

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 234/MUM/2024  
Assessment Year: 2013-14**

Manish Vijay Enterprises A-305, Dynasty Business Park, Andheri Kurla Road, Chakala, Andheri (E), Mumbai – 400059  (PAN : AAJFM7226K)	Vs.	Income Tax Officer – 24(2)(4), Mumbai
<b>(Assessee)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Shri Pawan Chakrapani, CA  
Revenue : Shri Ankush Kapoor, CIT, DR

Date of Hearing : 25.07.2024  
Date of Pronouncement : 23.10.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2023-24/1058475242(1), dated 05.12.2023 passed against the assessment order by the Income Tax Officer, 24(2)(4), Mumbai, u/s. 143(3) r.w.s. 147 of the Income-tax Act (hereinafter referred to as the “Act”), dated 29.12.2018 for Assessment Year 2013-14.

2. Assessee has raised as many as 20 grounds in the present appeal. Ground Nos.1 to 6 especially relate to legal issues in respect of re-assessment proceedings undertaken vide section 148 r.w.s.147 of the Act and impugned assessment order passed thereon. Ground Nos.7 to 14, they all relate to merits of the case involving three issues to be determined:

- i) Year of transfer
- ii) Nature of income i.e. capital gain or business
- iii) Market value of the property as on 01.04.1981 and market value as on the date of transfer.

2.1. Ground Nos.15 to 20 are consequential in nature.

3. Brief facts of the case are that assessee is a partnership firm and filed its return of income on 06.02.2018 reporting total income at Rs. Nil which was beyond the prescribed due date. Assessee claims to have sold piece of land i.e. CTS No.394/, 395/1, 399/1, at Morga, Jijamata Road, Andheri East, Mumbai 400093 on 06.06.2012 for a total consideration of Rs.25,00,000/-. Stamp duty value of the said property was Rs.17,94,18,000/- when the conveyance deed registered on 06.05.2012 registered in the office of the Sub-Registrar Andheri-2 under Sr. No. BDR4- 5045-2012. Considering the fact that assessee having sold the property and not disclosed any income in its return, case was reopened by issue of notice u/s.148. In response to the said notice, the assessee submitted its return on 07.05.2018 declaring total income at Rs. Nil. Reasons for reopening of the assessment were provided to the assessee on 29.05.2018.

3.1. During the course of assessment proceedings, details of sale of land was called for u/s 133(6) by the ld. Assessing Officer from the

Registrar of properties, in response to which copy of the registered conveyance deed was supplied. Assessee was asked to produce:

- i) Return of income for the A.Y. 2008-09 to 2013-14
- ii) Profit and loss account for A.Y. 2008-09 to 2013-14
- iii) Balance sheet for A.Y. 2008-09 to 2013-14
- iv) Audit Report for the year under consideration
- v) Bank details for the period during which the transaction of property was undertaken and payment was received.
- vi) Copies of all the agreements

3.2 Assessee submitted the details as called for from which ld. Assessing Officer took note of the following issues:

- i) Property in question i.e. land at CTS No.394/, 395/1, 399/1, at Morga, Jijamata Road, Andheri East, Mumbai 400 093 was never part of stock in trade of the assessee. The said property was not declared by the assessee in its books of account for the Asst. Year 2007-08 to 2013-14.
- ii) Property was never declared by the assessee in its balance sheet.
- iii) Assessee produced copy of conveyance deed dtd.30.05.2007 by which the property was transferred to the assessee from Shri Arun Vasant Patil and others. The conveyance deed was duly registered with the Stamp duty authority. As per the conveyance deed the market value of the property was at Rs.50,16,000/- and transaction has been made at Rs.22,50,000/-. The said agreement was registered on 09.08.2007.
- iv) Assessee produced copy of unregistered agreement dtd.19.10.2007 by which it is claimed that the said property has been sold to M/s Anshuman Developers, sister concern of

the assessee, for a consideration of Rs.25,00,000/-. The said agreement is neither registered with the Stamp duty authority nor any stamp duty was paid on the said agreement. It is also noticed from the bank statement that only Rs.2,50,000/- was received by the assessee on 15.03.2008 i.e. after 5 months of the agreement and assessee did not provide any details about the balance receipts.

- v) For the balance, assessee stated that it was not received due to legal dispute. Legal dispute was not with regard to the property in question.
- vi) Assessee entered into sale agreement of the impugned land by way of a conveyance deed on 06.05.2012 whereby the said land was sold to M/s Anshuman Developers and as per the said registered agreement, stamp duty value of the said property was at Rs.17,94,18,000/-. However, assessee claims to have sold it for Rs.25,00,000/-. This registered conveyance deed does not speak about the agreement dtd.19.10.2007 and terms and conditions specified therein. Further, assessee had paid stamp duty on the stamp duty value as per the conveyance deed for Rs.89,17,900/-. This conveyance deed specific to the land which is sold to M/s Anshuman Developers.

3.3. From the above discussion, ld. Assessing Officer concluded that assessee purchased the land CTS No.394/, 395/1, 399/1, at Morga, Jijamata Road, Andheri East, Mumbai 400 093 from Shri Patil and others under a registered agreement in 2007. However, the said land was never declared by the assessee as his stock in trade in his books of account. Also, the said land was never disclosed in the balance sheet. Agreement entered into with M/s. Anshuman Developers dated

19.10.2007 whereby the development rights were transferred to M/s. Anshuman Developers is not a registered agreement, thus, led to the conclusion that assessee sold the land to M/s Anshuman Developers on 06.05.2012 through registered conveyance deed at a consideration below the stamp duty valuation. On these stated observations and facts, ld. Assessing Officer issued show cause notice to the assessee.

4. Assessee submitted its reply contending as under:

4.1. Assessee in its status as a partnership firm in the name and style of M/s. Manish Vijay Enterprises has been in the business of real estate development since year 1980. Main object of the assessee firm as contained in its partnership firm states:

*"Clause 8) The business of the partnership shall be that of builders and developers and/or and other business or businesses as the partners may from time to time agree upon."*

4.2. This fact is also confirmed from the assessments made by the income tax authorities from time to time for which copies of assessment orders passed for A.Y. 1981-82, A.Y. 1982-83, A.Y. 1983-84, and 1985-86 were placed on record. Assessee held land for its business purpose as stock in trade and not as capital asset.

4.3. Assessee had acquired development rights in respect of pieces and parcels of land admeasuring in aggregate about 42,432.90 sq. meters under diverse deeds, documents and writings. Large portion of this was under use, occupation and possession of various tenants and the remaining lay as vacant. Assessee completed the construction of buildings 'D, E, F' but the remaining buildings "G, H, K" could not be done. Assessee was subjected to area calculation by the City Survey Office who after physical verification issued the property registered

card for total land area of 24,484.70 sq. meters resulting a reduction from 42,432.90 sq. meters originally noted. Thus, it abandoned the construction of buildings "G, H, K" but completed the buildings "A, B, C". In order to mitigate the F.S.I. imbalance created; it acquired the parcel of land admeasuring 13,768.10 sq. meters (slum property) which was occupied by tenants, out of 24,484.70 sq. meters and got the conveyance deed registered in its name on 09.08.2007.

4.4. Assessee negotiated with one M/s. Anshuman Developers ("AD") and eventually granted development rights in respect of the said slum property in favour of AD at a price of Rs. 25,00,000/- vide agreement dated 19.10.2007. AD paid a sum of Rs. 2,50,000/- as earnest money deposit to the assessee, leaving a balance of Rs. 22,50,000/- as payable. AD proposed to redevelop the said slum property under the Slum Rehabilitation Scheme, with the intent that the TDR generated from the same could be utilized for setting right the imbalance of FSI and obtain occupation certificate (OC) of the building ABC and thereafter cause the assessee to hand over conveyance to the Society. As such, AD submitted Slum Rehabilitation Scheme on the said Slum Property in the office of the Slum Rehabilitation Authority (SRA) and obtained several approvals/permissions to proceed on the development project.

4.5. According to the assessee, the SRA required AD to submit registered land ownership document before approval of building plans, therefore, AD called upon the assessee to execute conveyance of the said slum property. In pursuance thereof assessee executed conveyance in favour of AD vide Deed of Conveyance dated 06.05.2012 registered with the office of Sub-Registrar Andheri-2 under Sr. No. BDR4- 5045-2012.

4.6. Assessee further submitted that as per the terms of understanding by and between the assessee and AD, AD is required to do the following acts at their own cost, charges & expenses in the name and on behalf of the assessee:

- i) either generate TDR by implementation of the Shem Rehabilitation Scheme on the said Slum Property or purchase from the open market requisite TDR as may be required for removal of imbalance of FSI in respect of the building ABC
- ii) load such TDR in the building ABC to set right the imbalance of FSI
- iii) comply with all the terms & conditions as laid down by MCGM in the letter bearing no. CE/9555/BSI AK dated 12.01.2000 issued by them as a precondition for grant of OC and eventually obtain OC in respect of building ABC
- iv) cause conveyance of the said Constructed Property executed by the assessee in favour of Federation to be proposed by societies of the said buildings A,B,C,D,E and F.

4.7. In view of the above, Rs. 25,00,000- was the consideration agreed to be paid by AD to the assessee for sale of the said Slum Property in their favour. According to the assessee, the transaction has been completed in Financial Year 2007-08 as the risk and rewards have been transferred by the assessee to AD upon execution of agreement dated 19.10.2007. Assessee submitted that since agreement of sale was executed on 19.10.2007, and the possession of the property was also given on that date and hence, capital gain, if any, was assessable in the assessment year 2008-09 and not during the year under consideration. It was further submitted that registration of

property was only a formality to be complied under the Registration Act. The conveyance deed though registered under the Registration Act belatedly on 06.05.2012, it will relate back to the date of execution of Agreement of Sale (i.e.) 19.10.2007.

5. Ld. Assessing Officer considered the detailed submissions made by the assessee both on the legal as well as merits of the case. On the objections raised by the assessee on the legality of the proceedings u/s. 148 r.w.s. 147, he noted that the reasons to believe is the determinative factor and not the sufficiency of material to form the reasons to believe. Assessee is a non-filer of return and the reasons were recorded based on information received from NMS cycle of the Department. Reasons for re-opening the case is that assessee sold immovable property for the consideration of Rs.17,94,18,000/- on which tax has not been paid as well as no return filed in this respect. According to the Ld. Assessing Officer, there is a gain in the property transaction undertaken by the assessee which to be subjected to tax under the Act and has escaped assessment. Whether the gain on the property transaction is to be taxed as long-term capital gain or business income will be determined based on the reassessment proceedings by considering the factual submissions of the assessee. He thus, held that that there is escapement of income for which reasons to believe is recorded based on the material available with the Department. Ld. Assessing Officer thus, disposed off the objections raised by the assessee and identified three issues to be determined in the assessment.

5.1. On the first issue relating to determination of year of transfer, according the Ld. Assessing Officer, assessee claimed that the property was sold in Assessment Year 2008-09 by way of unregistered

document for which a part consideration of Rs. 2,50,000/- was paid in the same year and subsequently, in Assessment Year 2013-14, i.e., year under consideration, the property was registered via a registered conveyance deed, dated 06.05.2012. On this issue after taking into account the submissions made by the assessee, ld. Assessing Officer noted as under:

*“a. In the normal business transactions, the property will be transferred to the transferee only when all the consideration will be paid to the transferor. In this case as per the so called agreement, the consideration for the property is Rs.25,00,000/- and the amount of Rs.2,50,000/- was paid after 5 months of the agreement date and the remaining amount is shown as payable till date. In this case, the property is claimed to be transferred without receiving the entire consideration.*

*b. If the property is purchased by M/s Anshuman Developers, the purchased property should be reflected in the books of account of the purchaser M/s. Anshuman Developers as assets and the payable amount of Rs.22,50,000/- should be reflected as payable. The assessee could not furnish any evidence in this regard. It is relevant to mention here that M/s Anshuman Developers is the sister concern of M/s Manish vijay enterprises and the partners in both the partnership firm are the same.*

*c. If any agreement and payment is there in the previous year in relation to any property, the details of the same will be mentioned in the subsequent agreement which was registered. In this case, the property was registered through registered document in the A.Y.2013-14 and nothing is mentioned about the unregistered document, which is entered in the A.Y.2008-09.*

*d. Even if the submission of the assessee is considered to be true that the property was transferred in Asst. Year 2008-09, then the assessee has to pay tax on the so called sale consideration of Rs.25,00,000/- and return of income is to be filed whereas the tax of Rs. 25,93,280/- was paid on 09/02/2018 for the Asst. year 2008-09 after initiation of prosecution proceedings u/s 279(1) of the Income Tax Act, 1961. The payment of Rs.2,50,000/- was received from M/s Anshuman Developers for some other purpose whereas the assessee claim that the same was received for transfer of property.*

*e. From the above facts it is clear that the transfer of the property was completed only in Asst. Year 2013-14 and not in the Asst. Year 2008-09. The assessee's claim of transfer was executed and possession was given in the Asst. Year 2008-09 is an afterthought, after initiation of prosecution proceedings u/s 279(1) of the Income Tax Act, 1961.*

*To establish the genuineness of transfer in the Asst. year 2008-09 the assessee submitted the unregistered documents, therefore, the claim of transaction, which had happened in Asst. Year 2008-09, is the colourable sham transaction whereas the actual transaction had happened and possession was given in the Asst. Year 2013-14”*

5.2. On the second issue relating to determination of nature of asset, ld. Assessing Officer noted that assessee has claimed that it is in the business of builder and developer. Therefore, the property so transferred is transfer of stock in trade held by it. However, according to the ld. Assessing Officer, assessee had filed its last return of income in Assessment Year 1987-88 and thereafter no return was filed. Assessee was asked to prove the claim through evidences in the form of treatment of the transfer of book of accounts along with details of purchase. According to him, since assessee had not filed its return of income from Assessment Year 1988-89, it had stopped its business and therefore in absence of any business activity for almost 15 years, the transfer of asset is to be treated as capital asset.

5.3. On the third issue in respect of market value to be taken on the asset so transferred, ld. Assessing Officer by holding the asset as a capital asset observed that since the land is purchased before 01.04.1981, market value of the same as on 01.04.1981 is to be adopted as the cost of acquisition which is not available. He referred the matter to the ld. District Valuation Officer (DVO) of the Department on 28.12.2018. Thus, for arriving at the capital gain, ld. Assessing Officer noted that purchase cost and sale value is to be adopted based on actual purchase cost in 1979 to be valued as on 01.04.1981 and ready reckoner value in the Assessment Year 2013-14. Since the assessment was getting time barred, he observed that based on the valuation of the ld. DVO, the purchase cost and sale consideration will be rectified later and thus proceeded with the assessment by computing the long-term capital gain at Rs.16,80,78,067/- which was added to the total income of the assessee. Subsequently, an order u/s. 154 of the Act dated

24.04.2021 was passed on account of receipt of valuation report from the ld. DVO, dated 19.02.2019. After considering the valuation report from the ld. DVO, long-term capital gain was re-computed at a figure of Rs.95,38,938/- and thus, total assessed income was revised accordingly. Aggrieved, assessee went in appeal before the ld. CIT(A) whereby, the appeal was partly allowed.

6. Aggrieved, assessee is in appeal before the Tribunal. We have heard both the parties and perused the material on record. We have also gone through the written submission and documentary evidences placed before us in three volumes of paper book.

7. On the legal issues raised by the assessee, we take note of the facts in the reasons to believe placed at page 46 of the paper book. From the same, we observe that ld. Assessing Officer took note of the fact of assessee having not filed its return of income for Assessment Year 2013-14 which is undisputed. Assessee had undertaken a transaction in immovable property appearing in the ITS details for Rs.17,94,18,000/- which is backed by registered conveyance deed dated 06.05.2012 and is uncontroverted. Assessee has paid stamp duty on this valuation arrived at by the Sub-registrar office. Considering the nature of business of the assessee who is engaged in the business of development of real estates, it is noted that transactions reflected in the ITS details are taxable receipts and the same has not been offered to tax. Thus, it is a clear case of income chargeable to tax having escaped assessment within the meaning of section 148 of the Act. Since exact quantification of profit on sale of immovable property could not be worked out by the ld. Assessing Officer, he estimated profit at the rate of 12% on the sale consideration of the property to arrive at amount of escapement of

income at Rs.2,15,30,160/-. Ld. Assessing Officer thus, recorded the reasons to believe that income chargeable to tax of Rs.2,15,30,160/- has escaped assessment within the meaning of section 147 of the Act due to failure on the part of the assessee for not disclosing full and true particulars of income.

7.1. On these set of facts, while dealing with the objections raised by the assessee, ld. Assessing Officer has noted that for re-opening a case u/s.148, reasons to believe is the determinative factor and not the sufficiency of the material to form the said belief. According to him, there is a gain in the immovable property transaction undertaken by the assessee during the year, which has escaped assessment though either as long-term capital gain or business income which is dependent upon the factual submissions of the assessee.

7.2. In the assessment so completed by the ld. Assessing Officer, addition has been made on the sale of immovable property transaction by computing the gain as long-term capital gain. Further, there is no denial of the fact that there is a transaction in the immovable property undertaken by the assessee during the year for which conveyance deed has been registered on 06.05.2012 with the office of Sub Registrar, Mumbai. Also, assessee is a non-filer of returns from Assessment Year 1988-89 onwards till date. It was only in response to notice issued u/s.148 that the return of income was filed by the assessee, reporting income at Nil. Since assessee had not filed any return of income for Assessment Year 2013-14 and there is no response to notice u/s.142(1), the assessment was re-opened u/s. 147 of the Act which otherwise would have got selected under the CASS cycle, had the return was filed by the assessee.

7.3. On these set of facts discussed above, we do not find any reason to interfere with the observations and findings of the Id. Assessing Officer of disposing off the objections raised by the assessee. Accordingly, grounds taken by the assessee on the legal issues are dismissed.

8. On the merits of the case, we first take up the issue relating to determining the nature of income i.e., whether it is capital gain or business income in respect of transaction of immovable property undertaken by the assessee. It is a fact on record that assessee is a partnership firm engaged in the business of real estate development since year 1980. It has filed its return of income up to Assessment Year 1987-88. It is also a fact on record that assessments have been made by the income-tax authorities by passing assessment orders for Assessment Years 1981-82, 1982-83, 1983-84 and 1985-86 which evidently demonstrates that the assessee firm had been engaged in the business of real estate development. Assessee has placed on record the assessment orders for all these years along with their respective financial statements, in the paper book.

8.1. From the assessment order for Assessment Year 1982-83 passed u/s.143(3) dated 12.10.1984, we take note of the observations made by the Id. Assessing Officer in the said order whereby he has recorded the fact regarding land at Andheri for which the cost is debited to trading account. In the assessment order for Assessment Year 1985-86 passed u/s. 143(3) dated 31.03.1987, Id. Assessing Officer has made factual noting in para 2 that assessee is a builder. During the year, assessee has constructed building partly A, B, C at Manish Park, Andheri East. Sales had been considered in proportion on completion of construction of building A, B and C at Rs.43,46,023/- (Sq.ft 18,900)

against which Rs. 29,29,500/- paid to construction contractor, Rs.4,55,301/- proportionate cost of land and Rs.1,83,300/- for lift resulting into gross profit of Rs. 7,77,922/-. Thus, proportionate cost of land has been taken into consideration to arrive at the gross profit.

8.2. It is also a fact on record that the partnership firm continued till the present and there is nothing brought on record to demonstrate that the said firm has been dissolved to hold that assessee had discontinued its business. Assessee has strongly contented that it has not closed the business. It is pointed out by the assessee that there is a difference between a firm without business activity and closing of business. Assessee has always retained its existing stock and the stock so retained cannot become capital assets in the hands of the assessee merely because of the lapse of time when there is no business activity by the assessee. Furthermore, ld. Assessing Officer himself for arriving at the capital gain has noted that purchase cost and sale value is to be adopted based on actual purchase cost in 1979 to be valued as on 01.04.1981 and ready reckoner value in the Assessment Year 2013-14 for which a reference was made to the ld. DVO. This itself points to the fact that assessee always held the said land.

8.3. Considering the facts on record corroborated by documentary evidences as discussed above, we do find favour in the submissions made by the assessee to hold that the land parcel held by the assessee has been reported as stock in trade by it in the financial statements and has been accepted by the Department as stock in trade in the assessments made by it referred above. Law does not contemplate for ld. Assessing Officer to convert the stock in trade into capital asset. There is no deeming conversion unless assessee undertakes such an

exercise. We thus, set aside the *suo moto* conversion of stock into capital asset by the Id. Assessing Officer and sustained by Id. CIT(A) and hold it to be treated as stock for the purpose of assessment which is in line with the accepted fact by the Department in the assessments made by it for above two Assessment Years referred. Any income arising on transfer of stock in trade will thus be chargeable as 'business income' and not as 'capital gain'. Accordingly, grounds taken by the assessee on this issue are allowed.

9. Since the nature of income on the transaction of immovable property undertaken by the assessee is held to be profits and gains of business, issues relating to valuation of the property for arriving at its sale consideration by applying provisions of section 50C and taking cost of acquisition as on 01.04.1981 and as on the date of transfer to compute long term capital gain has become infructuous. In this respect, it is worth noting that provisions contained in section 43CA relating to special provision for full value of consideration for transfer of assets other than capital assets had been brought on statute by the Finance Act, 2014 w.e.f. 01.04.2014, i.e., from Assessment Year 2014-15 and are not applicable in the present case which is for Assessment Year 2013-14.

10. The third and the most important issue to be determined in the present appeal is in respect of determination of year of transfer of the immovable property so as to decide on the Assessment Year in which business income arising from the said transfer is to be subjected to tax. Assessee has claimed the year of transfer as Assessment Year 2008-09 as against Assessment Year 2013-14 determined by the Id. Assessing Officer.

10.1. In this respect, we have taken note of the observations of Id. Assessing Officer on the submissions made by the assessee which are already narrated above in detail. Based on those observations, we perused the agreement dated 19.10.2007 which according to the assessee is the basis for claiming the year of transfer as Assessment Year 2008-09. We observe that the said document is titled as "Agreement". It is not an agreement to sell. This agreement is between the assessee who is referred to as "the owners" and M/s. Anshuman Developers, another partnership firm which is referred to as "developers". At page 9 of this agreement, it is stated that the said agreement is being entered herein for "grant of development rights" in respect of the slum property by the owners in favour of the developers on the terms and conditions appearing herein after. In clause 1 of the same page, it is stated that "*the owners hereby grant the development rights in respect of all that pieces and parcels of land.....to the developers and the developers acquire the development right in respect of the said slum property from the owners*". In clause 2 at page 10 of this agreement, it is stated that "*the developers herein shall pay the owners a sum of Rs.25 lakhs being the consideration amount for grant of development rights in respect of the said slum property to them by the owners.....*". In clause 3, it is stated that the developers have paid an amount of Rs. 2,50,000/- to the owners by way of cheque bearing No. 024731 dated 19.10.2007 drawn on HDFC Bank, Andheri East as "earnest money deposit". The balance consideration amount of Rs. 22,50,000/0 is to be paid by the developers to the owners in the manner listed in clause 4 to 6. Further, it is important to take note of clause 8 wherein it is stated that "*the owners hereby grant license to the developers to enter upon the said slum property and to develop the same under Slum Rehabilitation Scheme by providing permanent alternate accommodation to all the eligible slum dwellers*". In clause 10,

it is stated that all the acts, deeds, matters and things shall be done by the developers in the name of the owners except the acts specified in sub clauses 'J', 'K' and 'L' which shall be done in the name of the developers. In these sub clauses, it is stated to construct and complete the proposed buildings as per the plans and specifications approved by the Slum Rehabilitation Authority and apply and obtain Occupation/Completion Certificate, to sell flats, shops and offices, parking spaces and to receive consideration amount from prospective purchasers and issue appropriate receipts for the same and also to appropriate to themselves, to enter into and execute for sale of flats, shop premises, lodge the same for registration and admit execution thereof. For these sub-clauses, it is stated in clause 9 that owners shall execute an "irrevocable general power of attorney" in favour of the developers so as to enable them to undertake these activities.

10.2. Thus, on the conspectus of the above observations, the said agreement is an agreement for development of the property for and on behalf of the assessee for which an amount of Rs.2,50,000/- was paid by M/s. Anshuman Developers as earnest money deposit, fact of which is undisputed.

11. In reference to the above discussed agreement, the registered conveyance deed dated 06.05.2012 was perused. From the conveyance deed, it is noted that assessee is referred as the "vendors" and M/s. Anshuman Developers is referred to as "purchasers". On page 4 of the conveyance deed, it is noted that purchasers approached the vendor with a request to acquire the said tenanted property (the impugned parcel of land) which is completely in use, occupation and possession of tenants and further showed its intention to take over obligation of removal of imbalance of FSI in respect of the building A, B and C by

loading of TDR, obtaining Occupation Certificate thereof at their own cost and give conveyance of the said property to the federation of societies. It is also noted that purchasers are aware of the said tenanted property and undertook responsibility to settle all the tenants, residing on the said tenanted property at their own cost, charges and expenses. At page 5, it is noted that vendors agreed to sell the said tenanted property to the purchaser "*as is where is basis*" at a lumpsum consideration of Rs. 25,00,000/- with additional obligation on the part of the purchasers to remove the imbalance of FSI as already stated. It is further stated that pursuant to this agreement, consideration of Rs.20,00,000/- is paid by the purchaser to the vendor on or before execution of this deed for which the vendors have admitted and acknowledged the receipt to discharge the purchasers and sell/convey the said property to the purchasers. On page 7 in para 3, it is noted that vendors have handed over possession of the said property to the purchasers, subject however to possession of the said property by the tenants as stated earlier.

12. Thus, it is observed that the conveyance deed is in respect of transaction of purchase and sale between M/s. Anshuman Developers and the assessee which has been registered on 06.05.2012 whereas agreement dated 19.10.2007 is an unregistered agreement for the development of buildings between M/s. Anshuman Developer as the developer and assessee as the owner. This agreement is specific for granting of license to develop for which development rights were given by the owner to the developer. Under the registered conveyance deed, there is transfer of title of ownership on '*as is where is basis*' from the assessee to the purchasers, i.e., M/s. Anshuman Developers. The consideration of Rs.25,00,000/- is common to both the documents however, there is no reference to part payment already made of

Rs.2,50,000/- in the conveyance deed. Also, there is no detailing of how the balance of Rs.22,50,000/- were received by the assessee from the purchasers.

12.1. We also note that M/s. Anshuman Developers has reported the purchase of the said property in its financial statements/books of accounts in the Assessment Year 2013-14. Copy of ledger of M/s. Anshuman Developers in the books of the assessee is placed at page 331 of the paper book, wherein the accounting is under the head “transfer of development rights” dated 19.10.2007 against which the receipt of Rs.2,50,000/- is accounted, dated 12.03.2008. Purchase of land has been accounted by M/s. Anshuman Developers only on 06.05.2012 as noted in the ledger placed at page 331 of the paper book. Agreement for development is an unregistered document whereas the conveyance deed is a registered document which has conveyed the title of ownership from the assessee to the purchasers on ‘*as is where is basis*’.

13. Considering all these above stated observations and discussions, we are in agreement with the findings arrived at by Id. Assessing Officer on this issue to hold that the year of transfer is Assessment Year 2013-14 and not Assessment Year 2008-09 as claimed by the assessee. Accordingly, profits and gains on this transfer are liable to be taxed under head “business income” in the Assessment Year 2013-14. We accordingly, direct the Id. Assessing Officer to re-compute the profits and gains under the head “business income” on the impugned transaction of immovable property undertaken by way of registered conveyance deed after allowing permissible claims from the same as made by the assessee. Thus, grounds taken by the assessee in this respect are partly allowed.

14. In the result, appeal of the assessee is partly allowed.

Order is pronounced in the open court on 23 October, 2024

Sd/-  
(Amit Shukla)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 23 October, 2024***

*MP, Sr.P.S.*

**Copy to :**

1. The Assessee
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai