

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.5138/Del/2019
[Assessment Year : 2014-15]**

Sunil Kumar Jain, Prop. S. K. Traders, Outside Barsi Gate, Hansi, Hisar, Haryana-125003. PAN-ABBPJ4274B	vs	ITO, Ward-04, Hisar
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Shri Rajesh Kumar Dhanesta, Sr.DR	
Date of Hearing	26.05.2025	
Date of Pronouncement	26.05.2025	

ORDER

PER MANISH AGARWAL, AM :

The captioned appeal is filed by the assessee against the order dated 18.04.2019 passed by Ld. Commissioner of Income Tax (A)-5, Ludhiana [“Ld.CIT(A)”] in Appeal No.276/ROT/IT/CIT(A)-5/LDH/2018-19 passed u/s 250 of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 14.12.2016 passed u/s 143(3) of the Act pertaining to assessment year 2014-15.

2. Brief facts of the case are that assessee had filed his return of income on 04.11.2014, declaring NIL income after claiming deduction under Chapter -VIA. The case of the assessee was selected for scrutiny and after considering the submissions of the assessee, the AO held Long Term Capital Gain (“LTCG”) declared by the assessee on the sale of land as business income being the

adventure in the nature of trade. Therefore, he treated the same as regular income and assessed accordingly. In first appeal, Ld.CIT(A) dismissed the appeal of the assessee in terms of impugned order dated 18.04.2019 therefore, the assessee is in appeal before the Tribunal by taking following grounds of appeal:-

“That on the facts and in the circumstances of the case and in law the Ld. CIT (Appeals) erred in:

1. *confirming the addition of Rs. 1,27,00,000/- made by the Assessing Officer on account of gain on sale of BCRML land treating the same as business income as against long term capital gain returned by the assessee:*
2. *not allowing set off of long term capital gain as declared against long term capital loss in a sum of Rs. 16,41,996/-.*

The above actions being erroneous unlawful and untenable it is prayed that the same must be quashed with directions for appropriate relief.”

3. During the course of hearing, none appeared on behalf of the assessee despite of the fact that there were as many as 15 opportunities were granted and on most of occasions, none appeared on behalf of the assessee. Therefore, we proceeded to decide the appeal on the basis of material available on record.

4. Ld. Sr. DR for the Revenue vehemently supported the orders of the lower authorities.

5. Heard the contention of Ld. Sr. DR and perused the material available on record. In the instant case, the assessee is a trader in lands where he purchased the sick units and after dis-mantling the same, sold the lands. In this process, he had purchased one factory in the year 2006 known as Bhiwani Cold Rolling Mills Limited situated at Bhiwani (Haryana) which was dis-mantled and

the land was treated as “stock in trade” in the books of accounts. The assessee developed small pieces in the shape of plots over the said land and part of such plots were sold in immediately preceding years where the assessee claimed profit earned from such sale as LTCG however, it was treated by the Revenue as business income being adventure in the nature of trade. In the year under appeal also, on same part of the plots of land sold, the assessee declared LTCG however, the AO treated the same as business income.

6. In first appeal, after considering the facts, Ld.CIT(A) in its order at page 12 to 16 has discussed this issue at length and decided against the assessee. The relevant observations of Ld.CIT(A) is as under:-

4. *“.....On careful consideration of the facts, the various contentions of the AR are not found acceptable because as per assessee's own version, the assessee was in the business of purchasing Sick Industrial Unit for trading purposes. The assessee has made investment out of funds borrowed from bank and from other parties and the interest on those borrowing has been claimed as deduction from the profits of the assessee declared as business income. The entire unit named as Bhiwani Cold Rolling Mills Pvt. Ltd. was purchased as 'one entity' and the assessee demolished the Sick unit and sold the entire machinery/scrap during the Financial Year ending on 31.03.2003, 31.03.2004 & 31.03.2006 claiming the transactions as 'trading in the business' carried out by the assessee and thus it is clear that the entire unit including land, building and machinery was purchased by the assessee solely for the business purpose and with a motive to earn profit on the sale thereof. The assessee was holding the entire unit as stock-in-trade and valued the same at cost price. As and when the assessee sold its stock-in-trade, the profit on the sale was declared as business income and the corresponding stock-in-trade was decreased. It is therefore clear that the assessee did not purchase the land 'as an investment' and rather the land got into possession of the assessee a part of 'composite deal' purchased as stock-in-trade together with the plant & machinery during its normal course of business as scrap dealer. However, after the sale of plant & machinery, the assessee changed the character of the residual stock-in-trade which was land only and started treating it as an investment in the balance sheet on 31.03.2006. However, the assessee himself admitted, in reply dated*

27.11.2009 filed during the assessment proceedings for assessment year 2007-08, that the entries to this effect in the books were wrongly made. As per assessee's own stand, the said plots of land were actually stock-in-trade. Further, the assessee admitted following facts (as reproduced by the AO in the assessment order) about its business and the natures of land under consideration vide its letter dated 12.05.2009 filed before CIT-(A), Rohtak, as under:-

"Appellant is a scrap dealer, During financial year 2003-04, appellant purchased a sick industrial unit known as Bhiwani Cold Rolling Mills Limited situated at Bhiwani (Haryana) in open auction made by the Official Liquidator, duly appointed by Hon'ble Punjab & Haryana High Court, for a consideration of Rs. 8,39,41,838/- (refer trading account in audit report for the year ended 31.03.2005). This investment was made out of money borrowed from various parties and Central Bank of India, Hansi on interest. Appellant demolished aforesaid sick industrial unit and sold entire scrap during financial year ended on 31.03.2004 for Rs. 4,95,65,814/-, financial year ended on 31.03.2005 for Rs. 2,26,26,640/- and financial year ended on 31.03.2006 for Rs. 33,41,325/- and thereafter only land measuring 75000 sq. yards remained as stock in trade as on closing of 31.03.2006 worth Rs. 117,00,000/ which was transferred to land account in the books of account as on 31.03.2006 (refer to BCRM account as on closing of 31.03.2006 and details of fixed assets given in Schedule D as on 31.03.2006).

Further in para 2.1) of the above said letter dated 12.05.2009 it has been stated as:

"Appellant as a prudent businessman in-contemplation of purchasing more sick units, discarded plant & machinery and lots of iron scrap advanced money to various willing selling parties, year-wise details whereof are provided in annexed hereto chart."

Comparative chart of trade advances:

S.No.	Name of the parties	As on 31.03.04	As on 31.03.05	As on 31.03.06
1.	Official Liquidator Delhi	24900000	-	-
2.	Bhiwadi Packaging P.Ltd.	-	370000	-
3.	Panwar Steel Traders Hisar	-	350000	-
4.	Vikas Steels Hisar	-	25752	-
5.	Shiv Associates Bhiwadi	-	800000	800000
6.	Amtek Dealer P.ltd., Kolkata	-	32350000	11550000
7.	Mehandi Macs P.Ltd.	-	25255260	8705719
8.	Omji Macs P.Ltd.	-	4248572	-
9.	Sh.Pawan Kumar	-	200000	200000
10.	SH.Sham Lal Biwani	-	100000	100000
11.	Pardeep Kumar Mittal	-	180000	180000
12.	Ram Babu Mittal	-	300000	-

13.	<i>Bloosom Automotives</i>	-	-	1100000
14.	<i>Krishan Kumar Aggarwal</i>	-	-	500000
15.	<i>National Ispat Udyog</i>	-	-	300000
16.	<i>Ram Niwas Aggarwal</i>	-	-	500000
	Total	24900000	64179584	24435719

From the above, it is clear that assessee had been in the business of purchasing Sick Industrial Unit. The assessee sold the old machinery/scrap arising out of that, which is reflected as business transactions. The assessee claims various expenses against the sales proceeds for the purpose of calculating the profit. The assessee cannot go on changing its stand with a view to avoid payment of taxes, as per its own convenience. The sales are reflected as business transaction when assessee has to claim expenses under various heads which are otherwise not allowable under the head 'capital gain'. On the other hand, when there are not much expenses under other heads, it starts declaring the sales out of the assets of the sick unit under the head 'capital gain' if it suits the assessee. Thus, the assessee changes stand as per its convenience and declared income either as business income or as capital gains depending upon which way the tax liability is less. This approach of the assessee is not allowable as per law. The assessee is in the business of purchasing the Sick Units as is evident from the table above showing the details of trade advances given by the assessee in different years for purchase of sick units, discarded plant & machinery and iron scraps etc. It is therefore clear that the purchases made by the assessee are not in the nature of investments rather these are to be treated as stock-in-trade and the activities of the assessee are certainly in the nature of adventure in trade. Therefore, there is merit in the observation of the AO that the property BCRML was a 'composite deal' and it was purchased as stock-in-trade during the normal course of business of scrap, being carried out by the assessee, the same has been treated by him as stock-in-trade in the initial years. It is also relevant to state that the letter of the liquidator giving bifurcation of value of land, building, stock & machinery separately vide its letter dated 23.02.2007 will not affect the nature of the purchase made by the assessee and it can at the most said to be useful for determining the purchase price/cost of different items which is to be debited to the profit & loss account against the sale of the respective items for the purpose of calculating the business profit. There is further no merit in the argument of the assessee that the land cannot be treated as stock-in-trade as it was never in the business of purchase of land as developer or builder or trader, because it is not necessary that land will be stock-in-trade only in the cases of the builder/developer. When the assessee purchase the land as a part of Sick Industrial Unit, the land automatically becomes an item of stock-in-trade in the hands of the assessee along with the plant & machinery, which were all purchased in a composite deal in open bid and all of them will acquire the character of stock-in-trade in the hands of the assessee. Hence, the argument of the AR regarding Section 2(14) is also not found acceptable. The AO has rightly referred to the Official

Liquidator's letter in the matter from which it was clear that the auction was a composite sale and there was no occasion to buy the land separately. Hence, the same cannot be considered as capital investment when the other components of the composite deal viz, the stock, plant & machinery were treated by the assessee as stock-in-trade in its books of accounts at the time of purchase. The contention of the assessee regarding purchase of land through auction to be treated as investment has also been dealt by the AO who with example has demonstrated that stock-in-trade can also be purchased in auction like in the case of 'timber purchase'. The claim of the assessee is further negated from its own conduct that the interest paid on loans taken for the purpose of purchase of entire BCRML unit was claimed by it as expenses against sales/profit of old machinery/scrap etc. and the surplus was declared as business profit. The AO has duly distinguished the fact of the case laws relied upon by the assessee. In fact, the land sold by the assessee was neither in the nature of capital asset at the time of its acquisition nor at the time of its sales during the year under consideration. The following concluding remarks of the assessing officer are very relevant in this regard:-

"9. It may be concluded that the true character or nature of any transaction is to be decided in each case on its facts. Position is well-settled that name or label, which is given to any transaction by any party, is irrelevant in assessing the exigibility of receipt arising from the transaction to tax. The question whether any asset is capital asset or otherwise can be determined with regard to the nature of the transaction in which such an asset is employed and intention of the party, which would be gathered from surrounding circumstances after giving combined effect to all the factors and circumstances of any given case. The facts here in the case in hand are that the entire unit of BCRML including building, machinery and land was purchased by the assessee as in auction as stock-in-trade for the sole motive of earning profit on its sale and as such, the entire unit was rightly held by the assessee as stock in trade. This entire unit was the assessee's stock-in-trade at the time of its purchase; and after the sale of dismantled old machinery, the land also remained its stock-in-trade upto the time of its sale."

10. In view of the above, it is well established that the property i.e. BCRML land sold by the assessee during the under consideration was a trading asset and the profit earned on its sale is held to be the business profit and not as income from capital Gains as claimed by the assessee which is computed in the concluding para of this order."

The argument of the assessee that the investment in purchase of composite asset in auction was not as a adventure in the nature of trade is negated by the action of the assessee itself because the plant & machinery etc. out of the composite purchase of Sick Industrial Unit have been treated by the assessee himself as stock-in-trade and the profit has been declared

as business income for the period ending on 31.03.2004, 31.03.2005 and 31.03.2006. Further there is no merit in the argument of the AR regarding the interest payable on the loans taken for purchase of Sick Industrial Unit as the assessee, as per the AO, has himself claimed such interest in the profit & loss account against the sale of stock-in-trade while arriving at the business income. The argument of the assessee that it has never dealt in purchase & sale of land is also not found acceptable because in the line of the business of the assessee as scrap dealer, it will sell whatever item it gets as scrap (and that item may not have been sold by the assessee in the past but this fact will not change the nature of activities of a scrap dealer like assessee which are In the nature of adventure in trade). The AO therefore rightly treated the sale consideration of Rs. 2,05,00,000/- as business receipts of the assessee and after allowing set-off of decrease in stock-in-trade amounting to Rs. 78,00,000/-, the trading profit has been arrived at Rs. 1,27,00,000/- and assessed accordingly. The above action of the AO is found sustainable and as per law.

Accordingly, these grounds of appeal are dismissed.”

7. As is evident, Ld.CIT(A) has decided the issue after considering the facts and these observations have not been controverted by assessee by placing contrary material before us. Therefore, we find no infirmity in the order of Ld.CIT(A) which is hereby upheld.

8. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 26.05.2025.

Sd/-

**(SATBEER SINGH GODARA)
JUDICIAL MEMBER**

Sd/-

**(MANISH AGARWAL)
ACCOUNTANT MEMBER**

Dated- 19.08.2025

Amit Kumar, Sr.P.S

Copy forwarded to:

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