

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B': NEW DELHI**

**BEFORE SHRI YOGESH KUMAR US, JUDICIAL MEMBER  
AND  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No.604/Del/2020,AY2016-17**

Assistant Commissioner of Income Tax, Circle-50(1), E-2, Civic Centre, J L Nehru Marg, New Delhi <b>(Appellant)</b>	Vs.	Harkanwarpal Singh Lamba 11, Ranjit Nagar, New Delhi PAN: <b>AAAPL6760C</b> <b>(Respondent)</b>
Appellant by		Sh. Rajesh K. Dhanesta, Sr. DR
Respondent by		None
Date of Hearing		20/01/2025
Date of Pronouncement		09/04/2025

**ORDER**

**PER AVDHESH KUMAR MISHRA, AM**

This appeal of the Revenue for the Assessment Year (hereinafter, the 'AY') 2016-17 is directed against the order dated 29.11.2019 of the Commissioner of Income Tax (Appeals)-17, New Delhi [hereinafter, the 'CIT(A)'].

2. The Revenue has raised two grounds as under:

- “i) The Ld. CIT(A) has erred in deleting the addition of Rs.1,27,62,289/- made on account of rejection of exemption claimed u/s 10(38) of the I.T.Act, 1961 as long-term capital gain, despite the fact that the assessee failed to establish the claim with documentary evidences.*
- ii) The Ld. CIT(A) has erred in allowing Rs.78,76,459/- on account of Revenue from Real Estate Business even in the absence of any*

*documentary evidence regarding revenue and expenses of his real estate business.”*

3. The relevant facts giving rise to this appeal are that the assessee, engaged in trading of paints&allied products, filed his Income Tax Return (hereinafter, the 'ITR') of the relevant year on 16.10.2016 declaring income of Rs.42,05,490/-. The case was scrutinized and the assessment was finalized at income of Rs.2,48,44,240/- by the Assessing Officer (hereinafter, the 'AO'). The AO held that the Long-Term Capital Gains (hereinafter, the 'LTCG') of Rs.1,27,62,289/- derived on sale of shares claimed exempt under section 10(38) of the Income Tax Act, 1961 (hereinafter, the 'Act') was not genuine. Hence, he disallowed the exemption under section 10(38) of the Act. Further, the AO noticed that the assessee along with co-owners transferred their rights in a property to a builder for development and received the sum of Rs.78,76,459/- from the builder as per the collaboration agreement in lieu of surrender of rights in the immovable property. The assessee has disclosed the sum of Rs.78,76,459/- as advance. However, he treated the sum of Rs.78,76,459/- as the revenue receipt as per percentage completion method regularly followed by the assessee for his real estate business. Aggrieved, the assessee filed appeal before CIT(A) and succeeded.

4. The Ld. Senior Departmental Representative (hereinafter, the 'Sr. DR'), at the outset, submitted that the finding of the Ld. CIT(A) was not based on the correct appreciation of the facts. To buttress his argument, he drew out

attention to the para 5.4 of the impugned order, wherein the Ld. CIT(A) had held as under:

*“5.4 There is merit in the contention of the appellant. The AO has denied the claim of long term capital gain u/s 10(38) to the appellant on sale of shares of M/s. Yamini Investment Company Ltd. without bringing any adverse material on the record. The appellant has furnished all the necessary evidences and documents pertaining to contract notes for sale of shares in support of his contention. The appellant has bought the shares from M/s Fidelo Power and Infrastructure Ltd. and sold the same on stock exchange. All the purchases have been made through banking channels and AO did not find any discrepancy in purchase and sale of shares. The AO has reproduced the financial of M/s. Yamini Investment Company Ltd. in the assessment order and it is observed that in F.Y. 2015-16 company has shown revenue from operations at Rs.16.88 Crore and previous year it was 12.59 Crore. The AO did not raise any doubt in respect of profitability and income earning capacity of the company. As per the AIR information there is nothing against the assessee in respect of penny stock action by Investigation Wing and no data available in suspicious transaction report. No investigation is carried out in respect of M/s. Yamini Investment Company Ltd. by the Investigation Wing and no such information was available with the AO. Further, AO has not confronted any adverse finding related to share transaction to the appellant. The appellant has held the shares approximately 3 to 4 years before the same were sold. The information received from the BSE Ltd. in respect of exit companies nothing adverse has been pointed out against the assessee indicating that he is involved in malafide activities. Since as per the AIR information in respect of the appellant no data available in penny stock, penny stock scrip related documents, penny stock trade summary, penny stock action by investigation wing, penny stock trade data and no data available in suspicious transaction report, the AO is not justified treating the long term capital gain as income from undisclosed sources without bringing any direct evidences on record in treating the same suspicious transaction. Thus, addition made by the AO on the basis of the surrounding circumstances on assumption and presumption denying the claim of long term capital gain at Rs.1,27,62,289/- is not sustainable and it is hereby deleted.”*

5. Before us, a confidential report in respect of Yamini Investment Company Ltd. prepared by the Investigation Wing was produced for our perusal to demonstrate that the Investigation Wing had carried out the investigation in the case of Yamini Investment Company Ltd. detailing suspicious transactions including transactions under consideration here. The Ld. Sr. DR argued that the finding of the Ld. CIT(A) that no investigation had been carried out by the Investigation Wing in the case Yamini Investment Company Ltd. was nothing but prima facie based on incorrect facts. Further, he drew our attention to the para 3.3 to 3.8 of the assessment order to buttress his arguments that the AO had rightly treated the long-term capital gains arisen on sale of shares of Yamini Investment Company Ltd. as bogus and taxed the same as income under the head other sources. It was further contended that the Ld. CIT(A) had not appreciated the facts of the case in entirety. The Ld. Sr. DR argued that contract notes and Securities Transaction Tax (hereinafter 'STT') payments did not establish and demonstrate that share transactions were genuine. It was further submitted that the Yamini Investment Company Ltd. was found indulged in significant trading with those companies which had been held and classified as a sham companies. The rise in share prices; prima facie, appeared manipulated in such a way which had helped the assessee in laundering his unaccounted money through exempted long-term capital gains.

5.1 The Ld. Sr. DR further submitted that the assessee along with others had entered into collaboration agreement with the builder; Bestech India Pvt. Ltd. in 2011. The builder built the flats and recorded 27.31% revenue as per percentage completion method. The assessee got 11 flats in lieu of the transfer of the land. The assessee has shown receipt of advance of Rs.3,94,08,582/- from buyers of the said 11 flats. The assessee has shown entire advance of Rs.3,94,08,582/- as liability in his balance sheet. However, the AO, out of the said advance of Rs.3,94,08,582/-, taxed Rs.78,76,459/- on the percentage completion method and mercantile system on accounting in the relevant year. The Ld. CIT(A) deleted the said addition observing as under:

*“6.3 I have considered the facts of the case, findings of the AO and submissions of the appellant. The appellant has entered into collaboration agreement with M/s Bestech India Pvt. Ltd. in year 2011 wherein the appellant has provided the part of land along with other land owners on which M/s Bestech India Pvt. Ltd. agreed to build multistoried tower. In lieu of consideration of land, M/s Bestech India Pvt. Ltd. agreed to allocate a certain number of flats in favour of the appellant. The appellant has not offered the capital gain or business income in respect of the flats to be received from M/s Bestech India Pvt. Ltd. The appellant has booked the amount spent on construction by the collaborator in respect of flats belong to the appellant as advance received from the company and collaborator company shown it as work in progress and TDS is duly deducted on the same. The AO has not accepted the contention of the appellant and asked him to provide each and every figure appearing in balance sheet and profit & loss account. Since appellant has not provided the exact calculation regarding revenue and expenses of his real estate business, the AO has treated the amount received during the year at Rs. 78,76,459/- as income of the appellant from real estate business. During the course of appellate proceedings, appellant has submitted that for the purpose of collaboration, land measuring, 9 canal 14 marla costing to Rs.1,14,58,197/- was converted into stock in trade at a value of Rs. 2 crore on 01.04.2011 u/s*

*45(2) of the Act. The total capital gain on such conversion amounted to Rs. 85,41,803/- which becomes taxable in the year when the property is actually sold/registered. The cost of construction towards the flat in the name of the appellant are duly accounted for by collaborator i.e. M/s Bestech India Pvt. Ltd. as expenses/purchases towards the work in progress and TDS is duly deducted. The same amount being deemed value of consideration in lieu of the sale of proportionate land in favour of collaborator is booked as advance received from the company as per collaboration agreement by the appellant. The appellant has further submitted that he has explained each and every entry of the balance sheet before the AO and no TDS has been claimed by the appellant in its return of income. It was submitted by the appellant that the Percentage Completion Method as per AS-7 is not applicable in his case since he is neither a construction company nor under any construction contract. Thus, the project completion method can be said to be applicable in the case of the appellant which is rightly being followed. It is again specified that the appellant is following this method of accounting since inception of its real estate business in 2011 and has also been assessed under section 143(3) for the Ay 2012-13. The method of accounting followed by the appellant was duly accepted vide a speaking order for that year.*

*6.4 It is observed that appellant is following project completion method and offer the income at the time of when the property is actually sold/registered. The appellant has shown the cost of construction incurred by the M/s Bestech India Pvt. Ltd. as per the collaboration agreement in respect of the flats of the appellant as advance received from the company in the balance sheet and furnished complete details in respect of the entry appearing in the balance sheet. The appellant has not taken any benefit of the TDS deducted by M/s Bestech India Pvt. Ltd. The assessment of the appellant was completed u/s 143(3) in AY 2012-13 and AO has not made any addition on this issue and accepted the accounting method followed by the appellant in respect of revenue recognition of the flats. The appellant is not a builder or a construction company and following mercantile system of accounting. Since appellant is following project completion method revenue is to be recognized at the time of when the property will be actually sold and capital gain will be released. Similar view is held by Hon'ble Agra ITAT in the case of Income Tax Officer, Ward 1(1)(5), Agra Vs. M/s Shanti Constructions, UG-13, Shanti Madhuvan Plaza, Delhi Gate, Agra. ITA No.*

*289/AGRA/2017 for Ay 2012- 13. On identical facts, Hon'ble ITAT held that*

*“.....”.*

5.2 The Ld. Sr. DR contended that the case laws relied upon by the Ld. CIT(A) for deleting the addition of Rs.78,76,459/- are distinguishable on the facts because those cases were of builder & developer whereas the assessee was neither builder nor developer over the years. He contended that the facts of the case were not properly appreciated by the Ld. CIT(A). He contended that the entire issue needed proper appreciation of facts afresh by the Ld. CIT(A).

6. The respondent assessee was heard as neither anyone attended on his behalf nor was sought any adjournment.

7. We have heard Ld. Sr. DR and have perused the material available on the record. We found merit in the argument/contention/submission of the Ld. Sr. DR that the Ld. CIT(A) had erred in holding that the Investigation Wing of the Income Tax Department, has not conducted any inquiry in the case of Yamini Investment Pvt. Ltd. and there is no adverse finding against Yamini Investment Pvt. Ltd. The secret report produced by the Ld. Sr. DR before us clearly demonstrates the contrary facts than those mentioned by the Ld. CIT(A). It is hereby clarified that we have not examined the secret report produced by the Ld. Sr. DR on merit and therefore, we are refraining to make any comment thereon. However, we find that the Ld. CIT(A) erred in deciding the appeal mentioning the facts that there is no report of Investigation Wing

and no suspicion has been raised on the share transactions of/with Yamini Investment Pvt. Ltd. Further, we also find that the Ld. CIT(A) has not appreciated the facts of the second issue; i.e. the taxability of income derived from the collaboration agreement-vis-à-vis transfer of developmental rights/land as stock-in-trade as a whole and has deleted the addition of Rs.78,76,459/-. However, without offering any comment on merit of the case, we are of the considered view that it is a fit case to remit the matter back to the file of the CIT(A) for deciding the appeal; both issues, afresh after providing adequate opportunity of being heard to the AO and assessee. The assessee, no doubt, shall cooperate in fresh appellate proceedings before the Ld. CIT(A).

8. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in open Court on 09<sup>th</sup> April, 2025

**Sd/-**  
**(YOGESH KUMAR US)**  
**JUDICIAL MEMBER**  
Dated: 09/04/2025  
*Binita, Sr. PS*

**Sd/-**  
**(AVDHESH KUMAR MISHRA)**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT/CIT
4. CIT(A)

ITA No.604 /Del/2020  
Harkanwarpal Singh

5. Sr. DR-ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI