

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.3417/Chny/2024  
निर्धारण वर्ष/Assessment Year: 2017-18

Abusha Investment & Management Services LLP, 27, Mylai Ranganathan Street, T. Nagar, Chennai-600 017.	v.	The DCIT, Non Corporate Circle-7(1), Chennai.
[PAN: AAZFA 6631 N]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.Bhabagrahi Dash, CA
प्रत्यर्थी की ओर से /Respondent by	:	Mr.Shiva Srinivas, CIT
सुनवाईकीतारीख/Date of Hearing	:	08.05.2025
घोषणाकीतारीख /Date of Pronouncement	:	09.07.2025

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter referred to as "the Ld.CIT(A)"), Delhi, dated 11.07.2024 for the Assessment Year (hereinafter referred to as "AY") 2017-18.

2. At the outset, it is noted that there is a delay of '92' days in filing of this appeal and assessee has filed condonation petition. Having



perused the same, we are satisfied that there is reasonable cause for delay. So, we condone the delay and proceed to adjudicate the appeal.

**3. Grounds raised by the assessee are as under:**

1. The order of Ld. CIT(A) is contrary to the law and the facts and circumstance of the case.

2.1 The Ld. CIT(A) had grossly erred in law and on facts by passing the impugned order without giving a sufficient and a proper opportunity of being heard to the Appellant. The impugned order is passed in violation of principles of natural justice.

2.2 The Ld. CIT(A) has erred in law by concluding the Appellate proceeding refusing the Appellant an opportunity for personal hearing through video conferencing without providing any reasons.

3. The Ld. CIT(A) has erred in law and facts by affirming the applicability of section 45(4) of the Act in the Appellant's case since the said section stipulates that the incidence of tax arises only in the hands of the specified entity (firm) and not in the hands of the partner during the reconstitution of the firm.

4. The Ld. CIT(A) has erred in upholding the addition of Rs. 12,73,57,200/- under section 45(1) of the Act.

5. The Ld. CIT(A) has erred in holding that the retirement of a Partner constitutes "transfer" of capital asset as envisaged u/s 2(47) of the Act.

6. The Ld. CIT(A) has erred in not appreciating that unless there is a "transfer" within meaning of Section 2(47) of the Act, capital gain under section 45(1) of the Act is not attracted.

7. The Ld. CIT(A) has erred in not appreciating the fact that, none of the Capital assets were distributed at the time of retirement and thereby there is no "Capital gains" that would arise in the hands of the Appellant.

8. The Ld. CIT(A) has erred failed to appreciate that the Appellant never received any sum other than the repayment of its own share of capital balances.

9. The Appellant submits that each ground of appeal is without prejudice to one another.



10. The Appellant craves leave to add, alter, amend, substitute, delete and/or modify, in any manner whatsoever, all or any of the foregoing grounds of appeal, at any time before or during the hearing of the appeal.

**Prayer:**

The Appellant prays before your goodself to acknowledge that the order u/s 250 of the Act dated 11th July 2024 is passed in violation of principles of natural justice and misinterpreted facts. Therefore, we pray before your goodself that the said order is liable to be quashed and the addition made u/s 45(1) of the Act of Rs. 12,73,57,200/- to be deleted.

**4.** The brief facts are that the assessee, Abusha Investment & Management Services LLP (hereinafter referred to as assessee or 'M/s.AI & MS LLP'), is a Limited Liability Partnership firm engaged in the business of providing financial, technical & management consultancy services. Apart from the above business activities, the assessee also has investments in various companies involving strategic positions and investment in Partnerships and LLP for undertaking businesses. On 24<sup>th</sup> September 2014, the assessee was admitted as a partner in the M/s.Amuda Capital Services LLP ("Amuda LLP") by infusing capital of Rs.1.2 Crore (being the 12 Lakh equity shares of Lifecell International Private Limited ("LifeCell") @ Rs.10/- each). As on 24<sup>th</sup> September 2014, M/s.Amuda LLP had the following partners:

<b>S.no</b>	<b>Partners</b>	<b>Capital Contribution</b>	<b>Profit Sharing Ratio</b>
1	Abhay Kumar Deepak	Rs. 50,000/-	12%
2	Shankarlal Abhaya Kumar	Rs. 50,000/-	12%
3	Abhaya Mayur	Rs. 50,000/-	12%
4	AIMS LLP	Rs. 1,20,00,000/-	15%
5	Chayadeep Ventures LLP	Rs. 16,00,00,000/-	49%
TOTAL		Rs. 17,21,50,000/-	100%



5. On 07<sup>th</sup> March 2018, Mr. Abhayakumar Deepak, Mr. Shankarlal Abhaya Kumar and Mr. Abhaya MG Mayur had resigned from M/s.Amuda LLP transferring the combined capital balance of Rs.1,50,000/- to M/s.AIMS LLP (assessee). Thus, the capital balance of the assessee as on 07<sup>th</sup> March 2018 was Rs.1,21,50,000/-. Subsequently, M/s.Abusha Aryav Ventures Private Limited ("AAVPL") was admitted as partner of M/s. Amuda LLP and M/s. Chayadeep Ventures LLP (existing partner) had resigned transferring the entire capital contribution in M/s. Amuda LLP to M/s. AAVPL vide supplementary LLP agreement dated 18<sup>th</sup> March 2017.

S.No.	Partners	Capital Contribution	Profit Sharing Ratio
1	AIMS LLP	Rs. 1,21,50,000/-	51%
2	AAVPL	Rs. 16,00,00,000/-	49%
Total		Rs. 17,21,50,000/-	100%

6. On 20<sup>th</sup> February 2017, LifeCell for the purpose of determining the fair market value of the equity shares at which the same can be transferred had revalued its equity shares at Rs. 218.10 per share. Subsequently, M/s. Amuda LLP had re-valued its assets and the asset being 12,00,000 shares held in Lifecell were revalued at the fair market value as determined in the valuation report on 20<sup>th</sup> February 2017 at Rs.218.10 per share. Accordingly, the revaluation surplus of Rs.26,17,20,000/- [12,00,000 shares Rs.218.10] was credited to partner's capital account in the agreed profit-sharing ratio. Hence, the



assessee's capital account was credited to the tune of Rs.12,73,57,200/- being the entitled share on the revaluation surplus.

<b>Particulars</b>	<b>Debit (Rs.)</b>	<b>Credit (Rs.)</b>
By Revaluation Account	26,17,20,000	-
To AIMS LLP Capital Account	-	12,73,57,200
To AAVPL Capital Account	-	12,23,62,800

7. Consequent to the revaluation made, the assessee had an outstanding capital account balance of Rs.13,95,07,200/- and debit balance in the current account of Rs.1,22,422/-. On 20<sup>th</sup> March 2017, the assessee had retired from M/s.Amuda LLP and the net outstanding balance in capital account of Rs.13,95,07,200/- as on that date was settled by M/s. Amuda LLP. The summary of the capital account is given below.

<b>Date</b>	<b>Description</b>	<b>Amount</b>
24.09.2014	Capital infused by AIMS LLP	1,20,00,000
07.03.2017	Add: Transfer of capital from Abhaya Kumar, Mayur, Deepak	1,50,000
20.03.2017	Add: Surplus from revaluation of shares of Lifecell	12,73,57,200
20.03.2017	Total outstanding as on 20th March 2017	13,95,07,200
20.03.2017	Amount settled by Amuda LLP to Appellant	(13,95,07,200)
31.03.2017	Closing Capital Balance	NIL

8. During AY 2017-18, the assessee filed a return of income (RoI) in accordance with Section 139(1) of the Income Tax Act, 1961 ("the Act") on 30<sup>th</sup> October 2017 admitting 'NIL' income and carry forwarded the loss of Rs.25,23,550/-. The RoI filed by the assessee was taken for scrutiny assessment proceedings and after the assessee has furnished the replies to the queries raised by the AO along with relevant documents, the AO completed the assessment by passing an order of assessment under



section 143(3) of the Act dated 31<sup>st</sup> December 2019 by assessing the total income at Rs.12,73,57,200/- under head 'Capital Gains' and allowed carry forward loss from Business of Rs. -25,23,550/-. Aggrieved by the said order the assessee filed an appeal before the National Faceless Appeal Centre ("the NFAC" / "the Ld. CIT(A)") inter-alia challenging the addition made in its hands, when the very same AO had made the very same addition of Rs.12,73,57,200/- under the head 'capital gains' being revaluation surplus in the hands of the Firm M/s. Amudha, LLP. On 11<sup>th</sup> July 2024, the NFAC/CIT(A) has passed the impugned order dismissing the appeal filed by the assessee and thus, upheld the addition made u/s.45(1) of the Act of Rs.12,73,57,200/-.

**9.** At the outset, the Ld.AR brought to our notice that the assessee is a partner in a Firm M/s. Amudha, LLP; and assessee has retired from the Firm M/s. Amudha, LLP and has received its entire outstanding capital of Rs.13,95,07,200/- which also included profit on revaluation of capital asset held by the Firm of Rs.12,73,57,200/-. The AO added Rs.12,73,57,200/- under the head 'capital gains' being the revaluation surplus, in the hands of the assessee as well as the Firm [M/s. Amudha, LLP]. According to the Ld.AR, the settled position of law is that the profit or gain arising from the transfer of a capital asset by a Firm to a partner on dissolution or otherwise would be chargeable as the Firm's income in the previous year in which the transfer took place and for the purpose of



computation of capital gains, the Fair Market Value of the asset on the date of transfer would be deemed to be the full value of consideration received or accrued as a result of transfer. According to the Ld.AR, the Hon'ble Bombay High Court in the case of A.N. Naik Associates & Others reported in **265 ITR 346 (Bom.)** had an occasion to analyze section 45, of which, we are concerned with sub-section (4), which reads as under:

"(4) The profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals (not being a company or a co-operative society) or otherwise, shall be chargeable to tax as the income of the firm, association or body, of the previous year in which the said transfer takes place and for the purposes of section 48, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration received or accruing as a result of the transfer."

**10.** A bare reading of the aforesaid sub-section (4) of section 45 of the Act, it is clear that in order to attract the capital gains on a transfer of capital asset by way of distribution of capital assets either on account of dissolution of Firm or other association of persons or body of individuals or otherwise, shall be chargeable to tax as income of the Firm, association or body of persons. The Hon'ble Bombay High Court in the case of A.N. Naik Associates & Others supra has observed as under:

With the above, we may now proceed to answer the issue. On retirement of a partner or partners from an existing firm, and who receives assets from the firm, the law before 1988 would really be of no support, as by Section 45(4) what was otherwise not taxable has been made taxable. Section 45(4) seems to have been introduced with a view to overcome the judgment of the apex court in Malabar Fisheries Co. v. CIT [1979] 120 ITR 49 and other judgments which took a view that the firm on its own has no right but it is the partners who own jointly or in common the asset and thereby remedy the mischief occasioned. Distribution of capital assets on dissolution now is subject to capital gains tax unless it does not fall within the definition of transfer under Section 2(47). What would be the effect of partners of a subsisting partnership distributing assets to partners who



retire from the partnership. Does the asset of the partnership, on being allotted to the retired partner/partners fall within the expression "otherwise". As noted earlier on behalf of the assessee it has been contended that the expression "otherwise" would have to be read "ejusdem generis" with "dissolution of partnership or body of individuals" and for that purpose reliance was placed on a judgment of the Division Bench in CIT v. Trustees of Abdulcadar Ebrahim Trust [1975] 100 ITR 85 (Bom). Section 45 is a charging section. The purpose and object of the Act of 1987 was to charge tax arising on distribution of capital assets of firms which otherwise was not subject to taxation. If the language of Sub-section (4) is construed to mean that the expression "otherwise" has to partake of the nature of dissolution or deemed dissolution, then the very object of the amendment could be defeated by the partners, by distributing the assets to some partners who may retire. The firm then would not be liable to be taxed thus defeating the very purpose of the Amending Act. Prior to the Finance Act, 1987, in the case of a partnership it was held that the assets are of the partners and not of the partnership. Therefore, if on retirement a partner received his share of the assets, may be in the form of a single asset, it was held that there was no transfer and similarly on dissolution of the partnership. Another device resorted to by an assessee was to convert an asset held independently as an asset of the firm in which the individual was a partner. The decision of the Supreme Court in Kartikeya V. Sarabhai v. CIT [1985] 156 ITR 509 took a view that this would not amount to transfer and, therefore, fell outside the scope of the capital gain. The rationale being that the consideration for the transfer of the personal asset was indeterminate, being the right which arose or accrued to the partner during the subsistence of the partnership to get his share of profit from time to time and on dissolution of the partnership to get the value of his share from the net partnership asset. Parliament with the avowed object of blocking this escape route for avoiding capital gains tax by the Finance Act, 1987, has introduced Sub-section (3) to Section 45. The effect of this was that the profits and gains arising from the transfer of a capital asset by a partner to a firm are chargeable as the partner's income of the previous year in which the transfer took place. On a conversion of the partnership assets into individual assets on dissolution or otherwise also formed part of the same scheme of tax avoidance. To plug this loophole the Finance Act, 1987, brought on the statute book a new Sub-section (4) in Section 45 of the Act. The effect is that the profits or gains arising from the transfer of a capital asset by a firm to a partner on dissolution or otherwise would be chargeable as the firm's income in the previous year in which the transfer took place and for the purposes of computation of capital gains, the fair market value of the asset on the date of transfer would be deemed to be the full value of the consideration received or accrued as a result of the transfer. Therefore, if the object of the Act is seen and the mischief it seeks to avoid, it would be clear that the intention of Parliament was to bring into the tax net transactions whereby assets were brought into a firm or taken out of the firm.

21. The expression "otherwise" in our opinion, has not to be read ejusdem generis with the expression, "dissolution of a firm or body or association of persons". The expression "otherwise" has to be read with the words "transfer of capital assets" by way of distribution of capital assets. If so read, it becomes clear that even when a firm is in existence and there is a transfer of capital assets it comes within the expression "otherwise" as the object of the amending Act was to remove the loophole which existed whereby capital gain tax was not chargeable. In our opinion, therefore,



when the asset of the partnership is transferred to a retiring partner the partnership which is assessable to tax ceases to have a right or its right in the property stands extinguished in favour of the partner to whom it is transferred. If so read it will further the object and the purpose and intent of the amendment of Section 45. Once, that be the case, we will have to hold that the transfer of assets of the partnership to the retiring partners would amount to the transfer of the capital assets in the nature of capital gains and business profits which is chargeable to tax under Section 45(4) of the Income-tax Act. We will, therefore, have to answer question No. 3 by holding that the word "otherwise" takes into its sweep not only cases of dissolution but also cases of subsisting partners of a partnership, transferring assets in favour of a retiring partner.

22. The only other contention advanced is that Section 2(47) has not been amended and consequently even if Section 45(4) has been brought in by the amendment yet there is no transfer. In our opinion, that would not be the correct position. Firstly, the definition of transfer itself is inclusive. Before the introduction of Sub-section (4), there was Clause (ii) of Section 47 which read as under :

"any distribution of capital assets on the dissolution of a firm, body of individuals or other association of persons."

23. Considering this clause as earlier contained in Section 47, it meant that the distribution of capital assets on the dissolution of a firm, etc., were not regarded as "transfer". The Finance Act, 1987, with effect from April 1, 1988, omitted this clause, the effect of which is that distribution of capital assets on the dissolution of a firm would henceforth be regarded as "transfer". Therefore, instead of amending Section 2(47), the amendment was carried out by the Finance Act, 1987, by omitting Section 47(ii), the result of which is that distribution of capital assets on the dissolution of a firm would be regarded as "transfer". Therefore, the contention that it would not amount to a transfer has to be rejected. It is now clear that when the asset is transferred to a partner, that falls within the expression "otherwise" and the rights of the other partners in that asset of the partnership are extinguished. That was also the position earlier but considering that on retirement the partner only got his share, it was held that there was no extinguishment of right. Considering the amendment, there is clearly a transfer and if, there be a transfer, it would be subject to capital gains tax.

**11.** We note that aforesaid view of the Hon'ble Bombay High Court in the case of A.N. Naik Associates & Others case was concurred/affirmed by the Hon'ble Supreme Court by order dated 24.11.2022 in the case of CIT v. Mansukh Dyeing & Printing Mills in Civil Appeal No.8258/2022, by holding as under:



"...The Bombay High Court in the case of A.N. Naik Associates and Ors., (supra) had an occasion to elaborately consider the word "OTHERWISE" used in Section 45(4). After detailed analysis of Section 45(4), it is observed and held that the word "OTHERWISE" used in Section 45(4) takes into its sweep not only the cases of dissolution but also cases of subsisting partners of a partnership, transferring the assets in favour of a retiring partner... The effect is that the profits or gains arising from the transfer of a capital asset by a firm to a partner on dissolution or otherwise would be chargeable as the firm's income in the previous year in which the transfer took place and for the purposes of computation of capital gains, the fair market value of the asset on the date of transfer would be deemed to be the full value of the consideration received or accrued as a result of transfer... As such, we are in complete agreement with the view taken by the Bombay High Court in the case of A.N. Naik Associates and Ors., (supra). We affirm the view taken by the Bombay High Court in the above decision".

**12.** Therefore, in the facts and circumstances of the case, it is noted that the capital gains was chargeable in the hands of the Firm M/s. Amudha, LLP. In this regard, the Ld.AR brought to our notice that the Firm, M/s. Amudha, LLP on whose hand also the AO has made the very same addition of Rs.12,73,57,200/- under the head 'capital gains' has opted to settle the matter by paying the disputed tax under the head 'DTVSV Scheme' and has filed the following relevant Forms:

31-01-2025	Copy of Form 1 filed in the case of Amuda Capital Services LLP	45-62
10-01-2025	Copy of Form 2 received in the case of Amuda Capital Services LLP	63-64
25-03-2025	Copy of Form 3 intimating payment of taxes by Amuda Capital Services LLP	65-66
29-04-2025	Copy of Form 4 issued by PCIT in the case of Amuda Capital Services LLP	67-68

**13.** In the light of the decision of the Hon'ble Supreme Court in the case of Mansukh Dyeing & Printing Mills as well as the Hon'ble Bombay High Court in the case of A.N. Naik Associates & Others, we note that the Firm M/s. Amudha, LLP has accepted the capital gains added in its hand of



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Abusha Investment & Management Services LLP

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Rs.12,73,57,200/- u/s.45(4) of the Act by settling the same by DTVSV Scheme as noted supra by paying the tax as per the scheme. Therefore, the same addition made in the hands of the assessee needs to be deleted and we order accordingly.

**14.** In the result, appeal filed by the assessee is allowed.

Order pronounced on the 09<sup>th</sup> day of July, 2025, in Chennai.

**Sd/-**  
(मनोज कुमार अग्रवाल)  
**(MANOJ KUMAR AGGARWAL)**  
लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**  
(एबी टी. वर्की)  
**(ABY T. VARKEY)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,  
दिनांक/Dated: 09<sup>th</sup> July, 2025.

**TLN**

आदेश की प्रतिलिपि अग्रेषित / **Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF