IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH: BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No.1297/Bang/2024
Assessment Year: 2017-18

M/s. Nalapad Properties No.23, 1st Cross Magarath Road Bangalore 560 028 **PAN NO : AADFN0541L**	**Vs.**	DCIT Central Circle-2(3) Bangalore
APPELLANT		**RESPONDENT**

SP No.33/Bang/2024 (Arising out of ITA No.1297/Bang/2024)
Assessment Year: 2017-18

M/s. Nalapad Properties No.23, 1st Cross Magarath Road Bangalore 560 028 **PAN NO : AADFN0541L**	**Vs.**	DCIT Central Circle-2(3) Bangalore
APPELLANT		**RESPONDENT**

ITA No.1298/Bang/2024
Assessment Year: 2017-18

M/s. Nalapad Hotels and Convention Centre M/s. Guruswamy and Associates No.311, 1st Floor 10th Main, 3rd Block, Jayanagar Bangalore 560 011 **PAN NO : AAEFN5563D**	**Vs.**	DCIT Central Circle-2(3) Bangalore
APPELLANT		**RESPONDENT**

SP No.34/Bang/2024 (Arising out of ITA No.1298/Bang/2024)
Assessment Year: 2017-18

M/s. Nalapad Hotels and Convention Centre M/s. Guruswamy and Associates No.311, 1st Floor 10th Main, 3rd Block, Jayanagar Bangalore 560 011 **PAN NO : AAEFN5563D**	**Vs.**	DCIT Central Circle-2(3) Bangalore
APPELLANT		**RESPONDENT**

Appellant by	:	Sri H. Guruswamy, ITP & Sri Ravikiran M., A.R.
Respondent by	:	Shri Kiran D., D.R.

Date of Hearing	:	30.07.2024
Date of Pronouncement	:	16.08.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

These appeals filed by assessee are directed against different orders of CIT(A) for the assessment year 2017-18 both have common date 30.6.2024. The issue in both these appeals is common in nature. Hence, these are clubbed together, heard together and disposed of by this common order for the sake of convenience.

2. The assessees herein also filed SP Nos.33 & 34/Bang/2024 seeking stay of outstanding disputed demand of tax.

2.1 We reproduce the common grounds of appeals, except change in futures in ITA No.1298/Bang/2024 for the AY 2017-18, which are as follows:

1. *The impugned order u/s 250 of the Act dated 30.6.2024 passed by the ld. CIT(A) Bangalore 15 is opposed to law, facts and circumstances of the case.*

2. *The Ld. CIT(A) has erred in passing the impugned Appellate order confirming the additions of alleged Business income amounting to Rs.111,53,50,377/- for the A.Y.2017-18 on the ground of alleged exchange of asset which is being exploited without appreciating the*

fact that the income so confirmed is not chargeable to tax for the impugned A.Y. 2017-18 as no asset as transferred except the stock in trade transferred in pursuance of the JDA dated 08-01-2008 entered with M/S. Bridge Enterprises Ltd.

3. *The ld. ClT(A) has erred in rejecting the ground adduced relating to limitation of time reckonable from the date of original search in the case of M/s. Brigade Enterprises conducted on 02-11-2017 and alleged seizure of documents on 28-12-2017 from the said premises without appreciating the admitted fact that the AO was he same to the searched case of the Brigade enterprise and the appellant as a result of which he limitation applicable to the original searched case was also applicable to the case of the appellant and the limitation was expired on 31-12-2019.*

4. *Without prejudice to the limitation of time as urged in ground No. 4, the ld. ClT(A) has erred in holding that the Notice U/s 143(2) of the Act was not required to be issued since the return of income was on 26.2.2021 in response to the Notice u/s 153C of the Act dated 24-03-2020 which was said to be invalid without appreciating the fact that the AO has not issued any Defective Notice u/s 139(9) and therefore the return filed on 26-02-2021 was valid.*

5. *The Ld. CIT(A) has erred in upholding the Notice Issued u/s 153C on the basis of a satisfaction note alleged to have been drawn on 24-03-2020 on the basis of assessment proceedings in the case of searched assessee M/S. Brigade Enterprises Ltd without appreciating the fact that he limitation of time for completion of the assessment was already expired on 31-12-2019 as a result of which the Notice u/s 153C was invalid.*

6. *Without prejudice as to the limitation of time and validity of the assessment order, it is urged that he Ld. CIT(A) has erred in holding a sum of Rs111,53,50,377/- as Business income for the A. Y 017-18 on the decision dated 22-01-1997 of the Honourable Supreme Court in the case of M/S. Oriental Trading co. Ltd. vs. CIT(A)- 224 ITR 371 without appreciating the fact that the said decision was distinguishable on facts and circumstances of the case of the appellant.*

7. *The Ld. CIT(A) has erred in holding a sum of Rs. 111,53,50,377/- as Business income merely on the basis of occupation certificate obtained in the Financial year 2016-17 relevant to the A.Y 201718 without appreciating the fact that the said certificate was not a relevant document for chargeability of Tax relating to transfer of stock in trade in pursuance of the JDA dated 08-01-2018.*

8. *The Ld. CIT(A) has erred in not appreciating the act that the completion and occupation certificate were applicable as per amended provision of Section 45(5A) of the Act which is applicable for the individuals and HUF and not applicable to the appellant which is a Registered partnership Firm.*

9. *Without prejudice to the above ground it is urged that the Id. CIT(A) ought to have appreciated the act that the delivery of possession of built-up rea in the F.Y. 2016-17 relevant to the A. Y. 017-18 cannot be a ground for charging of business income without appreciating the fact hat the Stock in trade was already transferred in pursuance of the JDA dated 08-01-2008.*

10. *Without prejudice to the above ground it is urged that the Ld. CIT(A) has erred in adopting the SR value of the Built up area in view of non-clarity of the cost of acquisition which was said to be not discernable without appreciating the fact that the cost of acquisition was debited in the books f Account and same was furnished and alternatively the cost of construction ought to have been determined on the basis of the standard rates as applicable on the basis of either CPWD or State PWD rates.*

11. *The ld. CIT(A) has erred in not appreciating the fact that the closing stock credited requires to be debited in the P&L account on the basis of double entry system of accounting as a result of which the transaction was Revenue neutral.*

12. *The ld. CIT(A) has erred in determining the extent of Built up area including the Car parking slots and area attributable to MLCP block situated in the stilt floor which is not saleable.*

13. *The appellant craves leave to add, alter, amend and delete any of the grounds at the time of hearing.*
Total tax effect Rs.58,47,78,202/-

Now we will consider this appeal for adjudication.

3. Facts of the issue are that the firm registered with Registrar of firms as No. 1404/03-14 dated 29.12.2003. The firm purchased an industrial land from M/S KAP Steel Ltd vide sale deed dated 8.1.2004 and the value of the land is Rs.1,45,44,590/-. The firm treated this land as stock in trade from the beginning. The assessee has entered into JDA on 17.1.2008 with Brigade Enterprises for development of commercial property at No 1

Doddanekund Industrial Area Bangalore. However, the project did not commence and the builder did not proceed with construction. The assessee executed a supplementary agreement on 5.7.2012 with certain modification in the original JDA. Only after this agreement the developer applied for construction license and project obtained life and the construction work started in the FY 2012-13. As per the JDA the assessee share is 50% of the build-up area i.e 3,69,386 square feet (50 % of 7,38,772 square feet). The assessee executed power of attorney(POA) in favour of the builder to obtain all clearances and other license i.e the assessee has handover the complete possession of the land to the builder for future development. The construction was complete and completion certificate was obtained in July-2016 and OC/CC has been obtained in the same year. Sharing agreement between the land owner and the builder is complete and land owner's share is handed over to the assessee in FY 2016-17.

3.1 A statement u/ s 131 of the IT Act has been recorded and Sri NA Harris the Managing partner of the firm who has stated that the land with which the JDA is entered is a stock in trade. Sri NA Harris also confirmed that the purpose of floating the firm is for real estate and development business. As per the balance sheet for FY 2006-07 the land was revalued at Rs. 1,45,44,590/- crores. The assessing officer has taxed the fair market value of the developed commercial property which was received by the assessee in lieu of the transfer of 50 percentage of the land held as stock in trade by the assessee. A Search and seizure action was conducted on M/S Brigade Enterprises Ltd on 2/11/2017 at Floor 29 & 30, at World Trade Centre, Brigade Gateway Campus, 26/ 1 Dr. Rajkumar Road, Malleshwaram, Rajaji Nagar, Bangalore. During the course of the search many Sale deeds, agreements, JDA and other documents were seized from the above premises on 04.11.2017 which are

marked as A/BCVDPL/B2/01 to A/BCVDPL/B2/06 and also A'/BEL/OI which was seized on 28.12.2017. The seized material A'/BEL/OI seized on 28.12.2017 as mentioned above, contained Agreements, Memorandums, supplementary agreement, joint Development Agreements other documents pertaining to M/S Nalpad Hotels and Convention Centre.

Seized Material marked as A/BCVDPL//B2/01To A/BCVDPL/ B2/06 and A/BEL/01 seized on 28.12.2017. A/BEL/01 contains following:

Page No 117 to 160	Joint Development Agreement between Nalapad Hotels and Convention Centre and Brigade Enterprises Ltd. Dated 17.1.2008
Page No 169 to 173	General Power of Attorney dated 17.01.2008
Page No 174 to 179	Supplementary Agreement between Nalapad Hotels and Convention Centre and Brigade Enterprises Ltd. Dated 5.7.2012
Page No 180	General Power of Attorney dated 08.05.2006

3.2 This seized material also contains Joint Development Agreement / Memorandums/ Supplementary agreements/ documents pertaining to the appellant M/S Nalpad Hotels & Convention Centre having bearing on its total income. The ld. AO on examination of JDA observed as under:

1. The firm (registered with Registrar of firms as No. 1404/03-14 dl. 29.12.2003). The firm purchased an industrial land from M/S KAP Steel Ltd vide sale deed dated 8.1,2004 and the value of the land is Rs. 14544590/-
2. The firm treated this land as stock in trade from the beginning.

3. A statement u/s 131 of the IT Act has been recorded and it is confirmed by Sri NA Harris the Managing partner of the firm that the land with which the JDA is entered is a stock in trade.
4. Sri NA Harris also confirmed that the purpose of floating the firm is for real estate and development business
5. As per the balance sheet for FY 2006-07 the land was revalued at Rs. 1,45,44,590/crores, However the assessee has not furnished the basis for revaluation.
6. The assessee has entered into JDA on 17.1.2008 with Brigade Enterprises for development of commercial property at No 1 Doddanekund ilndustrial Area Bangalore. However, the project did not commence and the builder did not proceed with construction.
7. The assessee executed a supplementary agreement on 5.7.2012 with certain modification in the original JDA. Only after this agreement toe developer applied for construction license and project obtained life and the construction work started in the FY 2012-13.
8. As per the JDA the assessee share is 50% of the build-up area i.e 3,69,386 square feet (50 % of 7,38,772 square feet)
9. The assessee executed power of attorney(POA) in favour of the builder to obtain all clearances and other license i.e the assessee has handover the complete possession of the land to the builder for future development.
10. The construction was complete and completion certificate was obtained in July-2016 and OC has been obtained in the same year.

11. Sharing agreement between the land owner and the builder is complete and land owner's share is handed over in the same year.

3.3 Consequently, AO of the opinion that the transfer has took place on the financial year 2016-17 on the basis of OC/CC obtained by the developer from BBMP on 21.7.2016 and brought the income generated from the impugned transaction in the AY 2017-18. He computed the value of sale consideration for 50% of super built up area of 750148 sq ft. working out the assessee's share at 370074 sq.ft. valuing at Rs.10681.69 p.sq.ft. total value of Rs.395,30,15,745/- and given deduction towards cost of land at Rs.1,45,44,590/- and computed the business income at Rs.393,84,71,155/-. On appeal, ld. CIT(A) observed that transfer took place in the AY 2017-18 as decided by ld. AO. However, while determining the value of sale consideration, he directed the ld. AO to adopt the value of built up area at Rs.3085.50 per sq. ft. on the basis of guideline/circle rate. Aggrieved by the above order of the ld. CIT(A), assessee is in appeal before us. The facts of the case and grounds in both assessee's appeals are common. We consider the grounds in ITA No.1298/Bang/2024.

4. Ground No.1 is general in nature, which do not require any adjudication

5. With regard to ground No.2 the ld. A.R. submitted that the assessee firm had owned four acres of land forming a portion of land known as plot No.1 in Doddanekkundi, IInd Phase Industrial Area, situated in Survey No.73/1, 73/2, 74(Part), 76/1(Part), 76/2 (Part), 77/1, 78, 79, 80/1, 80/2, 81/1 and 81/2, Mahadevpura Village, Krishnarajpuram Hobli, Bangalore South Taluk, Bangalore District and presently forming a portion of City Municipal Council No.1 Doddanekkundi, IInd Phase Industrial Area, Mahadevpura Village, Krishnarajpuram Hobli, Bangalore South Taluk, Bangalore

District, Bangalore. The aforesaid land was converted as Stock in Trade and a JDA dated 17-01-2008 was entered with the Developers M/s. Brigade Enterprises for development. The sharing ratio of the Built-up area was agreed to be in equal proportion being 50:50. The 50 percent share of undivided land was transferred in lieu of 50 percent of the built-up area receivable by the assessee. The Investigation wing of the Department has conducted a Search u/s 132 of the Act on 02-11-2017 in the case of the Developer M/s. Brigade Enterprises Ltd. and in the course of the search certain documents were stated to have been seized and impounded on 28.12.2017 marked as A/BEL/01, which are as follows:

a) JDA dated 17-01-2008 between M/s. Nalapad Hotels and Convention Centres consisting of page No. 117 to 160.
b) General Power of Attorney consisting of page No. 169 to 173.
c) Supplementary Agreement between Nalapad Hotels and Convention Centres and M/s. Brigade Enterprises Ltd. consisting of pages No. 174 to 179.
d) General Power of Attorney – page No. 180 to 191.

5.1 He submitted that the above documents were impounded on 28-12-2017 and marked as A/BEL/01. The case of the assessee, consequent upon the Search was notified and transferred to DCIT, Central Circle - 2(3), Bangalore. The Ld. AO has issued a Notice u/s 153(c) of the Act and assessment was completed on 12-07-2021 u/s 153C of the Act determining the total income at Rs.398,07,82,390/- with consequent Tax and Interest liabilities of Rs.208,74,18,955/- without appreciating the submissions made by the Assessee.

5.2 He further submitted that the assessee having been aggrieved with the arbitrary impugned assessment order has filed an appeal before the Ld. CIT(A), Bangalore -15 urging the relief on original Grounds and Additional Grounds of Appeal. The assessee has raised ground relating to the Year of Chargeability and the same are reproduced as under :

> **"17. <u>Year of Assessability:</u>** The appellant submits that in the scheme of Joint development a portion of the undivided share of land measuring 2 Acres was transferred by JDA dated 17.01.2008 and coupled with irrevocable power of attorney and therefore the undivided portion of the land according to the law stood transferred in favour of the Developer in view of the irrevocable power of attorney. Thus the right, Title and interest in respect of the 2 Acres undivided portion of the land vested with the developer as on 17.01.2008. In this regard appellant begs place reliance on the Judgement of the Hon'ble High Court of Karnataka in the case of Dr.T.K.Dayalu v/s CIT 60 DTR 403 wherein the Hon'ble High court unambiguously held that the exigibility of capital gains tax as per section 45(1) arises in the same year of JDA and the consideration is required to be computed as per the SR value of the transferred land. The same view was also held by the Hon'ble High Court of Bombay in the case of Chaturbhuj Dwaraka Das Kapadia v/s. CIT (2003) 260 ITR 491. The appellant submits that as per the above judicial decision which have reached the finality the chargeability of capital gains tax arises in the same year as that of the year of JDA and the ratio laid down in the above judicial decision is applicable in respect of the capital asset as per section 2(47)(v) r.w.s 53A of the Transfer of Property Act, and the ratio laid down in the

above judgements became the settled position of law till the assessment year 2016-17 and thereafter an amendment was made by inserting a new provision of section 45(5A) of the Act applicable with effect from assessment year 2017-18 and onwards.

18.The appellant submits that on parity of the reasons mentioned in the above judicial decisions relating to deemed transfer of capital asset in the scheme of JDA, the income arising from transfer of the Non Capital asset being Stock-in-Trade is also chargeable to tax as Business Income in the year of such transfer as defined u/s 45(2) of the Act which is reproduced as under.

"45(2) Notwithstanding anything contained in sub-section (1), the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into, or its treatment by him as stock-in-trade of a business carried on by him shall be chargeable to income-tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him and, for the purposes of section 48, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset."

19. However, the A.O has held that the income is chargeable to tax in respect of the Stock-in-trade in the assessment year 2017-18 on the ground of alleged exchange of asset drawing the support from the occupancy certificate dated 21.07.2016 ignoring the fact that the

building was already completed in the financial year 2015-16 as is evident from the clearance certificate dated 11.03.2016 issued by the Department of Fire Force. It is further submitted that as per the occupancy certificate dated 21.07.2016 the application for obtaining the occupancy certificate was made on 22.01.2016 only after completion of the building as is evident from reference(1) of the occupation certificate. Therefore it is evident from the occupation certificate that the building was completed much earlier to 22.01.2016 and in any case the construction of the building was completed during the financial year 2015-16 relevant to the assessment year 2016-17 and therefore without prejudice to the above submissions, the appellant submits that the chargeability of tax would not arise for the assessment year 2017-18 as has been held by the A.O in Para 37 of the assessment order based on the occupancy certificate 21.07.2016 which was not the date of either transfer or exchange of assets. The A.O has considered the chargeability of tax arising in the scheme of JDA for the assessment year 2017-18 on wrong premises presuming the exchange of asset in the financial year 2016-17 relevant to the assessment year 2017-18. The A.O's view as to the assessability or exigibility of tax for the assessment year 2017-18 is opposed to law, Facts and Judicial Decisions and it is only to save the limitation of time which was expired in the assessment year 2008-09 itself. The A.O in the assessment order has canvassed his arguments based upon the judgment of the Hon'ble supreme Court in the case of M/s. Orient Trading Company v/s. CIT 224 ITR 371 and also in the case of CIT v/s Mrs. Grace Collis and others (2001) 248 ITR 323 (SC). The

appellant submits that the facts and circumstances of the above cases are not identical and not squarely applicable since the facts are completely distinguishable. The decision in the above cases were rendered in the context of exchange of capital assets, being the shares surrendered in the scheme of merging process of two companies. Whereas in the case of the appellant the Non Capital Asset being Stock-in-Trade was transferred as per JDA dated 17.01.2008 as a result of which any exigibility of tax either capital gains or business income would arise in the same assessment year in which the transfer took place and such a transfer has nothing to do with the receipt of consideration in the subsequent years, since the business income is assessable on accrual basis and not on the basis of receipt of consideration either by cash or in-kind.

20. The exchange concept is not applicable to the case of the Appellant since the undivided portion of the land was transferred in the F.Y 2007-08 relevant to the A.Y 2008-09 as per JDA dtd: 17-01-2008.In all probability the changeability of tax by way of Capital Gains or business income arises only in the A.Y 2008-09 and at No Stretch of imagination, the income is chargeable to tax in the A.Y 2017-18. It is a settled position of law that the receipt or non receipt of consideration is not a criteria for eligibility of the tax.

21.The Appellant begs to place reliance on the Advance Ruling of the Authority on Advance Ruling in the case of Jasbir Singh Sarkaria wherein in para 7.3 has held as under:

The legal position does not therefore admit of any doubt that the actual receipt of the entire sale consideration during the year of 'transfer' is not necessary for the purpose of computing capital gains.

22. In view of the Advance Ruling and also according to law the passing of consideration either by way of Cash or Kind is not a necessary requirement for computation of Capital Gains during the year of Transfer of the asset. It is evident from the JDA and GPA dtd: 17-01-2008 that the undivided portion of the land was transferred in favour of the developer in the F.Y 2007-08 relevant to the A.Y 2008-09. Therefore the exigibility of Capital Gain tax on the basis of transfer of land arises in the same year of transfer and not assessable in the subsequent years. Hence the income computed for the A.Y 2017-18 amounting to Rs. 393,84,71,155/- is not justifiable and the same is liable to be deleted since the relevant asset being undivided prtion of the land measuring 2Acres was transferred in the F.Y 2007-08. ”

5.3 The ld. A.R. submitted that the Ld. CIT(A) for the reasons stated in Para 32 to 36 has held the Year of Chargeability arose in the A.Y. 2017-18 based on the decision of the Honourable Supreme Court in the case of M/s. Orient Trading Co. Ltd., Vs. CIT - 224 ITR 371 (SC) without appreciating the fact that the said decision was distinguishable and not applicable to the facts and circumstances of the case of the Assessee. Further the Ld. CIT(A) in Para 36 has held that the asset transferred was Stock in Trade and in exchange received the Builtup area and the same was put to exploitation in

the F.Y. 2016-17 relevant to the A.Y.2017-18 as per the Occupation Certificate/Completion Certificate.

5.4 He submitted that the Ld. CIT(A) was not justified to hold that the income arising out of the deemed transfer of land was assessable for the A.Y. 2017-18 without appreciating the fact that the deemed transfer of land took place in pursuance of JDA dated 17-01-2008 relevant to the A.Y. 2008-09. The Ld. CIT(A) has not appreciated the citations relied upon by the assessee in the following cases:

a) CIT vs. Dr. T.K. Dayalu - *(202 taxman 531) (Karn.)* Judgement of Jurisdictional High Court of Karnataka .
b) CIT vs. Chaturbhuj Dwarkadas Kapadia - 260 ITR 491 (HC Bombay)
c) Advance Ruling in the case of Jasbir Singh Sarkaria (294 ITR 196) (AAR) New Delhi.

5.5 He submitted that on Parity of reasoning mentioned in the above cases, the transfer of land arose in pursuance of JDA dated 17-01-2008 relevant to the A.Y. 2008-09 and not in the A.Y. 2017-18. In this regard the Ld. CIT(A) was of the opinion that the above decisions were rendered u/s 45(1) of the Act and not u/s 45(2) of the Act. The reliance placed by the Ld. CIT(A) on Occupation Certificate/Completion certificate said to have been obtained in the F.Y. 2016-17 has no relevance to the facts and circumstances of the case since the phrases "Completion Certificate and Occupation Certificate" were envisaged under the newly amended provision of Section 45(A) applicable for the A.Y. 2017-18 onwards in respect of the JDA executed on or after the F.Y. 2016-17 and more so the said provision is applicable only to the individuals and HUFs and not to the Firms. The assessee being a Firm provision of Section 45(A) in relation to Occupation Certificate/CC is not applicable and hence the findings of the Ld. CIT(A) are liable to be reversed. The

assessee submitted here with a copy of the JDA dated 17-01-2008 and the same placed as Annexure – A for our reference.

6. The ld. D.R. relied on the order of the Tribunal Bangalore Bench in the case of Dheeraj Amin Vs. ACIT 71 taxmann.com 288 wherein held as follows:

"What the assessee has got today is only a right to sell the 1,28,940.26 fis of constructed area in the Alexandria project and the profits, howsoever certain they may appear to be, will only fructify and be realized, and can even be quantified, only when this right is exercised- in part or in full. That stage has not yet come, and until that stage comes, in our considered view, such profit cannot be taxed. Unlike in a case of a capital gain which arises on parting the capital asset at the first stage itself it is a case of business transaction which is completed when the rights so acquired by the assessee are exercised"

6.1 The ld. D.R. submitted that in Dheeraj Amin case (Supra), the appellant only received rights to sell the properties and not physical possession of the property. However, in the case on hand the appellant had exercised his rights over the impugned property when he received possession of the property during the impugned assessment year along with the occupancy certificate/CC and let the property out on rent in the same assessment year earning rental income. In this case what the appellant has got is not the right to sell his portion of the constructed area but rather full possession of the development plot in the form of commercial property and has also put it to use.

6.2 Further, he submitted that the ITAT in the very same order has also discussed the modality for calculating business profits and the same is reproduced here under for our reference:

"The business transaction entered into assessee, in our humble understanding, is this. The assessee has contributed a trade asset

consisting of a piece of land, admeasuring 1 acre and 96.22 cents, on which a group housing project by the name of Alexandria was to be constructed, and what he got in consideration of this transfer is the Tight to sell 1,28,940.26 sq. ft. constructed area in this project. In his closing stock, even if he is to substitute the part ownership of the land transferred with the value of this right to sell 1,28,940.26 square feet constructed area, it would not make any difference to the profit figures because, as far as this assessee is concerned the cost of acquiring this right is the same as the cost of giving up the right in the hand, and, as is the settled legal position, the closing stock can only be valued at cost price or market price—whichever is less. Obviously, the cost price of this right to sell 1,28,940.26 sq.ft, which has been treated as a trading asset, is less than the market price of these rights, and, therefore, these rights can only be valued at cost in the accounts"

6.3 He submitted that in the case on hand the appellant held 4 acres of land as stock in trade. It entered into a joint development agreement with M/s Brigade Enterprises Ltd. The sharing ratio of the super built-up area was 50:50. According to the appellant this 50 % amounts to 2,32,475.5 sq. ft. Therefore, for two ACRES of land transferred to the JDA partner/ builder/ developer, the appellant has received to 5 sq. ft of fully developed commercial area. This was taken into possession by the appellant during the relevant financial year. Therefore, in the balance sheet of the appellant the land held as stock in trade has to be reduced from 4 acres to 2 acres as 2 acres have been transferred to the builder/ developer. The book value of these 2 acres shall be the cost of consideration for the receipt of 2, 32, 475.5 sq ft of fully developed commercial property.

6.4 He submitted that as per the decision of the ITAT in Dheeraj Amin's case as quoted supra, the value of this should be taken at cost or market price whichever is lower. As, there is no clarity on

the cost it is only fair that the Guideline value/circle rate is to be adopted. The assessing officer also in his order has stated as much but has adopted a different value as according to him the assessee did not cooperate during the appellate proceedings.

7. We have heard the rival submissions and perused the materials available on record. In this case, the main grievance of the assessee is with regard to chargeability of taxable income arising out of the JDA entered by assessee on 17.1.2008 with developer M/s. Brigade Enterprises on JDA and charging the same to tax in the assessment year 2017-18. For answering this issue, first, we will examine whether provisions of section 2(47)(iv) or (v) of the Act is applicable to the impugned transaction, if it is so applicable the assessment year in which it is to be taxed?

7.1 The contention of the ld. A.R. is that the assessee entered into JDA on 17.1.2008 with M/s. Brigade Enterprises for development of above property. The capital gain accrued on the said JDA subject to provisions of section 45(2) of the Act and it should be taxed in the assessment year 2009-10 and not in the assessment year 2017-18. In the present case, assessee converted the capital asset into stock in trade by entering into JDA on 17.1.2008 with M/s. Brigade Enterprises. The ld. AO of the opinion that assessee got Occupancy Certificate on 21.7.2016 and by taking the clue from section 45(5A) of the Act, he brought the income arising out of this transaction in the assessment year 2017-18 and applicable for AY 2018-19 only. We note that the ld. AO cannot invoke provisions of section 45(5A) of the Act, which was introduced by Finance Act, 2017 w.e.f. 1.4.2018. Further, it is applicable to an assessee who is an individual or Hindu Undivided Family from the transfer of capital asset being land and building or both under the specified agreement for the purpose of obtaining of

capital gain. In the present case, the assessee neither individual or HUF and the income is not chargeable under the head "Capital Gain". In other words, assessee is a partnership firm and the income emanated from the impugned JDA is chargeable under the head "capital gain" as well as "business income" as there was a conversion of capital asset into stock in trade and the provisions of section 45(2) of the Act is applicable. Thus, the provisions of section 45(5A) of the Act cannot be invoked in the present case.

7.2 Further, coming to the chargeability of income in the assessment year 2017-18, the ld. AO has not invoked provisions of section 45(2) which provides that any profits and gains arising from the transfer of capital asst effected in the previous year shall be chargeable to income tax under the head "capital gains" and shall be deemed to be the income of the previous year in which transfer took place. However, in the present case, income has to be charged u/s 28 of the Act after conversion of capital asset into stock in trade and it has to consider the applicability of section 45(2) of the Act also which is applicable as the capital asset was already converted into stock in trade by entering into JDA on 17.1.2008.

7.3 The fundamental features which determine the taxability of gain are that the gain ought to be from the transfer of an asset. The said provision has a large scope of operation due to the presence of the deeming fiction which states that the gain shall be the deemed income of that previous year in which the transfer took place. In other words, the profits may actually be received in any other year, but for the purposes of Section 45, the gain shall be the deemed income of the year of transfer of the capital asset. In the context of JDA transactions, it is important to analysis the point in time in

which the transfer can be said to have taken place for the purposes of Section 45.

7.4 Section 2(47)(v) of the IT Act provides that 'transfer' in relation to a capital asset, includes any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in Section 53A of the Transfer of Property Act, 1882 ('**TOPA**'). In order to attract Section 2(47)(v), it is essential that the conditions stipulated under Section 53A of the TOPA are satisfied.

The Bombay High Court in *Chaturbhuj Dwarkadas Kapadia of Bombay* v. *CIT* 260 ITR 491 (Bombay High court)observed that in order to attract Section 53A of TOPA, the following conditions need to be fulfilled:

1. There should be a contract for consideration;
2. It should be in writing;
3. It should be signed by the transferor;
4. It should pertain to transfer of immovable property;
5. The transferee should have taken possession of the property;
6. The transferee should be ready and willing to perform his part of the contract.

Date of execution of the JDA must be taken as the date of transfer

7.5 The Hon'ble Bombay High Court in *Chaturbhuj Dwarakadas Kapadia of Bombay* (2003) 260 ITR 491 dealt with an issue as to whether the transfer of an immovable property took place on the date of execution of the JDA or in the year in which substantial compliances were carried by the developer as per the JDA. In the present case, the assessee entered into a JDA with a developer on

18 August 1994 and executed a limited power of attorney in favour of the developer on the same day. The developer had made substantial payments and obtained two permissions for the construction in AY 1996-97. Subsequently, the assessee executed an irrevocable license in favour of the developer on 12 March 1999 to enter the property. The assessee contented before the lower authorities that the transfer took place only when he executed the irrevocable licence in favour of the developer to enter upon the property and, therefore, liability to pay capital gain only arose during the AY 1999-2000. However, the Tribunal held that since substantial payments and permissions were obtained in AY 1996-97, the capital gains is taxable in AY 1996-97. The High Court observed that in the instant case, the agreement was a Development Agreement and the test to be applied to decide the year of chargeability was the year in which the transaction had been entered into. This view was taken for the reason that the Development Agreement does not transfer the interest in the property to the developer in general law and, therefore, by application of Section 2(47)(v), even entering into such a contract could amount to transfer from the date of the agreement itself. The Court further observed that substantial compliance would differ from officer to officer and therefore, it cannot be taken as reason to decide the year of taxability. The Court held that once under the agreement a limited power of attorney was intended to be given to the developer to deal with the property, the date of the contract/JDA viz., 18 August 1994 would be the relevant date to decide the date of transfer under Section 2(47)(v) and, in which event, the question of substantial performance of the contract thereafter did not arise.

7.6 The Bangalore ITAT in a recent decision of Jaico Automobile Engineering Company Pvt. Ltd. v. ITO (192 ITD 147) also dealt with a similar issue. In the case of Jaico Automobile Engineering Company Pvt. Ltd the assessee had executed a JDA, General Power of Attorney ('GPA') and sale agreement with a developer on 30 March 2007. All the three documents were registered. As per the JDA, it was agreed between the parties that possession would be given to the developer in pursuance of the agreement on or before 30 November 2007. The reason for fixing the date was on the basis of payment of refundable deposit of INR 35 crores. The developer had paid INR 15 crores while the agreement was executed, and the balance was required to be paid on or before 30 November 2007. The question before the ITAT was to decide whether there was a valid transfer of property on the date of executing the JDA. The assessee contended that since it was specifically agreed between the parties that possession would be handed over only on 30 November 2007 or earlier if the balance of the refundable deposit was made, there was no transfer of possession contemplated on or before 30 March 2007. The assessee further contended that the developer had not carried out any construction activity during the said period and therefore, there was no performance of the contract by way of development of the property during the relevant year. Therefore, the assessee took a stand that there was no transfer of property to the developer in AY 2007-08 as the conditions stipulated under Section 53A of TOPA were not satisfied. On the other hand, the Department contended that by virtue of the JDA, the assessee granted the developer the right of development of the site and that such right was irrevocable. Since, the assessee had also executed an irrevocable GPA in favour of the developer to develop, alienate, sale, convey and lease the constructed area, there was a valid transfer as per Section 2(47)(v) of the IT Act in AY 2007-08. The ITAT observed

that from a perusal of the contents of the JDA and GPA dated 30 March 2007, it can be inferred that the assessee had provided to the developer all facilities to entry, development and even sale of the constructed built-up area. Therefore, such unhindered access provided to the developer is very much in the nature of possession even if the word as such has not been mentioned in the JDA. The ITAT further observed that the GPA also gives irrevocable powers of not only possession but, even to alienate and sell the constructed area. Therefore, the ITAT held that the transactions entered by way of JDA dated 30 March 2007 would constitute a 'transfer' in terms of Section 2(47) of the IT Act r.w. Section 53A of TOPA and therefore, the capital gains arising out of the said transfer is taxable in AY 2007-08.

7.7 The Chennai ITAT in Tamilnadu Brick Industries v. ITO in ITA No.744/Chny/2017 for the AY 2013-14 dated 11.5.2018 dealt with an issue as to whether a registered GPA along with a JDA conferring entitlement to the developer to sell, convey or deal with the property amount to transfer of property as per Section 2(47)(v) of the IT Act. The assessee in the present case had executed a JDA along with a GPA in favour of the developer on 17 September 2012. The assessee had contended that it had only permitted the developer to enter and exit the property for the purpose of development and therefore, the same shall not be construed as deliver of possession or part performance contemplated under Section 53A of TOPA. The ITAT observed that execution of a GPA in favour of the developer confers the entire possession of the property to the developer and thereby attracts Section 53A of TOPA and therefore, the date of execution of JDA along with GPA must be considered for purposes of Section 2(47)(v) of the IT Act.

However, there was a contrary judgement wherein held that date of execution of the JDA cannot be taken as the date of transfer

7.8 The Hyderabad ITAT in S. Ranjith Reddy v. DCIT (144 ITD 461) (Hyd) dealt with an issue as to whether mere execution of a JDA without commencement of construction be held as transfer as per Section 2(47)(v) of the IT Act. The Assessee had entered into a JDA with a developer on 28 February 2006. During the relevant year, the developer had not started the construction of the project. The ITAT observed that usually in cases where an assessee enters into a contract which is a development agreement, in the garb of agreement of sale, it is the date of the development agreement which is material to decide the date of transfer. However, it was further observed that by no stretch of logic, this legal precedent can support the proposition that all development agreements, in all situations, satisfy the conditions of Section 53A which is a *sine qua non* for invoking Section 2(47)(v). The ITAT observed that a plain reading of the Section 53A shows that for a contract to fall under the ambit of Section 53A, it is necessary that transferee should have or is willing to perform his part of the contract. Therefore, it is clear that willingness to perform for the purposes of Section 53A is something more than a statement of intent and it is the unqualified and unconditional willingness on the part of the vendee to perform its obligations. Thus, unless the party has performed or is willing to perform its obligations under the contract, and in the same sequence in which these are to be performed, it cannot be said that the provisions of Section 53A will come into play on the facts of that case. It was observed that it is only elementary that, unless provisions of Section 53A of TOPA are satisfied on the facts of a case, the transaction in question cannot fall within the scope of

deemed transfer under section 2(47)(v). In light of the abovementioned observations, it was held that once it is concluded that the developer did not perform the stipulations as required by the JDA during the period under consideration and within the meaning assigned to the expression in Section 53A, it cannot be said that there was a transfer under section 2(47)(v) so as to levy capital gain tax on the date of execution of the JDA.

7.9 The Hyderabad ITAT in Binjusaria Properties (P.) Ltd. v. ACIT (149 ITD 169) (Hyd.) also deals with a similar issue. The assessee had entered into a JDA-cum-GPA in AY 2006-07 with a developer. The developer had to develop the property according to the approved plan from the competent authority and deliver the assessee 38% of the constructed area in the residential part. During the relevant year, the process of construction had not been initiated and no approval for the construction of the building was obtained by the developer. The lower authorities opined that that the transfer had taken place during the relevant year, in terms of the development agreement-cum-GPA and therefore, the assessee was liable to pay capital gain tax on the date of executing the JDA. The ITAT observed that while the assessee had fulfilled its part of the obligation under the JDA, the developer had not done anything to discharge the obligations cast on it and therefore, the capital gains could not be brought to tax in AY 2006-07, merely on the basis of signing of the JDA during relevant year.

7.10 In Rameysh Ramdas v. ITO in ITA No.1399/Chny/2017 for the AY 2012-13 dated 3.8.2017, the assessee had on 13 November 2011 entered into a JDA with a developer to demolish and construct residential apartments. As per the JDA, the assessee was to receive some monetary consideration along with 50% of the built-

up area. Subsequently, the assessee executed a POA on 17 August 2012 granting the developer the authority to convey, sell, transfer the property. It was contended by the assessee that the transfer took place only in AY 2013-14, subsequent to executing the POA dated 17 August 2012. However, the Assessing Officer held that capital gains were liable to be taxed in AY 2012-13 since there was a transfer under Section 2(47)(v) as on the date of executing the JDA. The ITAT observed that as per the JDA, the possession had not been handed over to the developer as the assessee had only granted a right to enter into the premises for the purposes of demolition and re-construction. Additionally, it was observed that the POA granted in favour of the developer specifically barred the developer from selling or executing any deed for any portion of the property. Thus, it was observed that neither the JDA nor the POA complied with the conditions specified in Section 53A of TOPA. The ITAT held that the transfer in the present case took place only after execution of the POA dated 17 August 2012 in favour of the developer granting the authority to convey, sell, transfer the property. Therefore, the capital gain, if any was leviable only in AY 2013-14 and not during AY 2012-13 when the JDA was executed.

7.11 In a JDA, since the developer takes the possession of the property to execute the project and is willing to conclude the project, it was held in certain judgments that the execution of JDA would amount to transfer and the owner will be liable to capital gains tax at the time of execution of the JDA itself. In a landmark judgment, Bombay High Court had held in case of *Chaturbhuj Dwarkadas Kapadia of Bombay* v. *CIT* [2003] 129 Taxman 497 that the date of the development agreement is relevant to consider the point of taxation, disregarding the time when the construction was substantially complete or the handover of possession to the owner.

The Chennai Tribunal also held the same view in the case of *ITO* v. *Smt. Ayisha Fathima*[2016] 73 taxmann.com 78/160 ITD 377 (Chennai - Trib.) that the date of JDA will be relevant to determine the point of taxation of the capital gains. It would be interesting to note that both the above decisions were turned to be in favour of the assessee in the light of the facts of those cases.

The 2001 Amendment

7.12 The 2001 bill of The Registration and Other related laws (Amendment) Act dated 24th September, 2001 brought down following vital amendments relating to Sec. 53A of TPA:

(1)	The clause *"the contract, though required to be registered, has not been registered, or"* in the running provision of Sec. 53A was omitted.
(2)	Sub-section (1A) was introduced to Sec. 17 of the Registration Act, 1908 to mandate compulsory registration of the documents contained in a contract to have the effect of Sec. 53A.
(3)	Section 49 of the Registration Act, 1908 was amended to prescribe that an unregistered document, required to be registered, shall not be received as an evidence of part performance of a contract for the purposes of Sec. 53A of TPA.

7.13 Thus, with the above development, the requirement to register the document became an additional condition, and departure from English law, to invoke the part performance doctrine under Indian law.

7.14 In the context of JDA, generally the development agreement need not be registered compulsorily unless the parties wish to. It is only the deed of declaration which will be registered and stamp duty be paid. Thus, this aspect was used to prevent invocation of Sec. 2(47)(v) of the Income Tax Act, 1961 postponing the exigibility of capital gains till the date of sale deed. At this point we consider judgement in the case of Punjabi Cooperative Housing Building Society Ltd (386 ITR 116)

(P&H) where the issue was carried upto Supreme Court and settled in favour of the assessee.

7.15 In the cited case, the society of 95 members entered into a JDA in February, 2007 with developers to develop 21.2 acres of land owned by the society and the consideration was payable to the members in cash and as flats. As per the agreement, the sale deeds had to be registered and consideration was be paid in 4 instalments. The developers made the first two payments and the members offered the capital gains to the extent of land conveyed in the first two instalments. The developers could not proceed with the project due to necessary approvals being not granted.

7.16 The Assessing Officer held that the entire consideration receivable in the project would be assessed to capital gains in the A.Y 2007-08 and he completed the assessment. The first two appellate authorities concurred with the view of the AO and upheld the addition made.

7.17 However, the Hon'ble Punjab & Haryana High Court reversed the decisions of lower authorities and allowed the appeal of the members. On appeal by the revenue, the Supreme Court *CIT* v. *Balbir Singh Maini* [2017] 86 taxmann.com 94/251 Taxman 202 along with several other appeals confirmed the view of the High Court stating that the terms 'being in the nature of contract' could only mean that those contracts which were to recognised for the purpose of Sec. 53A of TPA could only be deemed as contract allowing possession to trigger 'transfer' to assess the capital gains. Hence, in the event of non-registration of JDA, there would be no capital gains until the registration of the final deed of conveyance.

7.18 Since a decision of the Supreme Court becomes a law of land, the prospective amendment brought about by the Finance Act, 2017 was made retrospective from 24th September, 2001 by the decision of the Supreme Court.

7.19 Therefore, it can be said that a straight-jacket formula cannot be applied in order to determine the year of taxability in cases where transfer of an immovable property takes place through registered JDAs. In other words, it cannot be said that in every case, the transfer of an immovable property would take place on the date of execution of a JDA itself. As mentioned in the cases discussed above, all the conditions stipulated under Section 53A of TOPA have to be satisfied for a transaction to qualify as a transfer for the purposes of Sections 2(47)(v) and 45 of the IT Act. Therefore, determination of the year of taxability of capital gains w.r.t. to transactions pertaining to registered JDAs will differ from facts and circumstances of each case. Willingness to perform is a necessary fact to be established in concluding whether or not there exists transfer in terms of Section 2(47)(v) of the IT Act.

In view of the above, we have to see the JDA and the applicability of section 53A of Transfer of Property Act r.w.s. 2(47)(v) of the Act of the light of facts of these cases.

7.20 In the present case, we have to examine the following documents:

Page No 117 to 160	Joint Development Agreement between Nalapad Hotels and Convention Centre and Brigade Enterprises Ltd. Dated 17.1.2008
Page No 169 to 173	General Power of Attorney dated 17.01.2008

Page No 174 to 179	Supplementary Agreement between Nalapad Hotels and Convention Centre and Brigade Enterprises Ltd. Dated 5.7.2012
Page No 180	General Power of Attorney dated 08.05.2006

7.21 Now we examine the provisions of section 53A of the Act. The starting words of section 53A are “where a person contracts”, which means just the existence of the contract. The assessee is a “person” who has entered into a contract with the **developer viz., on** 17-01-2008 This section says "to transfer" means the said contract is in respect of a transfer and not for any other purpose. The term "transfer" is to be read along with the s. 45 and s. 2(47)(v) of IT Act. It is pertinent to clarify that one must not mistake to identify the issue of capital gain with the term "transfer" as defined in s. 54 of Transfer of Property act. At the cost of elaboration, we may like to add that in the past there was a long line of pronouncements; while deciding income tax cases, that unless and until a sale deed is executed and that too it is registered, transfer cannot be said to have been effected. The consequence of said catena of decisions was that no capital gain tax was directed to be levied so long as "transfer" took place as per the generally accepted connotation of the term under Transfer of Property Act. The resultant position was that the levy of capital gain tax thus resulted in major amendments in the income-tax statute. The main objective of those amendments was to enact that for the purposes of capital gains, the transaction involving transfer of the nature referred are not required to be registered under Registration Act. Such arrangement does not include transfer of certain rights vesting to a purchaser; however, such "transfer" does confer certain privileges of constructive ownership with connected bundle

of rights. Indeed, it is a departure from the commonly understood meaning of the definition "transfer" while interpreting this term for tax purpose. On the facts of this case, the developer has got bundle of rights and thereupon entered into the property. Thereafter, we have to see what has happened and what steps the transferee has taken to discharge the obligation on his part. If transferee has taken any steps to construct the flats, undisputedly then, under the provision of Income Tax Act a "transfer" has definitely taken place.

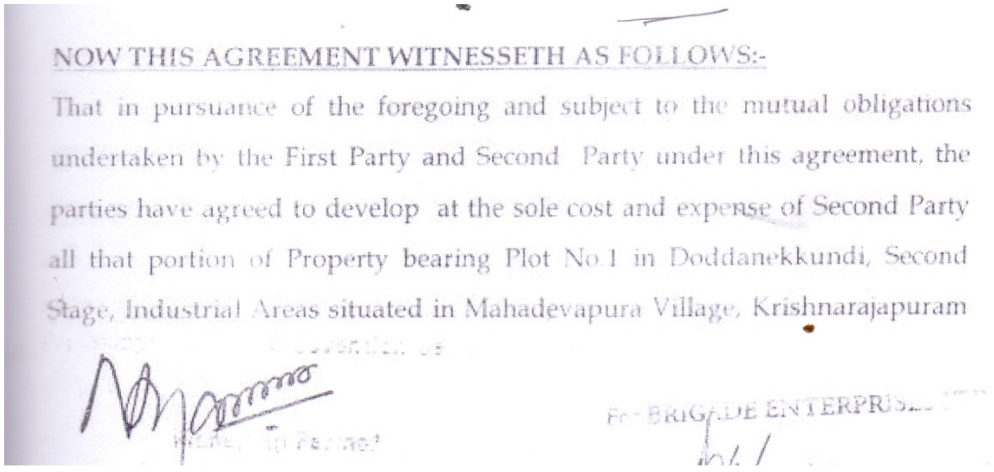
7.22 The argument of the ld. AR on this issue before us is that possession was given on 17.1.2008 vide registered JDA and GPA was also entered giving the right to enter into the said property. The contention of the ld. AR Section 2(47)(v) of the Act is applicable to the facts of the present case. The judgment of the Hon'ble High Court of Karnataka in the case of *CIT v. Dr. T.K. Dayalu (202 taxman 531) (Karn.)* will have application and gain arises only in AY 2008-2009 and not in AY 2017-18. This proposition is totally misconceived.

7.23 The existence of a consideration is essence of the contract. In the present case, the land owner i.e. the assessee will get his share of constructed area in the said complex to be constructed on the schedule property which includes proportionate common areas and amenities along with covered car parking slot in said complex along with the right to retain the ownership of the proportionate share / undivided share, right, title, interest in the land in the schedule property.

7.24 The next important phase i.e., "terms necessary to constitute the transfer" can be ascertained with reasonable certainty. In this case, the terms and conditions of the contract were unambiguous thus clearly spoken about the rights and duties with certainty of

both the signing parties. We are concerned mainly with two certainties; (i) passing of consideration; & (ii) passing over of possession, which has been passed to the assessee vide registered JDA along with registered General Power of Attorney cited (supra). Being so, the judgement of Hon'ble Supreme Court in the case of CIT Vs. Balbir Singh Maini (398 ITR 531) (SC), is directly applicable, wherein held that

7.25 The last noticeable ingredient is, "the transferee has performed or is willing to perform his part of the contract". To ascertain the existence of willingness on the part of the transferee one must not put stop at one event but willingness is to be judged by the series of action of the transferee/transferee. It is evidently clear from the contents of the JDA and POA dated 17.1.2008 that the Assessee has provided to the purchaser M/s. Brigade Enterprises Ltd. all facilities of entry, development and even sale of the constructed built-up area. Such unhindered access provided to the purchaser is very much in the nature of possession, even if the word as such has not been mentioned in the JDA. It would be appropriate in this context to extract the relevant clause of the JDA, which gives irrevocable right of development to the Developer as follows:



NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

That in pursuance of the foregoing and subject to the mutual obligations undertaken by the First Party and Second Party under this agreement, the parties have agreed to develop at the sole cost and expense of Second Party all that portion of Property bearing Plot No.1 in Doddanekkundi, Second Stage, Industrial Areas situated in Mahadevapura Village, Krishnarajapuram

Hobli, Bangalore South Taluk, morefully described in the Schedule hereto and hereinafter referred to as 'SCHEDULE PROPERTY' into Buildings, for one or more purposes for Shopping, Hospital/Wellness Centre, 3 Star Hotel/Serviced Apartments, Restaurants etc., subject to the terms and conditions hereinafter contained.

(a) The Second Party/Developers shall at their cost develop the Schedule Property into Buildings by constructing buildings for the purposes referred to above or any one or more of them.

(b) The Second Party/Developers shall deliver 50% of the area to the First Party in the entire development to be undertaken and developed on the Schedule Property with proportionate car parking spaces and proportionate share in the common areas and in the terrace also detailed further in this Agreement and which is hereinafter referred to as '**OWNERS' AREA**'.

(c) In consideration of the Second Party/Developers completing the development of the '**OWNERS' AREA**' and delivering the same, the First Party shall convey ownership of an undivided 50% or proportionate share, right, title and interest in the land comprised in the Schedule Property to the Second Party/Developers and/or their nominees referred to herein and retain the remaining undivided 50% or proportionate share in the land comprised Schedule Property.

1) POWER TO DEVELOP:

The First Party agrees to empower the Second Party to develop the Schedule Property into Commercial Buildings for Shopping, Hospital/Wellness Centre, 3 Star Hotel/Serviced Apartments, Restaurants, Multiplex etc., in terms of this Agreement after securing the license and plan sanctioned from the jurisdictional authorities and execution of Allocation Agreement.

2) PERMISSION TO ENTER:

2.1) The First Party agrees to permit the Second Party to enter the Schedule Property to develop the same in terms of this Agreement on execution of Allocation Agreement to be entered into on sanction of Licence and Plan.

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2.2) The Second Party on entering the Schedule Property is entitled to commence and complete development of the Schedule Property by constructing buildings for the aforesaid purposes, as per the Sanctioned plans, subject to terms of this Agreement.

2.3) Such permission to develop the Schedule Property shall however not be construed as delivery of possession under Section 53A of Transfer of Property Act read with Section 2 (47) (v) of the Income Tax Act of 1961. The legal possession of Schedule Property shall continue to vest in the First Party at all times including during the course of development and construction and at no time the Second Party is entitled to claim possession of the Schedule Property or the construction therein. The Second Party shall not be entitled to possession of the proportionate share in the land in the Schedule Property in part performance until issue of Project Architect Certificate of Completion of the 'OWNERS AREA' referred to in this Agreement and delivery of the same as agreed to under this Agreement and specifically allocated for First Party in respect thereto.

3) PLANS/LICENCES:

The Second Party shall at their cost prepare Plans and all required drawings as per building Bye-laws in force for construction of Commercial Buildings and also the necessary drawings, designs etc., for the buildings therein. The First Party shall secure Khata for the Schedule Property from Bruhat Bangalore Mahanagara Palike to enable the Second Party to secure consents, no objections, licence and other sanctions for construction of the buildings in the Schedule Property. The said municipal Khata from Bruhat Bangalore Mahanagara Palike for Schedule Property shall be obtained and delivered to the Second Party within one month from this day with one month grace period and any delay will affect the development. The Second Party shall

take appropriate steps to secure at their cost necessary consents, no objection certificates and other permissions required to be submitted along with the plans to Bruhat Bangalore Mahanagara Palike and/or other applicable authorities, immediately on the First Party furnishing to the Second Party Khata for the Schedule Property from Bruhat Bangalore Mahanagara Palike in the name of the First Party with upto date tax paid receipts. The Second Party shall apply before the authorities for sanction of license and plans within one month from the date of Second Party receiving from First Party Municipal Khata for Schedule Property and on the Second Party securing at their cost all NOC's and clearance required to be submitted along with plans for sanction of Licence. The Second Party shall make available to the First Party one set of sanctioned plans. Prior to submission of the plans for sanction, the Second Party shall get the plans approved from the First Party by making available one set of plans. The First Party shall approve the said plans with or without modifications within Ten days failing which it is presumed that the First Party has approved the plans prepared by the Second Party without modification.

4) DEVELOPMENT:

The Second Party shall develop the Schedule Property at their cost into Commercial Building/s with internal and external walkways, including compound, staircases and passages. It is the responsibility of the Second Party to complete the proposed building in the Schedule Property in terms of this Agreement without any delay or default. The development shall be in accordance with the specifications contained in Annexure attached hereto.

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5) COST OF DEVELOPMENT:

The entire cost of development in the Schedule Property including the First Party's allocated area shall be borne by the Second Party. The First Party shall not be required to pay any amount for the development. The Development charges and deposits, if any, Infrastructure Cess and Cauvery Water Schemes and all charges and demands as demanded by Bruhat Bangalore Mahanagara Palike/Bangalore Development Authority required to be paid for sanction of licence and plan will be borne by the Second Party in full. The First Party will not have any liability. Any refundable deposits paid to the authorities for plan sanction shall be to the sole entitlement of the Second Party.

6) SHARING OF BUILT AREA:

6.1) In consideration of the First Party agreeing to transfer 50% or such proportionate undivided share in the land in the Schedule Property as is proportionate to the super built-up areas allocated to the Second Party, by way of sale or otherwise to the Second Party and/or their nominee/s and/or their assignee/s (who shall be Group Companies and/or Subsidiary Companies and/or Associated Concerns only and not any third parties) and/or to any third parties under one or several documents, the Second Party shall develop the Schedule Property at their cost in accordance with specifications in ANNEXURE attached hereto and deliver the developed area allocated to the First Party and/or their said nominee/s and/or their said assignee/s free from all encumbrances and claims within the time stipulated herein (i) 50% of the super built up area in the buildings (ii) 50% of the car parking areas in Basement Floor and Ground Floor and other levels wherever they are provided in Schedule

Property (iii) 50% of the Terrace rights and (iv) 50% of all the benefits and advantages arising out of the development and built as per the specifications detailed in the ANNEXURE attached hereto (hereinafter referred to as the 'OWNERS' AREA') for the absolute use and/or benefit and ownership and enjoyment of the First Party and/or their permitted nominee/s and/or their permitted assignee/s.

4.2) The remaining (I) 50% super built up area in the buildings (II) 50% of Car Parking Areas in Basement Floor and Ground Floor and in all other levels wherever they are provided in the Schedule Property (III) 50% of the terrace rights and (iv) 50% of all the benefits and advantages arising out of the development (hereafter referred to as 'DEVELOPERS' AREA') shall belong to the Second Party and/or their aforesaid nominee/s and/or their aforesaid assignee/s in accordance with this Agreement.

4.3) In consideration of the Second Party agreeing to develop the 'OWNERS' AREA' for the First Party as per Para above, the First Party will and shall transfer and convey to the Second Party and/or their aforesaid nominee/s and/or their assignee/s and/or to third parties in terms of this Agreement 50% or such proportionate undivided share in the Schedule Property as is proportionate to the super built-up areas in terms of this Agreement in the form of undivided shares in either one lot or in several lots.

4.4) The Second Party shall intimate in writing to the First Party within Fifteen days as to receipt of sanction of Licence and Plan and furnish a set of plans to the First Party. That within Fifteen days from the date of Second Party intimating in writing as to sanction of licence and plan as aforesaid and furnishing the copies of license and plans or before any mutually

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extended date, which shall not be later than thirty days from the date of sanction of licence and plan, the First Party and Second Party shall decide upon their respective built up areas in the buildings by mutual discussions and reduce the same into writing in the form of Allocation Agreement. At the time of deciding on such allotment of the built-up areas, the First Party and Second Party shall give due account to both the advantages/ disadvantages in proportion to their respective shares on equitable basis. If there is no consensus in allocation, the parties agree to identify the areas falling to their respective shares, vertically in all floors on equitable basis.

6.5) As it may not be possible to divide the built-up areas to enable the parties to be allotted exactly 50 : 50 of super built-up area etc., in the Schedule Property, the First Party shall be entitled to such number of units/areas whose super built-up area will be closest to such percentage of super built-up area agreed to be allotted in each building. If the total area contained in units/areas allotted to First Party falls short of their entitlement of super built up area, car parks and other areas, the First Party and Second Party shall pay the price for the deficit area at mutually agreed rates. The payment for such area, if any, by First Party or Second Party shall be paid on completion of construction of the building and delivery of 'OWNERS' AREA' in the building and vice-versa.

6.6) The First Party and/or their nominee/s and/or their assignee/s and Second Party and Second Party's aforesaid nominee/s or assignee/s shall jointly deal with the entire 'OWNER'S AREA' and 'DEVELOPERS' AREA' for mutual benefit in terms of this Agreement.

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6.7) The word "super built-up area" mentioned in this Agreement shall mean and include the total constructed area including balconies, staircases, lift rooms, electrical Meter rooms, pump rooms, Generator rooms, Air-conditioning/AHU areas, common areas, circulation areas but excludes car parking areas and terrace areas.

6.8) Any reference to the assignee/s and/or assignee/s referred to in the above paras or elsewhere in this Development Agreement shall include the Second Party's Subsidiary Companies and/or Group Companies and/or Associated Companies referred to above in which the Second Party shall have a minimum of 20% stake. Similarly in respect of the nominee/s and/or assignee/s in relation to the First Party, they include only the family members of the Partners of First Party.

7) FIRST RIGHT OF REFUSAL:

The parties have agreed that in the event of either party desirous of selling their portion/s of the Developed Area/s to this party/ies other than to the permitted nominee/s and/or assignee/s referred to in Para-6.8 above, such party shall give first option to the other party with Fifteen working days notice in writing and on the other party not purchasing the same, such portion can be sold to any third party/ies for terms no less than those offered to the other party.

8) COMMENCEMENT AND COMPLETION OF DEVELOPMENT:

8.1) That on execution of Allocation Agreement, on sanction of license and plan the Second Party shall be permitted to enter Schedule Property who shall commence construction not later than Sixty days thereafter.

For Nalapad Hotels & Covention Centre

8.2) The Second Party shall under normal conditions and in the absence of any restrictions, shall complete the construction of the buildings within Forty Two months from the date of First Party furnishing separate Municipal Khata for Schedule Property in the name of First Party with latest tax paid receipt from the Bruhat Bangalore Mahanagara Palike. However, the Second Party shall not incur any liability for any delay in delivery of possession of the 'OWNERS' AREA' by reason of non-availability of Government Controlled Materials, and/or by reason of Governmental restrictions and/or civil commotion, transporters strike, Act of God or due to any injunction or prohibitory order (not attributable to any action of the Second Party) or conditions force majeure or for reasons beyond the control of Second Party. In any of the aforesaid events, the Second Party shall be entitled to corresponding extension of time for delivery of the said 'OWNERS' AREA'. In the event of delay in securing Occupancy Certificate or Power/sanitary/water connections, the Second Party shall arrange to have temporary electrical, water and sanitary connections until permanent connections are obtained.

8.3) It is specifically understood that the Second Party shall not be deemed to be in default or incur any liability for any delay beyond Forty Two months as aforesaid, if the performance of its obligations hereunder is delayed or prevented by conditions constituting force majeure or for any acts of First Party. All periods, hereunder fixed shall be deemed to have been extended by the periods equal to the periods of delay on account of the force majeure conditions and acts of First Party. In any of the aforesaid events, the Second Party shall be entitled to corresponding extension of time for delivery of the said 'OWNERS' AREA'. However, if the delay or stoppage of work is on account of Second Party's acts of omission or commission, they are not entitled to any extension of time.

8.4) In the event of any delay in completing the construction as stated above other than for the reason stated in above, the Second Party shall be entitled to three months grace period to complete the construction and delivery of the OWNERS' AREA.

8.5) Should the Second Party fail to complete construction of the building and deliver OWNERS' AREA as aforesaid, the Second Party is entitled to further time of three months thereafter after the grace period mentioned in Clause above, subject to payment of Rs.25/- (Rupees Twenty Five Only) per Sq. Feet of super built-up area per month of 'OWNERS' AREA' not completed and delivered by way of liquidated damages and the Second Party agrees to pay the same in the form of money. The Second Party in any case shall complete the entire construction within the stipulated period. If part of the 'OWNERS' AREA' is delivered in the building, the damages will accordingly stand reduced proportionately.

8.5A) If the delay is more than six months from the date of expiry of the period stipulated, the First Party shall be entitled to deal with the Schedule Property and the Construction thereon with third parties as they deem fit. The Second Party has no objection for the same and accordingly consent there for. The First Party may at their discretion complete whole or part of the balance construction of 'OWNERS' AREA' and/or DEVELOPERS' AREA' in the Building and provide all access and facilities and recover the entire cost incurred from Second Party. The First Party may or may not complete the buildings in Schedule Property. The Second Party will be liable and responsible for all the claims and demands arising out of default by Second Party and also the claims of persons with whom the First Party would have contracted for sale, lease or transfer or otherwise pursuant to this Agreement in Schedule Property prior to the date of default and

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Second Party shall settle all such and other claims and demands and protect the First Party and the Schedule Property there from and accordingly offer indemnity, provided the liability of Second Party under the said circumstances shall not exceed Rs.50/- (Rupees Fifty Only) per Sq. Feet super built up area per month of delay.

8.6) In the event of First Party coming forward to complete the balance development of **OWNERS' AREA** or part thereof under the circumstances stated above, the parties shall assess the cost of development undertaken by the Second Party in the first instance. The parties shall also assess the cost required to complete the balance development and thereafter the First Party shall proceed to complete the balance development within the agreed period. The valuation of the work done by Second Party and the work to be done by First Party and the period required for completion by First Party shall be mutually agreed and in case of differences be settled through arbitration as provided herein. Such dispute/s shall be resolved through arbitration within Thirty working days. The First Party shall be entitled to reimbursement of the cost of development and construction undertaken by them on account of Second Party's failure to complete the building and the 'OWNERS' AREA' or balance development or part thereof, assess the quantum of damages suffered by the First Party herein at the rates stipulated in Para-8.5 above and appropriate the same from the cost of development and construction undertaken by Second Party and after such settlement, the Second Party would be entitled to the remaining developed/constructed area. Any short fall or deficit shall be made good by the Second Party and any dispute with regard to the valuation shall be settled through arbitration as provided under this Agreement. Further the extent of Second Party's entitlement under the Power of Attorney agreed to be executed in favour of Second Party stands varied to the extent the Second Party retains on such settlement

8.7) That on the completion of the construction including 'OWNERS' AREA' in the building, the Second Party shall intimate in writing to the First Party as to the said completion and the First Party and/or their nominee/s or assignee/s shall be entitled to receive delivery of the same in terms of this Agreement.

8.8) The Second Party shall complete the construction of the 'OWNER'S AREA' and 'DEVELOPERS' AREA' in the building to be built in the Schedule Property simultaneously.

9) INDEMNITY:

9.1) The First Party hereby confirms that their title to the Schedule Property is good, marketable and subsisting and that no one else has any right, title, interest or share in the Schedule Property and that the Schedule Property is not subject to any encumbrances, mortgages, litigation, lien, attachments, court or taxation or acquisition proceedings or charges of any kind or any tenancy claims and which shall bar the development and sale of the Schedule Property and/or disposal of 'DEVELOPERS' AREA'. The First Party shall keep the Second Party fully indemnified and harmless against any loss or liability, cost or claim, action or proceedings and third party claims that may arise against the Second Party or any one claiming through the Second Party for any act of omission or commission of First Party or on account of any defect in or want of title on the part of the First Party.

9.2) The First Party declares that the Second Party has entered into this Agreement expressly on the faith and strength of such declaration that they have marketable title to the Schedule Property and that there is no other person interested in the Schedule Property. The Second Party has come forward to invest huge sums of money for development of the Schedule Property and if it is found at a later date that the representations made by

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the First Party regarding their title are false, the First Party shall be solely liable for the loss incurred by the Second Party due to the misrepresentations and the First Party shall reimburse all the costs, charges and expenses incurred by the Second Party to obtain plan sanction, permissions, clearances, consents and No Objection Certificates and the cost of construction and third party claims and by the persons who have dealt with the Second Party to acquire whole or portions of 'DEVELOPERS' AREA' in the proposed building. The First Party will not encumber the Schedule Property nor deal with or dispose of the Schedule Property or any interest or portion therein or part with its title deeds and/or possession nor shall grant any licence to use the Schedule Property which will prejudice the rights of Second Party under this Agreement. The First Party shall not grant any Power of Attorney to deal with the Schedule Property in any manner whatsoever inconsistent with this Agreement during the Second Party's compliance of this Agreement except in the normal course of the First Party's business and for sale of their share. However, the aforesaid will not come in the way of First Party independently dealing with their 50% share of land and entire OWNERS' AREA in the Schedule Property by themselves and/or through their Powers of Attorney in terms of this Agreement.

9.3) The First Party covenants with the Second Party that the Second Party and/or any transferee/s of the Second Party shall enjoy the 'DEVELOPERS' AREA' or any part thereof and all the common facilities in the Schedule Property with proportionate undivided share in the land without any let or hindrance whatsoever from the First Party or any person claiming through or under them and the Second Party shall have the absolute right to transfer the whole or any part of the 'DEVELOPERS' AREA' with proportionate undivided share in the land in Schedule

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10) TRANSFER OF SECOND PARTY'S ALLOTTED AREA:

10.1) The Second Party shall on sanction of licence and plan and execution of the Allocation Agreement is entitled to agree to transfer, agree to sell the undivided share in the land in Schedule Property, which will be proportionate to the super built-up areas allocated to the Second Party in the buildings in Schedule Property and forming part of 'DEVELOPERS' AREA' to any nominee/s and/or assignee/s referred to in Para-6.8 above intending to own built-up areas and receive the consideration there under and enter into Agreements with them. In addition thereto, the Second Party shall on sanction of licence and plan and execution of the Allocation Agreement entitled to agree to transfer and on First Party's refusal to purchase agree to sell the undivided share in the land in Schedule Property, which will be proportionate to the super built-up areas allocated to the Second Party in the buildings in Schedule Property and forming part of DEVELOPERS' AREA' to any third parties intending to own built-up areas and receive the consideration there under and enter into Agreements with them.

10.2) After completion of the building and delivery of 'OWNERS' AREA' the Second Party is entitled to sell to the Second Party and/or their aforesaid nominee/s and/or assignee/s referred to in Para-6.8 proportionate undivided share in the land in the Schedule Property in one or more lots which will be proportionate to the 'DEVELOPERS' AREA' sold. In addition thereto, after completion of the building and delivery of 'OWNERS' AREA' the Second Party on the First Party's refusal to purchase 'DEVELOPERS' AREA' and proportionate undivided share in the Schedule Property or portions thereof is entitled to sell to any third parties proportionate undivided share in the land in the Schedule Property in one or more lots which will be proportionate to the 'DEVELOPERS' AREA' sold.

10.3) The Certificate of the Architect of the project evidencing completion of the building is conclusive proof thereof. The Second Party shall require the First Party to receive possession of 'OWNERS' AREA' within Fifteen days and after expiry of fifteen days, the Second Party is entitled to transfer/sell/lease the DEVELOPERS' AREA and proportionate share in the land in the Schedule Property to the aforesaid nominee/s and/or assignee/s referred to in para 6.8 above and/or to third parties subject to clause 7 above.

10.4) The First Party at their cost shall from time to time obtain clearances, wherever applicable, under the Income Tax Act, if required under the said Act for sale/lease/transfer within thirty days or any extended time as may be mutually agreed to between the parties in writing from the date of request by the Second Party and delivery of the draft Sale Deeds or lease/licence agreements and deeds as the case may be by the Second Party in order to sell/lease/transfer the specified undivided share of land and proportionate built areas in 'DEVELOPERS' AREA' in favour of Second Party and/or in favour of their aforesaid assignee/s and/or nominee/s and/or to third parties.

10.5) The First Party is liable to pay Income Tax dues and other dues to statutory authorities and shall pay the said sums promptly.

10.6) The stamp duty, registration charges legal fees and expenses in connection with the preparation and execution of the Deed/s of Conveyance and/or other documents relating to 'DEVELOPERS' AREA' and the proportionate undivided share of land in the Schedule Property to be conveyed to the Second Party and/or their aforesaid nominee/s and

assignee/s and/or third parties shall be borne by Second Party/and/or their aforesaid nominee/s and assignee/s etc., Similarly what is applicable to 'OWNERS' AREA' will be borne by the First Party and/or their nominee/s or assignee/s or purchasers of 'OWNERS' AREA'.

10.7) The capital gains tax, if any, that may be leviable on the transfer of land rights in Schedule Property to Second Party and/or their transferee/s under one or several documents shall be borne by the First Party while the Second Party shall meet all their tax liabilities arising on transfer of 'DEVELOPERS' AREA' promptly.

7.26 As seen from the above, the second party shall develop the scheduled property at their own cost into commercial building with internal and external walkways, including compound and passages and it was the responsibility of the second party to complete the proposed building in the scheduled property in terms of JDA without delay or default and development shall be in accordance with the specifications contained in the annexure attached with the JDA. The cost of development entirely borne by second party and the assessee entitled for 50% of super built up area and 50% car parking area in the basement floor and ground floor in all other levels wherever they are provided in the scheduled property and 50% of the terrace rights, 50% of the benefit and advantages arising out of the development. The developer also got un-hindrance permission to enter into the property for the purpose of construction and he has also given the general power of attorney to alienate his share of property and the present assessee permitted to the DEVELOPER that such permission shall not be revoked

until all the objects of this Agreement are fulfilled as the DEVELOPER shall be incurring expenditure for construction.

7.27 The General Power of Attorney executed with the developer also gives irrevocable powers of not only possession but, even alienate & sale of the constructed area.

7.28 It is abundantly clear therefore that, the rights of possession have been alienated to M/s. Brigade Enterprises Ltd. in letter and spirit. The contentions of the assessee in this regard are therefore to be accepted with regard to transfer of possession vide JDA dated 17-01-2008 by converting capital asset into stock in trade. Apart from disputing the year of taxability in respect of the impugned transaction, it is not the revenue's case that the JDA dated 17.1.2008 with M/s. Brigade Enterprises Ltd. were not enforced or continued in the subsequent years. It is also not the case of the revenue that the above agreements were either cancelled. The AO in this regard has accepted in his order that the JDA dated 17.1.2008 remained in force and was not cancelled. Therefore, the transaction of sale / JDA with M/s. Brigade Enterprises Ltd. is remained intact and the income accrued from this impugned transaction to be taxed in the AY 2008-2009 only. In these facts & circumstances the agreement between the assessee and M/s. Brigade Enterprises Ltd. remaining effective, the transactions entered by way of the JDA dated 17.1.2008 would undisputably constitute a "transfer" in terms of the section 2(47) of the I.T. Act r.w.s. 53A of the T.P. Act, 1982 and the income accrued from this impugned transaction to be taxed in the AY 2008-09 only and not in AY 2017-18. In our opinion, had it been considered as a transfer of capital asset in terms of section 2(47)(v) of the Act, then there is a transfer of capital asset in AY 2008-09 and not in AY 2017-18 as held by lower authorities. However, in the present case, it is not a

case of transfer u/s 2(47)(v) of the Act since there was conversion of capital asset into stock in trade by assessee vide entering into JDA on 17.1.2008 and there is no dispute regarding these facts and both the parties are admitted that there was a conversion of capital asset into stock in trade vide JDA dated 17.1.2008. This also confirmed by Shri N.A. Haris, Managing Director of the firm in his statement recorded u/s 131 of the Act and he also confirmed that the purpose of floating the firm is for real estate and development business and as per balance sheet for financial year 2006-07, the land was revalued at Rs.1,45,44,590/-. Hence. there is no dispute between the assessee and department to the fact that the assessee has converted the capital asset into stock in trade vide entering into JDA dated 17.1.2008 with developers M/s. Brigade Enterprises Ltd. for development. It is also brought on record by ld. AO in his order that land has been shown by assessee as stock in trade subsequent to entering into JDA which is evident from the **para 21 to 23 page nos.8 to 12** of the assessment order dated 12.7.2021 which is reproduced herein below:

21. It is seen from various financial statements filed by the assessee before DDIT (investigation) that there is no fixed asset and the value of stock in trade is stated as Rs 10,00,00,000. From the details filed by the assessee before DDIT, the following is reproduced for ready reference;

AY	FIXED ASSET VALUE IN Rs.	STOCK IN TRADE IN Rs
2007-08	0	10,00,00,000

2008-09	0	10,00,00,000
2009-10	0	10,00,00,000
2010-11	0	10,00,00,000
2011-12	0	10,00,00,000
2012-13	0	10,00,00,000
2013-14	0	10,00,00,000
2014-15	0	10,00,00,000
2015-16	0	10,00,00,000
2016-17	0	10,00,00,000
2017-18	0	10,00,00,000

22. However the bases for such valuation has been furnished by the assessee where the said land has acquired for Rs. 1,45,44,590/- by virtue of sale deed dated 08.01.2004.

23. The relevant portion of financials duly signed by the managing partner submitted before DDIT investigation and returns filed are shown below.

NALAPAD HOTELS AND CONVENTION CENTRE
NO.19, NALAPAD CHAMBERS,
K.G.ROAD, BANGALORE - 560 009.

BALANCE SHEET AS ON 31.03.2013

LIABILITIES	AMOUNT	ASSETS	AMOUNT
CAPITAL ACCOUNT:		**Stock In Trade**	100000000.00
N.A.Abdulla	24720300.00		
N.A.Haris	43471541.00	**ADVANCES& DEPOSITS:**	
N.A.Mohammed	29664360.00	Nalapad Hotel Pvt Ltd.	35000.00
		Fixed Deposit at Bank	41923099.00
		TDS Account - 07-08	40642.00
		TDS Account - 08-09	134585.00
		TDS Account - 09-10	363195.00
LOANS (LIABILITY):		TDS Account - 10-11	230442.00
N.A.Abdulla	13962500.00	TDS Account - 11-12	346801.00
N.A.Haris	1958500.00	TDS Account - 12-13	366649.00
N.A.Mohammed	955000.00		
Advance received from		Cash at Bank	724900.00
Brigade Properties	30000000.00		
		Cash	500816.00
CURRENT LIABILITIES:		Profit & loss A/c	75572.00
Audit Fee Payable	9500.00		
	144741701.00		144741701.00

NALAPAD HOTELS AND CONVENTION CENTRE
NO.19, NALAPAD CHAMBERS,
K.G.ROAD, BANGALORE - 560 009.

BALANCE SHEET AS ON 31.03.2014

LIABILITIES	AMOUNT	ASSETS	AMOUNT
CAPITAL ACCOUNT:		Stock In Trade	100000000.00
N.A.Abdulla	25007411.50		
N.A.Haris	43988341.70		
N.A.Mohammed	30008893.80	**ADVANCES& DEPOSITS:**	
		Nalapad Hotel Pvt Ltd.	35000.00
		Fixed Deposit at Bank	45439820.00
		TDS Account - 07-08	40642.00
LOANS (LIABILITY):		TDS Account - 08-09	134585.00
N.A.Abdulla	13962500.00	TDS Account - 09-10	363195.00
N.A.Haris	4058500.00	TDS Account - 10-11	230442.00
N.A.Mohammed	955000.00	TDS Account - 11-12	346801.00
		TDS Account - 12-13	366649.00
Advance received from		TDS Account - 13-14	390747.00
Brigade Properties	30000000.00		
		Cash at Bank	5374.00
CURRENT LIABILITIES:			
Audit Fee Payable	12000.00	Cash	560816.00
		Profit & loss A/c	78576.00
	147992647.00		147992647.00

NALAPAD HOTELS AND CONVENTION CENTRE
NO.19, NALAPAD CHAMBERS,
K.G.ROAD, BANGALORE - 560 009.

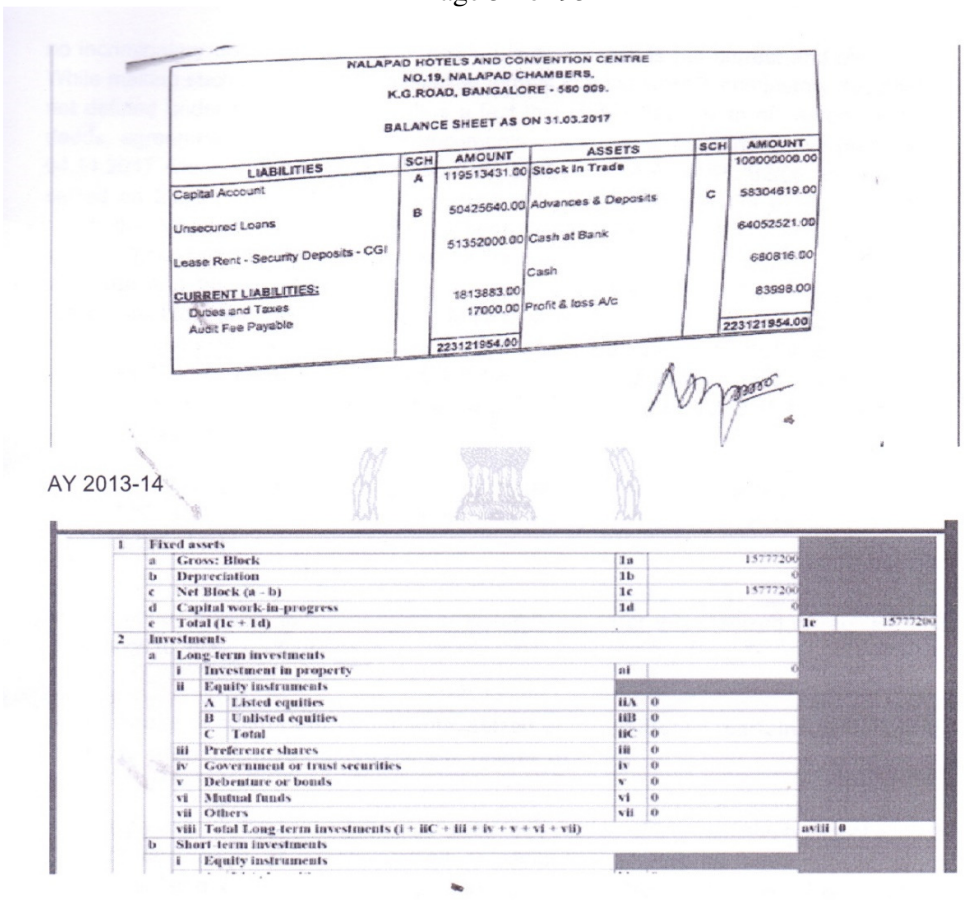
BALANCE SHEET AS ON 31.03.2015

LIABILITIES	SCH	AMOUNT	ASSETS	SCH	AMOUNT
Capital Account	A	102474312.00	Stock In Trade		100000000.00
			Advances & Deposits	C	51687199.00
Unsecured Loans	B	49905640.00	Cash at Bank		5294.00
			Cash		520815.00
CURRENT LIABILITIES:					
Audit Fee Payable		14500.00	Profit & loss A/c		81156.00
		152394452.00			152394452.00

NALAPAD HOTELS AND CONVENTION CENTRE
NO.19, NALAPAD CHAMBERS,
K.G.ROAD, BANGALORE - 560 009.

BALANCE SHEET AS ON 31.03.2016

LIABILITIES	SCH	AMOUNT	ASSETS	SCH	AMOUNT
Capital Account	A	106311272.00	Stock In Trade		100000000.00
			Advances & Deposits	C	55985773.00
Unsecured Loans	B	50425640.00	Cash at Bank		3385.00
			Cash		680816.00
CURRENT LIABILITIES:					
Audit Fee Payable		14500.00	Profit & loss A/c		81438.00
		156751412.00			156751412.00



NALAPAD HOTELS AND CONVENTION CENTRE
NO.19, NALAPAD CHAMBERS,
K.G.ROAD, BANGALORE - 560 009.

BALANCE SHEET AS ON 31.03.2017

LIABILITIES	SCH	AMOUNT	ASSETS	SCH	AMOUNT
Capital Account	A	119513431.00	Stock in Trade		100000000.00
Unsecured Loans	B	50425640.00	Advances & Deposits	C	58304619.00
Lease Rent - Security Deposits - CGI		51352000.00	Cash at Bank		64052521.00
CURRENT LIABILITIES:			Cash		680816.00
Duties and Taxes		1813883.00			83998.00
Audit Fee Payable		17000.00	Profit & loss A/c		
		223121954.00			223121954.00

AY 2013-14

1	Fixed assets					
	a	Gross: Block	1a	15777200		
	b	Depreciation	1b	0		
	c	Net Block (a - b)	1c	15777200		
	d	Capital work-in-progress	1d	0		
	e	Total (1c + 1d)			1e	15777200
2	Investments					
	a	Long-term investments				
		i Investment in property	ni	0		
		ii Equity instruments				
		A Listed equities	iiA	0		
		B Unlisted equities	iiB	0		
		C Total	iiC	0		
		iii Preference shares	iii	0		
		iv Government or trust securities	iv	0		
		v Debenture or bonds	v	0		
		vi Mutual funds	vi	0		
		vii Others	vii	0		
		viii Total Long-term investments (i + iiC + iii + iv + v + vi + vii)			aviii	0
	b	Short-term investments				
		i Equity instruments				

7.29 This being the case, then, the assessee case was falls under purview of section 2(47)(iv) of the Act, which reads as follows:

> *"S. 2(47)(iv) ["transfer", in relation to a capital asset, includes—*
>
> *in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment."*

7.30 Once we apply section 2(47)(iv) of the Act, as there was conversion of capital asset into stock in trade, the income of the assessee to be computed by applying section 45(2) of the Act and there cannot be any application of section 2(47)(i) of the Act, which refers to transfer in relation to capital asset including the sale, exchange or relinquishment of the asset. There cannot be any exchange of the property in the present case, as there was no

existence of assets which has to be exchanged in relation to the transfer of land by the assessee at the time of entering into JDA on 17.1.2008. In other words, to hold it as an exchange, there should be existence of both the properties, which are subject matter for exchange with each other at the time of entering into contract/JDA. In the present case, at the time of entering into JDA on 17.1.2008, there was no existence of both the properties and that property to be came into existence in future date. Hence, decision of Hon'ble Supreme Court in the case of Orient Trading Company Vs. CIT (224 ITR 371) have no application to the facts and circumstances of present case. Being so, it cannot be said that section 2(47)(i) of the Act is having any application to the facts of present case. Thus, we hold that section 2(47)(i) of the Act have no application. Accordingly, we decide the issue in favour of the assessee.

7.31 Now the question before us is how to compute the income of the assessee arisen out of JDA dated 17.1.2008. Since the assessee has converted the capital asset being land into stock in trade vide JDA as discussed above, the income of the assessee has to be computed by applying the provisions of section 45(2) of the Act r.w.s. 2(47)(iv) of the Act. It has to be considered as business income as generated from said transaction on transfer of property by applying section 45(2) of the Act. Even before us, the assessee not objected for considering the income generated from these projects as business income of assessee in the relevant assessment year when the assessee's share of constructed area sold wholly or partly as the case may be. In case of partial share of the constructed area in any assessment year, the proportionate income generated from such sale to be taxed in that particular assessment year. However, on application of section 45(2) of the Act, income on transfer of property up to the date of conversion of capital asset into stock in trade has to be assessed under the head capital gain in AY

2008-09 and the gain from the present property after the date of conversion into stock in trade has to be assessed as business income by applying section 45(2) of the Act on sale of assessee's share of constructed area in its hand. For clarification, we reproduce the section 45(2) of the Act:

> *"S. **45(2) -** Not withstanding anything contained in sub-section(1), the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into, or its treatment by him as stock-in-trade of a business carried on by him shall be chargeable to income-tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him and, for the purposes of section 48, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset."*

7.32 From the reading of the section 45(2) of the Act and 2(47)(iv) of the Act, it is clear that if a capital asset is converted into stock in trade of a business carried by the assessee, then it is considered as a transfer of such capital asset and capital gain or loss as the case may be shall be computed in the year of sale of such converted capital asset. The consideration in such case for the purpose of computing capital gain or loss shall be equivalent to the fair market value of such asset as existing on the date of such conversion. At this stage, we also draw support from section 2(22B) of the Act, which defines fair market value in relation to a capital asset, which reads as follows:

> ***"S. 2(22B) –** "fair market value", in relation to a capital asset, means –*
>
> *i. The price that the capital asset would ordinarily fetch on sale in the open market on the relevant date; and*
> *ii. Where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with the rules made under this Act."*

7.33 The conjoint reading of above three sections, makes it clear that for applying section 45(2) of the Act, there must be a capital asset and capital gains shall be computed in the year when such

converted asset is sold. Although conversion of a capital asset into stock in trade is treated as transfer in relation to the capital asset, in terms of 2(47)(iv) of the Act. But section 45(2) of the Act provides that capital gain or loss shall be calculated on such converted asset in the year in which such asset is actually sold. In other words, although the transfer of capital asset in case of its conversion into stock in trade is deemed to have taken place in the year of conversion, but the capital gain or loss is computed in the year of sale of such asset. Hence, the indexation of cost of acquisition and improvement will be done by considering the cost of indexation in the year of conversion while calculating the capital gain or loss relevant to the assessment year 2008-09. Now the question arises with regard to sale consideration which is to be computed while calculating the capital gain or loss. As per section 45(2) of the Act for computing the capital gain, the sale consideration will be equivalent to the fair market value of such asset as existing on the date of conversion and FMV has been considered in terms of section 2(22B) of the Act.

7.34 Now the next question is with regard to computation of business income after conversion of capital asset into stock in trade.

7.35 After conversion of capital asset into stock in trade of business of assessee then the fair market value on the date of conversion is considered as full sale consideration of such capital asset for the purpose of capital gain or loss, such fair market value is considered as cost of such asset as converted into stock in trade and at the time of sale of such stock in trade, the same price i.e. as realized from the sale of such stock in trade wholly or partially as the case may be will be deducted from the fair market value of such asset as existing on the date of conversion i.e. the cost price of

stock in trade and the profit arising therefrom, if any shall be treated as income under the head "business & profession", when such sale took place in the relevant assessment year only and not otherwise.

7.36 In the present case, since there is no dispute that capital asset has been converted into stock in trade on the date of entering into JDA i.e. 7.1.2008 relevant to AY 2008-09, and capital gain accrued on such conversion of capital asset into stock in trade, to be computed with the fair market value as on date of conversion of the land being treated as full value of consideration. Thus, the deemed capital gain on said conversion of capital asset, to be taxed on the actual sale of said converted asset along with the assessee share of constructed area. However, the ld. AO assessed the entire value of constructed area after deducting the cost of the land as business income in assessment year 2017-18 on the ground that the developer has got the O.C./CC on 21.7.2016 which is not correct. At this point, we place reliance on the judgement coordinate bench of Madras in the case of M/s. Essrope Mills ltd. in ITA No.2256/Mad/2012 dated 11.7.2013, wherein held that the gain on transfer of capital asset up to the date of conversion in to stock has to be assessed under the head capital gain and the gain in respect of property i.e. after the date of conversion into stock in trade has to be assessed as business income. As assessing officer computed the entire sale consideration under the head long term capital gain, he did not apply the provisions of section 45(2) of the Act. Therefore, the ld. AO should compute the business income in respect of stock in trade of the property i.e. the sale of stock in trade, taking into consideration section 45(2) of the Act in the year of sale of stock in trade and not in the assessment year 2017-18 since there was no sale of constructed area of assessee's share. There was no provision in the Act which deals with the

determination of business income or capital gain on conversion of investment into stock in trade which is later on sold as business income of the assessee in whole without following the provisions of section 45(2) of the Act. In our opinion, the assessee income has to be computed u/s 45(2) of the Act when the stock in trade has been actually sold by the assessee and not in the assessment year when the developer has got the OC/CC from the BBMP. At this time it is appropriate to take support from the judgement of Kolkata High Court in the case of CIT Vs. Dhanuka & Sons 124 ITR 1, where it has been held that profit & gains arising from shares transferred from trading account to investment account at prevailing market rate is not a transaction at all because a person have a transaction with himself and in turn such profit cannot be taxed. If such shares can be disposed at a value other than the value at which it was transferred from the business stock the question of capital loss or capital gain would arise. Being so, in the present case, on applying the section 45(2) of the Act the income to be charged to tax in the year of sale of stock in trade as follows:

(A) Taxation at the time of conversion of capital asset into stock in trade:

1. **Sales consideration** at the time of entering in to JDA on 17.1.2008 by transferring the land as a capital asset; The fair market value of capital asset on the date of conversion shall be deemed to be the sale consideration.
2. **Indexation benefit for cost of acquisition and improvement** will be considered upto the year of conversion of capital asset into the stock in trade i.e. up to assessment year 2008-09.
3. **Year of taxability** – Capital gain will be taxed in the year in which stock in trade is sold and not in the AY 2017-18.

B. Taxation at the time of sale of stock in trade –

When the stock in trade is sold, the assessee needs to pay the tax under the head "Business Income":

1. **Sale consideration –** The Sale proceeds of stock in trade will be considered as Sale consideration.
2. **Purchase cost –** The purchase cost of stock in trade is fair market value on the date of conversion.
3. **Year of taxability –** The Business Income will be taxable in the year in which stock in trade is sold and not in the AY 2017-18.

7.37 Thus, there cannot be any taxability of income in the assessment year 2017-18 as there was no whole or part sale of stock in trade in the assessment year under consideration. In view of the above discussion, this ground No.2 of appeals of the assessee is allowed.

8. Ground Nos.3 to 5 with regard to Limitation of Time and non-issue of Notice u/s 143(2) of the Act. The ld. A.R. for the assessee submitted that the assessee in Ground No.2 before the Ld. CIT(A) urged that the impugned assessment order passed u/s 153C r.w.s. 144 of the Act was barred by the Limitation of Time. The assessee furnished the submissions dated 20-02-2023 before the Ld. CIT(A) in Para 10 to 12 in support of the non-maintainability of Notice u/s 153(c) of the Act dated 24-03-2020 and Limitation of Time. He reproduced the relevant Paras 10 to 12 as under for our reference:

> *"10.**Satisfaction Note:** The A.O in Para 8 of the assessment order held that upon centralisation of the case in connection with the searched case of M/S. Brigade Enterprises Ltd, has stated to have drawn a satisfaction note and consequently a notice U/S 153C of the Act was issued on 24.03.2020 requiring the assessee to file the return of income within 30 days for impugned Assessment year 2017-18. In this regards the appellant submit that the date of drawing satisfaction note was not mentioned in the assessment order to by-pass the limitation prescribed u/s 153B of the Act. The A.O in Para 7 of the*

assessment order has held that he was the A.O of M/S. Brigade Enterprises Ltd and in the course of Examination of the documents relating to the searched assessee M/S. Brigade Enterprises Ltd that he was satisfied as regards the determination of income in the assessment to be made u/s 153C of the Act in the case of the appellant. In this regards the appellant submit that the Jurisdictional A.O or the A.O to whom the case was notified (Central Circle 2(3)) have not mentioned the date of drawing of the satisfaction note in the context of the limitation of time as prescribed U/s 153B of the Act. The Impugned assessment order is barred by limitation of time as provided u/s 153B of the Act, according to which the A.O having jurisdiction over the case is required to complete the assessment u/s 153C within 12 Months from the end of the financial year in which the records and seized documents are handed over to him.

The search U/s 132 of the Act was admittedly completed on 28.11.2017 in the case of M/S. Brigade Enterprises Ltd and the said case was notified to the A.O and Central Circle 2(3). The case of the appellant was also notified to the same A.O U/s 127 vide notification bearing F.No.29/Centralisation/PCIT-5/2018-19 dated 17.07.2018.The appellant submits that after the notification of the case, the A.O has initiated assessment proceeding by issue of a notice u/s. 143(2) of the Act dated 24.09.2018 followed by notice u/s. 142(1) of the Act dated 28.01.2019, 28.01.2019, 01.03.2019, 04.04.2019 and 06.05.2019. The appellant submits herewith the notices cited above and marked as ***Annexure A,B,C,D,E and F*** *and the issue of above said notices is evident from the A.Os letter bearing F.No.AAEFN5563D/DCIT-CC-2(3)-2017-18 dated 04.06.2019. In this regards the appellant submits that the A.O has initiated assessment proceedings by issue of an initial notice u/s 143(2) of the Act dated 24.09.2018 only after taking over the seized documents between the date of notification i.e 17.07.2018 and 24.09.2018 being the date of issue of 143(2) notice.*

11.The appellant further submits that it is evident from the notice u/s 142(1) dated 08.01.2019 and 28.01.2019 and 01.03.2019 that the assessment proceedings initiated in the case of the appellant were related to a search conducted u/s 132 of the Act in the case of M/S. Brigade Enterprises Ltd. The records were obviously were handed over to the A.O central Circle 2(3) on or before 24.09.2019 being the date on which a notice u/s 143(2) was issued followed by subsequent notices issued u/s 142(1) of the Act periodically. In view of the notice u/s 143(2) of the Act dated 24.09.2019 it is evident from the records that the case was transferred in the month of July 2018 as per notification dated 17.07.2018 and thereafter, the relevant records and the alleged documents found in the course of search conducted on 02.11.2017 and 28.12.2017 in the case of M/S. Brigade Enterprises Ltd were forwarded to the A.O and based upon such documents the A.O had issued a notice u/s 143(2) of the Act dated 24.02.2019 and

accordingly the limitation of time is reckonable from the end of the financial year 31.03.2019 and the assessment as per limitation of time prescribed u/s 153B of the Act ought to have been completed on or before 31.03.2020, whereas the impugned assessment was completed on 12.07.2021 after lapse of 1 year 3 Months. It is further submitted that the AO in para 8 of the Assessment Order has held that a Satisfaction Note was recorded and Notice u/s. 153C of the Act was issued on 24-03-2020. In this regard it can be seen from para 8 of the Assessment Order that the AO has not mentioned the date on which the alleged Satisfaction was recorded and therefore the impugned Notice u/s. 153C stated to have been issued on 24-03-2020 was invalid, improper and illegal since the assessment proceedings were already initiated by issue of Notice u/s. 143(2) of the Act dtd: 24-09-2018 followed by five 142(1) Notices issued later. In this context it is submitted that the assessment proceedings consequent upon the search were already initiated as admitted in the 142(1) Notices dtd: 08-01-2019, 28-01-2019 and 01-03-2019 and therefore the contention of the AO that a Notice u/s. 153C was issued on 24-03-2020 after recording the alleged satisfaction Notice is factually incorrect. The AO's contention that a Notice u/s. 153C issued on 24-03-2020 is a misleading factor. The AO is aware that the Assessment Proceedings were already initiated and relevant notices u/s. 143(2) and 142(1) were already issued and the assessment proceedings were in progress and therefore it is not justifiable for the AO to say that a Notice u/s. 153C dtd: 24-03-2020 was issued. The AO even though aware that the Assessment proceedings were in-progress he has made an attempt to get the benefit of time extended to a future date since the limitation of time was already barred as on 24-03-2020 and hence the AO's contention as to the issue of 153C Notice on 24-03-2020 is opposed to the law and facts of the case as a result of which the assessment completed u/s 153C r.w.s 144 dated 12.07.2021 is ab-intio void and liable to be annulled/cancelled in view of limitation of time as envisaged u/s. 153B of the Act.

12. The Appellant submits that a Notice u/s. 153C of the IT Act dtd: 24-03-2020 was issued directing the Appellant to file the return of income within 30 days from the date of receipt of the said Notice. The Appellant in compliance with the Notice u/s. 153C of the Act has sought for extension of time to examine the legality of the said notice and the consequent proceedings. However the AO insisted upon filing the return of income and to avoid the legal consequences of non compliance of the statutory notice has filed a return of income on 26-03-2021 under protest and therefore the return of income so filed was not e-verified and hence the AO has held the said return of income as invalid for non e-verification. However the Assessing Officer has completed a Scrutiny Assessment u/s. 153C r.w.s 144 of the Act dtd: 12-07-2021 computing the total income at Rs. 398,07,82,395/- with a consequent tax and interest liability of Rs. 208,74,16,965/-. The

Appellant submits that the AO in spite of holding the return of income as invalid has completed the Assessment which is not justifiable in law."

8.1 With regard to non-issue of Notice u/s 143(2) of the Act the ld. A.R. submitted that in pursuance of Notice u/s 153C filed ROI on 26-02-2021. The Ld. AO after filing the ROI in compliance with the Notice u/s 153C of the Act dated 24-03-2020, has failed to issue the mandatory Notice u/s 143(2) of the Act. In this regard the assessee has urged the additional ground No. 1 and 2 before the Ld. CIT(A) placing reliance on the decision of the Honourable Supreme Court in the case of ACIT vs. Hotel Blue Moon (2010) 321 ITR 362 and CIT vs. Laxmandas Khandelwal (2019) 417 ITR 325 (SC) wherein it was held that the non-issue of mandatory Notice u/s 143(2) of the Act within the prescribed Time Limit rendered the assessment ab-initio-void and further categorically held that the non-issue of the said Notice was also incurable. He submitted that the above judicial decision of the Honourable Supreme Court were followed by the ITAT Bangalore Bench in the following cases:

1. Rajiv Gandhi University of Health Sciences (RGUHS) v/s ACIT Exemption, Circle-1 Bangalore in ITA No. 16/BANG/2023 as dated 16-05-2023.
2. Smt. Arwa Harawala v/s ITO in ITA No. 01/BANG/2020 dated 20-12-2021.
3. Honourable High Court of Karnataka in the case of Nittu Vasanth Kumar Mahesh v/s ACIT (2019) 265 Taxman 277 (Karnataka)
4. The Honourable ITAT's decision in the case of M/s. VVD Constructions v/s DCIT Circle - 7(1)(2) Bangalore in ITA No. 3384 to 3388/BANG/2018 dated 22-03-2021.

8.2 He submitted that the Ld. CIT(A) has not considered the above judicial decisions. However he has relied upon the decision of

the Honourable Madras High Court in the case of B. Kubendran vs. DCIT in WP No.3023 of 2020 dated 09-04-2021 in which the decision of the Honourable Delhi High Court in the case of Ashok Chaddha was relied wherein it held that the Notice u/s 143(2) of the Act was not mandatory in 153A cases. The Ld. CIT(A) in Para 17 on page 47 and 48 held that the ROI filed on 27-02-2021 was not E-verified till 27-06-2021 (within 120 days) and the assessment order was passed on 12-07-2021 which was beyond 120 days and therefore the contention of the assessee as to the non-issue of Defective Notice does not survive. In this regard he submitted that the ITAT Bangalore Bench in the case of Electronics and Controls Power vs. DCIT in ITA No. 914/BANG/2016 dated 03-11-2017 has held that the Department was not permitted to treat the returned filed Electronically as invalid in the absence of E-verification and further the Honourable Supreme Court in the case of Mangalam Publications vs. CIT (SC) 461 ITR 159 (2024) wherein it was held that the ROI filed by assessee was accepted by AO and no Defective Notice was issued and therefore it cannot be said that the non E-verification of the ROI can be construed as a ground for holding the ROI as Defective without communicating to the assessee the nature of Defectiveness. In the case of the assessee it is an undisputed fact that the AO has not issued any Defective Notice and therefore the non-issue of Notice u/s 143(2) of the Act rendered the assessment ab-initio-void. The Ld. CIT(A) has arbitrarily held that issuance of Notice u/s 143(2) is not mandatory in 153A/C cases and there was no violation of Principles of Natural Justice. The findings of the Ld. CIT(A) are clearly opposed to the Judicial decisions cited above.

8.3 He further submitted that the Honourable High Court of Madras in the case of Sri. B. Kubendran (Supra) has held that Department had only 3 days' time to complete the assessment from

the date of filing the ROI and therefore came to the conclusion that issue of Notice u/s 143(2) was not required. However in the case of the assessee ROI was filed on 26-03-2021 and the assessment was completed on 12-07-2021 and therefore the AO had sufficient time of more than four months and the decision of the Honourable Madras High Court contrary to the decision of the Honourable Supreme Court in the case of Hotel Blue Moon and Laxmandas Khandelwal (Supra), as a result of which the findings of the Ld. CIT(A) are to be reversed. Further the assessee submits that the ITAT Bangalore Bench in the case of Bangalore Narayan Das vs. ITO in ITA No.120 and 121/Bang/2020 dated 17-03-2023 held that the issue of Notice u/s 143(2) of the Act was mandatory as per the decisions of the Honourable Supreme Court in the case of Hotel Blue Moon and Laxmandas Khandelwal (Supra). In view of the above judicial decisions he submitted that it is a trite Law that the AO was bound to issue a Notice u/s 143(2) of the Act before completion of the assessment.

8.4 Limitation of Time : The ld. A.R. submitted that the Ld. AO has not considered the Legal submissions of the assessee. It is an undisputed fact that a Search was conducted in the case of M/s. Brigade Enterprises on 02-11-2017 and finally concluded on 28-12-2017 and the JDA, GPA, Supplementary Agreement were stated to have been impounded and held that the said documents were relevant for determination of income in the case of the assessee in view of Section 153C of the Act. The AO in Para 8 of the Assessment order has held that the case of the assessee was centralised and notified to him vide Notification bearing F No.29/Centralisation/PCIT-5/2018-19 dated 17-07-2018. However, the Ld. AO in Para 5 of the assessment order has held that the case was Notified on 18-11-2019 vide Notification bearing F No.29/Centralisation/PCIT-5/2019-20 which is nothing but a

Corrigendum to the earlier Notification dated 17-02-2018. Therefore, he submitted that the AO was not justified to say that the Notification was issued on 18-11-2019 even though the case was Notified as per Notification dated 17-02-2018. Thereafter the predecessors of AO already aware of the Search in the case of M/s. Brigade Enterprises Ltd and accordingly a Notice u/s 143(2) of the Act was issued 24-09-2018 on original return within Seven months from the date of original Notification dated 17-07-2018 and therefore the AO was not justified to say that the case was Notified on 18-11-2019. Later the predecessors of the AO has also issued series of Notices u/s 142(1) periodically commencing from the first Notice dated 08-01-2019 in which he has sought for the production of impounded documents such as JDA along with other relevant documents on the ground that it was a search related case. Thus it is evident from records that the information about the search was available in the year 2018-19 itself and therefore the Limitation of Time is reckonable from the date of knowledge i.e. from the date of search being 02-11-2017 concluded on 28-12-2017 followed by a specific Notification dated 17-02-2018. He submitted that the AO was not only aware of the Search and also the consequences u/s 153C of the Act in the case of the assessee on the date of Search being 02-11-2017 but more clearly it was within his knowledge in view of the Centralised Notification cited above. Therefore the Limitation of Time commences from the date of Search i.e. 02-11-2017 and barred by Limitation on 31-12-2019 in the case of the Searched assessee and same Limitation of Time is also applicable in the case of the assessee and therefore the Notice issued u/s 153C of the Act dated 24-03-2020 was clearly barred by Limitation of Time. The AO in Para 7 and 8 of the assessment order has stated that he happened to be the same AO for the Searched case M/s. Brigade Enterprises Ltd., and the assessee and therefore he was

satisfied that the documents pertained to M/s. Nalapad Hotels and Convention Centre and information contained therein relates to and have a bearing and total income of the assessee and accordingly a Satisfaction Note was recorded in the case of the assessee and Notice u/s 153C of the Act was issued on 24-03-2020 directing the assessee to file the ROI within 30 days from the date of receipt of the said Notice. In this regard the ld. A.R. reproduced Para 7 and 8 of the Assessment order as under:

> *"7. Hence, the assessing officer of M/s. Brigade Enterprises Ltd who happens to be the undersigned is satisfied that these documents pertain to M/s Nalpad Hotels & Convention Centre and information contains therein relate to the assessee firm and have a bearing on the total income of M/s Nalpad Hotels & Convention Centre. After examining the seized material, the undersigned who is also the assessing officer of M/s Nalpad Hotels & Convention Centre is satisfied that documents pertain to M/s Nalpad Hotels & Convention Centre and information contained therein relates to and have a bearing on the total income of M/s Nalpad Hotels & Convention Centre.*
>
> *8. Accordingly, the satisfaction note was recorded in the case of assessee, and the notice u/s 153C of the IT Act, 1961 was issued on 24-03-2020 to the assessee requiring the assessee to file the return of income within 30 days from the date of receipt of notice for the A.Y. 2017-18 and this notice was duly served on the assessee."*

8.5 The ld. A.R. submitted that it is an admitted fact on record that the Search in the case of M/s. Brigade Enterprises Ltd was commenced on 02-11-2017 and concluded on 28-12-2017 and the Limitation of Time is reckonable from the date of Knowledge as per Search proceedings records and the Limitation of Time expired on 31-12-2019. The case of the assessee was Notified on 17-07-2018 and therefore the Limitation of Time considering the date of Notification was expired on 31-12-2019 as the Limitation of Time of Nine months commences from the end of the Year of Notification i.e. 01-04-2019 to 31-12-2019. However, admittedly the AO in Para 8 of the assessment order has stated that a Notice u/s 153C of the Act was issued on 24-03-2020 obviously beyond the Limitation

of Time. Therefore the assessment completed u/s 153C r.w.s. 144 of the Act dated 12-07-2021 was ab-initio-void. But the Ld. CIT(A) has passed an appellate order on Para 7.1 on page 30 to 34 holding that there was no infirmity in the action of the AO and accordingly the relevant ground No. 2 to 4 urged before the Ld. CIT(A) were dismissed. The findings of the Ld. CIT(A) were opposed to Law and facts of the case and therefore the relevant findings of the Ld. CIT(A) on ground No. 2 to 4 needs to be reversed and the assessment completed upon the Time barred Notices be held as ab-initio-void.

9. The ld. D.R. relied on the judgement of Hon'ble Madras High Court in the case of B. Kubendran Vs. DCIT (Central Circle) in WTA No.3823 & others of 2020 dated 9.4.2021, wherein held as follows:

> *"In the case of Rangroopchand Chordia, a Division Bench of this Court dealt with a statutory appeal filed by the revenue under section 260A of the Act. The appeal had been admitted on two substantial questions relating to whether an addition of undisclosed income Ray be made on the basis of loose sheets found in the search, particularly when the assessee therein had accepted, in his sworn statement, that the information contained in the sheets reflected his undisclosed income. In that case the assessee had not filed a return within the time stipulated in the notice issued under section 158BC, The return had been filed one year and seven months after the date of the notice and there was only three days left for the department to complete the assessment.*
>
> 16. *The Bench thus stated that a notice under section 143(2) could not be issued, since the issuance of such notice contemplated adherence to the principles of natural justice. Since the assessee had created a situation to his advantage by defaulting on the requirement to comply with the notice under section 158BC, he should not be permitted to take advantage of such default. It held that the decision in the case of Blue Moon should be seen to come to the aid of a person, who had filed his return within the time stipulated in the statutory notice, and not one who had defaulted.*
>
> 17. *Both decisions, that of the Supreme Court in Blue Moon as well as this Court in Rangroopchand Chordia, are in the context of erstwhile Chapter-XIV B a neither decision comes to the aid of the petitioner in this case, since it would answer the argument in relation*

to whether the issuance of notice under section 143(2) was mandatory in the context of an assessment under Section 153A/C as well.

18. *The Delhi High Court in Ashok Chaddha (supra) had framed a substantial question specifically on whether the issue of a notice under section 143(2) was mandatory for finalisation of assessment under section 153A. This case is thus on point as far as the present writ petition is concerned. The assessee therein relied on a slew of decisions of the Supreme Court and various High Courts the proposition that notice under section 143(2) was mandatory. However, the Bench, after an elaborate discussion negates the plea of the assessee, concluding that the issuance of notice was not mandatory in the case of an assessment under section 153A.*

The difference in the language of section 158 BC and Section 153A must attributed sufficient weightage. While there is specific reference to the provision of section 143(2) in Section 158 BC, such reference is conspicuous by absence in Section 153A. Section 153A only states that an assessment in terms thereof shall be completed in terms of the provisions of the Income-tax Act, 196 as if such return were a return required to be furnished under section 139.

23. *It would thus suffice that in framing an assessment under due regard must be given to the principles of natural justice, which requirement will stand satisfied either by issuance of notice under section 143(2) or questionnaire under section 142(1). In this case, a questionnaire has been issued.*

24. *I am, thus in agreement with the ratio of the decisions answer this legal issue in favour of the revenue. "*

9.1 The ld. D.R. submitted that as can be seen, the Honourable Madras High court referring to the decision of the Honourable Delhi High Court in the case of Ashok Chaddha has he that notice under section 143(2) is not mandatory in 153A cases. This decision also takes care of the appellant's objection with respect to non-issuance of defective notice. Once it is held that principles of natural justice having followed when show cause notices have been served on the assessee this objection of the appellant does not stand. Further, it would be of note to mention here that the return u/s. 153C for the relevant assessment year was filed by the assessee on 27.02.2021 thereby giving the assessee time of 120

days to E-Verify this ITR till 27.06.2021. He submitted that the assessment order was passed only on 12.07.2021 which is beyond 120 days. Therefore, he submitted that the assessee's contention that the defective notice was not served on him also does not survive.

First we will adjudicate the issue on non-issue of notice u/s 143(2) of the Act after recording satisfaction u/s 153A of the Act on 24.3.2020:

10. We have given thoughtful consideration to the facts and circumstances of the present case. We have seen the sequence of events and provisions of law as applicable to re-assessment proceedings under the Act. Learned DR basically argued that assessee has not filed ROI in the stipulated time and therefore AO was correct in law in framing the assessment without issuance of any notice under section 143(2) of the Act and framing the assessment under section 144 of the Act. The above arguments of learned DR look attractive. However, the arguments failed when examined on the touch stone of admitted facts of the present case. For the sake of convenience, the observations of the AO in Para 11 as follows:

"11. In response to notice and the show cause the assessee responded and filed the return of income u/s 153C of the Act on 26.2.2021. But it is seen that assessee has not e-verified the return of income till date. As the return filed by assessee is not e-verified it is as good as invalid and no return filed."

10.1 Further, in para 13 of assessment order ld. AO stated as follows:

13. It is noticed that the assessee has not filed return of income since inception up to FY 2012-13.However, the assessee did file return of income from FY 13-14 up to FY 16-17. The assessee was asked to explain the reason for not filing the return of income earlier. The assessee submitted that since the firm did not have any taxable income no return of Income is filed. However, it is pertinent to mention here that the partnership firms are legally bound by the Income Tax Act to file return of income even in case of loss or no income. It is further noticed that the assessee had not offered any income arriving out of Joint Development agreement entered with M/s Brigade. This issue was confronted with the assessee. The assesse has contented that the asset (land) in question is a stock in trade in the hands of the firm since beginning. Since it is a stock in trade there is no income arising out of this transaction. The assessee's stand is that, the firm handed over 50% of the land and received 50% of the commercial building in his statement dated 29.01.2018 in reply to q.no 15 the relevant portion of the same is reproduced below :

15	**It could be summarized from the above answerers that the firm has received constructed area of 50% in the completed commercial building for having given the possession the land which the firm had in it's balance sheet as stock in trade . Do you agree to this.**
Ans	Yes. The firm has received 50% of the constructed commercial property in lieu of the land given to the BEL on 31.5.2016 i.e the date of obtaining Occupancy certificate.
16	**Please let me know how the firm has accounted the building in its balance sheet after the receipt of building. Please let me know the value.**
Ans	The firm has obtained 50% of the constructed commercial property on 31.5.2016. The firm has treated the commercial property as stock in trade as on 31.3.2017. The value adopted in the balance sheet for the year 31.3.2017 is at Rs. 1000000000/- (Rs. Ten crores only) which is the value of the land adopted by the firm.
17	**Please let me know the basis of valuation adopted in firm's balance sheet for the Building as on 31.3.2017 i.e FY 16-17**
Ans	The value of the property as on 31.3.2006 was RS. 10 crores. I would like to submit that there is no method adopted for valuing the constructed commercial building received. The value of the building is adopted at the same value of the land which was handed over to BEL for construction in 2007.

So according to assessee this is just an exchange of assets hence there is no income arising out of this transaction.

10.2 Perusal of lines of the Assessment Orders along with other events happened at the time of assessment would show clearly that Assessment Order was passed under section 143(3) of the Act and not under section 144 of the Act.

10.3 We also wish to quote expression used in provisions of section 153C of the Act, "***provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139"*** which means provisions of section 139 of the Act have to complied in toto as whole while framing an assessment under section 148 of the Act mandatorily.

10.4 Perusal of sub-section (9) of 139 of the Act would show that if a return filed by an assessee is defective, then the AO has to intimate the assessee about such defect and in case an assessee would fail to remove the defect so pointed out then such return would be treated as invalid return. However, in the case at hand, perusal of records would show that no such defect notice has been issued by the AO. On the contrary, while finalizing the Assessment, the AO has adopted the same figures as disclosed by assessee in its original return and return filed in pursuance to notice issued under section 153C of the Act meaning thereby the AO has not treated the return filed as defective and has taken the ROI in cognizance while passing the reassessment order. Neither the AO has launched prosecution u/s 276CC, which empowers an AO to launch prosecution against an assessee who could not file ROI in pursuance to the notice of 148. All these events would show that the AO has impliedly condoned the delay happened in filing of ROI and has not treated the ROI as an invalid ROI. Therefore, the finding of the ld. CIT(A) would be of no help to the Department.

10.5 We would also like to quote here the recent decision of the Hon'ble Patna High Court in the case of CIT Vs Nagendra Parasad 156 Taxman.19(Pat), in which case also the return was filed after the expiry of eight and half months after the expiry of time prescribed in 148 notice, the observations of the Hon'ble High Court are as under:-

> *"The Tribunal found, relying on the decision in Hotel Blue Moon (supra) that the proceedings are liable to be struck down. It was held that the return was filed by the assessee in response to the notice under section 148* ***though delayed and in such circumstance, there should have been a notice issued under section 143(2) as has been held in Hotel Blue Moon (supra)****. 4. The only question of law arising in the facts and circumstances of the case is whether notice should have been issued under section 143(2) of the Income-tax Act? 5. Admittedly, the notice was issued by the Assessing Officer under section 148 of the Act on 14-7-2008 requiring the assessee to file a return within thirty days.* ***A return was filed much later on 31-3-2009, after eight and a half months****.*
>
> *6. On identical facts, in M.A. No. 239 of 2011 titled as Chand Bihari Agrawal v. Commissioner Of Income Tax, Central, Patna decided on 257-2023, this Court considered the issue and held against the revenue. 7. We find that the question of law has to be answered in favour of the assesee and against the revenue. Hotel Blue Moon (supra) governs the issue which has been followed in Chand Bihari Agrawal (supra)."*

10.6 We also note the decision rendered by Hyderabad Bench of the Tribunal in the case of Gonuguntla Nirmal Devi in ITA No.412/Hyd/2022 dated 17.8.2023 for the AY 2012-13 is misplaced because in that case, assessee has not filed any return. For the sake of clarity, we would like to quote the observations of the Hon'ble Bench:

> *"8. We have gone through the record in the light of the submissions made on either side. We shall look at the allegation as to filing of return of income in the light of the facts available on record. It could be seen from the assessment order that notice under section 148 of the Act was issued on 28/03/2019 and the same was served on the assessee, but there was no response from the assessee.*

Likewise, when the case was posted for hearing on 24/06/2019, notice dated 12/04/2019 calling for the details was issued, it was served on the assessee on 13/06/2019, but again there was no response from the assessee. Notice granting another opportunity was issued on 24/10/2019 fixing the date of hearing on 06/11/2019 and served on the assessee on 25/10/2019. Still there was no response from the assessee. Lastly, there was appearing for the assessee before the AO after 29/11/2019

…….

11. ***We agree with the observations of both the authorities that there is no return of income filed pursuant to the notice issued under section 148 of the Act. In the case of Hotel Blue Moon(supra) the Hon'ble Apex Court held that section 143(2) of the Act itself becomes necessary when it becomes necessary to check the return.*** *In the case of Oberoi Hotels (P.) Ltd (supra) the Hon'ble Calcutta High Court held that the dictum of the Hon'ble Supreme Court in the case of Hotel Blue Moon(supra) is that a notice issued under section 143(2) of the Act is mandatory if the return as filed, is not accepted and an assessment order is to be made at variance with the return filed by the assessee. It, therefore, goes without saying that non-issuance of notice under section 143(2) of the Act vitiates the proceedings if the assessee filed the return of income, such a return as filed was not acceptable to the AO and the assessment has to be made at variance with the return filed by the assessee. If no return of income is filed by the assessee, such allegation does not arise.*

12. We have gone through the various decisions relied upon by the assessee and in all the cases invariably within the time stipulated in the notice issued under section 148 of the Act, either the assessee or the authorized representative either filed the return of income or submitted that the original return of income may be treated as the return of income filed pursuant to the notice under section 148 of the Act. Here in this case no return of income was filed within the time, and no return of income was filed till the commencement of hearing. It was only when the proceedings are going on, that too without obtaining the permission of the AO, the return was filed online and on the next day the AO was informed of such online filing.

13. For these reasons, we brush aside the contention of the assessee that for want of issuance of notice under section 143(2) of the Act, the assessment is bad under law. Next contention of the assessee is that assessment is bad for want of sanction of the learned PCIT before issuance of notice under section 148 of the Act."

10.7 Perusal of the above observations of the Hyderabad Bench would clearly show that in that case the assessee failed to file any return of income in response to the notice under section 148 of the

Act. The assessee has filed only his submissions on merits of the addition and that too during the course of reassessment proceedings, in that case the AR of the assessee contend that submissions made by assessee would be considered as ROI in response to 148 notice. However, in the case at hand the assessee has filed a ROI vide e-filing on 26.22021 as recorded by the ld. AO in para 11 of his order. Further no one from the side of assessee has brought to the notice of Hyderabad Bench the case of **Hon'ble Patna High Court reported in 156 taxman.com 19(Pat) in the case of CIT Vs Nagender Parsad (Supra**), in which case also the assessee has filed return after the expiry of eight months from the time prescribed in notice issued under section 148 of the Act.

10.8 We also take note of the decision of Hon'ble Madras High Court in the case of Areva T and D India Ltd Vs ACIT reported in 294 ITR 233(Mad) (order dated 06th August 2008). That decision is not applicable to the facts of the present case. Further the decision of Hon'ble Madras High Court is prior to the judgment of Hon'ble Apex Court in the case of Hotel Blue moon reported in 319 ITR 326(SC) decided by Apex Court in 2010. After the arrival of Hon'ble Apex Court judgment in the case of Hotel Blue moon, this issue is no more ***res-integra***.

10.9 It is pertinent to note the latest decisions of Hon'ble Madaras High Court in the case of **Sapthagiri Finance & Investments v. ITO (2013) 90 DTR 289 (Mad)**. Relevant facts of the case are as under:-

> *In that case the notice under section 148 was issued on 20.05.2002. Assessee could not file any return in response to that notice. Then notice u/s 142(1) was issued and in response to that assessee filed ROI on 18.12.2002. And finally assessment was completed on 31.12.2002. In the back drop of these facts the ITAT has decided the matter against the assessee holding that non- compliance of issuance of 143(2) provision would not fatal to the reassessment proceedings.*

ITAT further observed that since assessee has duly participated in reassessment proceedings he had wavied his right for issuance of 143(2) proceedings. Matter reached to the Hon'ble High Court and following questions of laws inter alia were formulated by the Hon'ble High Court :

(i) …….
(ii) …….

(iii) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the appellant has requested the Assessing Officer to complete the assessment, which amounts to waiver of notice under Section 143(2)?

(iv) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the appellant has requested the Assessing Officer to complete the assessment, which amounts to waiver of notice under Section 143(2)?

Hon'ble High Court while deciding the above questions of law has observed as under:-

"Merely because the matter was discussed with the Assessee and the signature is affixed it does not mean the rest of the procedure of notice under Section 143(2) of the Act was complied with or that on placing the objection the Assessee had waived the notice for further processing of the reassessment proceedings. ***The fact that on the notice issued u/s 143(2) of the Act, the assessee had placed its objection and reiterated its earlier return filed as one filed in response to the notice issued u/s 148 of the Act and the Officer had also noted that the same would be considered for completing of assessment, would show that the AO has the duty of issuing the notice under Section 143(2) to lead on to the passing of the assessment****. In the circumstances, with no notice issued u/s 143(3) and there being no waiver, there is no justifiable ground to accept the view of the Tribunal that there was a waiver of right of notice to be issued u/s 143(2) of the Act."*

10.10 Further, a reference can be made to the following decisions of Co-ordinate Benches of the Bangalore ITAT, wherein after following the mandate of Hon'ble Apex Court in the case of Hotel Blue Moon reported in 321 ITR 362(SC) the Bangalore Benches have held that issuance of notice under section 143(2) of

the Act, is a condition precedent for framing an assessment/ reassessment.

i) Shri Banglore Narayan Das in ITA Nos.120 &121/Bang/2022 order dated 17.03.2023
ii) Smt Arwa Harawala in ITA No.01/Bang/202 order dated 20.12.2021

10.11 In all above decisions the courts have unanimously held that issuance and service of notice under section 143(2) of the Act after the filing of the ROI is *sine qua-non* for framing the assessment. Therefore, following the view of Hon'ble Patna High court, the Co-ordinate Benches of the Tribunal and of the Hon'ble Apex Court in the case of Hotel Blue Moon (Supra) we hold that the AO has erred in framing the assessments without issuing any notice under section 143(2) and hence the present orders are ***void-ab-initio***.

10.12 Further, Co-ordinate Bench, Bangalore in the case of Electronics and Controls Power vs. DCIT in ITA No. 914/BANG/2016 dated 03-11-2017 has held that the Department was not permitted to treat the returned filed Electronically as invalid in the absence of E-verification and further the Honourable Supreme Court in the case of Mangalam Publications vs. CIT (SC) 461 ITR 159 (2024) wherein it was held that the ROI filed by assessee was accepted by AO and no Defective Notice was issued and therefore it cannot be said that the non E-verification of the ROI can be construed as a ground for holding the ROI as Defective without communicating to the assessee the nature of Defectiveness. In the case of the assessee it is an undisputed fact that the AO has not issued any Defective Notice and therefore the non-issue of Notice u/s 143(2) of the Act rendered the assessment ab-initio-void. The Ld. CIT(A) has arbitrarily held that issuance of Notice u/s 143(2) is not mandatory in 153A/C cases and there was no violation of Principles of Natural Justice. The findings of

the Ld. CIT(A) are clearly opposed to the Judicial decisions cited above.

10.13 Madras high Court in the case of Sri. B. Kubendran (Supra) has held that Department had only 3 days time to complete the assessment from the date of filing the ROI and therefore came to the conclusion that issue of Notice u/s 143(2) was not required. However in the case of the assessee ROI was filed on 26-03-2021 and the assessment was completed on 12-07-2021 and therefore the AO had sufficient time of more than four months and the decision of the Honourable Madras High Court contrary to the decision of the Honourable Supreme Court in the case of Hotel Blue Moon and Laxmandas Khandelwal (Supra), as a result of which the findings of the Ld. CIT(A) are to be reversed. Further the assessee submits that the ITAT Bangalore Bench in the case of Bangalore Narayan Das vs. ITO in ITA No.120 and 121/Bang/2020 dated 17-03-2023 held that the issue of Notice u/s 143(2) of the Act was mandatory as per the decisions of the Honourable Supreme Court in the case of Hotel Blue Moon and Laxmandas Khandelwal (Supra). In view of the above judicial decisions he submitted that it is a trite Law that the AO was bound to issue a Notice u/s 143(2) of the Act before completion of the assessment.

10.14 In view of the above position of facts and law, we are of the view that the reassessments (for both years in appeal before us) framed in the present case without issuance of notice under section 143(2) of the Act is bad in law and *void ab-initio*.

10.15 Now we will deal with grounds relating to issue of notice u/s 143(2) on 24.9.2018 before assumption of jurisdiction u/s 153C of the Act and also assumption of jurisdiction by issuing notice u/s 153C of the Act on 24.3.2020 by recording satisfaction on 24.3.2020.

11. We have heard the rival submissions and perused the materials available on record. In this case, satisfaction note has been recorded u/s 153C of the Act on 24.3.2020. It was also noted by the ld. AO that seized material pertain to assessee seized during the course of search of M/s. Brigade Enterprises Ltd. were handed over by the jurisdictional AO of M/s. Brigade Enterprises, which is unsigned to the ld. AO of the assessee vide satisfaction note dated 24.3.2020. Thereafter, he said to be issued a notice u/s 153C of the Act to the assessee on the same day.

11.1 Thereafter, the show cause notice was issued to the assessee on 6.10.2020 asking it to file the submissions as per the notice issued. The assessee filed letter for adjournment for 3 weeks stating Covid-19 as reason, the same was granted to the assessee by ld. AO. Again a letter was issued to the assessee to submit the details called for on 10.1.2020. But again the Managing Director of the assessee firm submitted letter stating that he has infected with the Covid-19 and he has hospitalized and also advised to be self-quarantined for 3 weeks. The same was granted by ld. AO. Again a letter dated 28.12.2020 was issued asking the assessee to submit the details called for. Thereafter, a show cause notice dated 19.1.22021 was issued to the assessee to file a return and to submit the details called for. Again the assessee failed to comply to the show cause notice. However, assessee filed the return of income in response to notice u/s 153C of the Act on 26.2.2021. However, it was observed by ld. AO that said return was not e-verified. In this regard, the ld. A.R. submitted that ld. AO initiated assessment proceedings by issue of an initial notice u/s 143(2) of the Act only after taking over the seized documents between date of notification u/s 127 of the Act bearing F.No.29/Centralisation/PCIT-5/2018-19 being the date of issue of notice u/s 143(2) of the Act. The copy is reproduced herein below:

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भारत NMENT OF INDIA
वित्त मंत्रालय/ MINISTRY OF FINANCE
आयकर विभाग/ INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE 2(3), BLR

सेवा में/ To,	
NALAPAD HOTELS AND CONVEN NO.19, NALAPAD CHAMBERS, ,K.G.ROAD, K.G.ROAD, BENGALURU 560009 ,Karnataka India	

स्थायी लेखा संख्या/ PAN:	निर्धारण वर्ष/ AY:	नोटिस संख्या / Notice No.:	दिनांक/ Dated:
AAEFN5563D	2017-18	ITBA/AST/S/143(2)/2018-19/1012546870(1)	24/09/2018

आयकर अधिनियम, 1961 की धारा 143(2) के अधीन नोटिस

Notice under section 143(2) of the Income-tax Act, 1961

महोदय/महोदया/ मेसर्स,

Sir/ Madam/ M/s.

आपको सूचित किया जाता है कि निर्धारण वर्ष 2017-18 के पावती संख्या 242669081131017 के अनुसार आपके द्वारा दिनांक 13/10/2017 को दाखिल की गई आयकर विवरणी की संवीक्षा के लिए चुना गया है।
This is for your kind information that the return of income filed by you for assessment year 2017-18 vide ack. no. 242669081131017 on 13/10/2017 has been selected for Scrutiny.

2. इस संबंध में, आपको दिनाँक 28/09/2018 को 10:12 AM तक साक्ष्य प्रस्तुत करने अथवा साक्ष्य प्रस्तुत कराने का अवसर प्रदान किया जा रहा है जिस पर आप उक्त आयकर विवरणी के समर्थन में निर्भर हैं/रहेंगे।

2. In this regard, an opportunity is being given to you to produce or cause to produce any evidence on which you may like to rely in support of the said return of income by 28/09/2018 at 10:12 AM.

3. उपर्युक्त निर्दिष्ट प्रमाण / सूचना को आपको ऑनलाइन माध्यम से इलेक्ट्रॉनिक रूप मे *incometaxindiaefiling.gov.in* पर अपने ई-फाईलिंग खाता द्वारा प्रस्तुत किया जाना है। बाद की निर्धारण कार्यवाही भी आयकर विभाग की 'ई-कार्यवाही' सुविधा द्वारा की जायेगी। 'ई-कार्यवाही' पर एक संक्षिप्त नोट आपके संदर्भ के लिए संलग्न है।

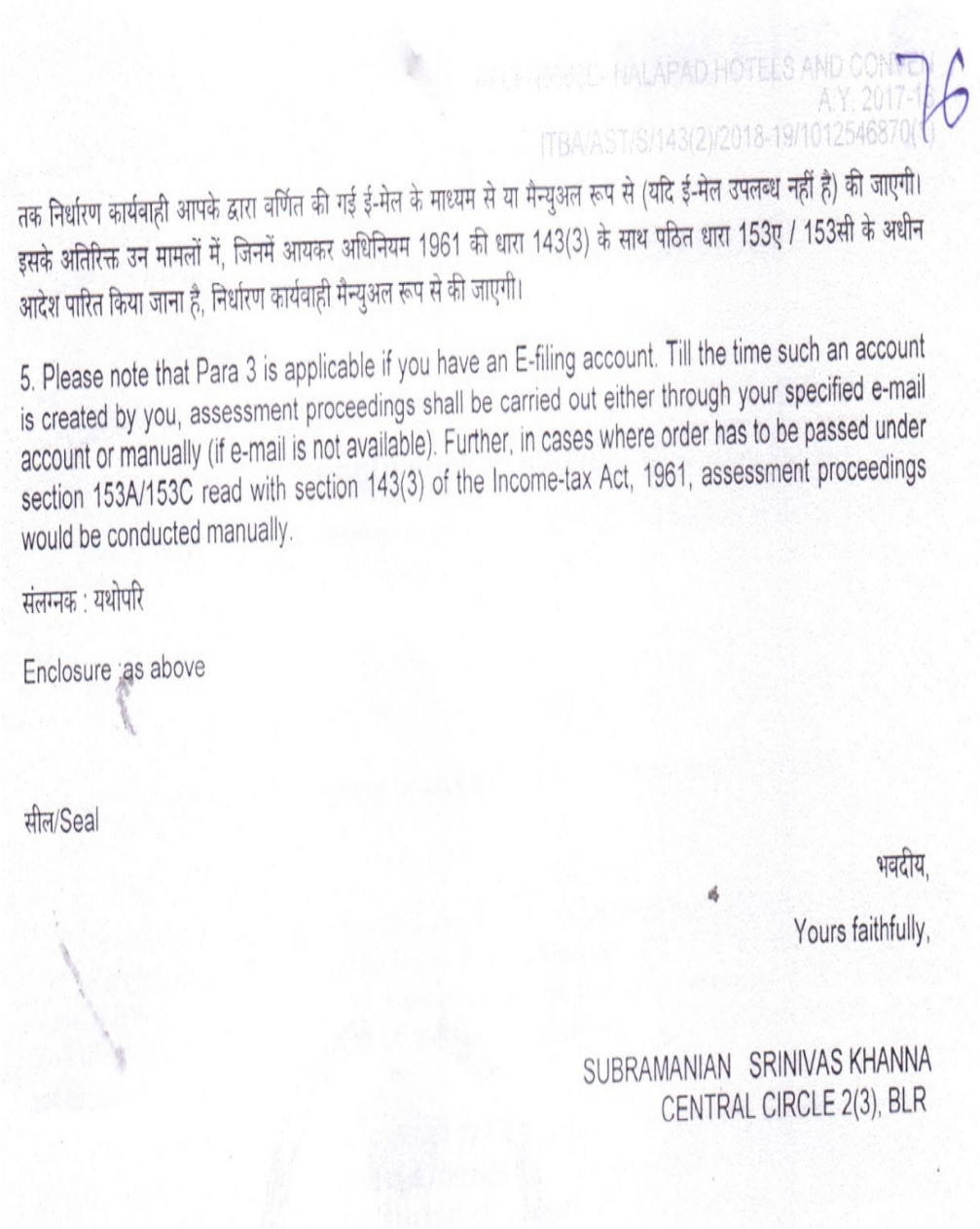
3. The evidence/information specified above has to be furnished online electronically through your E-filing account in *incometaxindiaefiling.gov.in*. Subsequent assessment proceedings shall also be conducted electronically through the 'E-Proceeding' facility of Income-tax Department. Further proceedings shall also be conducted electronically. A brief note on 'E-Proceeding' is enclosed for your kind reference.

4. निर्धारण कार्यवाही के दौरान, यदि आवश्यक होगा तो सूचना / दस्तावेज हेतु विशेष प्रश्नावली (यों) या अधियाचना (यों) को बाद में जारी किया जाएगा।

4. In course of assessment proceedings, if required, specific questionnaire(s) or requisition(s) for information/document shall be issued subsequently.

5. कृपया ध्यान दें कि यदि आपके पास ई-फाइलिंग खाता है तो आपके लिए पैरा 3 लागू है। आपके द्वारा स्वयं अपना खाता न बना लेने

Note: If digitally signed, the date of digital signature may be taken as date of document.
CENTRAL REVENUE BUILDING, QUEENS ROAD, BENGALURU, Karnataka, 560001
Email: BANGALORE.DCIT.CEN2.3@INCOMETAX.GOV.IN,



तक निर्धारण कार्यवाही आपके द्वारा वर्णित की गई ई-मेल के माध्यम से या मैन्युअल रूप से (यदि ई-मेल उपलब्ध नहीं है) की जाएगी। इसके अतिरिक्त उन मामलों में, जिनमें आयकर अधिनियम 1961 की धारा 143(3) के साथ पठित धारा 153ए / 153सी के अधीन आदेश पारित किया जाना है, निर्धारण कार्यवाही मैन्युअल रूप से की जाएगी।

5. Please note that Para 3 is applicable if you have an E-filing account. Till the time such an account is created by you, assessment proceedings shall be carried out either through your specified e-mail account or manually (if e-mail is not available). Further, in cases where order has to be passed under section 153A/153C read with section 143(3) of the Income-tax Act, 1961, assessment proceedings would be conducted manually.

संलग्नक : यथोपरि

Enclosure :as above

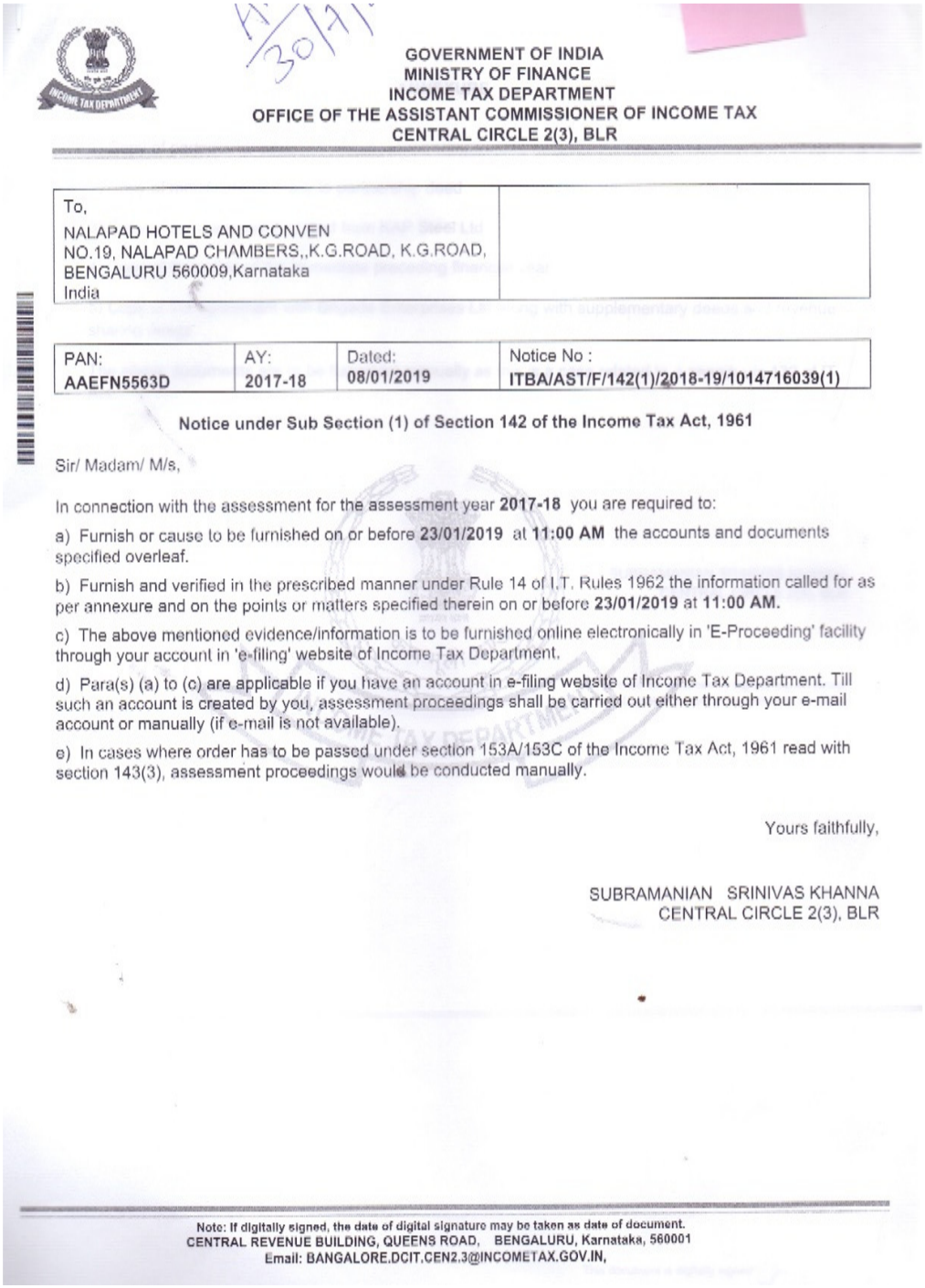
सील/Seal

भवदीय,

Yours faithfully,

SUBRAMANIAN SRINIVAS KHANNA
CENTRAL CIRCLE 2(3), BLR

11.2 He submitted that there was originally issue of notice u/s 142(1) of the Act on for the assessment year 2017-18 on 8.1.2019 to the assessee which reads as follows:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE 2(3), BLR

To,
NALAPAD HOTELS AND CONVEN
NO.19, NALAPAD CHAMBERS,,K.G.ROAD, K.G.ROAD,
BENGALURU 560009,Karnataka
India

PAN:	AY:	Dated:	Notice No :
AAEFN5563D	2017-18	08/01/2019	ITBA/AST/F/142(1)/2018-19/1014716039(1)

Notice under Sub Section (1) of Section 142 of the Income Tax Act, 1961

Sir/ Madam/ M/s,

In connection with the assessment for the assessment year **2017-18** you are required to:

a) Furnish or cause to be furnished on or before **23/01/2019** at **11:00 AM** the accounts and documents specified overleaf.

b) Furnish and verified in the prescribed manner under Rule 14 of I.T. Rules 1962 the information called for as per annexure and on the points or matters specified therein on or before **23/01/2019** at **11:00 AM.**

c) The above mentioned evidence/information is to be furnished online electronically in 'E-Proceeding' facility through your account in 'e-filing' website of Income Tax Department.

d) Para(s) (a) to (c) are applicable if you have an account in e-filing website of Income Tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available).

e) In cases where order has to be passed under section 153A/153C of the Income Tax Act, 1961 read with section 143(3), assessment proceedings would be conducted manually.

Yours faithfully,

SUBRAMANIAN SRINIVAS KHANNA
CENTRAL CIRCLE 2(3), BLR

Note: If digitally signed, the date of digital signature may be taken as date of document.
CENTRAL REVENUE BUILDING, QUEENS ROAD, BENGALURU, Karnataka, 560001
Email: BANGALORE.DCIT.CEN2.3@INCOMETAX.GOV.IN,

11.3 It is also submitted that there was further issue of notice u/s 142(1) of the Act on 28.1.2019 and 1.3.2019. Thus, the contention of the ld. A.R. is that records were handed over to the assessee

before issue of notice u/s 143(2) of the Act dated 24.9.2018 being the date on which notice u/s 143(2) of the Act was issued. In our opinion, time limit u/s 153B of the Act to be reckoned from this date i.e. 24.9.2018 and if we compute the time limit u/s 153B of the Act from the issue of initial notice u/s 143(2) of the Act, the time available to the ld. AO to pass assessment order u/s 153C of the Act is as per section 153B of the Act.

12. We have heard both the parties and perused the materials available on record. First of all, we will deal with whether assessment completed u/s 153C of the Act is valid without issuing notice u/s 143(2) of the Act after recording satisfaction u/s 153C of the Act, though the said notice u/s 143(2) of the Act was issued before recording satisfaction u/s 153C of the Act on 24.9.2018.

12.1 It is to be noted that originally, the assessee was assessed by ITO Ward 5(2)(4) Bangalore. It is only by way of notification dated 17.7.2018 r.w. notification dated 19.11.2019 u/s 127 of the Act that the powers were transferred from ITO Ward 5(2)(4) to ACIT Central Circle 2(3), Bangalore. Further, it is noted that the ld. ACIT Central Circle 2(3) has issued notice u/s 143(2) of the Act on 24.9.2018 for AY 2017-18 followed by notice u/s 142(1) of the Act dated 28.1.2019, 1.3.2019, 4.4.2019 and 6.5.2019. Subsequently, assessee was issued notice u/s 153C of the Act dated 24.3.2020 consequent to recording of satisfaction u/s 153C of the Act on the even date.

	Particulars	Date
1.	Notification issued u/s 127 wherein centralization of assessee has been done	17.7.2018
2.	Notice issued u/s 143(2) of the Act	24.09.2018
3.	Satisfaction recorded on	24.03.2020
4.	Notice issued u/s 153C of the Act	24.03.2020

12.2 From the above table, it is clear that notice u/s 143(2) of the Act has been issued by the ACIT, Central Circle-2(3), Bangalore after the case of assessee was centralized post search that took place in the place of M/s. Brigade Enterprises. The same is very clear from the satisfaction note recorded by the ld. AO, which is much after the date of issuance of notice u/s 143(2) of the Act. It is also noted that the assessment order was completed by the ld. AO u/s 153C r.w.s. 144 of the Act on 12.7.2021. It is implicit that the Central Circle who passed the assessment order u/s 153C of the Act assume jurisdiction only upon transfer of case from ITO Ward 5(2)(4) Bangalore vide order dated 17.7.2018. Thus, it was a necessity that before issuance of notice u/s 143(2) of the Act, ld. AO should have recorded the satisfaction for initiating proceedings u/s 153C of the Act. It is not happened in the present facts of the case. Hence, on this count also the assessment order is bad in law and to be quashed. Accordingly, we quash the impugned assessment orders.

12.3 Now we will examine passing of assessment order u/s 153C of the Act which is barred by time as provided in section 153B of the Act, which reads as follows as stood in the relevant assessment year:

"153B. Time limit for completion of assessment under section 153A.

(1)Notwithstanding anything contained in section 153, the Assessing Officer shall make an order of assessment or reassessment,—

(a)in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b) of sub-section (1) of section 153A, within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed;

(b)in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed:

***Provided** that in case of other person referred to in section 153C, the period of limitation for making the assessment or reassessment shall be the period as referred to in clause (a) or clause (b) of this sub-section or nine months from the end of the financial year in which books of account or documents or assets seized*

or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:

Provided further *that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2018,—*

(i)the provisions of clause (a) or clause (b) of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted;

(ii)the period of limitation for making the assessment or reassessment in case of other person referred to in section 153C, shall be the period of eighteen months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed or twelve months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:

Provided also *that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on or after the 1st day of April, 2019,—*

(i)the provisions of clause (a) or clause (b) of this sub-section shall have effect, as if for the words "twenty-one months", the words "twelve months" had been substituted;

(ii)the period of limitation for making the assessment or reassessment in case of other person referred to in section 153C, shall be the period of twelve months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed or twelve months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:

Provided also *that in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed and during the course of the proceedings for the assessment or reassessment of total income, a reference under sub-section (1) of section 92CA is made, the period available for making an order of assessment or reassessment shall be extended by twelve months:*

Provided also *that in case where during the course of the proceedings for the assessment or reassessment of total income in case of other person referred to in section 153C, a reference under sub-section (1) of section 92CA is made, the period available for making an order of assessment or reassessment in case of such other person shall be extended by twelve months:*

The authorisation referred to in clause (a) and clause (b) of sub-section (1) shall be deemed to have been executed,—

(a)in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued; or

(b)in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the Authorised Officer.

(3)The provisions of this section, as they stood immediately before the commencement of the Finance Act, 2016, shall apply to and in relation to any order of assessment or reassessment made before the 1st day of June, 2016:

Explanation.—In computing the period of limitation under this section—

(i)the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(ii)the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and—

(a)ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section; or

(b)where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Principal Commissioner or Commissioner; or

(iii)the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under sub-section (1) of section 142A and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer; or

(iv)the time taken in re-opening the whole or any part of the proceeding or in giving an opportunity to the assessee of being re-heard under the proviso to section 129; or

(v)in a case where an application made before the Income-tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which an application is made before the Settlement Commission under section 245C and ending with the date on which the order under sub-section (1) of section 245D is received by the Principal Commissioner or Commissioner under sub-section (2) of that section; or

(vi)the period commencing from the date on which an application is made before the Authority for Advance Rulings [or before the Board for Advance Rulings] under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Principal Commissioner or Commissioner under sub-section (3) of section 245R; or

(vii)the period commencing from the date on which an application is made before the Authority for Advance Rulings [or before the Board for Advance Rulings] under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Principal Commissioner or Commissioner under sub-section (7) of section 245R; or

(viii)the period commencing from the date of annulment of a proceeding or order of assessment or reassessment referred to in sub-section (2) of section 153A, till the date of the receipt of the order setting aside the order of such annulment, by the Principal Commissioner or Commissioner; or

(ix)the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of one year, whichever is less; or

(x)the period commencing from the date on which a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the Principal Commissioner or Commissioner under sub-section (1) of section 144BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the Assessing Officer.

***Provided** that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in clause (a) or clause (b) of this sub-section available to the Assessing Officer for making an order of assessment or reassessment, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly:*

***Provided further** that where the period available to the Transfer Pricing Officer is extended to sixty days in accordance with the proviso to sub-section (3A) of section 92CA and the period of limitation available to the Assessing Officer for making an order of assessment or reassessment, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly:*

***Provided also** that where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section to the Assessing Officer for making an order of assessment or reassessment, as the case may be, shall, after the exclusion of the period under sub-section (4) of section 245HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year"*

12.4 As per first proviso to section 153B of the Act, the time limit available to the ld. AO is 9 months from the end of the financial year in which books of accounts or documents, assets seized or requisitioned are handed over u/s 153C of the Act to the ld. AO having jurisdiction over such other person or the period mentioned in clause (a) or (b) of section 153(1) of the Act, whichever is later. In the present case, the assessment order was passed vide assessment order dated 12.7.2021 as per first proviso to section 153B(1) of the Act. The time to be reckoned from the issue of notice u/s 143(2) of the Act i.e. on 24.9.2018. The said financial year will end on 31.3.2018 and the time limit to complete the assessment should be

reckoned from the end of the financial year 31.3.2019 and the assessment as per limitation as prescribed u/s 153B of the Act to be completed on or before 31.3.2020 in the present case. However, the assessment order has been passed on 12.7.2021. The ld. D.R. pleaded before us that this was the Covid period and the extended time available to the ld. AO to pass assessment order u/s 153C of the Act. As such, the assessment order has been passed within the extended time available due to Covid period. In our opinion, this issue not required to be answered at this stage as we have already held that assessment order is bad in law in both counts i.e. (i) non issue of notice u/s 143(2) after issuing notice u/s 153C on 24.3.2020. (ii) Issue of notice u/s 143(2) of the Act on 24.9.2018 before recording satisfaction u/s 153C of the Act. In view of these facts we kept it open the time limit u/s 153B of the Act to pass the assessment order u/s 153C of the Act at this stage and the assessee is at liberty to agitate this ground at appropriate stage, if situation warrants.

13. With regard to ground No.6 the ld. A.R. submitted that the Ld. AO in Para 33 of the assessment order has relied upon the decision of the Honourable Supreme Court in the case of M/s. Orient Trading Co. Ltd, vs. CIT 224 ITR 371 (SC) and the Ld. CIT(A) has upheld the action of the AO without appreciating the fact that the said decision was rendered in the concept of exchange of Low rate share of old company to High rate share of the new company in which the old company was merged. The surrender of old company share in exchange of allotment of High rate new company share was held as a transfer by way of exchange and the difference of the value between the surrendered old shares of the old company in exchange to shares of new company was held as Business income chargeable to Tax in the year of exchange since the shareholder was a dealer in shares as a main Business.

On the contrary the assessee submits that said decision was distinguishable on Law and fact of that case and therefore the said decision is not squarely applicable to the facts and circumstances of the assessee. The Ld. CIT(A) was misdirected by misleading the above decision in confirming the action of the AO as per Para 7 of the Appellate Order.

13.1 In this regard he submitted that the exchange of old company shares to new company shares has taken place in the same previous year, whereas, in the case of the assessee such an exchange did not take place simultaneously in any of the years. It is evident from the JDA dated 17-01-2008 that a portion of the land was agreed to be transferred in favour of the developer in lieu of consideration of Built up area. The JDA took place in the F.Y. 2007-08 relevant to the A.Y. 2008-09 and the receipt of Built up area took place after a lapse of nearly eight years from the date of JDA. However, the Ld. AO considering the Occupancy Certificate dated 21-07-2016 has held that the exchange of assets took place in the F.Y. 2016-17 relevant to the A.Y. 2017-18 and accordingly the arbitrary income was subjected to Tax. For the sake of clarity the assessee submits that the issues relating to the completion Certificate and Occupancy Certificate were based upon the amended provision of Section 45(5A) of the Act applicable for the A.Y. 2017-18 onwards in respect of the JDAs executed on or after the F.Y. 2016-17. However in the case of the -assessee the JDA was executed on 17-01-2008 prior to the insertion of an amended provision Section 45(5A) of the Act and more so the said provision is applicable in respect of the individuals and HUFs only and not to other entity. It is an undisputed fact on record that the assessee is a partnership firm and therefore the amended provision of Section 45(A) is inapplicable in all respect. He submitted that in view of the above facts and circumstances the decision of the Honourable Supreme Court in the case of M/s. Orient Trading Co. Ltd, relied upon by the AO and concurred by the Ld. CIT(A) is opposed to the Law and facts of the case and hence the findings of the Ld. CIT(A) be reversed.

14. The ld. D.R. submitted that in the case of M/s. Oriental Trading Company Ltd. (224 ITR 371) (SC), wherein held that the difference

between book value of original asset and market value of new asset received in exchange of original asset held as stock in trade is to be taxed as business income. According to ld. D.R., this judgement is squarely applicable to the case in hand.

15. We have heard the rival submissions and perused the materials available on record. Since we have already held that the assessee's case falls under the purview of section 2(47)(iv) of the Act as the assessee has converted the capital asset into stock in trade vide JDA dated 17.1.2008 and ld. AO has to compute the income of assessee by applying the provisions of section 45(2) r.w.s. 2(22B)of the Act when the assessee has actually sold the stock in trade as discussed in earlier para nos.7.31 to 7.37 while adjudicating ground No.2 in this order. Accordingly, we hold that this judgement relied by the ld. CIT(A) have no application to the facts of present case. This ground of appeal of the assessee is allowed.

16. With regard to ground No.7 taxing the income of the assessee as business income in assessment year 2016-17, since we have already held in ground No.2 that the income of the assessee to be computed in terms of section 45(2) of the Act r.w.s. 2(47)(iv) of the Act. As such, there cannot be any determination of income in the AY 2017-18 and the income to be charged as discussed in ground No.2 in the AY when there was actual sale of assessee's share of constructed area wholly and partially in any assessment year as discussed in para 7.31 to 7.37 of this order. Accordingly, this ground of appeal of the assessee is allowed.

17. With regard to ground no.8 on application of section 45(5A) of the Act, the ld. AO of the opinion that assessee got Occupancy Certificate on 21.7.2016 and by taking the clue from section 45(5A) of the Act, he brought the income arising out of this transaction in the assessment year 2017-18 and applicable for AY 2018-19 only. We note that the ld. AO cannot invoke provisions of section 45(5A) of the Act, which was introduced by Finance Act, 2017 w.e.f. 1.4.2018. Further, it is applicable to an assessee who is an individual or Hindu Undivided Family from the transfer of capital asset being land and building or both under the specified agreement for the purpose of obtaining of capital gain. In the present case, the assessee neither individual or HUF and the income is

not only chargeable under the head "Capital Gain". In other words, assessee is a partnership firm and the income emanated from the impugned JDA is chargeable under the head "capital gain" as well as "business income" as there was a conversion of capital asset into stock in trade and the provisions of section 45(2) of the Act is applicable. Thus, the provisions of section 45(5A) of the Act cannot be invoked in the present case. as we already held in earlier para while disposing of the ground No.2 in this order that there was no application of section 45(5A) of the Act as this section was inserted by Finance Act, 2017 w.e.f 1.4.2018. In view of this, we allow the ground No.8 in these appeals.

18. With regard to ground No.9 the ld. A.R. submitted that the Ld. CIT(A) has held that the delivery of possession of the Built up area in the F.Y. 2016-17 relevant to the A.Y. 2017-18 constituted transfer without appreciating the fact that the passing of consideration is of no criterion for chargeability of Capital Gain Tax. The Built up area agreed to be receivable without Time Limitation as per recitals of JDA cannot be construed as a ground for transfer based on alleged delivery of possession. In this regard the assessee begs to place reliance on the advance Ruling in the case of Jasbir Singh Sarkaria cited (supra) that passing of consideration was of no criterion for exigibility of Capital Gain Tax and the emphasis was laid down that the transfer/deemed transfer of the asset was the criterion for chargeability of Capital Gain Tax and not the passing of consideration. However the Ld. CIT(A) has held that the said Advance Ruling was applicable in the case of transfer of Capital asset chargeable to Tax u/s 45(1) of the Act and said to be not applicable in the case of Stock in Trade. He submitted the relevant portion of the Advance Ruling which was reproduced in Para 11 on page 37 and 38 of the impugned appellate order. However the CIT(A) has not appreciated the Advance Ruling which is squarely applicable to the facts and circumstance of the case of the

assessee and therefore the findings of the Ld. CIT(A) needs to be reversed, in view of the fact that as per the Advance Ruling the actual date of taking physical possession need not to probed into. In this view of this matter, he submitted that the Ld. AO and Ld. CIT(A) were not justified to probe the case of actual delivery of the Built up area based upon the Occupancy Certificate dated 21-07-2016 without appreciating the fact that the transfer of the original asset being the Stock in Trade was transferred in the F.Y. 2007-08 as is evident from the JDA dated 17-01-2008 and therefore the question of chargeability of Capital Gain Tax for the A.Y. 2017-18 was based upon a misplaced view of the Authorities below.

19. The ld. D.R. submitted that the Occupancy certificate has been obtained by the Developer vide OC dated 21.7.2016, which falls under AY 2017-18 and same has been considered to tax the income arising out of the impugned transaction.

20. We have heard the rival submissions and perused the materials available on record. This ground is decided in favour of the assessee as discussed in ground No.2 above of this order as the income of the assessee is to be determined u/s 45(2) of the Act as discussed in para 7.31 to 7.37 of this order. Accordingly, ground No.9 of the assessees are allowed.

21. Ground No. 10 is with regard to Quantification of Consideration on SR Value. In this regard, the ld. A.R. without prejudice to the legal ground urged above submitted that the Ld. CIT(A) was not justified to quantify the alleged consideration of the Built up area on SR Value merely on the ground of non clarity of the cost of acquisition which was unable to be discernable even though the Builders cost was available on records and the cost of acquisition was found entered in the Books of Account. Therefore he submitted that the consideration arrived at Rs.3085.50 per sq. ft. was unjust

and unreasonable and hence the order of the Ld. CIT(A) is liable to be reversed.

22. The ld. D.R. submitted that the assessee cannot have any grievance on this issue since the ld. CIT(A) remitted the issue to the file of ld. AO to verify the guideline value/circle rate at Rs.3,085.50 p.sqft. by verifying the same as this guideline value/circle rate was not available at the time of passing the assessment order.

23. We have heard the rival submissions and perused the materials available on record. This ground is decided in favour of the assessee as discussed in ground No.2 above of this order as the income of the assessee is to be determined u/s 45(2) of the Act as discussed in para 7.31 to 7.37 of this order. Accordingly, ground No.10 of the assessees is allowed.

24. With regard to ground No.11 the ld. A.R. submitted that the Ld. CIT(A) has held that the closing stock value of the Built up area credited has to be considered to arrive at the consideration. In this regard the Ld. CIT(A) has not appreciated the fact that once the closing stock is credited, a debit entry is to be passed as per the double entry system of Accounting as a result of which the transaction was Revenue Neutral. However the Ld. CIT(A) has not considered the submissions of the assessee and therefore he submitted that the findings being against the Principles of accounts is liable to be reversed.

25. The ld. D.R. relied on the order of lower authorities.

26. We have heard the rival submissions and perused the materials available on record. As discussed in ground No.2, there is no determination of income in the assessment year under consideration and the income has to be computed on the actual sale of stock in trade as discussed in earlier para 7.31 to 7.37 of this order. Accordingly, this ground of assessees is also allowed.

27. With regard to ground No.12 the ld. A.R. without prejudice to the Legal ground as submitted above, stated that the Ld. CIT(A) was not justified in determining the extent of Built-up area including the Car parking slot and area attributable to MLCP Block which is situated in the Stilt Floor not intended to be sold. Therefore, the extent determined in respect of Car parking slot measuring 2,32,468.17 Sq. Ft. and the MLCP Block measuring 84,745 sq. ft. was unjust and unreasonable. Therefore, he submitted that the findings of the Ld. CIT(A) as mentioned in Para 11 to 14 of the appellate order is liable to be reversed.

28. The ld. D.R. relied on the para 11 to 14 of the ld. CIT(A)'s order, which reads as follows:

"11. When it comes to the area the AO is directed to adopt the area as 2,32,468.17Sq. ft excluding the area of car park. (This figure has been adopted form occupancy certificate dated 21.07.2016)

12. The appellant submits that the value of each car park is 1.5 lakhs. But the appellant has not given any basis for the same. The AO may adopt a value of Rs 2.5 lakhs towards the value of each car park received. As per the occupancy certificate number of car parks received 547.

13. It is seen from the occupancy certificate that, the built-up area of the basement floor admeasuring 10690.78 sq. ft has 104 car parking, 354 number of mechanical car parking, STP, DG room, Service room, Pump room etc. As per the BBMP buildings by laws car parking space is to be 18 sq. mtr. So, for 104 normal car parking 1872 sq. mtr would have been utilized. That leaves 8818 sq mtr space for other utilities. The appellant's share of 50% would be 4409 sq. mtr which comes to 4,74,58.08 sq. ft. This 47,458.08 sq.ft of amenities should also be valued at the guideline value in addition to 2,32,468.17 sq.ft.

14. In MLCP block the total built up area is 14902.32 sq. mtrs. This has 443 this has 443 car parks which should occupy 7974 sq. mtrs. of space. This leaves 6928 sq mtrs for lift, lobby, staircase etc. The appellant's share would be 3464 sq. mtrs which comes to 37286.19 sq. ft which again has to be valued at guideline value in addition to the above two i.e. 232468.17 sq. ft. + 47458.08 sq. ft + 37286.19 sq. ft = 3,17,212.44.

29. We have heard the rival submissions and perused the materials available on record. In our opinion, the income generated from this transaction to be computed while on actual sale of super built up area allotted to the present assessee along

with parking area as discussed in para 7.31 to 7.37 of this order. This ground of appeals of the assessee is allowed.

30. In the result, assessee's appeal in ITA No.1298/Bang/2024 is allowed.

31. The facts and circumstances in the case of M/s. Nalapad Properties in ITA No.1297/Bang/2024 for the AY 2017-18 is identical to the facts considered in the case of M/s. Nalapad Hotels & Conventions Centre, Bangalore in ITA No.1298/Bang/2024, being so, applying the ratio laid down in ITA No.1298/Bang/2024, the appeal of the assessee in ITA No.1297/Bang/2024 is also allowed.

32. Since we have disposed of both the appeals itself, the stay petitions filed by the respective assessees in SP Nos.33 & 34/Bang/2024 are dismissed as infructuous.

33. In the result, ITA Nos.1297 & 1298/Bang/2024 of the assessee's appeals are allowed and SP Nos.33 & 34/Bang/2024 filed by the assessees are dismissed.

Order pronounced in the open court on 16th Aug, 2024

Sd/-	**Sd/-**
(Soundararajan K.)	**(Chandra Poojari)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 16th Aug, 2024.
VG/SPS
Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5 Guard file

By order

Asst. Registrar,
ITAT, Bangalore.