

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.4969/Mum/2024
(Assessment Year :2018-19)**

Deputy Commissioner of Income Tax, Circle-1, Thane Ashar IT Park Thane West	Vs.	Darshan Enterprises 2 nd Floor, Rosa Vista Opp. Suraj Water Park Ghodbunder Road Thane West Maharashtra
PAN/GIR No.AADFD8612N		
(Appellant)	..	(Respondent)

Assessee by	Shri Rushabh Mehta, Jigar Mehta
Revenue by	Smt. Sanyogita Nagpal, CIT DR
Date of Hearing	28/01/2025
Date of Pronouncement	28/02/2025

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the Revenue against order dated 15/07/2024 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2018-19.

2. In the grounds of appeal, Revenue has raised following grounds:-

1. *On the facts and in circumstances of the case and in law, the CIT(A) erred in holding that section 68 will not be applicable in the hands of the assessee firm, whose profit sharing ratio has been changed during the year and also its accounts has been credited by the amount of Rs. 52,17,38,000/- on revaluation*

2. *On the facts and in circumstances of the case and in law, the CIT(A) erred in deleting the addition on account of brokerage expenses against unsecured loans claimed to have been paid by the assessee of Rs. 3,85,000/- to Geeta Charan and Rs. 3,84,665/-paid to M/s B.R. Associates, even though there is no increase in secured or unsecured loans during the year.*

3. The brief facts and background of the matter are that the assessee firm is engaged in the business of trading in land plots and development rights. For the year under consideration i.e. A.Y. 2018-19, the assessee firm had filed its return of income declaring total income of Rs. 8,72,88,8880/-. Later, the case was selected for complete scrutiny under the E-assessment scheme, 2019 and assessment order was passed u/s. 143(3) on 23.06.2021 assessing total income at Rs. 60,97,96,550/-. Initially, the assessee firm had negotiated for purchase/acquisition of rights, title and interest in a piece of land at Kolshet, Thane from Pasari family and Irani family, along with the rights of several other claimants in the said land. As the assessee firm was incapable of developing the same alone, it offered to develop the said land jointly with the Dosti Group in Mumbai. Accordingly, an Agreement of Association of Persons and Establishments of Undertaking dt. 25/11/2005 was entered into between the assessee and M/s. Friends Development

Corporation, (both being partnership firms), recording the terms and conditions of the AOP in the name of M/s. D. D. Associates. Thereafter, a Deed of Conveyance dt. 01.04.2014 was also entered into between M/s. D.D. Associates-AOP and the original land owners. Accordingly, M/s. D.D. Associates (AOP) became the owner of the land and this AOP is now developing the real estate project titled "Dosti Desire" at Kolshet, Thane.

4. The profit-sharing ratio of M/s. D.D. Associates (AOP) was as under;

Darshan Enterprises (assessee)	46.50%
Friends Development Corporation	53.50%

5. During the year under consideration, the project being developed by the AOP on land admeasuring land admeasuring 19508.14 sq. mtrs was revalued by Rs. 1,25,72,00,000/- and the same was credited to the capital account in the aforesaid proportion and was accounted by the AOP as under:

Project WIP	Dr	1,25,72,00,000	
To Darshan Enterprises (assessee)			58,45,98,000
To Friends Development Corporation			67,26,02,000
(Being Project WIP revalued and credited to member in PSR ratio)			

6. Thereafter, since the assessee was unable to provide the finance required for undertaking the project and therefore, the share of PSR of members of AOP was revised during the year under consideration as under:-

Darshan Enterprises (assessee)	5%
Friends Development Corporation	95%

7. Further, the revaluation undertaken earlier was reversed in the new PSR and the said reversal was debited to members account in the new PSR in books of AOP in the following manner:-

Darshan Enterprises (assessee) Dr	6,28,60,000	
Friends Development Corporation Dr	1,19,43,40,000	
To Project WIP		1,25,72,00,000
(Being revaluation of Project WIP reversed and debited to member in new PSR ratio)		

8. The net result of aforesaid entries was accounted by the assessee firm in its books of accounts by debiting the investment in AOP and crediting the partners account as under:

Investment in DD Associates Dr	52,17,38,000	
To Jagdish Khetwani		33,91,29,700
To Naresh Khetwani		10,43,47,600

To Suresh Mehta		7,82,60,700
(Being net impact of revaluation & reversal by AOP credited to partner)		

9. The assessee firm has withdrawn Rs. 42 crores from its capital account and a sum of Rs. 68.17 crores is introduced by another member - M/s. Friends Development Corporation as capital contribution to AOP.

10. Before the Ld. AO, assessee had explained the aforesaid facts, however, the ld. AO rejected all the contentions of the assessee holding that –

a) During the process of revaluation and reversal, development rights and land is transferred from DDA to Partners and from one partner to another without getting registered through instrument. The accounting gimmick was played to reduce tax liability by transferring entries by denying real income.

b) In agreement, ownership of property was not transferred from seller to DDA and on revaluation, ownership of AOP assets is transferred by Darshan to Dosti. The transaction is in fact sale consideration between the partners. The transfer of property was camouflaged to save capital gains and stamp duty and to reduce tax liability under Income Tax Act and is a 'colourable device' used by the assessee in the deal.

c) The assessee firm has routed its undisclosed money through such artificial entries in the books of AOP M/s. D. D. Associates and created increase of its capital by Rs.52,17,38,000/- and introduced the same amount of Rs.52,17,38,000/- by crediting the capital accounts of its partners namely Jagdish Khetwani, Naresh Khetwani and Suresh Mehta.

12. In response to the show-cause notice as to why the amount of Rs.52,17,38,000/- should not be treated as undisclosed income, assessee submitted detailed explanation which has been incorporated in the impugned assessment order, however, he has rejected the same after holding as under:-

“i. In this reply the assessee has reiterated the para (1) of reply furnished on 12/03/2021. This reply has already been considered and discussed in para 2.2 of the draft assessment order and the reply of the assessee was not found acceptable. Now the same reply is not required to be re discussed.

ii. In the reply at S.No. (1) of page 2 of the reply it is stated that the total gain on revaluation of land and development was Rs. 125,72,00,000/-. The gain equivalent to 41.50% (46.50%-5%) to which the assessee entitled is recognized by the A.O.P. by crediting capital of the assessee by Rs. 52,17,38,000/-. It is further claimed that the equivalent amount of Rs. 52,17,38,000/- has been debited to the capital account of the other member namely M/s Friends development corporation of the A.O.P.

The instant assessment proceeding to be finalized is related to the assessee but not to the case of m/s Friends Development Corporation. The credit of Rs. 52,17,38,000/- in the capital account of the assessee is only on account of book entries of the amount artificially only showing fair valuation of land and development of the AOP twice in the A.Y. 2018-19 and also changing the share ratio of the assessee in profit/gain /loss of the AOP.

iii. In the reply the assessee has given reference of the decision of the Hon'ble supreme court in the case of CIT Vs Hind construction 831TR211SC. The facts of the referred case differed from the fact of the case of the assessee. The revaluation of the land and development has not been actually made by the AOP but only book entries of revaluation has been made twice in A.Y. 2018-19 by the A.O.P. in its books changing share ratios of the members. Though there is no real profit to the A.O.P. on revaluation of land and development but the twice entries of revaluation of land and development, changing the share ratios of the members, resulted in credit of fund of Rs. 52,17,38,000/- in the capital account of the assessee which is a member in that AOP.

Therefore, it is firmly held that the assessee firm has routed its undisclosed money through such artificially entries in the books of the AOP m/s D.D. Associates and created increase of its capital by Rs. 52,17,38,000/- and introduced the same amount of Rs. 52,17,38,000/- by crediting the capital accounts of its partners namely Jagdish Khetwani, Shri Naresh Khetwani and Shri Suresh Mehta.

Accordingly, the amount of Rs. 52,17,38,000/- is treated as undisclosed income credited in the books of the assessee and same is charged to Income Tax under section 68 of the IT Act. Penalty proceeding u/s 271AAC is initiated on this addition.”

13. The ld. CIT (A) held that Section 68 is not applicable because here in this case AOP M/s. DD Associates had re-valued its assets and accordingly, credited into creditor's profit and loss account. The assessee's accounts have been credited of Rs.52,87,38,000/- which was subsequently credited to each partner's capital account in their profit sharing ratio. This, assessee has duly explained alongwith relevant documentary evidences like bank statement, ledger accounts of the assessee and its partners and reply of M/s. D.D. Associates (AOP) and

other relevant documents. Thus, he held that no addition can be made u/s.68.

14. We have heard the rival submissions and also perused the relevant finding and the material placed on record. The facts stated above relating to the acquisition of land by assessee firm initially, AOP in the name of M/s. D.D. Associates being incorporated in 2005, conveyance of said land in AOP in 2014, revaluation on 01.04.2017, change in profit sharing ratio (PSR) during the year and entries in books of AOP relating to revalued amounts credited to respective member's account of AOP and debited on change in PSR are not at all in dispute. All the necessary documents and explanations in relation to the revaluation and the accounting entries passed in the books of AOP and the assessee viz. deeds of Conveyance, Ledger of assessee in books of AOP, ledger of AOP in books of assessee, ledger of partners in the books of assessee, deed of AOP as amended from time to time, deed of Partnership as amended from time to time as were furnished before the authorities below are not in dispute and no defects have been pointed out by the Id. Assessing Officer

15. One very important fact to be noted is that, the revaluation has been done by DDA who is independently taxed as an AOP. The assessee firm being a member in AOP is only entitled to the share of profits/surplus in AOP. The AOP has members that have determinate shares and therefore, it is liable to pay tax in its own hands. Merely because the account of the assessee firm,

being a member in AOP is credited in books of AOP on account of revaluation as per its PSR, this *per se* does not lead to any income in the hands of the assessee firm. Even otherwise, there is no sale or transfer of any asset. Revaluation of stock in trade in books of accounts of AOP to recognise its present value in our opinion does not trigger any tax liability either in the hands of AOP or any of its members. Another fact here is that the AOP is still in existence and is not dissolved. Even the members of the AOP are same and continuing, i.e., none of them have retired. It is only a case of change in PSR and capital account has been credited based on the revaluation and changed PSR. There is no provision in the Act for the relevant year to tax such a transaction.

16. It has been contended on behalf of the assessee that in so far as the onus u/s. 68 of the Act, the assessee firm has discharged its onus regarding the nature and source of alleged amount of Rs. 52,17,38,000/-being the amount of credit given by AOP in its books of account on account of revaluation considering the changed PSR by furnishing following ample documents in which no defects have been pointed out by the Id. Assessing Officer, like, copy of AOP deed of DD Associates as amended from time to time; Ledger account of assessee in books of DD Associates;; Ledger account of DD Associates in the books of assessee; Ledger account of partner of assessee in the books of assessee; Financial Statements of DD Associates.

17. With respect to various allegation of the AO that the transaction was an accounting gimmick and colorable device with an intention to reduce tax, it has been submitted as under:

(a) The land was originally conveyed in the name of AOP in 2014. Thereafter, there is no change in the ownership of land in as much as the AOP continues to be the owner of the land and project being developed. Therefore, the contention of the ld. Assessing Officer that the development rights and land is transferred from DDA to Partners and from one partner to other without getting registered through instrument is devoid of merits.

(b) As a matter of fact, there is no admission or retirement of members in the AOP either before or after the revaluation. Similarly, there is no change in partners of the assessee firm or Friends Development Corporation prior to or post the revaluation. Accordingly, as a matter of fact, the owners of the land and the project being developed remain the same prior and post the revaluation. Therefore, the contention of the ld. Assessing Officer that the ownership of AOP assets is transferred by Darshan to Dosti and the transaction is in fact sale consideration between the partners and that it camouflaged to save capital gains and stamp duty and to reduce tax liability under Income Tax Act is merely based on surmises and conjectures as the owner as well as the beneficial owners of the land and project prior to and post the revaluation remains the same. There is in fact no transfer of asset from the assessee to other member of the AOP. The view that amount received by the assessee-partner from other existing partners for reduction in profit sharing ratio would not tantamount to even capital gains chargeable to tax under section 45(1) as also has been upheld by the Hon'ble Mumbai ITAT in the case of Anik Industries Ltd vs. DCIT [2020] 116 taxmann.com 385 (Mumbai) after detailed considerations of several important decisions of the Hon'ble Supreme Court and High Courts on the issue. In any case, it is also not the case of the Id. Assessing Officer to tax the alleged amount u/s. 45 of the Act but the additions have been sought to

be made u/s. 68 of the Act as evident from the assessment order and the grounds raised before the Hon'ble ITAT as well.

(c) The change in PSR of the members of the AOP was due to the fact that the assessee was unable to meet the financial commitment required to undertake the development of the project. Therefore, the same was not undertaken with an intention to save any taxes/ stamp duty but as per business rationale that the member who contributes less to the AOP should be rewarded less.

(d) The contention of the Id. Assessing Officer that the assessee firm has routed its undisclosed money through such artificial entries in the books of AOP M/s. DD Associates and created increase of its capital by Rs. 52,17,38,000/- and introduced the same amount of Rs. 52,17,38,000/- by crediting the capital accounts of its partners namely Jagdish Khetwani, Naresh Khetwani and Suresh Mehta is a bald observation without any cogent or corroborative evidence against the assessee firm. The Id. Assessing Officer has not even brought on record any evidence to establish as to how the amount credited to the account of assessee firm in the books of the AOP were the undisclosed money routed by the assessee.

18. We are in complete agreement with the rebuttal of the assessee and the observation and finding of the AO has no basis either under the accounting system or under the law. Here, the issue which has been raised by the Ld. Assessing Officer is that the net amount credited of Rs. 52,17,38,000/- to the member of AOP being assessee firm on account of revaluation exercise considering the PSR pertaining to the assessee firm is nothing but sale of asset between partners and that the capital gain is avoided by such accounting gimmicks. Further, he has alleged that the assessee firm has introduced its undisclosed income in the process and has failed to prove the genuineness of the

transaction for which he invoked provisions of section 68 of the Act to make the addition of Rs. 52,17,38,000/- in the hands of the assessee firm.

19. We are unable to appreciate the stand of the AO, because here in this case AOP has revalued the assets during the year under consideration by an amount of Rs.125.72 crores and credited to the capital of the members of the AOP in the profit sharing ratio as noted above and accordingly, the amount was credited in the capital account of the members i.e. Friends Development Corporation Rs.67,26,02,000/- and the Darshan Enterprises Rs.58,45,98,000/-. Later on the share of the members of the AOP was revised and Friends Development Corporation share of profit became 95% and that of Darshan Enterprises of 5%. Accordingly, the amount of revaluation amounting to Rs.125.72 Crores was reversed and debit of the capital of the members in the revised profit sharing ratio which was as under:-

- | | |
|-------------------------------------|---------------------|
| (i) Friends Development Corporation | - Rs.1,19,43,40,000 |
| (ii) Darshan Enterprises | -Rs. 6,28,60,000 |

20. Thus, the aforesaid entries resulted into net credit / capital in the members of the AOP as under:-

Particulars	Net Credit /(Debit)
Friend Development Corporation	(52,17,38,000)
Darshan Enterprises	52,17,38,000

21. Thus, the amount credited to the assessee's account in the books of AOP of Rs.52,17,38,000/- was recorded by the assessee by debiting the investment in AOP and crediting the capital account of individual partners in their respective shares which has been as highlighted above. The ld. AO without understanding the true nature of transaction has held that during this process, the development rights in line is getting transferred from one partner to other without getting registered through instrument and that it is some kind of accounting gimmick to reduce the tax liability by transferring entries by denying the real income. First of all, we are unable to understand how any income has arisen on account of such revaluation by the joint venture M/s. DD Associates in assessee's hand. The revaluation has been done by M/s. DD Associates who is independently assessed to tax as an AOP. The assessee was only entitled to receive share debt surplus from AOP because any such tax incidence would be only in the hands of the AOP only. The AOP i.e. M/s.DD Associates have members having determined share therefore, liable to pay tax in its own hands. Even otherwise also there is no sale or transfer of any assets warranting liability to tax as it is only a revaluation of stock in trade to recognize in the books of accounts and the present value does not trigger in tax liability either in the hands of joint venture AOP from any of its members. It has also been brought on record and also noted in the CIT(A) order that credit of small share of re-valuation of stock-in-trade in the books of the other member i.e. Friends Development Corporation, no adverse view

has been taken by the department in their case. Here in this case, the total re-valuation of project land was Rs.125.72 Crores as per the audited financial statement of M/s. DD Associates-AOP and the share of the assessee till 31/03/2017 was Rs.46.50 which was brought down to 5% at the year ending 31/03/2018. The gain equivalent to 41.50% to which assessee was entitled to is recognized by AOP by crediting to the capital account by such amount and pressing equivalent debit to the capital account of the other member of the AOP. It was for this reason that the profit and loss share alleged was increased by 41.1%. There is no sale consideration as inferred by the ld. AO or any kind of transfer of property to trigger capital gain and stamp duty or to reduce any tax liability. There is no provision or law which has been referred by the ld. AO that form of partner cannot revalue assets or is there any procedure to moderate such exercise. Accordingly, we do not find any reason to uphold the addition as stated by the ld. AO and order of the ld. CIT(A) is confirmed.

22. Now coming to the issue with regard to disallowance of property paid for loan of Rs.7,69,655/-, the brief facts are that assessee has claimed brokerage / commission payment of Rs.20,79,982/- out of which Rs.11,89,187/- was claimed as direct expenses and Rs.8,82,795/- was claimed as other expenses. Before the ld. AO assessee had furnished person wise of details of brokerage paid and details of amount paid on sale of 7 flats and 4 plots and details of brokerage claimed of Rs.8,82,795/- under the other expenses was on account of brokerage of Rs.3,85,000/- claimed against unsecured loan

taken from Karur Vysya Bank as paid to Geeta Charan and brokerage of Rs.1,97,640/- and Rs.1,87,025/- claimed as paid to B.R. Associates as brokerage against unsecured loans. The case of the ld. AO is that there is no increase in the secured loan and unsecured loan in A.Y.2018-19 from the amount in A.Y.2017-18 and in fact there is a reduction in the amount of secured and unsecured loan in A.Y.2018-19. The ld. AO noted that assessee has not given details of amount of secured and unsecured loan obtained through brokers and also not furnished their evidences.

23. Before the ld. CIT (A) assessee submitted that incase of Geeta Charan Rs. 3,85,000/- was on account of borrowed secured loan from Karur Vysya Bank Ltd. and the charges paid to Geeta Charan were for liasoning with the bank during the tenure of loan. In the case of B.R Associates Rs.3,84,665/- brokerage given to be paid to finance brokers during the entire tenure of loan on year to year basis. The assessee has paid the brokerage through banking channels and also TDS has been deducted. Ld. CIT (A) has deleted the addition after observing as under:-

7.4.5 I have considered the findings of the AO in his assessment order and the submissions of the assessee during the appellate proceedings. The assessee submitted that it has paid the brokerage through banking channels and TDS has been deducted and all details of broker parties and maintained that the expenditure was incurred for business purposes only and is fully allowable as revenue expenditure and furnished invoices for the above expenditure. I am of the opinion that the AO could have verified the expenses from the invoices furnished and decide on the authenticity. In the absence of this, I am of the view that the Rs. 7,69,655/- which has been disallowed on account of

brokerage commission expenses is allowable in the absence of any adverse findings by the AO and the assessee having deducted TDS and furnishing the details and invoices of brokerage paid. Accordingly, the addition of Rs, 7,69,655/- is hereby deleted. Ground of appeal 4 stands allowed.”

24. On perusal of the facts and material brought on record, once there is a finding of the fact that the brokerage has been paid for the specific purpose and the amounts have been paid through cheques and TDS has been deducted and without any adverse material, we do not find any infirmity in the order of the Id. CIT (A) deleting the addition. Accordingly, this ground raised by the Revenue is dismissed.

25. In the result, appeal of the Revenue is dismissed.

Order pronounced on 28th February, 2025.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Mumbai; Dated 28/02/2025
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai