

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.5032/M/2012
Assessment Year: 2006-07**

M/s. Troika Estates Pvt. Ltd., 2 nd Floor, Citimall, Andheri Link Road, Andheri (W), Mumbai – 400 053 PAN: AACT 5759N	Vs.	Assistant Commissioner of Income Tax, Range – 2(3), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Nitesh Joshi, A.R.

Revenue by : Shri K.L. Kanak, D.R.

Date of Hearing : 28.09.2015

Date of Pronouncement : 03.02.2016

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 08.06.2012 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2006-07.

2. The assessee has taken the following grounds of appeal:

"1. The Learned Commissioner of Income Tax (Appeals) {CIT(A)} has erred in not accepting the appellant's contention that there is no transfer of the property at Ulhashnagar (the property) as defined u/s 2(47) of the Income Tax Act; there being no transfer of the property, no capital gains ought to be computed.

2. Without prejudice to Ground No 1, Learned CIT(A) has erred in holding that full value of consideration for the purpose of transfer should be taken at Rs.7,20,50,365/-. On the facts and in the circumstances of the case, Learned CIT(A) ought to have accepted alternative submission of the appellant that full value of consideration accruing or arising as a result of transfer should be taken either at Rs. 1,50,00,000/- or at Rs. 3,88,71,000/-.

3. While adopting the full value of consideration, learned

CIT(A) has erred in not considering and dealing with the objections of the appellant to the valuation adopted by the District Valuation Officer (DVO) vide Valuation Report dated 20.07.2011 on the ground that no appeal lies on the valuation done by the DVO. On the facts and in the circumstances of the case and in law, the Learned CIT(A) ought to have considered and dealt with the objections filed by the appellant to the valuation report submitted by the DVO.

4. Learned CIT(A) has erred in directing the AO to adopt the value of the property as on 01.04.1981, for the purpose of computation of cost of acquisition, at Rs. 82,51,700/- on the basis of value determined by the DVO vide valuation report dated 20.07.2011 as against Rs.1,03,28,050/- adopted by the appellant.

On the facts and in the circumstances of the case and in law, the Learned CIT(A) ought to have held that:

- i) The reference made by Learned AO to DVO is without jurisdiction and ought to be ignored.
- ii) Cost of acquisition of Rs. 1,03,28,050/- on the basis of market value of the property as at 01.04.1981 ought to be adopted.

5. Learned CIT(A) has erred in confirming the action of AO in disallowing the cost of improvement of Rs.70,00,000/- on the basis that the expenses, so incurred, is neither to be treated as the cost of improvement nor expenditure in connection with transfer. On the facts and in the circumstances of the case and in law, the said payment ought to be allowed as cost of improvement or in the alternative as expenditure incurred in connection with the transfer.

6. The appellant craves to add, alter, amend and/or rescind any grounds of appeal during the course of the hearing.”

Ground No.1

3. The assessee, vide ground No.1, has contended that the capital gains assessed by the Assessing Officer (hereinafter referred to as the AO) in relation to the transfer of development rights in land at Ulhashnagar were not warranted to be taxed as no transfer of the property had taken place as per the provisions of section 2(14) of the Income Tax Act.

4. During the assessment proceedings the AO observed that the assessee company had shown long term capital loss of Rs.4,35,78,325/- on sale of land at Ulhashnagar. As per the details, the sale consideration of the property was shown at Rs.1,50,00,000/-. The indexed cost of acquisition had been

computed at Rs.5,85,78,325/- and the resultant capital loss was accordingly claimed in the return of income. When asked to explain in this respect by the AO, the assessee explained to the AO that the assessee had entered into a scheme of arrangement u/s 391 and 394 of the Companies Act with M/s B.R. Herman and Mohatta (India) Pvt. Ltd. (BRHM). As per the scheme, the Ulhasnagar undertaking of the BRHM with certain assets and liabilities were transferred from BRHM to the assessee. The scheme was approved by the Hon'ble Bombay High Court on 28.11.1997 in a company petition. The scheme was effective from 1.4.1996. Pursuant to the Scheme, the assessee received land situated at Ulhasnagar belonging to BRHM being Plot Nos.6,7 and 8 admeasuring 38,380 sq mtrs.

5. Prior to such transfer, BRHM had given the said land to M/s.DRM Steel Industries Pvt. Ltd. (DRM) on conducting basis under the agreement dated 11.8.1979. DRM had taken loan from State Bank of Bikaner and Jaipur (SBBJ) against hypothecation of Plant & Machineries. Due to labour unrest, market slow down and other problems, DRM stopped production in 1990. DRM ran into financial crisis leading to defaults in payment of dues to SBBJ. The matter went up to Debts Recovery Tribunal and SBBJ's dues were settled on payment of Rs.2 crores by DRM to SBBJ. Since DRM was not in a position to pay the entire settlement amount, the assessee paid a sum of Rs.70 lakhs in January 2005 to obtain peaceful and vacant possession of the land for the purposes of development activity by the assessee. DRM has been under liquidation.

6. On receiving possession of the land, the assessee entered into Development Agreement dated 16.9.2005 (the Agreement, which was not registered with the Registrar of properties) with M/s. Yogi Developers Corporation (the Developer). As per the terms of the Agreement, the assessee had given development rights to the Developer to use the FSI. The Developer was to pay Rs.1,50,00,000/- to the assessee plus 18% of the constructed area

free of cost against use of FSI. Subsequently, A supplement agreement was entered into as per which the Developer agreed to discharge certain liabilities of the assessee and also agreed to give 25% (in place of 18% as per the original agreement) of the constructed super built up area to the assessee. The Supplement Agreement also provided that the Developer would be entitled to deduct from the said 25% of the super built up area, such area proportionate and equivalent to the amount paid by the Developer in discharging the liabilities calculated at the rate of Rs. 1000/- per sq ft.

7. Since the Development Agreement was entered into during the year, the assessee had shown sale of land during the year and worked out long term capital loss as under -

Sale consideration			1,50,00,000
Less: Cost of acquisition	Original cost	Indexed cost	
Cost of land	1,03,28,050 (value as on 1.4.81)	5,13,30,409	
Cost of improvement	70,00,000 (paid in Jan 05)	72,47,9 17	
Total indexed cost			5,85,78,325
Long term capital loss			(4,35,78,325)

8. Since there was no stamp duty valuation available on the date of the Agreement, it was requested by the AO to the the assessee to produce the fair market value of the transfer of development rights (TDR) as on the date of agreement 16.09.2005 with the developer. However, the assessee failed to file the required details and vide its submissions dated 12-12-08 submitted to the AO that the assessee was not in a position to furnish the market value of the land in question. Hence, in view of the inability shown by the assessee to furnish the required details, the AO appointed the Inspector in charge of the area to obtain the stamp duty valuation in respect of the subject property. The Inspector in his report dated 16.12.2008 reported that the stamp duly valuation

at Rs.2000/- per sq mtr based on the rates prevailing in the year 2005. Based on this rate, the AO worked out the value of the property at Rs.7,67,60,000/- (i.e. 38380 sq mtr x Rs.2000). The assessee was show caused by the AO vide letter dated 16-12-2008 as to why this value should not be treated as sale consideration in place of Rs.1,50,00,000/-. Further, the assessee was also asked to explain on what basis the market value as on 1.4.1981 had been substituted for cost.

9. In response to the above, the assessee submitted that till that date, no construction had been carried out. The plans had not been passed and the area which the assessee has to receive was not determined. The possession of the property had not been given to the Developer in part performance of the agreement as defined in section 53A of the Transfer of Property Act. The liability in respect of arrears payable to Maharashtra State Electricity Board (MSEB) vide suit no.2006/96 was to the account of the assessee as per the Scheme approved by the Bombay High Court. The liability on account of arrears of Rs.5.55 crores payable to MSEB was subsisting as on the date of the agreement. As per supplementary agreement, the developer had agreed to discharge the liability of the assessee and deduct the same from 25% of the area to be given to the assessee. In view of these various factors, the right to the constructed area was only contingent. The consideration towards such area which was yet to be provided by the developer could not be added to the full value of consideration for the purpose of working out capital gains.

The assessee further submitted that even if one were to add any amount to the consideration, it could be only the cost of construction of the area which the assessee was supposed to receive from the developer. Since there was existing liability of Rs. 5.55 crores as stated above, the area available with the assessee, would be 47,742 sq. meter as under –

Total area of the plot (sq. mts.)	38,380
FSI available (sq. mts.)	38,380
FSI in sq. ft.	412,968

25% of the above – sq. ft.	103,242
Area to be retained in discharge of liability	55,500
Balance area available with the assessee	47,742

The assessee further submitted that the cost of construction of the premises was Rs.500 per sq. ft. Therefore the additional consideration, if applicable, would be only Rs.2,38,71,000 and the total consideration would be Rs.3,88,71,000 (i.e. Rs.1,50,00,000 being sale consideration as per statement of long term capital loss plus Rs.2,38,71,000 additional consideration as above). Based on this, there would still be a loss as under:

Total consideration as above	3,58,71,000
<u>Less: Indexed cost of acquisition as per return Long term capital loss</u>	<u>5,85 78,326</u> <u>1,97,07 326</u>

10. As regards substitution of market value as on 1.4.1981, it was submitted by the assessee that the land had been acquired by way of devolution and operation of law in as much as the Scheme of Arrangement u/s.391 and 394 of the Companies Act, 1956 had been approved and sanctioned by the Hon'ble Bombay High Court vide Order dated 28.11.1997. As per the Hon'ble Calcutta High Court's decisions in 122 FTP 561 and 139 FIR 215, the transfer of asset under Court order and under operation of law amounts to devolution. Accordingly, since the land was purchased by BRHM in 1963 i.e. prior to 1.4.1981, the assessee was entitled to substitute market value as on 1.4.1981 in place of cost to the previous owner u/s.55(2)(b)(ii).

11. The AO, however, observed that the indexed cost of acquisition adopted by the assessee was not proper. The assessee had adopted the market value based on valuer's report dated 15.11.2006 of Rs.1,03,28,050/-. This value was

on higher side. As per the Deed of confirmation filed by the assessee, the stamp duty valuation at the time of transfer in 1996 was Rs.1,20,02,000/-. Since the value in 1996, itself, was only Rs.1.20 crore, the value as on 1.4.1981 could not be Rs.1.03 crore. The AO referred the determination of market value as on 1.4.1981 to the District Valuation Officer-II, Mumbai (DVO) u/s 55A. However the valuation report of the DVO was not received at the time of framing of the assessment order.

The AO further observed that the possession had been given to the developer by means of the said agreement and based on the same only; the assessee had claimed the Long Term Capital Loss at Rs.4.35 crores in the return of income. Hence, thereafter to say that no transfer had taken place would mean that the Long Term Capital Loss claimed by the assessee while filing its return of income was bogus. Secondly, the liability of Rs.5.5 crores as stated above towards Maharashtra State Electricity Board (MSEB) had not crystallised so far and hence, was unascertained liability, which could not be allowed to the assessee. He further observed that the assessee's contention that the possession of property was not given to the developer in part performance of the agreement as defined in Section 53A of the Transfer of Property Act was also not acceptable based on the records and claims made by the assessee for the Long Term Capital Losses. The AO therefore valued the transfer of development rights at Rs.7,67,60,000/-, as per the report of the inspector and proof given by the Sub Registrars office.

12. Further, the AO observed that the assessee company had claimed the amount of Rs.70,00,000/towards cost of improvement of the above said property. The AO, however, observed that the same was not allowable as the assessee was not in a position to prove the nexus of Rs.70,00,000/- as cost of improvement. Further, as per provisions of Section 48, expenditure incurred only and exclusively in connection with transfer and cost of improvement of the asset was deductible. The AO observed that the amount of Rs.70,00,000/-

was spent neither towards the cost of improvement nor in relation to expenditure in connection with transfer of the asset. Hence, he added back the amount of Rs.70,00,000/- to the income of the assessee holding the same was not allowable u/s.48 of the IT Act.

The AO accordingly computed the total income of the assessee as under:

“Total business income as per computation		Rs.16,08,720/-
Add: As at point 2		<u>Rs.70,00,000/-</u>
		Rs.86,08,720/-
Capital Gains:		
Long Term capita loss	(-) Rs.4,35,78,326/-	
Add: Disallowances as discussed above	<u>Rs.7,67,60,000/-</u>	Rs.3,31,81,674/-
Total Taxable Income		Rs.4,17,90,394/-
Rounded off to		Rs.4,17,90,390/”

13. Being aggrieved by the order of the AO, the assessee preferred appeal before the Ld. CIT(A).

14. The Ld. CIT(A), however, observed that since the assessee, itself, had treated the transfer of development right in the property at Ulhashnagar as transfer of capital asset and had declared capital gains/loss on such transfer in the return of income, therefore the subsequent change of stand that there was no transfer was not sustainable. He observed that moreover the transfer was complete in terms of the definition of transfer provided under section 2(47) of the Act and even the income had accrued to the assessee in relation to the transfer of land in question by way of development agreement. The Ld. CIT(A) further observed that the report of the District Valuation Officer (DVO) was received and the same was handed over to the assessee and that the assessee’s objections against the said report were not tenable. He, therefore, directed the AO to adopt the value given by the DVO in his report regarding the valuation of the land as on 01.04.1981 and as on 16.09.15. The Ld. CIT(A) also denied the claim of payment of Rs.70 lakhs towards cost of

improvement/development of land observing that the assessee company and M/s. DRM had common director Shri Ratan Mundra. M/s. DRM had taken the factory at Ulhashnagar on conducting basis from M/s. BRHM in 1979. The assessee company had taken over the M/s. BRHM in the year 1996. The M/s. DRM was already under BFIR since 1993. The M/s. DRM had given the asset and machinery on mortgage to the State Bank of Bikaner & Jaipur and it was the responsibility of M/s. DRM to pay the amount of Rs.70 lakhs and not that of the assessee company. The land was not mortgaged to the bank by the assessee and that there was no encumbrance on the land itself. The directors of the M/s. DRM were Shri S.R. Mundra and Smt. Shreekanta Devi Mundra, both residents of the same apartment i.e. Laxmi Villas, 12th Floor, Neposean Road, Mumbai. At the same time, the directors of the assessee company were Shri S.R. Mundra, Smt. Kusum Mundra and Smt. Dhruva Mundra. The directors of the assessee company and the M/s. DRM were closely interlinked as the affairs of both the companies were managed by the same person i.e. Shri S.R. Mundra or his family members. The amount of Rs.70 lakhs paid by the assessee company to the bank was actually a loan from the assessee company to M/s. DRM. The machinery of M/s. DRM was mortgaged to the bank. The Ld. CIT(A) also asked the assessee to state as to at what consideration the machinery was sold and why the loan of Rs.70 lakhs was not received from M/s. DRM, though both the companies were controlled by the same persons or the persons from the same family.

The assessee, however, explained that M/s. DRM was under liquidation and was managed by the panel liquidator. The required information was not available with the assessee.

The Ld. CIT(A), considering the above submissions, rejected the contention of the assessee regarding incurring of Rs.70 lakhs towards cost of development/improvement of land in question. He, therefore, dismissed the appeal of the assessee with the direction to the AO to adopt the value given by

the DVO for computation of capital gains. Being aggrieved by the order of the Ld. CIT(A), the assessee, thus, has come in appeal before us.

15. We have heard the rival contentions and have also gone through the records. The dispute before us is in relation to computation of capital gains on transfer of development rights in the p[lot in question. The assessee, though in the return of income had treated the land in question as a case of transfer and had offered the resultant capital gains/loss in the return of income. However, when the AO asked the assessee to explain the computation of capital loss offered in the return of income, the assessee thereafter claimed that the case of the assessee could not be considered as a case of transfer of capital property. The Ld. A.R. of the assessee has brought our attention to various clauses of the agreement to contend that in fact no possession has been handed over to the developer, no plans have been sanctioned and that even full consideration in question has not been received by the assessee till date and further that the cost of built up area that is to be handed over by the developer to the assessee has not been ascertained. He has further submitted that the agreement in question has not been registered till date and no development activity has happened, only the license was given to the developer and physical possession has not been handed over. He has further submitted that since the agreement was not registered, hence as per the provisions of section 53A of the T.P. Act, the transfer of the property cannot be said to have completed. He has also relied upon certain case laws in this respect.

16. The Ld. D.R., on the other hand, has relied upon the findings of the lower authorities and has contended that the transfer in fact had taken place and that even the assessee himself had offered capital gains/loss in the return of income and that the assessee was now estopped from its own act and conduct to take a different stand at this stage.

17. We have considered the rival contentions in this respect. After going through the various clauses of the development agreement and reading the development agreement as a whole, we find that the assessee had given development rights to the developer, the consideration was agreed upon and in fact the cash component of the consideration has already been received by the assessee. Further, the developer had agreed to handover 25% of the super built up area to the assessee, which part of the agreement was to be performed after the development of the land. The assessee itself, after considering the above transaction as transfer of capital rights, had offered the capital loss in the return of income. It was only when the AO was not satisfied with the computation of capital loss by the assessee and put up the relevant queries, then, the assessee changed its stand. After hearing the Ld. Representatives of both the parties and going through the agreement as a whole, considering the act and conduct of the assessee itself, we do not find any merit in the contention of the assessee that the transfer of the property had not taken place. In fact, the assessee had not only given the development rights to the developer but also the right to enter into the property, develop the property and get the necessary permissions and sanctions etc. from the competent authority etc. It is not a case where the assessee had only given a license to the developer and had retained the entire control over the property rather it is a case where the assessee had given all the rights to the developer to develop the property, sale the flats constructed thereupon except 25% of the built up area as agreed vide the deed of development. There was nothing left that the assessee was required to perform towards its part of contract in relation to above stated transaction of transfer in question. The transfer thus has taken place as per the provisions of section 2(47) of the I.T. Act for the purpose of taxability of the capital gains. Moreover the assessee now is estopped from its own act and conduct to agitate that the transfer has not taken place when the assessee itself has offered capital gains/loss in the return of income. The case law that is strongly relied upon by the Ld. A.R. is of the Hon'ble Bombay High Court (Goa Bench) in the case of

CIT vs. Sadia Sheikh Tax Appeal No. 11 & 12 decided vide order dated 2.12.2013, wherein, after appreciating the facts of that case, the Tribunal had held that the property or the rights were not transferred to the developer and that the assessee was having full control over the property and that it was not a case of transfer as per the provisions of section 2(47) of the Act which finding was affirmed by the Hon'ble High Court. However, as discussed above, the facts of the present case are quite distinguishable. As we have held that the assessee in this case has not only transferred the above rights but has also offered the resultant capital gains/loss in the return of income. Hence, the said decision is not applicable to the case of the assessee. We therefore decide the ground No.1 against the assessee.

18. The next issue raised before us is relating to the value of the consideration received/receivable by the assessee on transfer of development rights. The contention of the assessee has been that the sale value should be taken either at Rs.1,50,00,000/- which has been actually received by the assessee or at Rs.3,88,71,000/- as computed by the assessee as discussed and reproduced in the chart in the paras above. The Ld. A.R., in this respect, has relied upon certain case laws e.g. (i) CIT vs. Puja Prints – 360 ITR 697 wherein it has been held that in view of the specific provisions of section 55A(a), as were existent and applicable for the assessment year in question, a reference could be made to the Departmental Valuation Officer only when the value adopted by the assessee was less than the fair market value. It has also been held that the subsequent amendment to the relevant section where the relevant words “is less than the fair market value” have been substituted by the words “is at variance with its fair market value” is prospective and not applicable retrospectively. It has also been held that even the reference to the DVO under section 55A(a)(ii) was not acceptable for the reason that section 55A(b) of the Act very clearly states that it would apply in any other case i.e. a case not covered by section 55A(a) of the Act. Therefore, resort cannot be had

to the residuary clause provided in section 55A(b)(ii) and that the CBDT circular dated 25.11.72 has no application in view of above stated position of law. The Ld. A.R., thus, has submitted that the value as on 01.04.1981, as per the report of the Registered Valuation Officer which has been placed and relied upon by the assessee is to be considered. He, therefore, has submitted that the action of the AO for reference to the DVO was wrong and illegal in view of the law laid down by the Hon'ble Bombay High Court in the case of M/s. Puja Prints (supra). He has further contended that the sale value of the property should be taken as calculated by the assessee as reproduced and discussed in paras above of this order.

19. We have considered the rival contentions in this respect also. First of all, we find that the property/land in question had come to the assessee by way of scheme of arrangement as approved by the Hon'ble Bombay High Court in the company petition vide which certain assets and liabilities of the M/s. BRHM were transferred to the assessee. The AO has not gone into the question as to the same was a case of transfer or devolution of interest. However, since this issue has neither been raised before us nor gone into by the AO, hence we restrain ourselves from further discussion on this issue and assume that the assessee was entitled to claim the cost of acquisition as on 01.04.1981. In view of the law laid down by the Hon'ble Bombay High Court in the case of M/s. Puja Prints (supra), where the valuation of the property as per the registered valuer report was more than the fair market value in the opinion of the AO, the reference cannot be made to the DVO as the same, as per the relevant provisions, could be made only if the same is less than the fair market value in the opinion of the AO. The law laid down by the Hon'ble Jurisdictional High Court is binding on this Tribunal. Respectfully following the same, we hold that the action of the AO in referring the estimation of the value of the property as on 01.04.1981 was not in accordance with law and hence the value assessed by the DVO of the land in question as on 01.04.1981

cannot be adopted. The only evidence left in this respect which is available on file is the report of Regd. Valuer, we accordingly direct the AO to adopt the report of the registered valuer for arriving out at the value of the property as on 1.4.1981.

20. So far as the sale value of the property as on the date of agreement is concerned, we do not agree with the calculation offered by the assessee. We, even do not find it justified to adopt the value of the DVO regarding the land in question. From the record, we find that the assessee has to receive Rs.1,50,00,000/- as cash component and further 25% of the constructed super built up area. The developer had agreed to owe and pay certain liabilities of the assessee for which the developer was entitled to deduct from the said 25% of super built up area, such proportionate and equivalent cost calculated at the rate of Rs.1000/- per sqr. feet. Further, a perusal of the various clauses of the agreement reveals that in this case the developer had to offer 25% of the super built up area out of the FSI already available on the land in question. The developer was under no liability in relation to any other constructed area upon the FSI obtained by the developer from the market or in lieu of FSI available on any other land. The above clauses clearly depict that the right to construct as per the FSI already available on the land was available with the assessee itself. The assessee was not entitled to receive any share of built up area in relation to any further FSI received or receivable by the developer upon the land in question. Under such circumstances, it can be safely assumed that the assessee had transferred the development rights in relation to 75% of the total FSI available and the assessee had retained the 25% of the FSI already available and what the assessee got in lieu of the 75% transfer of the development rights/FSI on the land was the cost of construction in relation to 25% of the super built up area of the land in question plus Rs. 1,50,00,000/-. The cost of construction of the said super built up area has already been quantified and ascertained in the 'supplementary development agreement,'

itself, which is at the rate of Rs.1000/- per sq. feet. The available FSI on the land as discussed above has already been mentioned by the assessee itself as 38380 sq. mtrs which is equal to 412968 sq. ft. Hence, the total sale consideration received/receivable by the assessee is Rs.1,50,00,000/- plus cost of 25% of the super built up area as attributable to the available FSI on the plot calculated at Rs. 1000/- per sq. feet. The developer has been given the liberty to deduct the amount paid towards liabilities of the assessee out of the said amount, which does not, in any manner, effect the quantum/ price of the sale consideration settled between the parties. The AO is, therefore, directed to compute capital gains/loss by taking the value as on 01.04.1981 as provided by the registered valuer and the sale value as may be arrived as discussed above.

18. At this stage, we would like to refer the case law strongly relied upon by the Ld. A.R. in the case of "CIT vs. M/s. Chemosyn Ltd., Mumbai" ITA No.361 of 2013 decided on 11.02.15 (Bombay High Court). We find that the facts and circumstances of the above stated decision are not applicable to the case of the assessee. In the said case, the original agreement was replaced by another agreement. In the original agreement, the developer had agreed to handover certain built up area. However, vide substituted agreement, the said condition was dropped and in the substituted tripartite agreement, the plots in question were transferred to the new buyer for a cash consideration and the condition of handing over of built up area was dropped. Under such circumstances, the Hon'ble Bombay High Court held that the consideration with respect to the built up area had not accrued to the assessee. The facts of the said case, thus, are not applicable to the case of the assessee.

21. Now coming to the issue relating to the expenditure of Rs.70 lakhs claimed to have been incurred towards the cost of improvement/development of the land in question, we find that there is no merit in the contentions raised by the assessee. From the record/assessment order, what we find is that the M/s. DRM had obtained loan by way of mortgaging the machinery and other

assets on the land. The land, in fact, was owned by M/s. BRHM which was neither mortgaged by the M/s. DRM nor the M/s. DRM had got any right or authority to do so. Hence, there was no encumbrance on the land itself. The bank had got right to recover the loan amounts from M/s. DRM by way of auctioning and sale of the machinery which was mortgaged with it. There was no liability of the assessee to pay the loan amount of M/s. DRM nor the same was required to be paid for release of land or improvement or development of land in question. Moreover, the Ld. CIT(A) has pointed out that the directors of the M/s. DRM and the assessee was closely related and the affairs of both the companies were actually managed by one person i.e. Shri S.R. Mundra and that it was just a loan transaction between M/s. DRM and the assessee. Whatsoever may be nature of transaction, we find that the incurring of the expenditure neither was for the development of the land nor was for the improvement of the cost of land nor the same was in any way liability of the assessee. This claim of the assessee is therefore rejected.

22. In view of our findings given above, ground Nos.1 & 5 of the assessee's appeal are dismissed whereas ground No. 2, 3 & 4 are decided as per the observations and directions given above.

23. In the result, the appeal of the assessee is hereby treated as partly allowed.

Order pronounced in the open court on 03.02.2016.

Sd/-
(N.K. Billaiya)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 03.02.2016.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent

The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.