

ITA No.1958/Bang/2024  
M/s. Nalapad Properties, Bangalore &  
ITA No.1959/Bang/2024  
M/s. Nalapad Hotels & Convention Centre, Bangalore  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B”BENCH: BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**  
**AND**  
**SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA No.1958/Bang/2024
AssessmentYear:2017-18

ACIT Central Circle-2(3) Bangalore	<b>Vs.</b>	M/s. Nalapad Properties No.23, 1 <sup>st</sup> Cross, Magarath Road Bengaluru 560 028 Karnataka  <b>PAN NO : AADFN0541L</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

ITA No.1959/Bang/2024
Assessment Year: 2017-18

ACIT Central Circle-2(3) Bangalore	<b>Vs.</b>	M/s. Nalapad Hotels and Convension Centre No.19, Nalapad Chambers, K.G. Road Bengaluru 560 009 Karnataka  <b>PAN NO : AAEFN5563D</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Sri V. Srinivasan, A.R.
<b>Respondent by</b>	:	Sri Subramanian S., D.R.

<b>Date of Hearing</b>	:	25.02.2025
<b>Date of Pronouncement</b>	:	24.04.2025

**O R D E R**

**PER BENCH:-**

Both these appeals of the revenue are arising from the order of Id. CIT(A) dated 30.6.2024 and relates to assessment year 2017-18. Since both the assessee are sister concerns having same facts and circumstances, we are deciding these appeals by way of this consolidated order.

**2.** Brief facts as coming out from the order of the authorities below are that a search & seizure action was conducted in the case of M/s. Brigade Enterprise Ltd. on 02.11.2017. During the course of search, certain incriminating documents in the form of Joint Development Agreements (JDAs), sale deeds etc, were found and seized. The A.O. of the searched person observed that these documents were pertaining to the present assessees, therefore, action u/s 153C of the Income Tax Act, 1961 (in short "The Act") has been taken in the case of the assessees. Accordingly, notice u/s 153C of the Act have been issued to both the assessees on 24.3.2020. During the course of assessment proceedings, the AO observed that the assessee has not offered any income arising on account of transactions with M/s. Brigade Enterprise Ltd. The relevant observations of the AO in para 15 to 17 are as under:

15. The transaction done by the assessee firm with M/s Brigade is a business transaction. That is to say that the assessee firm has handed over land held as stock in trade to M/s Brigade Enterprises Ltd and received 70% of the Commercial Complex constructed by the builder on the land given by the firm. Thus, the difference in the value of what is received to what is handed over (commercial complex to land) is to be treated as Business Income and the income derived clearly falls under the head business income and such income is taxable under the head 'income from business and profession in the financial year in which the asset is handed over to the assessee. Whereas, the assessee has contended that the transaction is an exchange which cannot be considered as sale for income to be offered under business income and taxes will become due only when he sells the building/built up area and not before. In the instant case, there was business transaction between the assessee firm who held the land as its stock in trade and M/s Brigade Enterprises Ltd., the builder. By virtue of this business transaction, the assessee handed over land to the builder for development and the builder, as part of the consideration built and handed over 79938.89 sq.ft of complete built up area with all necessary approvals and occupation certificate to the assessee firm and there exists a difference in value of goods i.e., land in case and building/built up area received which requires to be taxed as business income of the assessee. This act of exchange of assets is a business transaction and is to be considered as sale as the assessee has transferred the right on the property to M/s Brigade enterprises ltd by entering into a Joint Development Agreement. Thus the ownership of the property has witnessed a change. In turn, the assessee firm has received a completed building with all necessary approval and such building is of higher value than the land value recorded by the assessee.

16. Further, it is seen that under the joint development agreement, the land owner is the assessee firm and has agreed to the developer selling, or transfer the area assigned as builders share to their clients. The assessee has transferred its rights in the land upon which developer has incurred cost of construction and developed the property. In lieu of such transfer of rights in the land in favor of the developer, the assessee would receive the constructed area.

17. Since the transfer / exchange of stock in trade has taken place between two entities/ persons the transaction is a business transaction and any income derived / accrued will be a business income. In view of this the difference in value of the building to the value of the land is to be taxed as business income.

**2.1** Thereafter, the AO took a view that addition of Rs.131,31,70,760/- is liable to be taxed as business income in the hands of the assessee.

**3.** Aggrieved with the order of AO, the assessee preferred an appeal before the Id. CIT(A) and argued that the view of the AO that business income is liable to be taxed in this year as legally not sustainable since in terms of the provisions of section 45(2) of the Act, the business income on account of conversion of capital asset into stock in trade is taxable in the year when the asset is finally sold. The Id. CIT(A) partly allowed the appeal of the assessee. However, he directed the AO to adopt the rate of Rs.3085.50ps. per sq.ft for calculating the income of the assessee.

**4.** Aggrieved by the order of Id. CIT(A) both the assesseees as well as revenue has come up in appeals. While deciding the appeal of the assessee, the coordinate bench of the ITAT in ITA No.1297/Bang/2024 dated 16.8.2024 in para 7.34 to 7.37 has observed as under:

***“7.34 Now the next question is with regard to computation of business income after conversion of capital asset into stock in trade.***

***7.35 After conversion of capital asset into stock in trade of business of assessee then the fair market value on the date of conversion is considered as full sale***

*consideration of such capital asset for the purpose of capital gain or loss, such fair market value is considered as cost of such asset as converted into stock in trade and at the time of sale of such stock in trade, the same price i.e. as realized from the sale of such stock in trade wholly or partially as the case may be will be deducted from the fair market value of such asset as existing on the date of conversion i.e. the cost price of stock in trade and the profit arising therefrom, if any shall be treated as income under the head "business & profession", when such sale took place in the relevant assessment year only and not otherwise.*

**7.36** *In the present case, since there is no dispute that capital asset has been converted into stock in trade on the date of entering into JDA i.e. 7.1.2008 relevant to AY 2008-09, and capital gain accrued on such conversion of capital asset into stock in trade, to be computed with the fair market value as on date of conversion of the land being treated as full value of consideration. Thus, the deemed capital gain on said conversion of capital asset, to be taxed on the actual sale of said converted asset along with the assessee share of constructed area. However, the ld. AO assessed the entire value of constructed area after deducting the cost of the land as business income in assessment year 2017-18 on the ground that the developer has got the O.C./CC on 21.7.2016 which is not correct. At this point, we place reliance on the judgement coordinate bench of Madras in the case of M/s. Essrope Mills ltd. in ITA No.2256/Mad/2012 dated 11.7.2013, wherein held that the gain on transfer of capital asset up to the date of conversion in to stock has to be assessed under the head capital gain and the gain in respect of property i.e. after the date of conversion into stock in trade has to be assessed as business income. As assessing officer computed the entire sale consideration under the head long term capital gain, he did not apply the provisions of section 45(2) of the Act. **Therefore, the ld. AO should compute the business income in respect of stock in trade of the property i.e. the sale of stock in trade, taking into consideration section 45(2) of the Act in the year of sale of stock in trade and not in the assessment year 2017-18 since there was no sale of constructed area of assessee's share.** There was no provision in the Act which deals with the determination of business income or capital gain on conversion of investment into stock in trade which is later on sold as business income of the assessee in whole without following the provisions of section 45(2) of the Act. In our opinion, the assessee income has to be computed u/s 45(2) of the Act when the stock in trade has been actually sold by the assessee and not in the assessment year when the developer has got the OC/CC from the BBMP. At this time it is appropriate to take support from the judgement of Kolkata High Court in the case of CIT Vs. Dhanuka & Sons 124 ITR 1, where it has been held that profit & gains arising from shares transferred from trading account to investment account at prevailing market rate is not a transaction at all because a person have a transaction with himself and in turn such profit cannot be taxed. If such shares can be disposed at a value other than the value at which it was transferred from the business stock the question of capital loss or capital gain would arise. Being so, in the present case, on applying the section 45(2) of the Act the income to be charged to tax in the year of sale of stock in trade as follows:*

**(A) Taxation at the time of conversion of capital asset into stock in trade:**

1. **Sales consideration** at the time of entering in to JDA on 17.1.2008 by transferring the land as a capital asset; The fair market value of capital asset on the date of conversion shall be deemed to be the sale consideration.
2. **Indexation benefit for cost of acquisition and improvement** will be considered upto the year of conversion of capital asset into the stock in trade i.e. up to assessment year 2008-09.
3. **Year of taxability** – Capital gain will be taxed in the year in which stock in trade is sold and not in the AY 2017-18.

**B. Taxation at the time of sale of stock in trade –**

When the stock in trade is sold, the assessee needs to pay the tax under the head “Business Income”:

1. **Sale consideration** – The Sale proceeds of stock in trade will be considered as Sale consideration.
2. **Purchase cost** – The purchase cost of stock in trade is fair market value on the date of conversion.
3. **Year of taxability** – The Business Income will be taxable in the year in which stock in trade is sold and not in the AY 2017-18.

7.37 Thus, there cannot be any taxability of income in the assessment year 2017-18 as there was no whole or part sale of stock in trade in the assessment year under consideration. In view of the above discussion, this ground No.2 of appeals of the assessee is allowed.”

5. The ld. D.R. appearing on behalf of the revenue has filed additional ground of appeal as under:

“(i) Whether on the facts and circumstances of the case and in law, the ld. CIT(A) is right in directing the AO to adopt the guideline value/circle rate at Rs.3085.50 per sq.ft. merely based on explicit request of the assessee, who in turn has not provided any rationale behind it or a scientific method how it has arrived at it?”

6. It is relevant to mention here that this additional ground has been raised vide application dated 10.12.2024. However, the matter was heard by the Bench on 4.12.2024, which means the revenue has filed the additional ground after the completion of hearing. Therefore, in order to comply with the principles of natural justice, we have re-fixed this matter for clarification on 27.1.2025.

**7.** Ld. A.R. strongly objected to the admission of the additional ground after completion of the hearing and ld. D.R. relied upon the application filed by the department in support of the additional ground, explaining the delay in filing the additional ground.

**8.** We have heard the rival submissions. In the interest of justice, we admit this ground of appeal and proceed to decide the matter as under.

**8.1** The Ld DR vehemently argued that the order of the Ld CIT(A) directing the AO to adopt the value of Rs.3085.50 per sq.ft is not tenable in view of the fact that the CIT(A) has accepted this value without verifying the same from the AO and has proceeded without any basis. Ld DR drawn the attention of the Bench towards the order of the CIT(A) and contended that there is absolutely no basis for arriving at the value of Rs.3085.50 per sq. ft.

**8.2** On the other hand Ld Counsel for the assessee relied upon the order of the CIT(A).

**Finding of the Bench:-**

**8.3** After considering the rival submissions we observe that it is an undisputed fact that the assessee has converted the capital asset into stock in trade in assessment year 2008-09 and thereafter entered into a Joint Development Agreement (JDA) with M/s. Brigade Enterprise Ltd. We further observe that it is also an admitted position of fact that the assessee has got the Occupancy Certificate with respect to completion of building of the developed area on 21.7.2016. It is also an admitted position of fact that the coordinate bench of the ITAT in assessee's own case cited (supra) has categorically observed that year of taxability is not assessment year 2017-18 and it is the year when the assessee has sold the

whole or part of the building. Now the only issue which we require to adjudicate in departmental appeal is whether the ld. CIT(A) is correct in directing the AO to take the value at Rs.3085.50ps. Per sq ft. We are of the view that ld. CIT(A) is not an expert for valuation purposes, therefore, this matter is to be referred to the valuation cell by the assessing officer to ascertain the correct valuation of the developed area and also the year of taxability of the amount in dispute. The AO will also examine in which year the assessee has sold the premises and has offered the income attributable to such sale. With these observations we restore this matter to the file of AO for examining afresh with a direction that the matter may be referred to the departmental valuation officer to decide in accordance with law. Needless to say, that the AO will grant sufficient opportunity to the assessee before passing any final order.

**9.** In the result, both appeals of the revenue are allowed for statistical purposes.

Order pronounced in the open court on 24<sup>th</sup> Apr, 2025

**Sd/-**  
**(Prakash Chand Yadav)**  
**Judicial Member**

**Sd/-**  
**(Laxmi Prasad Sahu)**  
**Accountant Member**

Bangalore,  
Dated 24<sup>th</sup> Apr, 2025.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**