

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' A ' Bench, Hyderabad**

**Before Shri Manjunatha, G. Accountant Member and**  
**Shri K. Narasimha Chary, Judicial Member**

आ.अपी.सं / **ITA No.319/Hyd/2022**  
(निर्धारण वर्ष / Assessment Year: 2015-16)

Ishoo Narang Hyderabad PAN: ACSPN1664K (Appellant)	Vs.	Dy. C. I. T. Circle 2(1) Hyderabad (Respondent)
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**S.A. No.2/Hyd/2024**  
**(Arising out of ITA No.319/Hyd/2022)**  
**A.Y 2015-16**

Ishoo Narang Hyderabad PAN: ACSPN1664K (Appellant)	Vs.	Dy. C. I. T. Circle 2(1) Hyderabad (Respondent)
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निर्धारिती द्वारा/Assessee by:	Shri P Murali Mohan Rao, CA
राजस्व द्वारा/Revenue by::	Smt. TH Vijaya Lakshmi, CIT (DR)
सुनवाई की तारीख/Date of hearing:	19/08/2024
घोषणा की तारीख/Pronouncement:	25/09/2024

**आदेश/ORDER**

**Per Manjunatha, G. A.M**

This appeal filed by the assessee is directed against the order dated 23/06/2022 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2015-16.

2. The assessee has raised the following grounds:

*"The Ld. CIT(A) erred in dismissing the appeal.*

*2(a) The Ld. CIT(A) erred in dismissing ground nos. 2 to 5 taken before him.*

*b) The Ld. CIT(A) ought to have appreciated that the impugned land was converted into stock-in-trade in the financial year 2013-14 itself and not during the financial year 2014-15.*

*c) The Ld. CIT(A) erred in holding that the appellant had converted the impugned land into stock-in-trade only in financial year 2014-15 relevant to the assessment year 2015-16.*

*d) The Ld. CIT(A) ought to have appreciated that the closing stock relating to the impugned converted land was not included by the appellant in the closing stock figures as on 31.03.2014, by over sight.*

*e) The Ld. CIT(A) erred in holding that the Assessing Officer has rightly made the additions of Rs.3,88,56,670/- and Rs. 2,17,48,115/- under the heads Short Term Capital Gains and Long term Capital Gains respectively.*

*3(a) The Ld. CIT(A) erred in dismissing ground no.6 taken before him.*

*b) The Ld. CIT(A) erred in holding that the action of Assessing Officer in recasting the P & L account and calculating the closing stock at Rs.7,24,83,840/- is correct and sustainable in the eyes of law.*

*4(a) The Ld. CIT(A) erred in dismissing ground nos. 7 to 11 taken before him.*

*b) The Ld. CIT(A) ought to have deleted the addition of Rs.16,16,928/ made u/s 2(22) (e) of the Act.*

*c) The Ld. CIT(A) erred in observing that the appellant has been unable to prove conclusively that the impugned amounts were advanced in the ordinary course of business or that these transactions were inter corporate deposits.*

*d) The Ld. CIT(A) ought to have appreciated that if the impugned amount is utilized by M/s. KOL, the recipient company towards "Salaries", "Site expenses", "Advances", "Travelling expenses", "Conveyance", etc., it is deemed that*

*the amount is utilized for business purpose of the recipient company since both the companies, M/s. KIPL and M/s. KOL are, admittedly, engaged in the business of Infrastructure.*

*e) The Ld. CIT(A) ought to have appreciated that merely because the impugned money advanced was not directly utilized for purchase of assets relating to the infrastructure business of M/s. KOL, it cannot be held that the impugned money had not been utilized for the business purpose of M/s. KOL.*

*f) The Ld. CIT(A) ought to have appreciated that merely because the impugned transactions run throughout the year, with payments and repayments, it cannot be said that there is no business expediency or business connection between M/s. KIPL and M/s. KOL.*

*g) The Ld. CIT(A) ought to have appreciated that inter-corporate deposits cannot be called as loans or advances for the purpose of application of provisions of section 2(22)(e) of the Act.*

*h). The Ld. CIT(A) ought to have appreciated the CBDT Circular No.19/2017 dated 12th June 2017 as per which the impugned transactions would not fall within the ambit of the word "advance" in 5. section 2(22)(e) of the Act.*

*5. The appellant may, add or alter or amend or modify or substitute or delete and/ or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal."*

3. The brief facts of the case are that the assessee is an individual and director of M/s. Kyori Infrastrucutre Pvt Ltd (KIPL) & M/s. Kyori Oremin Ltd (KOL) filed its return of income for the A.Y 2015-16 on 5.9.2015 admitting income of Rs.1,04,84,170/-. The assessee has filed revised return on 30.09.2015 admitting income of Rs.91,36,620/-. The case was selected for scrutiny to verify large difference in the opening stock of current year and closing stock of previous year. During the course of assesement proceedings, the Assessing Officer noticed that on verification of the return of income for the A.Y 2015-16, it is seen that the

opening stock is shown as Rs.17,98,60,568/-, whereas the closing stock as per the return filed for the A.Y 2014-15 is nil. The assessee was called upon to explain the discrepancy in opening and closing stock. In response, vide letter dated 22.12.2017, the assessee stated that the capital asset owned by him was converted into stock-in-trade in the financial year 2013-14 relevant to A.Y 2014-15 and because of this, opening stock has been increased. The assessee further contended that as per the provisions of section 45(2) of the I.T. Act, 1961 when capital asset is converted into stock-in-trade, the resultant capital gain is taxable in the year in which the asset is sold. Since only part of the land is sold during the financial year relevant to A.Y 2015-16, capital gains is not offered to tax.

4. The Assessing Officer, after considering the relevant submissions of the assessee and also taken note of provisions of section 45(2) of the Act observed that, as per section 45(2), profits and gains arising from the transfer by way of conversion by the owner of the capital asset to stock in trade of a business carried on by him shall be chargeable to income tax as income of previous year in which such stock-in-trade is sold or otherwise transferred and for the purpose of section 45(2), the fair market value of the asset on the date of conversion shall be deemed to be the value of the consideration received or accruing as a result of transfer of capital asset. Since the appellant has converted the capital asset into stock-in-trade for the A.Y 2015-16 and also sold part of stock-in-trade, capital gain arising out of conversion of capital asset into stock-in-trade should be taxed when stock-in-trade is

sold. Therefore, taking into the total extent of land converted by the appellant and also after obtaining fair market value of the land as on the date of conversion which was at Rs.38,72,000/- per acre has computed Long-Term Capital Gain + Short-Term Capital Gain of Rs.6,06,04,785/-. The Assessing Officer had also re-casted the P&L of the assessee by taking into account the value of fair market value of the land converted into stock-in-trade and arrived at the closing stock of Rs.7,24,83,840/-. The Assessing Officer further noted that M/s KPIL has advanced Rs.14.29 crores to M/s. KOL. The assessee is the common director in both the companies. Therefore, called upon the assessee to explain as to why provisions of section 2(22)(e) of the I.T. Act, 1961 should not be applied and taxed the extent of profits/reserves of Rs.16,16,920/- available in the case of M/s KPIL taxable in the hands of the assessee. The assessee contended that KPIL has given advance for commercial expediency and further stated that the transaction is inter-corporate deposit between two companies and cannot be considered as loan. The Assessing Officer after considering the relevant fact assessed Rs.16,16,920/- being profit/reserve as deemed dividend u/s 2(22)(e) of the I.T. Act, 1961.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the appellant challenged computation of capital gain from conversion of capital asset into stock-in-trade in terms of section 45(2) of the Act,, along with certain judicial precedents. The appellant also challenged the additions made by the Assessing

Officer towards deemed dividend. The learned CIT (A) after considering the relevant submission of the assessee and also taken note of provisions of section 45(2) of the I.T. Act, 1961 upheld the additions made by the Assessing Officer towards Long-Term/Short Term Capital Gain on the ground that when the capital asset is converted into stock-in-trade, the profits and gains arising from such transfer should be taxed in the year in which such stock-in-trade is sold by the assessee. Since the appellant has sold part of stock-in-trade for the current A.Y, the Assessing Officer has rightly computed the Long-Term Capital Gain and Short-Term Capital Gain depending upon the period of holding of the asset. Thus, rejected the argument of the assessee and upheld the additions made by the Assessing Officer. The learned CIT (A) had also upheld the re-computation of closing stock by taking into account fair market value of the land as on the date of conversion after reducing the sales value declared by the assessee. Similarly, the learned CIT (A) upheld the additions made by the Assessing Officer towards deemed dividend u/s 2(22)(e) of the I.T. Act, 1961.

6. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

7. The learned Counsel for the assessee submitted that the learned CIT (A) is erred in sustaining additions made by the Assessing Officer towards Short-Term Capital Gain and Long-Term Capital Gain without appreciating the fact that as per provisions of section 45(2) of the Act, capital gain is chargeable to

tax in the year in which the entire stock-in-trade is sold by the assessee. The learned Counsel further referring to the computation of capital gain by the Assessing Officer submitted that the Assessing Officer has taken the fair market value of the land as on the date of conversion ignoring the fact that the assessee had paid guarantee commission as per agreement between the parties which also forms part of cost of acquisition. Although, the appellant has filed relevant agreement to prove that the appellant discharged guarantee cost, but the Assessing Officer ignored the evidences filed by the assessee and computed the opening stock by taking the fair market value as per SRO value and arrived at the closing stock of Rs.7,24,83,840/-. The learned Counsel for the assessee further submitted that the transaction between two companies are in the ordinary course of business of the appellant and there is a commercial expediency and the advances given to another company, the assessee has explained the nature of transaction and how such advance is not coming within the ambit of section 2(22)(e) of the I.T. Act, 1961. The learned CIT (A) without appreciating the relevant fact simply sustained the additions made by the Assessing Officer.

8. The learned DR, on the other hand, supporting the order of the learned CIT (A) submitted that the claim of the appellant that it has converted capital asset into stock-in-trade in the financial year 2013-14 relevant to A.Y 2014-15 is incorrect, because in ITR Form-2 the value of closing stock has been declared at Nil. Therefore, the Assessing Officer has rightly treated conversion of capital asset into stock-in-trade for the impugned

A.Y. As regards the value arrived at by the assessee by taking into account the guarantee costs, the Assessing Officer has rightly rejected the claim of the assessee on the ground that as per section 45(2) of the Act, for the purpose of section 48, the full value consideration arising as a result of transfer should be the fair market value of the property as on the date of such conversion. Therefore, the Assessing Officer has rightly obtained SRO value and adopted the full value of the consideration for the purpose of section 45(2) of the Act. In so far as the addition towards deemed dividend, there is no dispute with regard to the fact that there is a loan between one company to another company and further the appellant is a common Director in both the companies. Therefore, the Assessing Officer has rightly invoked the provisions of section 2(22)(e) of the I.T. Act, 1961 and their orders should be upheld.

9. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. As regards the first issue of addition towards Short-Term Capital Gain and Long-Term Capital Gain on account of conversion of capital asset into stock-in-trade, admittedly, in the return of income filed for the A.Y 2014-15, the appellant has not disclosed any closing stock. Had it been the case of the assessee that he has converted capital asset into stock-in-trade in the previous financial year, then the value of closing stock should find place in the return of income filed for the earlier A.Y. Therefore, to this extent, in our considered view, the reasons given by the Assessing Officer to assess the capital gain in pursuant to



conversion of capital asset into stock-in-trade as per section 45(2) of the I.T. Act, 1961 for the A.Y in question, is in accordance with law. Having said so, let's come back to the quantification of Short-Term Capital Gain and Long-Term Capital Gain. The Assessing Officer has computed Short-Term Capital Gain and Long-Term Capital Gain depending upon the period of holding of the asset. In fact, the assessee never disputed the period of holding of the asset and hence, in our considered view, the classification made by the Assessing Officer based on the period of holding is not challenged by the assessee and accordingly upheld. In so far as the computation of full value of consideration as per section 45(2) of the Act, for the purpose of section 48, the full value of the consideration arising as a result of transfer is fair market value of the property as on the date of such conversion. The fair market value cannot be the SRO value for the purpose of determination of stamp duty. Therefore, the reasons given by the Assessing Officer to adopt SRO value as fair market value of the property cannot be upheld. Therefore, on this issue, we direct the Assessing Officer to determine the correct fair market value of the property either by referring the matter to the valuation cell to ascertain the correct fair market value of the property or obtain certain evidences including instance of registration of properties during that period and find out the correct fair market value of the property.

10. In so far as the computation of capital gain, we find flaws in the Long-Term Capital Gain and Short-Term Capital Gain computed by the Assessing Officer for the simple reason that as observed by the Assessing Officer himself as per section 45(2) of

the Act, the profits or gains arising from the transfer by way of conversion of capital asset to stock-in-trade shall be chargeable to income tax as income of the previous year in which such stock-in-trade is sold or otherwise transferred by the assessee. Admittedly, the appellant has sold part of the stock-in-trade for the current financial year and remaining stock-in-trade is still held by the assessee as closing stock. Therefore, the capital gain arising on account of conversion of capital asset into stock-in-trade should be proportionately computed by taking into account the stock-in-trade sold by the assessee for the impugned A.Y but not the entire extent of land converted by the assessee. In the present case, the Assessing Officer has computed the Long-Term Capital Gain and Short-Term Capital Gain by taking into total total extent of land converted by the appellant even though the appellant has sold only part of stock-in-trade. Therefore, we direct the Assessing Officer to ascertain the extent of stock-in-trade sold by the assessee and based on such extent, compute proportionate capital gain liable for taxation in the impugned A.Y. In so far as the computation of closing stock by adopting fair market value of the land as per SRO rate as on the date of conversion is concerned, since we have set aside the issue to the file of the Assessing Officer to determine the correct fair market value of the land as on the date, this issue also needs to go back to the file of the Assessing Officer and recompute the value of closing stock and thus, we direct the Assessing Officer to compute the closing stock after obtaining correct fair market value of the land as on the date of conversion.

11. To sum up, the issue of conversion of stock-in-trade and resultant capital gain in terms of section 45(2) of the I.T. Act, 1961 has been set aside to the file of the Assessing Officer to reconsider the issue in terms of our discussion given herein above.

12. The next issue that came up for our consideration is the addition towards deemed dividend u/s 2(22)(e) of the I.T. Act, 1961. There is no dispute with regard to the fact that M/s KIPL has advanced Rs.14.29 crores to M/s. KOL. It is also an admitted fact that the assessee is the common Director in both the companies. Further, there is no dispute with regard to the availability of profits/reserves to the extent of Rs.16,16,928/- in the case of M/s. KIPL. The only issue that needs to be ascertained is whether such advance given by M/s. KIPL is in the course of normal business of the assessee with a commercial expediency or a loan. The assessee contended that the transaction between the two companies is a normal inter-corporate deposit in the course of business of the assessee and there is a commercial expediency. The Assessing Officer has not examined the issue in light of relevant submission of the assessee. Therefore, we are of the considered view that the issue needs to go back to the file of the Assessing Officer for fresh consideration. Thus, we set aside the order of the learned CIT (A) on this issue and the Assessing Officer is directed to reconsider the issue denovo in accordance with law.

13. In the result, appeal filed by the assessee is allowed for statistical purposes.

**SA No.2/Hyd/2024 (ITA 319/Hyd/2022)**

12. Since we have disposed of appeals filed by the assessee, the present Stay Applications filed by the assessee seeking stay of outstanding demand becomes infructuous and the same are dismissed as not maintainable.

13. In the result, S.As filed by the assessee are dismissed.

Order pronounced in the Open Court on 25<sup>th</sup> September, 2024.

Sd/-

Sd/-

<b>(K. NARASIMHA CHARY) JUDICIAL MEMBER</b>	<b>(MANJUNATHA, G.) ACCOUNTANT MEMBER</b>
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Hyderabad, dated 25<sup>th</sup> September, 2024

***Vinodan/sps***

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4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*