for which the existing partners were agreed. The assessee filed relevant

evidence, including partnership deeds, copies of partners account and basis for revaluation. The Assessing Officer however, was not satisfied with the explanation furnished by the assessee and according to the Assessing Officer, the assessee could not substantiate increase in capital account of the partners with necessary evidences, therefore, treated the entire capital account as unexplained credit and brought to tax u/s 68 of the I.T. Act, 1961.

3. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee explained the nature and source of increase in capital account of partners and submitted that the lands held by the firm has been revalued and the revalued amount has been credited to the capital account of the partners. The assessee had filed the relevant details of the names & addresses of the partners, ledger account and also filed necessary evidence to prove the credits found in the capital account of the partners. The learned CIT (A) after considering the relevant submission of the assessee and also taken note of evidences filed by the assessee to explain increase in capital account observed that there is no fresh introduction of capital by the partners in the assessee firm by way of any cash or bank transfer, but the increase in capital account is due to re-valuation of the land already held by the firm in the books of account. Therefore, opined that the source for loan taken by the Partners and the firm stand explained. Further, the

increase in the value of the capital account of the partners, compared to the capital account as on 31.3.2017 is explained by way of revaluation of assets by the firm. Therefore, the additions made by the Assessing Officer assuming the introduction of the capital by the partners as unexplained cash credit u/s 68 is not correct and therefore, deleted. The learned CIT (A) further observed that what has escaped the assessment is the increase in capital account of the partners to the tune of Rs.12,56,24,416/- by way of revaluation of existing assets and crediting revaluation reserve to the partner capital account. Therefore, the learned CIT (A) invoked the provisions of section 45(4) of the I.T. Act, 1961 which deals with the profits or gain arising from the transfer of a capital asset by way of distribution of capital asset on the dissolution of the firm or 'otherwise' and held that the revaluation reserve credited to the partners' capital account is available for withdrawal by the partners which fall in the category of 'OTHERWISE' as stated under the provisions of section 45(4) of the I.T. Act, 1961 and thus, by following the decision of the Hon'ble Supreme Court in the case of CIT vs. Mansukh Dyeing and Printing Mills reported in 2022 (145 Taxmann.com 151)(S.C) held that when the firm is revalued its assets and increase in value of land is credited to the capital account of the partners, the said increase in value of assets and credits to partners' capital account is available to the partners for withdrawal. Therefore, the assets so revalued and the amount credited in the capital account of the respective partners can be said to be transfer which fall in

the category of 'OTHERWISE, therefore, the provisions of section 45(4) shall be applicable. Thus, he held that the increase in capital account to the tune of Rs.12,56,24,460/- is nothing but profit or gains arising from the transfer of a capital asset as per section 45(4) of the Act and directed the Assessing Officer to recompute the income of the appellant under the head capital gain.

4. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

5. The learned Counsel for the assessee Shri M.V. Prasad, CA, referring to the petition filed by the assessee for admission of additional ground submitted that the assessee has taken a legal ground challenging the jurisdiction of the learned CIT (A) to tax a new source of income in light of certain judicial precedents and therefore, in view of the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. vs Commissioner Of Income Tax on 4th Dec. 1996 reported in (1998) (229 ITR 383) the additional ground filed by the assessee should be admitted. The learned Counsel for the assessee further referring to the powers of the learned CIT (A) u/s 251(1)(a) of the I.T. Act, 1961 submitted that the word "enhance" or annul the assessment are confined to the assessment reached through a particular process which cannot be extended to the amount which ought to have been computed. There being other provisions which allow

escaped income from new sources to be taxed after following certain prescribed procedures. The enhancement powers of the CIT(A) cannot be stretched beyond the issues which are subject matter of assessment by the Assessing Officer. Since the Assessing Officer has taxed capital account under section 68 of the act, which is assessable under Chapter VI, whereas provisions of section 45(4) is fall under Chapter VI and thus, the same is not permissible in terms of section 251(1) of the I.T. Act, 1961. The learned Counsel for the assessee referring to the plethora of judicial precedents including the decision of the Hon'ble Supreme Court in the case of CIT vs. Shapoorji Pallonji Mistry reported in (1961) 441 ITR 891 submitted that the explanation to section 251 in no manner enlarges the scope of power of the CIT(A). It is mere statutory embodiment of judicial principles of wide powers of the CIT (A) and thus, the said explanation cannot empower the learned CIT (A) to tax a new source of income. Therefore, he submitted that the learned CIT (A), having deleted the addition made by the Assessing Officer u/s 68 of the Act, is erred in assessing the revaluation amount credited to partners' capital account u/s 45(4) of the I.T. Act, 1961.

6. The learned Counsel for the assessee further submitted that the provisions of section 45(4) of the Act deals with profits or gain that aroused from transfer of capital asset by way of distribution of capital asset on the dissolution of firm or

otherwise, and therefore, as per the said provisions the profit or gain shall be chargeable to tax as income of the firm in the previous year in which the said transfer takes place and for the purpose of section 48, the fair market value of the asset on the date of such transfer shall be deemed to the full value of the consideration received or accrued as a result of the transfer. The provisions of section 45(4) has two compartments, first one is determination whether it is a transfer and second one is for the purpose of section 48 to determine the capital gain. Although it is not a case of transfer as contended by the learned CIT (A), but because of Hon'ble Supreme Court's decision in the case of CIT vs. Mansukh Dyeing & Printing Mills (Supra) even assuming for a moment it is a transfer but for the purpose of computation of capital gain whether the fair market value as on the date of transfer needs to be taken as full value of the consideration or the amount of revaluation reserve credited to the partners account needs to be taken as full value of consideration is the question that needs to be considered. If we go by the provisions of section 45(4) it talks about the fair market value of the asset on the date of such transfer shall be deemed to be a full value of the consideration. If we consider the fair market value of the property as on the date of transfer, the market value of the property as per stamp duty authority was Rs.7 lakh per acre and if we consider the fair market value as per the stamp duty authority, the value considered by the learned CIT (A) on the basis of revaluation amount credited to the partners' capital

account is incorrect. Therefore, he submitted that the capital gain should be computed on the basis of provisions of section 48 of the Act and full value of the consideration should be adopted as per market value of the property but not as per the accounting method followed by the assessee.

7. The learned DR, Sri. Kumar Pranav, CIT, on the other hand, submitted that there is no merit in the additional grounds taken by the assessee on the powers of the CIT (A) u/s 251(1)(a) of the I.T. Act, 1961. The learned CIT (A) has co-terminus powers with that of the Assessing Officer is empowered to assessee the total income of the assessee which includes enhancement of assessment as held by various Courts. However, as contended by the learned Counsel for the assessee, it is not a case of enhancement of assessment, but it is a case of assessment of income under the correct provisions of law. Therefore, the argument of the assessee that the ld. CIT(A) taxed new source of income is incorrect. The learned DR further submitted that when it comes to taxation of capital gain on account of revaluation of asset by a firm and crediting the said revaluation reserve to the Partner's Capital Account, the Hon'ble Supreme Court has categorically held that the revaluation of asset and crediting revaluation reserve the partners' capital account falls under the category of OTHERWISE as stated in section 45(4) of the I.T. Act, 1961. Therefore, the learned CIT (A) has rightly taxed the gain arising from transfer of capital assets by way of revaluation of

assets. As regards argument of the learned Counsel for the assessee that for the purpose of section 48 of the I.T. Act, 1961, the fair market value of the property as per the stamp duty valuation authority is to be taken in to account is incorrect, because the assessee itself has revalued the asset to the tune of Rs.12,56,24,416/- and the said value is the correct market value of the property. The learned CIT (A) after considering the relevant facts has rightly taxed the income under the head "capital gain" and therefore, their order should be upheld.

8. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We have also carefully considered the additional grounds of appeal filed by the assessee on the powers of the learned CIT (A). After hearing both sides, the additional grounds of appeal filed by the assessee are admitted for adjudication, because such grounds are purely legal ground which can be taken at any stage of proceedings including the proceedings before the learned Tribunal. Having said so, let's come back to the additional grounds filed by the assessee. The assessee is challenging the powers of the learned CIT (A) in light of provisions of section 251(1)(a) of the I.T. Act, 1961 and argued that such powers cannot be enlarged to tax a new source of income. According to the assessee, the Assessing Officer has invoked section 68 which comes under Chapter VI as deemed income, whereas the learned CIT (A) has invoked section 45(4) of the I.T. Act, 1961 which falls

under Chapter IV. The learned CIT (A) having deleted the addition made by the Assessing Officer u/s 68 of the Act towards increase in capital account of the partners is erred in directing the Assessing Officer to assess the said capital account under the provisions of section 45(4) of the I.T. Act, 1961.

9. The provisions of section 251(1)(a) of the Act and the proviso provided therein deals with the powers of the learned CIT (A) to decide an appeal and as per the said provision, the learned CIT (A) is having wide powers to decide an appeal and consider the issues appealed against by the assessee and also the issues arising out of the proceedings from which the order appealed germinates. In other words, the learned CIT (A) can consider any issues which is raised out of the appeal filed by the assessee and also any other issues which comes to its knowledge from the assessement proceedings and also return of income filed by the assessee for the relevant A.Y. This is because, the learned CIT (A) is having co-terminus powers with that of the Assessing Officer and it can decide any issues which is arising out of the appeal filed by the assessee and also any other issues which is forming part of the assessement proceedings and return of income filed by the assessee. Further, the learned CIT (A) is also empowered to change the head of income in case a particular income is assessed by the Assessing Officer under wrong provisions of the Act or incorrect head of income where the facts suggests that the said income should be assessed under different head of income or

under different provisions of the Act. Therefore, once the first appellate authority is having the co-terminus powers with that of the Assessing Officer, then in our considered view, the powers of the learned CIT (A) u/s 251(1)(a) is wide enough to consider any other issues which comes to his knowledge during the course of appellate proceedings, but such issues should be emanated either from the assessment order or from the return of income filed by the assessee. In other words, the learned CIT (A) can very well consider the issues which has been dealt by the Assessing Officer as it is or he can deal with the issues under proper provisions of law, if facts so demands but he cannot consider a new issue or new source of income which is either not considered by the Assessing Officer in the assessement proceedings or not emanated from the return of income filed by the assessee and this principle is very well settled by various judicial precedents including the decision of the Hon'ble Supreme Court in the case of CIT vs. The Commissioner of Income-Tax vs Shapoorji Pallonji Mistry (Supra). In the present case, the issue considered by the Assessing Officer is increase in capital account of partners on account of revaluation of the assets held by the firm and credited such revaluation amount to the capital account of the partners and said issues falls under the provisions of section 45(4) of the I.T. Act, 1961, but, the Assessing Officer has considered the issue u/s 68 of the Act as unexplained cash credit. The learned CIT (A) having noticed the fact has rightly invoked the provisions of section 45(4) of the I.T. Act, 1961. Therefore, in our considered

view the powers exercised by the learned CIT (A) cannot be said to be beyond the scope of provisions of section 251(1) of the I.T. Act, 1961. Further, what was considered by the learned CIT (A) is the very same income which arises out of the revaluation of the asset held by the firm and the same has been assessed under proper provisions of section and as per facts available on record. Therefore, we are of the considered view that there is no merit in the legal grounds taken by the assessee challenging the powers of the learned CIT (A) u/s 251(1) and thus, the additional grounds of appeal taken by the assessee are rejected.

10. Coming back to the issue in hand. There is no dispute with regard to the fact that the appellant firm has revalued its assets held in the books of account. The appellant firm possesses 14 acres and 22 guntas of land in various survey numbers and the said land has been revalued upward to the tune of Rs.12,66,24,460/-, thereby increasing the value of the land in books of account. The said revaluation amount has been credited to the capital account of the partners. The issue now needs to be considered is, whether the revaluation of assets and crediting the amount of said revaluation amount to the capital account of the partners is amounts to or tantamount to transfer of a capital asset by way of distribution of capital asset on the dissolution of a firm or “otherwise”. The provisions of section 45(4) of the I.T. Act, 1961 deals with the profits or gains arising from the transfer of a capital asset by way of distribution of capital asset on the

dissolution of a firm or otherwise and as per the said provisions, the profits or gains shall be chargeable to tax as income of the firm of the previous year in which the said transfer takes place and for the purpose of section 48, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration received or accruing as a result of the transfer. This issue is no legal res integra. The Hon'ble Supreme Court in the case of CIT vs. Mansukh Dyeing and Printing Mills (Supra) has considered an identical issue in light of provisions of section 45(4) of the I.T. Act, 1961 and after considering the relevant facts has held that the assets revalued and the credits into capital account of the respective partners can be said to be transfer and which fall in the category of *otherwise* and therefore, the provisions of section 45(4) inserted by the Finance Act, 1987 w.e.f. 1.4.1988 shall be applicable. Therefore, we are of the considered view that the revaluation of the asset held by the firm and crediting the amount of said revaluation to the partners' capital account is a transfer which falls under section 45(4) of the I.T. Act, 1961 and any profit or gain arising from the transfer needs to be taxed in the hands of the appellant firm. Therefore, to this extent, we fully agree with the findings given by the learned CIT (A).

11. Having said so, let's come back, what is full value of consideration for the purpose of section 48 of the I.T. Act, 1961. The provisions of section 45(4) have two compartments. The first

compartment deals with whether it is a transfer or not and we answered the said question in affirmative. The 2nd compartment of provision of section 45(4) deals with computation of capital gain and as per the said provision, for the purpose of section 48, the fair market value of the asset on the date of such transfer shall be deemed to the full value of the consideration received or accruing as a result of transfer. What is the fair market value of the property, whether it is on the basis of fair market value determined by the stamp duty authorities for the purpose of payment of stamp duty or fair market value as determined by the assessee in his books of account or the fair market value as determined in terms of reference to an authority for the purpose of determining the market value of the property. The amount recorded in the books of account of the assessee firm cannot be considered as the fair market value of the property because there is no basis on which the assessee has determined the value of the property is not ascertainable. Further, entries recorded by the assessee in its books of account is not determinative and gospel truth as income should be computed as per the provisions of Income Tax act, 1961. There is yet another reason for not accepting the valuation given by the assessee in its books of account as sacrosanct and binding on the Revenue. More particularly, in some given cases, the assessee may devalue by decreasing the value of the assets, in that situation, it is not expected from Revenue to accept revaluation without any independent verification or valuation. Therefore, we are of the

opinion that in the case, the assessee either enhanced the valuation or decreased the valuation, in both the situation, it is incumbent upon the Assessing Officer to determine the fair market value of the assets by referring to the DVO or compute the correct fair market value of the asset in accordance with other methods as provided by the Act/Rules after affording reasonable opportunity of being heard to the assessee. The act has consciously used different terminology in different provisions of the Act. For example, the provisions of section 45(3) of the I.T. Act, 1961 while dealing the profits or gains arising from the transfer of a capital asset by a person to the firm in which he has or becomes a partner refers to amount recorded in books and as per the said provisions for the purpose of section 48, the amount recorded in the books of account of the firm shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset. But, as per the provisions of section 45(4), for the purpose of section 48, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration. Therefore, in our considered view, when the law specifically provides for considering the fair market value of the asset on the date of such transfer itself, it is incorrect on the part of the learned CIT(A) to direct the Assessing Officer to consider amount of said revaluation credited to the partners' capital account as full value of the consideration for the purpose of section 48 of the I.T. Act, 1961, without having regard to computation/valuation procedures. Therefore, in our considered

view, to this extent, the learned CIT (A) is erred in considering the amount of revaluation credit to the partners' capital account for the purpose of computation of capital gain arising as a result of transfer of capital asset in terms of section 45(4) of the I.T. Act, 1961. Further, the value recorded by the assessee in the books of account for the purpose of revaluation of asset cannot be a fair market value of the property because it is not ascertainable as what is the basis on which said value has been arrived at. Further, the guideline value fixed by the stamp duty authorities reflects the correct fair market value of any property and it may be a yardstick to determine the fair market value of the property. Therefore, in our considered view, in absence of contrary evidence to that effect, the fair market value fixed by the stamp duty value authorities should be taken as deemed full value of the consideration for the purpose of section 48 of the I.T. Act, 1961.

12. In the present case, the appellant has obtained a certificate from the Sub-Registrar, Shankarpally, RR District. As per the said certificate, the market value/guideline value of the property as on 1.1.2017 is at Rs.7 lakh per acre. Since the appellant has filed relevant evidences to prove the fair market value of the property at Rs.7 lakh per acre on the date of transfer of the capital asset, in our considered view for the purpose of section 48 of the I.T. Act, 1961, the fair market value of the asset on the date of such transfer should be adopted as per the guideline value of the property which is further supported by

certificate issued by the stamp duty authorities. Therefore, we are of the considered view that capital gain arising out of transfer of capital asset by way of revaluation of asset and crediting said amount of revaluation to partners' capital account should be computed in terms of section 45(4) of the I.T. Act, 1961 by considering the fair market value of the property at Rs.7 lakh per acre to total extent of land revalued by the assessee. Thus, we reverse the findings of the learned CIT (A) on this aspect and direct the Assessing Officer to compute the capital gain in light of our discussion given in terms of section 45(4) of the I.T. Act, 1961 by adopting the fair market value of the property at Rs.7 lakh per acre and compute the capital gain u/s 45(4) of the Income Tax Act, 1961.

13. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the Open Court on 31st July, 2024.

Sd/-	Sd/-
(K. NARASIMHA CHARY) **JUDICIAL MEMBER**	**(MANJUNATHA, G.)** **ACCOUNTANT MEMBER**

Hyderabad, dated 31st July, 2024

Vinodan/sps

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By Order