

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

**Before Shri Mahavir Singh, Hon'ble Vice-President and**  
**Shri Manjunatha, G. Accountant Hon'ble Accountant Member**

आ.अपी.सं / **ITA Nos.683/Hyd/2022**  
(निर्धारण वर्ष / Assessment Year: 2019-20)

Asstt. Commissioner of Income Tax, Central Circle 2(3) Hyderabad	Vs.	Asian Dwellings LLP Hyderabad PAN:ABMFA1423A
(Appellant)		(Respondent)

आ.अपी.सं / **ITA Nos.684 & 685/Hyd/2022**  
(निर्धारण वर्ष / Assessment Year: 2018-19 & 2019-20)

Asstt. Commissioner of Income Tax, Central Circle 2(3) Hyderabad	Vs.	Asian Infra Estates Ltd Hyderabad PAN:AABCA7660 <b>and</b> Asian Infra Estates LLP Hyderabad PAN:ABNF5143L
(Appellant)		(Respondent)
राजस्व द्वारा/Revenue by::	Shri B. Balakrishna, DR	
निर्धारिती द्वारा/Assessee by:	Shri P Murali Mohan Rao, CA	
सुनवाई की तारीख/Date of hearing:	26/09/2024	
घोषणा की तारीख/Pronouncement:	25/10/2024	

**आदेश/ORDER**

**Per Manjunatha, G. A.M**

These 3 appeals filed by the Revenue are directed against the separate, but identical orders passed by the learned

CIT (A)-12 Hyderabad dated 28/09/23022 and pertains to A.Y.2018-19 & 2019-20. Since facts are identical and issues are common in these three appeals, for the sake of convenience, these appeals were heard together and are being disposed off by this consolidated order.

**ITA Nos.683 & 685/Hyd/2022.**

2. The Revenue has more or less raised common grounds of appeals in all the three appeals. Therefore, for the sake of brevity, grounds of appeals filed in ITA No.683/Hyd/2022 for the A.Y 2019-20 (Asian Dwellings LLP) are hereby reproduced are as under:

*“1. The learned CIT (A) erred both in law and on facts of the case in granting relief to the assessee.*

*2. The learned CIT (A) ought to have appreciated that, though assessee is a part land owner, it's main activity is that of a facilitator/intermediary between the original land owners as per the Area Allocation Deed dated 02/01/2015 wherein it was clearly mentioned that there are 94 land owners and the assessee was the developer for the said land owners.*

*3. The learned CIT (A) having held that the assessee was required to transfer more than 10 lakh sft of built up area to the parallel owners and land dispute mediators after receipt of the built up area from the developer, erred in not appreciating that the assessee's activity constituted business activity.*

*4. The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary”.*

3. Facts of the case extracted from ITA No.683/Hyd/2022 in the case of Asian Dwellings LLP are that the assessee is a LLP and engaged in the business of developing and construction of residential building, commercial complexes and multiplexes. The assessee has filed its return of income for the A.Y 2019-20 on 15/10/2019 declaring total income of Rs.11,83,710/-. A search & seizure operation u/s 132 of the I.T. Act, 1961 was conducted on the assessee as part of the search conducted in the case of Skill Promoters (P) Ltd group on 22/10/2019. Consequent to the search, notice u/s 153A of the I.T. Act, 1961 dated 17/02/2021 was issued and served on the assessee. In response, the assessee filed its return of income on 3/3/2021 declaring total income of Rs.11,83,710/-. The case was selected for scrutiny and during the course of assesment proceedings, the Assessing Officer noticed that the Asian Group of Companies received 55,400 sft of commercial space in Block-A as developer share and out of 55,400 sft, 27,700 sft has been sold in the financial year 2017-18 relevant to A.Y 2018-19. The Assessing Officer further noted that the assessee LLP and other 2 group entities have taken the possession of remaining commercial space of 27,700 sft in Block-A and leased to M/s. AMB Cinemas LLP. However, no income has been offered on the said commercial space taken into possession and brought into their books of account as inventory and leased out to M/s. AMB Cinemas LLP, a sister concern. Therefore, called

upon the assessee to explain as to why profits and gains arising out of conversion of inventory into capital asset cannot be brought to tax as per amended provisions of section 28(via) of the I.T. Act, 1961. In response, the assessee submitted that the appellant and other group companies along with other land owners had entered into joint development agreement with M/s. Skill Promoters (P) Ltd and received 55,400 sft commercial space in Block-A. The appellant has sold 27,700 sft commercial space in Block-A in the financial year relevant to A.Y 2018-19 and offered resultant capital gain to tax. The remaining 27,700 sft commercial space has been leased out to M/s. AMB Cinemas LLP, a sister concern of Asian Group. Since the appellant is a land owner and received built up area in pursuant to joint development agreement with builders, the asset remains continued to be capital asset but not inventory as alleged and consequently, the question of conversion of inventory into capital asset in terms of section 28(via) of the I.T. Act, 1961 does not arise.

4. The Assessing Officer after considering the relevant submission of the assessee and also taken note of provisions of section 28(via) of the Act, observed that the appellant has received 55,400 sft commercial space in Block-A as a land owner and developer and since there is no details as to what is the extent of land received as a land owner and developer, the argument of the assessee that it has received built up area in pursuant to joint development agreement (JDA) with the developer as land owner

share is not acceptable. Therefore, the Assessing Officer held that the activity of the appellant in aggregating the land from various land owners and entering into JDA with M/s. Skill Promoters (P) Ltd is a business activity and whatever built-up area received in pursuant to said JDA as developer share becomes inventory or stock-in-trade of the assessee. Further, on leasing out of said stock-in-trade, the provisions of section 28(via) comes into operation. Therefore, he opined that the appellant has converted unsold inventory into capital asset and leased out to M/s. AMB Cinemas LLP and accordingly computed business profits u/s 28(via) of the I.T. Act, 1961 and by taking into account, the sale price received by the assessee for selling 27,700 sft adjacent commercial space to Shri Mahesh Babu and Smt. Namrata Shirodkar @ Rs.8379/per sft and computed business income of Rs.4,55,17,677/- in the case of the assessee.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee challenged the additions made by the Assessing Officer towards computation of business income on account of conversion of inventory into fixed asset or capital asset, in light of certain judicial precedents including the decision of the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla (380 ITR 573 (Del) and argued that in absence of any incriminating material, no addition can be made in case of unabated/completed assessment. The assessee had also

challenged the addition made by the Assessing Officer towards business income by invoking the provisions of section 28(via) of the I.T. Act, 1961 on the ground that the appellant has received 55,400 sft commercial space in pursuant to a JDA with M/s. Skill Promoters (P) Ltd in the capacity of land owner but not as a developer. Since the appellant being a land owner, treated the land as a capital asset, the built up area received in pursuant to transfer of said land consequent to the JDA will continue to be a capital asset but not inventory. Therefore, the Assessing Officer is erred in invoking the provisions of section 28(via) of the I.T. Act, 1961.

6. The learned CIT (A) after considering the relevant submissions of the assessee and also taken note of certain judicial precedents including the decision of the Hon'ble A.P High Court in the case of Gopal Lal Bhadraka & Ors. v. Dy. CIT (2012) (346 ITR 106) rejected the legal ground taken by the assessee challenging the additions made towards business income in the assessment order passed u/s 143(3) r.w.s. 153A of the Act, and by holding that the scope of assessment u/s 153A is not limited to the seized material alone but based on seized material and any other information provided by the assessee in the return of income filed in response to notice u/s 153A of the Act. In so far as the additions made by the Assessing Officer towards business income in terms of section 28(via) of the Act,, the learned CIT (A) held that merely for the reason of leasing out built-up area would

not attract provisions of section 28(via) of the Act, because said provision would come into operation only in a case where inventory of a business has been converted into or treated as a capital asset only. Since the appellant is received built up area as a land owner and also treated said built up area as a work in progress in the books of account, the question of application of provisions of section 28(via) of the Act, does not arise. Therefore, held that the provisions of section 28(via) does not apply to the facts of the present case. Accordingly, directed the Assessing Officer to delete the additions made towards income from business in terms of section 28(via) of the Act.

7. Aggrieved with such order of the learned CIT (A), the Revenue is in appeal before the Tribunal.

8. The learned DR Shri Srinath Sadanala, referring to the sale deed dated 30<sup>th</sup> June, 2017 between Asian Infra Estates Ltd and Shri Mahesh Babu and Smt. Namrata Shirodkar submitted that as per the recitals of the sale deed, the group company of the appellant is a vendor clearly shows that the appellant is not only a land owner but also worked as a developer in the JDA with M/s. Skill Promoters (P) Ltd. Further, there is no details about the extent of built up area received as a land owner and as a developer. In absence of necessary details, the Assessing Officer has rightly concluded that the appellant has received built-up area in Block A as a land owner and as a developer and

consequently the unsold built up area in Block A has been rightly treated as inventory for the purpose of section 28(via) of the I.T. Act, 1961.

9. The learned DR further submitted that as per allocation deed dated 2/1/2015 between the original land owner, the assessee is part land owner but its main activity is that of a facilitator/intermediary and said activity becomes the activity of developer for the said land owners. Therefore, once the appellant leased out unsold inventory, the provisions of section 28(via) of the Act would apply and as per the said provisions as on the date of conversion, the fair market value of the inventory should be treated as profits and gains of business or profession. The learned CIT (A) without appreciating the relevant facts simply deleted the additions made by the Assessing Officer.

10. The learned Counsel for the assessee, on the other hand, supporting the order of the learned CIT (A) submitted that there is no dispute with regard to the fact that the appellant has received 55,400 sft of commercial space in Block A along with other two entities as their shares for exchanging land in pursuant to JDA with M/s. Skill Promoters (P) Ltd. The appellant has also sold 27,700 sft commercial space in financial year 2017-18 relevant to A.Y 2018-19 and offered capital gain for taxation. The remaining 27,700 sft commercial space has been leased out to M/s. AMB Cinemas LLP. Further, the appellant has received

55,400 sft commercial space as a land owner and the land given on JDA is a capital asset of the appellant and consequently any super structure received in pursuant to JDA remains a capital asset but not as an inventory. The learned Counsel for the assessee further submitted that assuming for a moment, the appellant has received part of commercial space as a developer, the fact remains that even in a case of developer any unsold inventory is let out to a third party, provisions of section 28(via) cannot be invoked, because said provision would come into operation only in a case for conversion of inventory into capital asset. In the present case, since there is no conversion of inventory to capital asset, the question of computing business income in terms of section 28(via) of the Act, does not arise. The learned CIT (A) after considering the relevant facts has rightly deleted the addition made by the Assessing Officer and their order should be upheld. In this regard, he relied upon the decision of the ITAT Hyderabad Benches in the case of Shri Sharat Gopal Boppana in ITA No.637 & 638/Hyd/2022 order dated 27/06/2024.

11. The learned Counsel for the assessee referring to the appeal filed by the Revenue for the A.Y 2018-19 in the case of M/s. Asian Infra Estates LLP submitted that the appellant has filed a petition u/s 27 of the ITAT Rules, 1963 and taken a ground challenging the findings of the learned CIT (A) in rejecting the legal ground taken by the assessee in light of certain judicial

precedents. The learned Counsel for the assessee further referring to the decision of the Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell Ltd reported in (2023) 454 ITR 212 (SC) submitted that the additions made by the Assessing Officer in absence of any incriminating material cannot be sustained in case the assessment for the relevant A.Y is unabated/completed as on the date of search. In the present case, the date of search is on 22/10/2019 and as on the date of search, the assessment for the ay 2018-19 is unabated, because the date of issue of notice u/s 143(2) fort the A.Y 2018-19 was ended on 30/09/2019. Therefore, he submitted that the additions made by the Assessing Officer cannot be sustained and needs to be deleted.

12. Per contra, the learned DR present for the Revenue fairly agreed that the assessment for the A.Y 2018-19 is unabated as on the date of search and the issue is covered by the decision of the Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell Ltd (Supra). However, fact remains that the jurisdictional High Court of Andhra Pradesh & Telangana in the case of Gopal Lal Badruka vs. CIT (346 ITR 106 (AP)) has considered an identical issue and held that the assessment u/s 153A is not only based on incriminating material but also based on books of account and any other information come to the knowledge of the Assessing Officer and thus,, there is no merit in the argument of the assessee on the legal issue and same needs to be rejected.

13. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. In so far as the appeals of Asian Dwellings LLP and Asian Infra Estates LLP, the only issue that needs to be considered is the additions made by the Assessing Officer towards business income on account of conversion of inventory into capital asset as per provisions of section 28(via) of the I.T. Act, 1961. There is no dispute with regard to the fact that the appellant as a land owner entered into JDA with M/s. Skill Promoters (P) Ltd for development of certain properties. The appellant along with two other entities received 55,400 sft of commercial space in Block A in pursuant to JHDA with Skill Promoters (P) Ltd. Out of 55,400sft, 27,700 sft has been sold for the financial year 2017-18 relevant to A.Y 2018-19. The remaining 22,700 sft commercial space has been leased out to AMB Cinemas LLP. The Assessing Officer invoked the provisions of section 28(via) of the Act, and computed the profits and gains from business or profession on the ground that the appellant has converted or treated unsold inventory as capital asset before leasing out to M/s. AMB Cinemas LLP. It was the argument of the learned Counsel for the assessee that the appellant has received 55,400 sft of commercial space as a land owner. The appellant further contended that it has treated unsold commercial space of 27,700 sft leased out to AMB Cinemas LLP as a work-in-progress in their books of account and hence the reasons given by the Assessing Officer to

invoke provisions of section 28(via) is purely on the basis of assumption and presumption, but not on facts.

14. We have given our thoughtful consideration to the reasons given by the learned CIT (A) to delete the additions made by the Assessing Officer towards computation of income from business for conversion of 27,700 sft unsold commercial space into capital asset in terms of section 28(via) of the Act, and we ourselves fully agree with the reasons given by the learned CIT (A) for the simple reason that, the provisions of section 28(via) deals with the taxation of profits and gains of business or profession on account of conversion of inventory into capital asset. As per provisions of section 28(via) of the Act, any inventory of a business or a profession is converted into or treated as a capital asset, then profits and gains arising out of conversion of inventory into capital asset is chargeable to income-tax under the head “profits and gains of business or profession”. In the present case, going by the facts on record, the provisions of section 28(via) of the Act has no application, for the simple reason, the appellant has received 55,400 sft built-up area in pursuant to JDA and same has been treated as a capital asset only. Once the asset was a capital asset, before entering into JDA, then in our considered view, any built up area received in pursuant to said JDA remains continued to be a capital asset but not as an inventory. In the present case, the Assessing Officer himself stated the fact that the appellant has treated unsold commercial space as a work-in-

progress in their books of account and on the said basis, came to conclusion that the moment unsold inventory has been leased out, it amounts to conversion of inventory into capital asset. In our considered view, any asset whether capital asset or a stock-in-trade, remains continued to be a capital asset or stock-in-trade, even after leasing out to 3<sup>rd</sup> party. The utilization of the asset does not alter the nature of the asset in the books of account of the appellant. Since the appellant has treated unsold commercial space as a capital asset in their books of account, the said asset continue to be a capital asset even after leased out 3<sup>rd</sup> party. Therefore, we are of the considered view that the Assessing Officer has completely erred in invoking the provisions of section 28(via) of the Act, and to compute business income only on the ground that the appellant has leased out unsold commercial space and same partakes the nature of conversion of inventory into capital asset. The learned CIT (A) after considering the relevant facts has rightly held that the leasing out unsold commercial space would at best tantamount to exploitation of the built up area, but it cannot be said that it is a conversion of inventory into capital asset for the purpose of section 28(via) of the I.T. Act, 1961.

15. At this stage, we refer to the decision of the ITAT Hyderabad Benches in the case of Shri Sharat Gopal Boppana & others in ITA No.637 & 638/Hyd/2022 order dated 27/06/2024 where an identical issue has been considered by the Tribunal in

light of provisions of section 28(via) of the Act, and after considering the relevant facts held as under:

*“17. The next issue that came for consideration from ground no.5 of Revenue appeal is deletion of addition made towards income on account of unsold inventory list treated as fixed assets amounting to Rs.6,45,35,000/-.*

*17.1. The facts of the impugned dispute are that the assessee has entered into the joint development agreement in 2009 for development of property and offered relevant capital gain for tax in assessment year 2010-11. The assessee has entered into a sharing agreement dt.02.11.2015 with the developer M/s. Skills Promoters Pvt. Ltd. and has received a total built up area of 4,10,125 sq.ft in different floors. Out of the total built up area of 4,10,125 sft, the assessee family has sold 45,153 sq.ft in different years and has leased out 2,32,144 sq.ft out of the remaining built up area. During the course of assessment proceedings, the Assessing Officer observed that by entering into the joint development agreement with the developer, the assessee has commercially exploited the property by carrying out business activities and has also undertaken inventory risk, credit risk and market risk. Therefore, opined that property received in pursuant to the joint development agreement become inventory of the assessee and thus, as per the provisions of Section 28(via) of the Act, which is applicable from 01.04.2019 relevant to assessment year 2019-20, when inventory is converted into capital asset, then fair market value of the property as on the date of conversion should be treated as profits and gains from business. Therefore, invoked the provisions of Section 28(via) and by applying the fair market value of the property, department value of the property at Rs.25.81 crores and assessed sum of Rs.6,45,35,000/- being 1/4th share of the assessee under the head income from business and profession.*

*17.2. Being aggrieved by the assessment order, the assessee carried the matter in appeal before the first appellate authority.*

*17.3. Before the ld.CIT(A), the assessee submitted that the property held by the assessee is purely capital asset and*

*continued to be capital asset even after joint development of the property and thus, provisions of Section 28(via) cannot be applied. The assessee further contended that the said provision is applicable from 01.04.2019 relevant to assessment year 2020-21 and thus, the said provision cannot be applied for the impugned assessment year. The ld.CIT(A) after considering the relevant facts and also taken note of provisions of Section 28(via) of the Act, observed that said provisions do not apply to the facts of the present case, because the assessee has held the property, as investment even before the joint development agreement and after the joint development agreement, the property continued to be a capital asset and income derived from the said property has been offered to tax under the head 'income from house property'. The ld.CIT(A) further held that provisions of section 28(via) apply to a case where inventory / stock-in-trade converted to a capital asset. In the present case, since there is no conversion of inventory into capital asset, application of section 28(via) is incorrect and thus, direct the Assessing Officer to delete the addition made towards profits and gains from business u/s 28(via) of the Act.*

*17.4. Aggrieved by the order of ld.CIT(A), the assessee is in appeal before us.*

*17.5. The ld.DR, on the other hand, submitted that the ld.CIT(A) erred in deleting the addition made by the Assessing Officer towards profits and gains from business as conversion of inventory into fixed assets without appreciating the fact that the assessee has entered into joint development agreement and has carried out business activities, which is evident from the terms of joint development agreement between the parties and subsequent activities carried out by the assessee. The ld.DR further submitted that the assessee has received huge extent of developed area in pursuant to joint development agreement, has let out the said property, to various parties, which is in the nature of adventure in the nature of trade and commerce and thus, when the inventory has been converted into fixed assets, provisions of Section 28(via) are applicable and the Assessing Officer has rightly applied the said provisions.*

*17.6. The learned counsel for the assessee, on the other hand, supporting the order of ld.CIT(A) submitted that the assessee is a land owner, had entered into joint development agreement for development of the property.*

*The assessee has received built up area in the exchange of land in the year 2009 when the joint development agreement was entered into with a developer. The assessee has offered long term capital gain for A.Y. 2010-11, when the joint development agreement was entered into. The subsequent receipt of property in the form of built up area in exchange of land was also held as 'investment' (fixed assets) and the assessee never treated built up area as inventory. The assessee never carried out any business activity. Therefore, the question of holding constructed built up area, as inventory and subsequent conversion into capital asset does not arise. The Assessing Officer on presumption and on hypothetical basis, applied provisions of section 28(via). The ld.CIT(A) after considering the relevant facts, has rightly deleted the addition made by the Assessing Officer and the order should be upheld.*

*17.7. Heard both the parties, perused the materials available on record and have gone through the orders of authorities below. There is no dispute with regard to the fact that the assessee and their family members had entered into joint development agreement with M/s. Skills Promoters Pvt. Limited on 11.05.2009. It is also not in dispute that the assessee and their family members had offered capital gain for tax in A.Y. 2010-11 on the basis of date of joint development agreement and paid relevant taxes and the same has been accepted by the Assessing Officer, in pursuant to re- assessment proceedings u/s 147 of the Act. The Assessing Officer assessed the value of the property retained by the assessee and let out to various parties as profits and gains of business and profession in terms of Section 28(via) on the ground that the assessee's activity entering into joint development agreement with the developer and subsequent receipt of developed building is in the nature of trade and commerce and further, the built up area received by the assessee and their family members for exchanging the land becomes inventory of the assessee. The Assessing Officer further observed that since the assessee has let out the property, the nature of conversion of inventory into capital asset, in terms of Section 28(via) and thus, the fair market value of the inventory, as on the date on which it was completed into, are treated as capital asset should be assessed as income from business.*

*17.8. We have given our thoughtful consideration to the reasons given by the Assessing Officer to assess fair market value of the property under the head income from*

*business, in terms of section 28(via) and we ourselves do not subscribe the reasons framed by the Assessing Officer. The Assessing Officer made additions purely on assumptions and presumptions, without there being any activity carried out by the assessee, which falls under the provisions of 28(via) of the Act. The assessee, being the land owner, entered into joint development agreement with the developer in the year 2009 and has received built up area in exchange of land to the builder. The land held by the assessee and their family members was a capital asset and this fact has been further strengthened by the acceptance of capital gain by the department in the A.Y. 2010-11. Further, the assessee continued to be held the land as capital asset, which is evident from the property sold by the assessee in different assessment years and resulted capital gain offered to tax and also portions of the property let out by the assessee and their family members and resulted income was offered under the head income from house property.*

*17.9. From the above, it is undisputedly clear that the property held by the assessee was a capital asset and continued to be capital asset even after joint development agreement and thus, invoking provisions of section 28(via) is misconceived and against the spirit of law. Further, as per the explanatory memorandum to the Finance Bill 2018, the rationale behind insertion of 28(via) has been explained and as per the said Memorandum, the provision has been inserted to give similar treatment to provisions of Section 45 of the Act, which provides for capital gain arising from application of capital asset into stock-in-trade. Whereas, in cases, where the stock-in-trade converted into or treated as capital asset, the existing law does not provide for its taxability. In order to provide simple treatment and describe the practice of difference payment of tax by converting into the inventory into fixed assets, provisions of Section 28(via) have been inserted w.e.f. 01.04.2019. If you go by the logic behind for insertion of said provision, it is clear that the said provision is applicable only in a case where inventory of business has been treated or converted into capital asset but not otherwise.*

*17.10. In the present case, the facts brought on record clearly indicate that the assessee was not into the business and the question of carrying inventory and subsequent application of fixed assets does not arise. It is only the*

*Assessing Officer, who imagined and stated that the assessee carried the inventory of business and subsequently, converted into fixed assets without there being any substance in his observation. These facts clearly show that the assessee is an investor and the property held by the assessee was an investment or capital asset all along and even after receipt of built up area from the developer. Therefore, in our considered opinion, the Assessing Officer has erred in applying the provisions of Section 28(via) of the Act. The ld.CIT(A) after considering the said facts has rightly deleted the addition made by the Assessing Officer. Thus, we inclined to uphold the findings of ld.CIT(A) and reject the grounds taken by the Revenue.”*

16. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that leasing out of unsold commercial space would not amount to conversion of work-in-progress or inventory into fixed asset in terms of section 28(via) of the I.T. Act, 1961. The learned CIT (A) after considering the relevant facts has rightly deleted the addition made by the Assessing Officer. Thus, we are inclined to uphold the findings of the learned CIT (A) and dismiss the appeals filed by the Revenue in ITA Nos.683 & 685/Hyd/2022.

### **ITA No.684/Hyd/2022 – Asian Infra Estates Ltd**

17. In so far as ITA No.684/Hyd/2022 for the A.Y 2018-19 in the case of Asian Infra Estates Ltd, we find force in the argument advanced by the learned Counsel for the assessee in light of petition filed under Rule 27 of the ITAT Rules, 1963. The appellant has filed a petition under Rule 27 of the ITAT Rules, 1963 in support of the order of the learned CIT (A) on the issue

decided against the appellant. The assessee has taken legal ground challenging the addition made by the Assessing Officer towards income from business on account of conversion of inventory into capital asset in light of certain judicial precedents including the decision of the Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell Ltd (Supra) and argued that in unabated/concluded assessment, no addition can be made in absence of any incriminating material found during the course of search. We find that in the present case, the assessment for the impugned A.Y is unabated as on the date of search, because the time limit for issue of notice u/s 143(2) of the I.T. Act, 1961 for the A.Y 2018-19 would end on 30/09/2019, whereas the search had taken place in the present case on 22/10/2019. Going by the date of search, there is no dispute on the fact that the assessment for the A.Y 2018-19 is unabated/concluded as on the date of search. Once the assessment is unabated, then no addition could be made in the assessment order passed u/s 153A of the Act, in absence of any incriminating material found during the course of search and this legal principle is supported by the decision of the Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell Ltd (Supra) where it has been held as under:

*“Section 153A, r.w.s 132 and 143 of the I.T. Act, 1961 – Search and Seizure – Assessment in case of (conditions precedent) – Whether object of section 153A is to bring under tax undisclosed income which is found during course of search or pursuant to search or requisition; therefore, only in a case where undisclosed income is found on basis of incriminating material, Assessing Officer would assume the jurisdiction to assess or reassess total income for entire six years block*

*assessment period even in case of completed/unabated assessment – Held, yes – Whether I case of search u/s 132 or requisition u/s 132A, Assessing Officer assumes jurisdiction for block assessment u/s 2153A and that all pending assessments/re-assessments shall stand abated – Held, yes – Whether in respect of completed assessments/unabated assessments no addition can be made by Assessing Officer in absence of any incriminating material found during course of search u/s 132 or requisition under section 132A – Held, yes – Whether, however, completed/unabated assessments can be reopened by Assessing Officer in exercise of powers u/s 147/148 subject to fulfilment of conditions as envisaged/mentioned u/s 147/148 and those powers are saved – Held, yes (Paras 8,12 to 14) (In favour assessee)”.*

18. In the present case, there is no dispute with regard to the fact that the addition made by the Assessing Officer towards income from business is not supported by or reference of any incriminating material found during the course of search. Since the assessment for the impugned A.Y is unabated as on the date of search, in our considered view, the addition made by the Assessing Officer towards business income cannot be sustained. Therefore, by respectfully following the decision of the Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell Ltd (Supra), we allow the petition filed by the assessee under Rule 27 of the ITAT Rules, 1963 and the ground raised by the assessee in the said petition is answered in favour of the assessee.

19. In so far as the merits of the issue is concerned, we find that the facts and issues involved in this appeal are identical to the facts and issues which we have considered in ITA No.683/Hyd/2022 in the case of Asian Dwellings LLP. The

reasons given by us in preceding paragraph Nos. 13 to 16 shall mutatis mutandis apply to this appeal, as well. Therefore, for similar reasons, we are inclined to uphold the findings of the learned CIT (A) and dismiss the appeal filed by the Revenue.

20. In the result, appeal filed by the Revenue is dismissed.

21. To sum up, all the three appeals filed by the Revenue are dismissed.

Order pronounced in the Open Court on 25<sup>th</sup> October, 2024.

Sd/-

Sd/-

<b>(MAHAVIR SINGH) VICE-PRESIDENT</b>	<b>(MANJUNATHA, G.) ACCOUNTANT MEMBER</b>
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Hyderabad, dated 25<sup>th</sup> October, 2024

*Vinodan/sps*

Copy to:

S.No	Addresses
1	ACIT, Central Circle 2(3) Room No.,.613, 6 <sup>th</sup> Floor, Aayakar Bhavan, Basheerbagh Hyderabad
2	Asian Dwellings LLP, 8-2-120/76/1 Road No.2, Banjara Hills, Hyderabad 500034
3	Asian Infra Estates Ltd., 502B Ground Floor, Road No.31, Amar Jyoti Building, Jubilee Hills, Hyderabad/Asian Infra Estates LLP 396/397 Jain Estates Park Lane, Secunderabad 500003
3	Pr. CIT – Central, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*