

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकर अपील सं. ITA No.1352/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2016-17)

Shri Amar Rahman 547, Ideal Home Township 12 th Cross, Rajarajeswari Nagar Mysore Road, Bengaluru-560 098.	बनाम/ Vs.	ACIT Corporate Circle-1(1) Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AADPR-7258-N		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr. Quadir Hoseyn (Advocate) & Dr.L.Natarajan (CA)- Ld.ARs
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri Nilay Baran Som (CIT) - Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	12-06-2024
घोषणा की तारीख / Date of Pronouncement	:	04-09-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2016-17 arises out of the order of learned Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 03-11-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 30-12-2018. In the assessment order, Ld. AO made addition of Rs.32.40 Crores under the head Long-Term Capital Gain (LTCG) and made another addition of Rs.1.82 Crores under the

head Short-Term Capital Gains (STCG). The grounds of appeal raised by the assessee read as under: -

1. The order of the CIT(A), confirming the assessment of Long-Term and Short-Term Capital Gains in the hands of the assessee, is contrary to law, erroneous and unsustainable on the facts of the case.

Long-Term Capital Gains Rs.32,40,02,829/-:

2. The CIT(A) erred in his conclusion that the Long-Term Capital Gains arising on the retained sales consideration in respect of transfer of an industrial undertaking (containing four immovable properties) through the medium of share transfer to another body corporate was assessable in the hands of the individual assessee.

3. The CIT(A) failed to appreciate that in substance, the transfer of four immovable properties along with industrial buildings was between M/s. A.S.Cargo Movers Pvt. Ltd. and M/s. Indo Space A.S. Industrial Park Pvt. Ltd. (formerly known as Anmol Logistics Park Pvt. Ltd.) and that the assessee-individual was as Managing Director of M/s. A.S.Cargo Movers i.e. the transferor-company and as individual holding 49% shares in M/s. Indo Space A.S. Industrial Park Pvt. Ltd. (formerly known as Anmol Logistics Park Pvt. Ltd.), i.e. transferee-company, acted in the fiduciary capacity to effect the transfer of the said four immovable properties along with industrial buildings through registered document and hence there was no justification for assessing LTTCG, arising on retained consideration in the hands of the individual assessee, since in fact and truth the consideration for share transfer represented the retention price of the said properties.

4. The CIT(A) further failed to appreciate that the consideration retained and the retention of 10% of the total consideration was subject to or aimed at the effective transfer of lands through registration and towards completion of requisite formalities respectively and having due regard to this there was no justification for assessment of LTTCG in the hands of the assessee.

5. The CIT(A) further failed to appreciate that instead of reading the share subscription and shareholders agreements in the proper perspective, picking and choosing one or two clauses out of context and attributing ownership to the individual-assessee in respect of transfer of an undertaking comprising of four properties with old represented by share transfer for the purpose of roping in retained consideration in the hands of individual-assessee was unsustainable in law as well as on facts.

6. The CIT(A) further failed to appreciate that the acquisition of shares from transferee-company by the assessee, the Managing Director, was incidental and necessary for effecting smooth transfer of the said four immovable properties with Industrial Buildings by fulfilling various conditions such as before Registration and hence ignoring the fiduciary-capacity of the assessee and treating him as transferor per se for assessment of LTTCG arising on account of retained consideration was unsustainable in law as well as on facts.

7. The CIT(A) further failed to appreciate that the 90% LTTCG arising on retained consideration was offered and assessed in the hands of the transferor-company and having accepted the same it was not open to the Assessing Officer and the CIT(A) to assess the same again in the hands of individual-assessee.

8. The CIT(A), in any view of the matter and in any event and having due regard to the written submissions made before him and the Assessing Officer,

ought to have accepted the case of the assessee and held that 90% of the LTCG arising on retained consideration was rightly assessable in the hands of the transferor-company as mentioned in para 2.11 of the assessment order and deleted the addition.

9. The CIT(A) failed to appreciate that, as far as 10% of the gain on retained consideration through transfer of shares, in transferor company was concerned, the investment for the purchase of 49% share was provided by transferor-company and the same was returned with added-value to the transferor-company when the shares sold/transferred at the behest of transferor-company and hence the entire retained consideration for transfer, save 10%, ought to have been assessed only in the hands of the transferor company, as has been correctly admitted by the transferor- company.

10. The CIT(A) further failed to appreciate that the Long-Term Capital Gains relating to the 10% of retained consideration in the transferee-company was offered and assessed in the hands of the assessee and hence there was no justification for assessing the balance LTCG of 90% in the hands of the assessee, especially when the same had been offered and assessed in the hands of A.S. Cargo Movers Pvt. Ltd.

11. The CIT(A) without prejudice to the above grounds, ought to have held that, having accepted 90% of the retained consideration in the transferor-company under LTCG, there was no justification for assessing the same again in the hands of the assessee, which amounts to Double Taxation and clearly impermissible.

Short-Term Capital Gains Rs.1,82,96,019/-:

12. The CIT(A) erred in confirming the Assessing Officer's assessment of STCG in the hands of the individual-assessee in respect of transfer of pathway from individual to Indospace Nelamangala, when the pathway is an agricultural land as per State Government revenue records.

13. The CIT(A), without prejudice to the above grounds, further failed to appreciate that the said land in revenue records was notified as agricultural land and that it was outside the purview of Capital Asset as defined under the Act and hence assessing the same under STCG was untenable in law.

14. The CIT(A) further failed to appreciate that in the absence of cost of acquisition for pathway as such, assessing the same under STCG was unsustainable in law as well as on facts.

15. The CIT(A) in any view of the matter and having due regard to the written submissions before CIT(A) and Assessing Officer, ought to have accepted assessee's case and cancelled the assessment of STCG.

2. The Ld. AR advanced arguments and drew attention to various documents and agreements to support the case of the assessee. The Ld. AR also filed written submission which have duly been considered. The Ld. CIT-DR, on the other hand, supported the orders of lower authorities and justified the impugned additions. Having heard rival

submissions and upon perusal of case records, our adjudication would be as under.

3. The assessee being resident individual acted as Managing Director of an entity namely M/s A.S. Cargo Private Ltd. ('AS Cargo' in short). M/s AS Cargo intended to sell some of its warehouses to another entity viz. M/s Indospace AS Industrial Park Private Ltd. (formerly known as Anmol Logistics Parks Private Ltd.) ('Indospace' / 'Anmol' in short). In order to affect the transfer and to facilitate the same, 49% of shares were initially purchased in the name of the assessee from the transferee company viz. M/s Indospace for which money was stated to be paid by M/s AS Cargo. By virtue of this, the assessee became shareholder of the transferee company. After effecting the transfer, the assessee came out of the transferee company and he was paid for the shares he was holding in the transferee company. The said money was ultimately paid over to the transferor company.

4. Assessment Proceedings

In the return of income, the assessee admitted income of Rs.317.67 Lacs. During scrutiny proceedings, two issues were identified by Ld. AO i.e., (i) LTCG on sale of shares; (ii) STCG on Sale of Agricultural land.

Long-Term Capital Gains on Shares

4.1 It transpired that the assessee sold shares of an entity M/s Indospace and earned LTCG for Rs.35.08 Crores out of which a sum of Rs.32.40 Crores was reduced as 'sharing of gains' as paid to M/s AS Cargo. The assessee acted as Managing Director of M/s AS Cargo. The assessee furnished financial statements of M/s AS Cargo wherein receipt of said sum was explained vide Note No. 31 to the accounts. It was stated that M/s AS Cargo entered into an unincorporated joint

venture agreement (UJV) on 27-03-2012 with the assessee. As per the terms, the assessee was assigned to hold four lacs equity shares of face value of Rs.10/- each and 1.10 Lacs convertible debentures of face value of Rs.10/- each of M/s Indospace and M/s AS Cargo had undertaken to complete the warehouse under construction which were transferred as per the specification of M/s Indospace. Total investment of Rs.51 Lacs was funded by M/s AS Cargo. As per UJV agreement, the sale consideration of sale of shares was to be shared between M/s AS Cargo and the assessee in the ratio of 9:1 respectively. After the completion of construction of warehouse, the share of M/s Indospace was valued at Rs.897.26 per share and the shareholding in M/s Indospace was diluted by transferring equity shares to another entity by the name M/s Indospace Venture V. Mauritius (IVV in Short).

4.2 The Ld. AO held that the assessee relied upon certain arrangement carried out as per UJV agreement. In terms of the said agreement, the assessee was provided with the funds to invest in M/s Indospace in trust and the final consideration was to be shared in the ratio of 9:1. Upon perusal of bank statements, it was noted that the investment was funded by M/s AS Cargo to the assessee. However, Ld. AO, disregarding the terms of UJV, held that entire sale consideration was to be taxed in the hands of the assessee. The Ld. AO supported the same by rendering a finding that in the share transfer agreement (STA), the assessee was mentioned as the sole and beneficial owner of the shares. There was no mention of M/s AS cargo in the agreement. If indeed the assessee was holding the shares in the fiduciary capacity in the trust of M/s AS cargo, that fact would have been mentioned in the share transfer agreement. Therefore, the assessee's aforesaid claim was not to be accepted.

4.3 The Ld. AO further held that UJV agreement was only a device to mask the actual nature of transaction. The money to the assessee was provided by M/s AS Cargo as a loan only. Though the fact of investment was mentioned in the financial statements of M/s AS Cargo, however, the said noting was missing in the financial statements as submitted during the course of assessment proceedings of M/s AS Cargo. Therefore, the assessee provided a modified statement with a qualifier added as an after-thought to buttress the arguments. The provision of fund to the assessee was only by way of loan which was subsequently repaid after the sale consideration from issue of shares was received by the assessee. Further, the assessee had a huge outstanding of loans advanced to M/s AS Cargo and the transactions were only in the nature of routine advances from the company to its directors. The transaction was so arranged so as to reduce overall tax liabilities. The amount received as sale consideration by M/s AS Cargo was used to set-off the losses thereby negating tax incidences with respect to the said transaction. The tax incidence would have been more had the gains were offered by the assessee in his own hands. In such a case, substance of transaction would prevail over its form as held by Hon'ble Supreme Court in the case of Karanpura Development Co. Ltd. (44 ITR 362). Finally, the reduction in gains as claimed by the assessee was denied and entire gains were assessed in the hands of the assessee.

5. Short-Term Gains on Agricultural Land

5.1 The assessee received sale consideration of Rs.182.96 Lacs towards transfer of right of way in respect of an agricultural land. The said amount was claimed as capital receipts not chargeable to tax. The assessee submitted that it pertained to agricultural land which was not

capital asset. Further, what was transferred was only a right of way and not transfer of a land which would be capital receipt not chargeable to tax. The assessee submitted that the subject property was classified as agricultural property in the Government records. In the sale deed, it was mentioned as agricultural land only. The assessee further submitted that for a charge under the head capital gains, the capital asset must have cost which must be conceivable. In case of inconceivable cost, no gains could be computed as per the decision of Hon'ble Apex Court in the case of **B.C. Srinivasa Shetty (128 ITR 294)**.

5.2 However, Ld. AO rejected the aforesaid claim on the ground that no agricultural activities were carried out on the said land. The land was situated close to urban conglomerate of Bangalore wherein industrial and real estate boom had been at extraordinary rapid pace. The adjacent land was converted into industrial lands. The land was held as capital investment by the assessee though it was not officially converted in the land record and it continued to be classified as dry agricultural land though it appears to have lost its character. The Ld. AO, upon perusal of terms, also alleged that it was only a sale of land which had been cloaked under the garb of grant of right of way on the said property. Relying upon the decision of Hon'ble High court of Madras in the case of **A. Lalichan (104 Taxmann.com 30)**, it was held by Ld. AO that the land could not be treated as an agricultural land. Accordingly, entire sale consideration was brought to tax as short-term capital gains.

5.3 Aggrieved as aforesaid, the assessee assailed both the additions before Ld. CIT(A) which stood disposed-off vide impugned order dated 03-11-2023.

Appellate Proceedings

6.1 The Ld. CIT(A), after considering the observations of Ld. AO as well as detailed written submissions filed by the assessee, rendered its adjudication from Page No.24 onwards. The underlying issue of computation of LTCG was summarized by Ld. CIT(A) as under: -

- that he need not get Joan of Rs.51 lakhs from M/s AS Cargo for investment in captioned shares of M/s Anmol as he had credit balance of Rs.49.53 crores in M/s AS Cargo,
- that he had made such investment on behalf of M/s AS Cargo is supported in various clauses of Share Subscription and Shareholders Agreement dated 27.03.2012 (hereinafter referred to as "the SSSA") and that captioned shares were bought in his name only to impress upon him to perform the obligation under the said agreement (SSSA) for smooth transfer of immovable properties of M/s AS Cargo to M/s Anmol after fulfilling conditions,
- that the UJV Agreement is valid as much as all the sale proceeds on transfer of shares were utilised by M/s AS Cargo to liquidate its dues and it had accounted this fact in its books,
- that Schedule 2 of SPA dated 30.04.2015 is purely formal and the restrictive covenants attached to his Mr. Amar's share is not mentioned as it was unnecessary and does not serve any purpose and moreover the purchaser need not be concerned with the strings attached as long as its title is clear,
- that the records of M/s AS Cargo would demonstrate the unassailable fact that the sale proceeds of shares of Mr. Amar, in fact and truth belonged to the company and used as such which has been recognised in its (M/s AS Cargo) books,
- that the provision of SSSA dated 27.03.2012 overrides all other agreements, basic feature of which remained unaltered so much so Mr. Amar acted only as catalyst on behalf of M/s AS Cargo to effect smooth transfer of immovable properties of M/s AS Cargo,
- that, therefore, 90% of LTCG returned in the books of M/s AS Cargo is correct and this has been duly assessed and the balance 10% of LTCG in his hands is in tune with the UJV Agreement and if 90% of LTCG is also assessed in his hands then it will amount to double taxation as the same has already been offered and assessed in the hands of M/s AS Cargo.

6.2 The Ld. CIT(A) noted the terms of Share Purchase Agreement (SPA) entered into between the assessee, IVV and M/s Anmol which was entered on 30-04-2015 for sale of entire shareholding of the assessee in M/s Anmol to IVV. The shares were agreed to be sold for a consideration of Rs.36 Crores. There was no dispute that the said shares were purchased by the assessee on 26-03-2012 for Rs.40 Lacs and the same were held in the name of the assessee. The claim of the assessee was that he was holding such shares in the fiduciary capacity

for the beneficial owner i.e., M/s AS Cargo and LTCCG corresponding to 10% of the shareholding had arisen in his own hands whereas the balance 90% had arisen in the hands of M/s AS Cargo as per the terms of Unincorporated Joint Venture Agreement (UJV) dated 27-03-2012 entered into by the assessee with M/s AS Cargo. The same was to be read along with the terms contained in the SPA dated 30-04-2015 and Share Subscription and Shareholders Agreement (SSSA) which was entered into between assessee, M/s Anmol and IVV on 27-03-2012. The contention of the assessee was that the nature of the subject sale transaction of captioned share was not merely a sale transaction of shares between him and M/s Anmol but actually it was sale of the immovable properties (in Durainallur, Pollivakkam, Vallam and Pune) of M/s AS Cargo to M/s Anmol and completion of certain preconditions to be fulfilled by him with respect to such properties and the same could be properly understood from the combined and conjoint reading of relevant clauses of SPA (dated 30-04-2015), UJA (dated 27-03-2012) and SSSA (dated 27-03-2012). It was further submitted that the SSSA was with respect to subscription of shares of M/s Anmol to M/s IVV which was entered into on 27-03-2012 and he was also a party to this Agreement and various terms contained in this Agreement clearly bring out that the release of corresponding subscription consideration in various tranches by M/s IVV to M/s Anmol was subject to fulfilment of "Property Conditions" stipulated in the Agreement in general and in Schedule-5 of the same, in particular. These "Property Conditions" to be fulfilled by the appellant were with respect to immovable properties held by M/s AS Cargo which were to be transferred to M/s Anmol. Thus, the assessee endeavored to underline the issue of his acting in the fiduciary capacity

on behalf of M/s AS Cargo primarily for fulfilment of the "Property Conditions" in respect of properties held by M/s AS Cargo for ensuring smooth execution of the SSSA and transfer / sale of the immovable properties from M/s AS Cargo to M/s Anmol for final consideration of Rs.386.80 crores. It was further stated that out of such consideration, an amount of Rs.36 crores was withheld by M/s IVV / M/s Anmol pending completion of certain documentation and non-receipt of certain approvals. The assessee also submitted that this arrangement was worked out with the whole objective of avoiding any legal hurdles as he being Managing Director in M/s AS Cargo and also a shareholder in M/s Anmol and this dual role ensured legal certainty to the transaction. On the similar lines he had explained his submission with respect to acting in fiduciary capacity on behalf of M/s AS Cargo in respect of the SPA dated 30-04-2015 which also spelt out the "Conditions Precedent" to be fulfilled by the assessee (the Seller) for ensuring smooth execution of this SPA entered into between him and M/s IVV for sale of captioned shares of M/s Anmol.

6.3 It was further noted by Ld. CIT(A) that the assessee primarily relied on UJV to support its submissions. It was submitted that UJV clearly spelt out the reasons for such arrangement viz. the assessee agreed to purchase the captioned shares of M/s Anmol using funds advanced by M/s AS Cargo and further accepted to keep 90% of the investment in trust for the benefit of M/s AS Cargo and that he agreed and accepted that M/s AS Cargo is the beneficial and ostensible owner of the 90% of the shares allotted by M/s Anmol in his name. However, Ld. AO rejected the same on the ground that this agreement was between the assessee and M/s AS Cargo in which he was Managing Director and therefore, the

same could only be treated as a device to mask the actual nature of the transaction. The Ld. AO has also highlighted that the SPA dated 30-04-2015 (clause (i) Schedule 2) mentioned that the assessee himself was the sole and beneficial owner of the shares and there was no mention of M/s AS Cargo anywhere. The assessee contested the same and submitted that such conclusion was patently incorrect and such drafting was done to avoid clouding of title for the purchaser (M/s IVV) who only required clean and marketable title. The observation of Ld. AO was fallacious and out of context.

6.4 However, Ld. CIT(A) chose to concur with the observations of Ld. AO. It was further observed that SSSA dated 27-03-2012 between the assessee, M/s Anmol and M/s IVV primarily catered to the subscription of shares of M/s Anmol by M/s IVV and there were terms with respect to fulfilment of conditions by the assessee with respect to properties held by M/s AS Cargo. But this was in 2012 and directly importing the same ratio / purpose in the year 2015 was not convincing. There was a marked distinction between SSSA and SPA since SSSA was primarily an agreement for Subscription of shares of M/s Anmol to M/s IVV and the role of the assessee-appellant therein was in the capacity of only obligating to undertake the fulfilment of "Property Conditions" mentioned therein which was abundantly clear from various clauses of the SSSA. In contrast, in SPA which was an agreement for sale of captioned shares by the assessee himself, the role of the assessee was undisputedly that of seller himself. It was also observed that the "Conditions Precedent" in the SPA dated 30-04-2015 were not exactly akin to the "Property Conditions" mentioned in SSSA dated 27-03-2012. In addition to this, it was also stated that UJV dated 27-03-2012 was not an after-thought and

it was contemporary document since it contained the details of payments made for purchase of the captioned shares. However, the said fact, on standalone basis, would not establish its validity. To support the said conclusion, Ld. CIT(A) referred to para-1 of SPA which reinforce that the shares were sold free of encumbrances. The Ld. CIT(A) also held that the qualifier to the financial statements was added as an after-thought only. Though the assessee contended that at the time of preparation of draft accounts of M/s AS Cargo for finalization, detailed explanation on every aspect was appended and that in the Board Meeting of M/s AS Cargo, it was decided that the detailing about UJV was not required as the same was approved by the Board and no specific reference needed to be made. It was further submitted that while submitting details of accounts for AY 2012-13, by sheer inadvertence the draft accounts were given sans word-by-word comparison. It was further submitted that notwithstanding the said omission in the finally submitted Annual Report to Registrar of Companies (ROC), the fact remain that agreement referred to in the draft accounts does not lose significance and it was in full force and binding on all the parties to the agreement. It has also been added that such details were required at the fag-end when the assessment was getting time barred and barely three days were given to ferret out substantial details and such draft accounts were given in a haste. However, all these submissions were rejected by Ld. CIT(A) and the action of Ld. AO was confirmed.

6.5 On the issue of computation of gains on agricultural land, Ld. CIT(A) noted that it was the submission of the assessee that the impugned amount was received for parting with the right of way on agricultural land. The land was an agricultural land which was borne out

of official records of Karnataka State Government. Further, as per aerial survey, this land was situated about 10.2 Kms away from nearest city of Nelamanagla. The land never ceased to be agricultural land even though intense activities were not carried out regularly, nevertheless, coconut trees were grown therein.

6.6 The Ld. CIT(A) noted that the assessee as a grantor entered into an agreement for Grant of Right of way on 19-05-2015 with M/s Indospace Nelamangala Industrial Park Pvt. Ltd. (as Grantee) for a consideration of Rs.182.96 Lacs. However, Ld. AO concluded that the actual transaction was nor transfer of right of way but it was that of sale of land. It was the contention of the assessee that since the said right of way is on a land which is an agricultural land from where he was regularly deriving agricultural income as evidenced by transportation bills, VHN notes, Consignment notes and bills of delivery, the income so earned would be agricultural income only. The Ld. AO clearly recorded that the assessee failed to submit any evidence in support of growing of coconut trees. On arguments of distance, Ld. AO relied on the decision of Hon'ble Apex Court in the case of CWT V. Officer-in-charge, Courts of Wards (1976) 105 ITR 133 (SC) to hold an opinion that though the entry in the revenue record is material evidence to show the nature of land, however, it is not conclusive and further evidence is required to show that the land in question had not lost the character of agricultural land. The decision in BC Srinivasa Shetty (supra) would not apply. Finally, the computation of Ld. AO was confirmed.

6.7 Aggrieved as aforesaid, the assessee is in further appeal before us.

Our findings and Adjudication

7. Upon perusal of factual matrix as enumerated in preceding paragraphs, it could be seen that the assessee has acted as Managing Director of a corporate entity i.e., M/s AS Cargo. That entity intended to sell some of its warehouse to M/s Indospace. In order to facilitate the same, 49% of shares of that entity were initially purchased in the name of the assessee from the transferee company. Apparently, aforesaid investment has been funded by M/s AS Cargo with an understanding under an unincorporated Joint Venture Agreement (UJV) dated 27-03-2012 (placed on Page Nos. 297 to 306 of the paper-book). As per recitals of the terms of the agreement, M/s AS Cargo was not permitted to divert its funds for direct investment in view of the restrictions imposed by Bank of Baroda / Indian Overseas Bank which advanced extensive credit facilities for construction of warehouse since the bankers would not like to dilute their stake as long as their loan facilities subsist. After mutual negotiations, M/s Anmol Agreed to allot 4 Lacs equity shares of Rs.10/- each in the name of assessee-individual with a clear understanding that 90% of investment benefit would accrue to M/s AS Cargo whereas remaining 10% would belong to the assessee-individual. The shares would be held by the assessee in trust for the exclusive benefit of M/s AS Cargo. As per Clause-2 of UJV, M/s AS Cargo has paid for the purchase of these shares vide Cheques dated 26-03-2012. The terms of the UJV have been approved by the Board of Directors of M/s AS Cargo which is evident by the minutes of the Board Meeting as kept on Page Nos. 307 to 310 of the paper-book. The Board Meeting clearly approved that 90% of the capital gain that would arise in the

transaction would be retained by M/s AS Cargo whereas 10% shall be paid to the assessee individual.

8. On the same date i.e., 27-03-2012, a Share Subscription and Shareholder's Agreement (SSSA) has been entered into between M/s IVV, the assessee and M/s Anmol wherein IVV would invest certain amount in M/s Anmol, a part of which would be utilized by M/s Anmol for purchase of certain Durainallur Properties from M/s AS Cargo whereas the balance would be utilized for certain business purposes. In terms of Clause-5, the assessee individual was under an obligation to perform various duties in connection with transfer of immovable properties.

9. It is quite clear that as per the terms of UJV, the resultant gains were to be shared between the assessee and M/s AS Cargo in the ratio of 1:9. The funding of the same was provided by M/s AS Cargo. By virtue of this arrangement, the assessee became shareholder of M/s Indospace. After affecting the transfer, the assessee came out of the transferee company and he was paid for the shares which he was holding in the transferee company. The said money was ultimately paid over to the transferor company. Consequently, the assessee and M/s AS Cargo offered resultant capital gains to tax in the agreed ratio of 1:9. The gains as offered by M/s AS Cargo have been accepted by the revenue which is evident from Income Tax Return filed by M/s AS Cargo as well as its computation of income as placed on record. The CPC has issued an intimation u/s 143(1) on 08-12-2016 accepting the gains as offered by M/s AS Cargo. On the basis of these facts, it could very well be said and concluded that the whole objective of the transaction / agreement was to facilitate transfer of property transactions without any legal hurdles because the assessee being the MD of the transferor company also

acted as a shareholder of the transferee company and this dual role ensured legal certainty to the transaction. Quite clearly, as per the terms of UJV dated 27-03-2012, the assessee purchased the aforesaid shares on behalf of M/s AS Cargo from M/s Anmol in fiduciary capacity with conditions relating to transfer of assets / warehouse. The primary objective of the agreement was to facilitate the aforesaid transfer. The Ld. AO has made the assessment on the allegation that the transaction was between the assessee in individual capacity without considering the vital fact that the proportionate gains as accruing to M/s AS Cargo has already been offered to tax as per agreement which has also been accepted by the revenue. The gains have been shared proportionately as per mutual agreement, the funding of which has been provided by M/s AS Cargo. Such an arrangement was made in view of the fact that certain restrictions were imposed by the bankers on usage of loans advanced by them to M/s AS Cargo.

10. The prime allegation of Ld. AO stem from Scheule-II of Shares Purchase Agreement dated 30-04-2015 wherein the assessee has been mentioned as the sole and beneficial owners of the shares. However, the terms of Share Subscription and Shareholder's Agreement dated 27-03-2012 has been overlooked wherein the assessee individual is a party to the agreement. As per Clause-5, he is entrusted with obligation of performing various duties and obligations for smooth transfer of immovable properties situated in various locations of M/s AS Cargo. After effective transfer and fulfilling all conditions, the sales proceeds would be released to M/s AS Cargo. The same is also supported by terms of UJV which has been approved by Board of Directors. The discrepancy in the financial statements, in our considered opinion, has

already been explained satisfactorily by the assessee before lower authorities and the same has been rejected without much merits. The assessee's claim is backed up by other documentary evidences and therefore, the explanation in this regard has to be accepted.

11. Considering the totality of all the documents / agreements as a whole as executed by the parties to the transactions, the impugned fact that the assessee was termed as sold and beneficial owner of shares in the Share Purchase Agreement, on standalone basis, could not jeopardize the claim of the assessee. The fact that funding of the shares subscription has been provided by M/s AS Cargo has been established by the assessee. To term the same as mere loan by M/s AS Cargo to the assessee is opposed to facts on record. In fact, the assessee has already advanced huge funds to M/s AS Cargo and therefore, there would be no necessity for the assessee to secure loan from M/s AS Cargo to purchase the impugned shares. Pertinently, the resultants capital gains have been proportionately offered to tax by the assessee as well as M/s AS Cargo. M/s AS Cargo has utilized the capital gains for its business purposes. Merely because tax incidence was lower, the claim of the assessee could not be denied by Ld. AO since the same was backed-up by sufficient documentary evidences on record. Under these circumstances, the impugned additions are liable to be deleted. We order so. The corresponding grounds of appeal stand allowed.

12. The second grievance of the assessee is assessment of Short-Term Capital gain on sale of agricultural land. The Ld. AR, on page nos. 407 to 536 of the paper-book, has placed on record Copy of Agreement of way, Sale Deed thereof and Google Map of agricultural land to establish that the land was situated beyond the specified limit of

distance. Upon perusal of the same, it could be seen that the assessee has entered into an agreement on 19-05-2015 wherein the assessee has agreed to grant and make available permanent right of way through a portion of land owned by it. The one-time consideration has been fixed for Rs.182.96 Lacs. The grantee would be entitled to lay and construct and maintain the access road and would also be entitled to lay water lines, sewage lines, cables etc. Thus, what the assessee has sold is only a right of way. The land under consideration has been purchased by the assessee vide Sale Deed dated 20-02-2015. Upon perusal of the same, it could be seen that what the assessee has purchased is an agricultural land and the same continue to be classified as such in the government records. The Ld. AO has accepted that fact that the land continues to be classified as dry agricultural land. The land is situated beyond the prescribed distance which fact could not be controverted by revenue. Thus, it is clear that the sale consideration has accrued to the assessee out of an agricultural land. The right of way stem from agricultural land only and therefore, the resultant consideration has to be considered as agricultural income only. Alternatively, what the assessee has transferred is only a right of way, the cost of which is indeterminate and the decision of Hon'ble Supreme Court in the case of **B.C. Srinivasa Shetty (supra)** would apply. The right of way being as easementary right, no cost could be attributed to the same.

13. The Ld. CIT-DR has referred to the decision of Hon'ble Kerala High Court in the case of **Kunhaysu vs CIT (52 Taxmann.com 327)** to submit that in the absence of any agricultural activities, no deduction could be allowed to the assessee. Upon study, we find that this case law is based on search proceedings wherein it was admission by the

assessee that the land was used for conducting football tournaments and the land was described as stadium land in the conveyance deed. Therefore, this case law is not applicable. Rather the decision of Hon'ble High Court of Madras in the case of **CIT vs. P. Ashok Kumar (TCA No.268 of 2011 dated 02-01-2019)** would apply. In this decision, the land was classified and sold as agricultural land. The Hon'ble Court held that though there may not be any cultivation carried out as per land records, there was nothing on record to show that the land in question was put for any non-agricultural purposes and therefore, the assessee's claim was correct. This decision duly supports the case of the assessee.

14. In view of the foregoing, the assessee's claim of exemption of Short Term Capital Gain was to be accepted. We order so. The corresponding grounds stands allowed.

15. The appeal stand allowed in terms of our above order.

Order pronounced on 4th September, 2024

Sd/- (MANU KUMAR GIRI) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (MANOJ KUMAR AGGARWAL) लेखक सदस्य / ACCOUNTANT MEMBER
--	--

चेन्नई Chennai; दिनांक Dated :04-09-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Assessee
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT., Chennai
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF