

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA Nos.:- 3227, 3228, 3229, 3230, 3231, 3232, 3233 & 3234/Del/2017

A.Ys.: 2006-07, 2007-08,2008-09,2009-10,2010-11,2011-12,2012-13, 2013-14

Amrit Corp. Ltd. A-95, Sector-65 Noida PAN AAFCA7387Q	Vs.	DCIT Central Circle Ghaziabad
(Appellant)		(Respondent)

ITA Nos. 3789, 3790, 3791, 3792/Del/2017

A.Ys. : 2006-07, 2007-08, 2008-09, 2009-10

DCIT, Central Circle, Ghaziabad	Vs.	Amr t Corp. Ltd. Amrit Nagar, G.T. Road, Ghaziabad PAN AAFCA7387Q
(Appellant)		(Respondent)

Assessee by:	Shri Rohit Jain,Advocate Ms. Tejasvi Jain, CA
Department by :	Shri Ravi Kant Gupta, Sr. DR
Date of Hearing	01/02/2018
Date of pronouncement	/02/2018

ORDER

PER BENCH

The aforesaid appeals have been filed by the assessee as well as by the revenue against separate impugned orders of even date,

14.3.2017 for the assessment years 2006-07, 2007-08, 2008-09, 2009-10, 2011-12 and 2013-14; and order dated 22.3.2017 for the assessment years 2010-11 & 2012-13. Since the issues involved in all the appeals are common arising out of identical set of facts, therefore, same were heard together and are being disposed of by way of this consolidated order.

2. At the outset, Ld. Counsel, Shri Rohit Jain submitted that the issues involved in the cross appeals filed by the assessee as well as by the revenue, *firstly*, what should be the year of conversion of capital asset into stock-in-trade; and *secondly*, what should be the cost of acquisition of the capital asset as on 1.04.1981 for the purpose of indexation; stands squarely covered in favour of the assessee by the judgment of the Hon'ble Jurisdictional High Court in the case of the assessee which has been followed by the Tribunal in assessee's own case in the appeals arising out of the regular assessment for the assessment years 2007-08, 2008-09

3. Brief facts and background of the case are that, a search and seizure action u/s 132 was carried out in the case of the assessee company on 4.5.2011 and accordingly, reassessment proceedings for assessment years 2006-07 to AY 2011-12 were initiated u/s 153A and regular assessment u/s 143(3) was initiated for the assessment year 2012-13 being the year of search. Thereafter, regular assessment u/s

143(3) was also conducted for the assessment year 2013-14. One important fact to be noted here is that, regular assessments for most of the years covered u/s 153A were already completed and matters later on got settled from the appellate forums on the same very issues. The assessee-company owned 77,638 sq. yds. of industrial land since 1940-41 at G.T. Road, Ghaziabad. The land was shown as capital asset by the assessee-company since beginning in its books of accounts. On this very land, the Ghaziabad Vanaspati Unit of the assessee company was located. On closure of the said Ghaziabad Vanaspati unit, the assessee company, pursuant to a scheme of rehabilitation sanctioned by the Board for Industrial and Financial Reconstruction (BIFR) in the financial years 2001-02/2002-03, decided to sell the surplus land of the said unit. Based on the aforesaid scheme, from financial year 2002-03, relevant to the assessment year 2003-04, the assessee-company started selling the surplus land. Gains arising on sale of the surplus land were declared under the head 'capital gain' by the assessee-company in the returns of income for the assessment years 2003-04 to 2006-07. Pertinently, the regular assessments under section 143(3) conducted for the aforesaid assessment years 2003-04 to 2006-07, capital gains offered for tax by the assessee on transfer of the aforesaid land had been accepted by the Assessing Officer. On 01.04.2006, the assessee-company took a conscious decision to convert the aforesaid land

acquired and held as "capital asset" into "stock-in-trade". Accordingly, the provisions of section 45(2) of the Act stood attracted, which provide the mechanism for taxation of gain arising on conversion of capital asset into stock-in-trade as partly under the head "capital gains" and partly as "business income". Accordingly, during the previous year 2006-07, relevant to the assessment year 2007-08, the assessee-company offered for taxation 'long-term capital gain' of Rs.1,68,93,649 and 'business income' of Rs.1,32,84,593 on account of sale of industrial land admeasuring 7681.458 sq. yards, which was converted into stock in trade during the relevant previous year 2006-07, by applying the provisions of section 45(2) of the Act. In regular assessment for assessment year 2007-08, the assessing officer, for the first time, held/ observed that the assessee-company had converted the above land from capital asset to stock-in-trade on 01.04.2002, i.e., during the financial year 2002-03 and not in financial year 2006-07, as claimed by the assessee. Accordingly, the assessing officer proceeded to re-compute 'long term capital gains' and 'business income' of the assessee. Further, the assessee company while computing the 'long term capital gains', adopted Rs.190 per sq. yard as fair market value of the land on 01.04.1981, which was duly supported by the valuation report of the Government registered valuer. The registered valuer determined the fair value of the land at Rs.190 per sq. yd., as under: -

- (i) Valuer first took into account the circle rate of the land at Rs. 100 per sq. yd. and fair value of the land at Rs.115 per sq. yd.;
- (ii) Thereafter, the valuer took into account the fact that out of total land admeasuring 77,638 sq. yd., only land admeasuring 46,232 sq. yd. since saleable area of land was less, to determine the true fair value for the purpose of capital gains, the valuer determined the fair value of the saleable area by appropriately increasing the fair value of the saleable portion.

4. The assessing officer, however, rejected the said valuation report of the registered valuer and adopted the fair market value of the land at Rs.20 per sq. yd. as intimated by the U.P. State Industrial Development Corporation ("UPSIDC"), vide letter dated 17.12.2009, filed in pursuance to the assessing officer's notice under section 133(6) of the Act. The Id. CIT (A), however, in assessment year 2007-08, concluded that the fair market value of the land as on 01.04.1981 should be taken at Rs 100 being the circle rate. But the Id. CIT (A) did not accept the second step adopted by the registered valuer in increasing the value of land on account of lower saleable area. The aforesaid findings in assessment year 2007-08 were followed by the assessing officer in regular assessments for assessment years 2008-09 and 2009-10. Simultaneously, proceedings under section 147 were initiated for assessment years 2003-04 to 2006-07.

5. The assessee company against the reassessment orders passed u/s 147 for assessment years 2003-04, 2006-07 has challenged the validity of notice u/s 148 in a writ petition before the Hon'ble Allahabad High Court. The Hon'ble High Court vide its judgment dated

29.3.2004 has quashed the initiation of reassessment proceedings for the assessment year 2003-04 to 2006-07. While quashing the said proceedings, the Hon'ble High Court also considered the issue of applicability of section 45(2) on merits and held that there was no conversion of capital asset into stock in trade in the financial years 2002-03 to 2005-06 as alleged by the AO. The relevant observations and findings of the Hon'ble High Court reads as under:-

“32. Now coming to the question that whether, on the facts and circumstances, the provision of Section 45(2) of the Act is applicable.

33. Section 45(2), as referred hereinabove, provides the profit or gain arising from the transfer by way of conversion by the owner of the capital asset into, or its treatment by him as, stock-in-trade of a business carried on by him shall be chargeable to income tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him and, for the purposes of section 48, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

34. Section 45(2) is applicable in a situation where there is a transfer by way of conversion by the owner of a capital asset into stock-in-trade of a business or owner has treated such capital asset as stock-in-trade of a business. To make the provision application, there must be a positive act on the part of the owner of the capital asset to transfer the asset by way of conversion into stock-in-trade or treating such capital asset as stock-in-trade of a

business. In the absence of such a positive act on the part of the owner of the capital asset, the provision of Section 45(2) does not apply. In the present case, it is not the case of the revenue that the owner has transferred, by way of conversion of the capital asset, converted the capital asset into stock-in-trade or has treated such capital asset as stock-in-trade of a business. There is no such material in this regard on record. The assessing authority, while initiating the proceeding, under Section 148, read with Section 147, has inferred such conversion of capital asset into the stock-in-trade and applied the provision of Section 45 (2), which is wholly erroneous. "

6. Before us the Ld. Counsel submitted that in view of the aforesaid decision of the Hon'ble High Court, now it stands established that the land was held by the assessee company as "capital asset" in the assessment year 2006-07 and therefore, there could not be any question of the same land being converted into stock in trade in the financial year 2002-03 as alleged by the AO for the purpose of computing the capital gains during the years under consideration. Apart from that, the Hon'ble Court also recognised the fact that under the provision of section 45(2) there must be a positive act on the part of the owner of the capital asset to transfer the asset by way of conversion of stock-in-trade treating such capital asset as stock in trade of a business. Thus, in absence of such positive act on the part of the assessee the provision of section 45(2) will not apply. It has been further brought to our notice that following the aforesaid

judgments of the Hon'ble High Court, this Tribunal in the assessee's appeal for the regular assessments for the assessment year 2007-08 and 2008-09, vide order dated 6.6.2017 has again adjudicated the said issue of the date of conversion of applicability of section 45(2) in favour of the assessee company, by holding that conversion took place on 1.4.2006 and not in 1.4.2002. On the second issue, i.e., what should be the fair market value as on 1.4.1981, the Tribunal in principle decided the issue in favour of the assessee. However remanded the matter to the AO for limited verification. The relevant observation and finding of the Tribunal is reproduced as under:-

*"5.11 The next issue for consideration is whether the figure of Rs.100/- per sq. yd., being circle rate, as adopted by the Ld. CIT(A) is to be sustained or the value of Rs.190/- per sq. yd., as contended by the assessee, is to be applied for the purpose of computation of long term capital gain. **In our considered opinion, the assessee has a strong case for adopting a higher fair market value given the fact that the total area measuring 77.638 sq. yd. had a saleable area of only 46,232 sq. yds. The assessee had to essentially provide for parks, roads, pavements, drains, water supply system and public utility services free of cost to the GDA and as such, the reduction in saleable area would have to be necessarily factored into the Fair Market Value. Therefore. in principle, we do agree with the assessee's contention that the Fair Market Value should be appropriately enhanced so as to offset the reduction in the total saleable area.***

.....

5.13 A perusal of these documents reveals that although the assessee has duly been following up the matter pertaining to the issuance of completion certificate, the transfer of ownership of the open areas/ facilities in terms of clause (iv) of the agreement is still not complete as per the letter dated 25.09.2012 issued by the GDA. It is also pertinent that these additional evidences filed by the assessee have not been examined by the lower authorities. **Therefore. while we do agree with the assessee's contention that the Fair Market Value as on 1.4 1981 should be enhanced so as to include the cost of unsaleable area in terms of open space/facilities etc ., the issue will necessarily have to be decided by the Assessing Officer after duly considering the valuation report submitted by the assessee supporting the Fair Market Value of Rs. 190/- per sq. yd. as neither the Assessing Officer nor the Ld. CIT(A) have commented upon the same.** We also hold that should the assessee be able to demonstrate before the Assessing Officer that the transfer of ownership of unsaleable area has taken place, as contemplated in clause (iv) of the agreement, the assessee should be allowed due weightage of the same while computing the market value of the same as on 1.4.1981. Accordingly, ground nos. 2, 2.1....for both the years in assessee's appeal stand allowed for statistical purposes. ”

7. Ld. Counsel pointed out that following the aforesaid order of the Tribunal the regular assessment for the assessment year 2009-10 has been passed vide order dated 4.10.2017, accepting both the points

in favour of the assessee. Thus, the entire issue raised in the grounds of appeal stands decided in favour of the assessee.

8. Ld. DR on the other hand relied upon the order of the AO and Ld. CIT (A).

9. After considering the aforesaid facts and the material placed on record before us, we find that in most of the impugned assessment years, the issue of conversion of capital asset to stock-in-trade as on 1.4.2006 by the assessee has been accepted and the revenue's stand that same should be reckoned from the date of 1.4.2002 has been rejected. Similarly, the issue whether the fair market value of the land as on 1.4.1981 for the purpose of computing the index cost of acquisition is to be adopted at Rs. 190 per sq. yd. as claimed by the assessee; or Rs. 20 per sq yd. as per the AO, too has been decided in favour of the assessee. Whence this issue has been settled in the regular assessment, then same issue now cannot be added again in the reassessments falling within the scope of section 153A for the assessment years. Even for the regular assessments for the assessment years 2012-13 and 2013-14, the issue still stands covered in favour of the assessee by the judgment of the Hon'ble High Court and also by the Tribunal. It has also been brought on record that the second issue, whether the FMV of the land as on 1.4.1981 is to be taken at Rs. 190 per sq. yd. or Rs. 20 per sq. yd. has been accepted by

the AO at Rs. 190 per sq. yd. in pursuance of the order of the Tribunal vide order dated 3.8.2017. Thus, in compliance of the Tribunal order the issue has been decided in favour of the assessee and therefore, in these years it would be futile exercise to remand back the matter to the AO as both the issues have been decided in favour of the assessee. Thus, on merits we decide the issue in favour of the assessee on both the counts. So far as the legal issue raised that AO did not have jurisdiction to make the additions u/s 153A without their being any incriminating material found in the search, has been rendered academic and same is dismissed as infructuous. In the result all the appeals of the assessee are allowed.

10. So far as the revenue's appeals are concerned, the revenue has challenged the finding of the Ld. CIT(A) that fair market value of the land should be taken as on 1.4.2006 instead of 1.4.2002. This issue has already been discussed above that it has been settled by the Hon'ble High Court in the case of the assessee. Therefore, there is no merits in the grounds raised by the revenue and accordingly same are dismissed. Thus, the appeals of the revenue are dismissed.

11. In the result all the appeals of the assessee are allowed and all the appeals of the revenue are dismissed.

Order pronounced in the open court on 9th February, 2018.

sd/-

(O.P. KANT)

ACCOUNTANT MEMBER

sd/-

(AMIT SHUKLA)

JUDICIAL MEMBER

Dated: /02/2018

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

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