

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES , JAIPUR

श्री भागचन्द, लेखा सदस्य एव श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM & SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 1088/JP/2016
निर्धारण वर्ष/Assessment Year: 2011-12

Smt. Manju Bansal Plot No.5, Mangal Vihar, Gopal Pura Bypass, Jaipur	बनाम Vs.	The ITO Ward- 6(4) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AOFPB 6994 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Anil Sharma, CA &
Shri Arpit Vijay, CA
राजस्व की ओर से / Revenue by: Shri Varinder Mehta, CIT - DR

सुनवाई की तारीख / Date of Hearing : 31/08/2017
घोषणा की तारीख / Date of Pronouncement : 11 /10/2017

आदेश / ORDER

PER BHAGCHAND, AM

The assessee has filed an appeal against the order of the ld.
CIT(A)-2, Jaipur dated 23-09-2016 for the assessment year 2011-12
raising following grounds of appeal:-

“1. Under the facts and circumstances of the case, the ld.
CIT(A) is not justified in rejecting the additional ground
challenging the initiation of proceedings u/s 147/148 of I.T.
Act, 1961.

2. Under the facts and circumstances of the case, the ld. CIT(A) is not justified in not admitting the additional evidences submitted u/r 46A of I.T. Rules, 1962.

3. Under the facts and circumstances of the case, the ld. CIT(A) is not justified in confirming the addition of Rs. 78,34,422/- towards short term capital gain as determined by the AO comprising followings.

(1) Sale of property 74, SMS Colony, Durgapura, Jaipur Rs. 71,28,702/-

(2) Sale of property 91, R.K. Puram Sanganer, Jaipur Rs. 7,05,720/-

2.1 During the course of hearing, the ld. AR of the assessee has not pressed the Ground No. 1. Hence, the same is dismissed being not pressed.

3.1 Apropos Ground No. 2 & 3 of the assessee, the facts as emerges from the order of the ld. CIT(A) are as under:-

“3.3 I have perused the facts of the case, the assessment order and the submissions of the appellant. The facts of the case are discussed in ground No. 1. In the return of income filed by the assessee subsequent to the notice issued by ITO, (Intelligence), the assessee filed a return declaring sale consideration of Rs. 20,21,000/- and declared stock in trade of Rs. 12,21,000/-. The Assessing Officer did not accept the declaration of sale consideration and the sale of plots as a business transaction and the claim of the assessee that they were held as stock in trade. The reasons discussed in the return of income for Assessment Year 2011-12 page 19 are reproduced below:-

“(A) The assessee admitted that no return of income for the A.Y. 2011-012 and earlier years had been filed.

(B) *It has also been admitted that no business activity was there before A.Y. 2011-12.*

(C) *The assessee has also admitted that the return of income was filed after issuance of notice by the Department.*

(D) *The assessee categorically admitted that no books of account have been maintained as required u/s 44AA and the income has been declared u/s 44AD of the I.T. Act, 1961.*

(E) *The assessee stated that during the F.Y. 2009-10 one property situated at 74, SMS Colony, Durgapura, Jaipur was purchased which was her first business activity, however, no documentary evidence has been produced.*

(F) *The lady assessee stated that she is carrying out business activity since 26-03-2010 and started earning good since 21-07-2010, so it is correct that she was partially dependent on her husband before 26-03-2010. As regards the partially or fully dependency on her husband, the husband of the lady never intimated to his Govt. Department.*

(G) *As regards the rejection of claim, the assessee stated that the property was purchased on 26-03-2010 and at that time it was a plain plot. The assessee is not correct to say that one room set and boundary wall constructed thereon. The assessee in her statement had categorically stated that no construction was carried out thereon. Further, on going through the Sale Deed of the property, it has clearly mentioned that only tin shed was thereon.*

(H) *As regards the DLC value of Rs. 76,21,852/-, the assessee stated that they did not have knowledge otherwise the issue would have been challenged in the Revenue Court. Although, on the enhanced value of the property the Stamp Duty has to be paid by the purchaser, however, as per provisions of sec 50C, it was obligatory on the part of the assessee to pay Capital Gain Tax thereon.*

(I) *In the conclusion the assessee stated that the transaction begins with one purchase and ends with one sale is not decisive. It would be pertinent to mention that an isolated transaction or activity cannot be part of business. To consider the question of business, there must be regular activity of purchasing and selling..''*

Further, statement of Smt. Manju Bansal and her husband Mahesh Bansal were recorded and the extract is reproduced in the Assessing Officer's order. After discussing the details filed by the assessee the Assessing Officer did not accept the contentions of the assessee and subjected the transactions to the provisions of section 50C and calculated the capital gains thereon.

In the present proceedings, the Authorized Representative reiterated the submissions made before the Assessing Officer in the assessment proceedings and also made an application for acceptance of additional evidence which consisted of a valuation report of a registered valuer for valuation of land sold by the

assessee. No reasons as prescribed in Rule 46A exist for admittance of such an evidence as enough opportunity before the Assessing Officer was available to the assessee and the same has not been denied. Further, the only ground relates to the assessment of the transaction as capital gains or business venture, no purpose is served by the valuers report for the above proposition. No further or additional or alternate grounds have been taken by the Authorized Representative. Hence, the additional evidence is not admitted for reasons as discussed above.

Now coming to the question of sale transaction as capital gain or business, it is seen that no return has been filed in the prescribed time as per the provisions of the Act and only after a specific notice under section 133(6) with the details of the transactions was issued to the assessee by the ITO, Intelligence (I&CI) the return was filed. At that stage after the department has already received the information regarding the transaction and on being questioned about it the assessee has claimed that the transaction reflect a business transaction and the plot was being held as stock in trade. No previous returns have been filed by the assessee from where it could be seen that the assessee was in the business of selling and purchasing land and plots. In the balance sheet filed four plots have been shown as capital assets and it is stated by the Authorized Representative that the plot sold are part of the closing stock of the previous year. All the balance sheets and accounts have been subsequent years the same are filed under section 44AD. In view of the above conspectus of facts one thing is clear that the assessee had not filed the relevant returns and hence cannot take the benefit that its previous conduct would point to the fact of carrying on business or not.

Further, when questioned regarding the transactions, both the assessee and her husband in their statements recorded on 25.11.2014 could not give satisfactory answers. The relevant questions which bring out this aspect are reproduced below:

Manju Bansal statement recorded on 25.11.2014

प्रश्न 5: वर्ष 2009 में जब आपने अपना व्यवसाय शुरू किया था उस वर्ष में आपके पास क्या-क्या सम्पत्ति थी जिसके आधार पर आपने व्यवसाय शुरू किया।

उत्तर 5: मुझे इस बारे में याद नहीं है। वर्ष 2009 के व्यवसाय शुरू करते समय कौन सी सम्पत्ति से व्यवसाय शुरू किया था एवं उस वर्ष में क्या बेचा था यह भी ध्यान नहीं है।

प्रश्न 6: इसके बाद के वर्ष 2010-11 अर्थात् नि.वर्ष 2011-12 में आपने क्या खरीद बेचान किया था।

उत्तर 6: वर्ष 2010-11 में मैंने एस.एम.एस. कॉलोनी वाला प्लॉट खरीदा था एवं बेचा एवं एक प्लॉट कार के पुरम कॉलोनी में खरीदा था एवं उसे बनाकर कब बेचा था इसका मुझे ध्यान नहीं है। एस.एम.एस कॉलोनी वाला जैसा था वैसी ही स्थिति में बेचा था।

प्रश्न 9: आपने जो मकान बनाकर बेचे हैं एवं उनमें जो बनाने में खर्चा लगाया है क्या आपके पास उस खर्च के बिल वाउचर इत्यादि मौजूद हैं।

उत्तर 9: मकान बनाने में जो खर्चा किया गया है उसे बिल वाउचर प्रस्तुत करने में असमर्थ हूँ।

प्रश्न 11: न तो आपने वर्ष 2009-10 अर्थात् नि.वर्ष 2010-11 की आयकर विवरणी भरी है एवं नहीं कोई उसका सबूत इस बाबत कि आपका 31.03.2010 को क्या क्लोजिंग स्टॉक था एवं 1.4.2010 को क्या प्रारम्भिक स्टॉक था सबूत पेश करने में असमर्थ रहे हैं एवं वर्ष 2010-11 अर्थात् नि. वर्ष 2011-12 की आयकर विवरणी भी विभाग द्वारा इंगित किये। जाने के बाद कि आपके द्वारा जो सम्पत्ति बेची गई पर देय कर बनता है नि.वर्ष 2011-12 की विवरणी दाखिल की गई है जो कि आपने व्यवसाय में कोई लगातार व्यवसायिक गतिविधि नहीं रही है न ही इस बारे में आप कोई साक्ष्य प्रस्तुत कर पाये हैं कि आपने व्यवसाय शुरू किया था। अतः क्यों नहीं 72,61,852/- पर लघु कालिक पूंजित लाभ की गणना नि. वर्ष 2011-12 के दौरान की जाये।

उत्तर: इस बारे में विस्तृत रूप में मेरे पति श्री महेश बंसल उत्तर देने में सक्षम होगा क्योंकि वे ही व्यवसाय का सारा कार्य देखते हैं।

Mahesh Bansal Statement recorded on 25-11-2014

प्रश्न 8: आपकी पत्नी श्रीमती मंजू बंसल ने अपने बयानों में प्रश्न सं.11 में बताया है कि मेरे पति मेरे व्यवसाय की देखरेख कर रहे हैं एवं विभिन्न व्यवहार जो जमीन खरीद एवं बिक्री के हुये हैं उनके बारे में व ज्यादा अच्छी तरह जानते हैं एवं इस बारे में अपना स्पष्टीकरण दें।

उत्तर 8:मेरी पतनी द्वारा किये जा रहे व्यवसाय की जानकारी पति होने के नाते इतनी ही है कि वे जमीन खरीद फरोक्त एवं भवन निर्माण का व्यवसाय कर रही है। पति होने के नाते वे मुझे अपने व्यवसाय के बारे में बताती रहती है वर्ष 2009-10 में क्रय किये गये प्लॉट में जो धन व्यय किया गया था वह मेरे पिता द्वारा मृत्यु से पूर्व वर्ष 2009 में दिया था अन्य कोई जानकारी मुझे नहीं है।

In the statement, Smt. Manju Bansal stated that her husband would know the details, the husband stated that he only knew about the business that she is indulging in sale and purchase of plots. Further, while the lady stated that on the plot at SMS Colony no construction had been done while in the proceedings it has been claimed that construction had been undertaken on the plot. Thus, there are discrepancies in the statement also.

The above clearly shows that the assessee has sold the plots and not filed the return of income, information for which was received by the department. On being questioned for the same, the assessee has come up with the plea of having sold the same as stock in trade. No evidence of the fact that the assessee was in the business of sale and purchase of land and the plots were held as stock in trade could be produced by the assessee. All books of accounts, balance sheet, profit and loss account are prepared subsequently, no returns of income had been filed prior to the year or for the year in question. Four other plots are appearing as capital assets in the balance sheet and the two plots sold are being claimed to be stock in trade based on the balance sheet of previous year which is again arrived at and submitted subsequent to the enquiry by the department. The returns for subsequent years are filed under section 44AD. The assessee is claiming that construction had been carried out on the plot before its sale to supplement its stand that it was the part of business, whereas the registered sale deed records only a 100 sq. ft. tin shade room on the plot at the time of sale. The onus for proving treating a particular asset as stock in trade or asset rests with the assessee especially in a case where no returns were filed and the return is filed after detection of the transaction by the department and notice thereon based on information received. Reliance is placed on the case of V.S. Chandra Shekhar vs. ACIT, Bangalore wherein it has

been held that since the assessee failed to bring any evidence on record to show that the amount was paid to the vendor for acquiring land as stock in trade for the purpose of business, addition made thereon by the authorities below was to be confirmed. (54 Taxmann. Com 185, Bangalore Tribunal). In view of the discussion and facts of the case, the addition made by the Assessing Officer under the head capital gain is confirmed. The ground of appeal is dismissed.”

3.2 During the course of hearing, the Id.AR of the assessee prayed that the Id. CIT(A) had erred in not admitting the admitting the additional evidences submitted under rule 46A of IT Rules, 1962 and also erred in confirming the addition of Rs. 78,34,422/- towards short term capital gain as determined by the AO on sale of property 74, SMS Colony, Durgapura, Jaipur for Rs. 71,28,702/- and on sale of property 91, R.K. Puram, Sanganer, Jaipur for Rs. 7,05,720/- for which the Id.AR assessee filed the following written submission.

“Ground No.2 &3 :

1.The assessee purchased a land 74, SMS Colony, Durgapura Jaipur, vide registered deed dated 26.03.2010 for Rs.400000/- (**PB No.52**) and within four months thereof after construction of one room and boundary wall thereon sold the same vide registered sale deed dated 21.07.2010 for Rs.1000000/-DLC value was adopted as per registered sale deed Rs.2044872/-(**PB No.60**).

2.The assessee purchased another land 91, R.K.Puram, Sanganer, Jaipur vide registered deed dated 24.06.2010 for Rs.300000/- (**PB No.66**) and after construction of a residential house thereon sold the same vide registered sale deed dated 31.01.2011 for Rs.1021000/-DLC value was adopted as per registered sale deed Rs.986873/-(**PB No.71**).

3. The assessee purchased another land B-6A, Devi Chiranjeevi Colony, Jaipur vide registered deed dated 25.11.2010 for Rs.4960000/- (**PB No.81**) and started construction thereon, during the relevant previous year which remained in hand at the end of the year.
4. The assessee in response to certain inquiries conducted by Intelligence wing of the department submitted her return of income filed after initiation of such inquiries, wherein the relevant transactions of purchase and sale of land and construction thereon, were claimed as business transactions and corresponding income of Rs.175491/- was shown as income from business & Profession.
5. The AO initiated the assessment proceedings u/s 148 of IT Act 1961, and during the course of assessment proceedings assessee vide letter dated 16.12.2013 (**PB No.95**) submitted the copy of return of income along with Trading and Profit & Loss Account and Balance Sheet showing Opening stock, purchases, Construction Exp. sales and closing stock, and Indirect Exp. etc. and declaring Net profit of Rs.175491/- against total sales of Rs.2021000/-.(**PB No.28-31**)
6. The assessee vide letter dated 11.07.2014 (**PB No.100**) submitted the copy of balance sheet for the preceding A.Y.2010-11, wherein the land (74, SMS Colony) purchased in preceding year on 26.03.2010, was shown as closing stock of Rs.493150/-.(**PB No.27**)
7. The assessee also claimed that the business of Real Estate was continued in succeeding years and submitted the return of Income along with Trading and Profit & Loss Account and Balance sheet for the succeeding A.Y.2012-13(**PB No.32-34**) 2013-14(**PB No.35-39**) and 2014-15 (**PB No.40-42**) r.w. **PB No.108**.
8. The assessee vide letter dated 11.08.2014 (**PB No.102**) further claimed that the return for the relevant previous year has been filed u/s 44AD of IT Act 1961, declaring Net profit higher than presumptive NP rate, therefore she has neither required nor maintained any books of accounts, however the Trading and P& L Account and balance Sheet have been prepared on the basis of bank statement and memorandum information.
9. As directed by the AO the assessee and her husband personally appeared before the AO whose statements were recorded on oath.(**PB No.43-47/48-51**)
10. The AO rejected the claim of the assessee and held that the assessee had no such business activity during the preceding A.Y.2010-11 or in earlier years and return of income for the relevant previous year has been filed after issuance of notice of the Intelligence Wing of the department, therefore land/house under consideration is a capital assets and not the stock in trade as claimed by the assessee.
11. The AO on the basis of information available in his possession observed that the DLC Value of one of the property (74, SMS Colony) of Rs.2044872/-adopted at the

time of execution of registered sale deed dated 21.04.2010 has been enhanced to Rs.7621852/- by the DIG, Stamps.

12. The assessee vide letter dated 19.12.2014 (**PBNo.107**) raised her objection before the AO towards such enhanced valuation of Rs.7621852/-just within four months from the date of purchase.

13.The AO in respect of said property (74, SMS Colony), ignoring the objection of the assessee determined short term Capital Gain in respect of said property of Rs.7128702/-by applying the Enhanced DLC Value of Rs.7621852/- and cost of acquisition of Rs.493150/- without allowing any cost of improvement towards construction of One room and Boundary wall thereon.

14.The AO in respect of another property (91, R. K. Puram) determined short term Capital Gain of Rs.705720/-by applying the sales consideration of Rs.1021000/- and cost of acquisition of Rs.315280/- without allowing any cost of improvement towards construction of complete residential house thereon.

15. The AO thus made addition of Short term Capital gain determined in respect of both the properties, to returned income.

16. The year wise activities of the assessee relating to purchase, construction and sale of land/house, beginning from preceding A.Y.2010-11 may kindly be considered as follows:

A.Y.2010-11

Op. stock	Purchase	Construction	sale	Cl. stock
Nil	400 sq. Yard land, 74, SMS Colony, Durgapura, Jaipur for Rs.400000/- vide Reg. Deed dated 26.03.2010 (PB No.52-58) shown as stock in trade in the Balance Sheet submitted before the AO vide letter dated 11.07.2014(PB No.27/100) Registry Exp. Rs.93150/-	Nil	Nil	Rs.493150/-
Nil	493150/-	Nil	Nil	493150/-

A.Y.2011-12

Op. stock	Purchase	Construction	sale	Cl. stock
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74, SMS Colony, Jaipur Rs.493150/-		One Room and Boundary Wall as mentioned in registered sale Deed dated 21.07.2010 and site Plan (PB No.60/62/65) and affirmed in the statements of the assessee, answer to Question No.10 (PB No.43/45-46))	Vide registered deed dated 21.07.2010 for Rs.100000/- (PB No.60-65)	Nil
	126 sq. Yard land, 91, R.K.Puram, Sanganer, Jaipur for Rs.300000/-, vide Reg. Deed dated 24.06.2010 (PB No.66-70) Reg. Expenses Rs.15280/-	Construction of residential house, 1102 sq ft., as per site plan annexed to Reg. Sale deed dated 31.01.2011 (PB No.71/80)	Vide registered deed dated 31.01.2011 for Rs.1021000/- (PB No.71-80)	Nil
	91.66 sq.Yard land, B-6A, Devi Chiranjeevi Colony, Jaipur vide registered deed dated 25.11.2010 for Rs.496000/- (PB No.81-88) Reg. Expenses Rs.25100/-	Construction of residential house, costing Rs.700000/- as claimed before AO vide letter dated 17.11.2014 (PB No.104)	Nil	B-6A, Devi Chiranjeevi Colony, Jaipur Rs.1221100/-
493150/-	836380/-	1630000/-	2021000/-	1221100/-

Trading and Profit & Loss Account (PB No.31)

A.Y.2012-13

Op. stock	Purchase	Construction	sale	Cl. stock
B-6A, Devi Chiranjeevi Colony, Jaipur Rs.1221100/-	Nil	Nil	Nil	1221100/-

During the succeeding A.Y.2012-13 assessee undertaken contract work and opening stock remained in hand as closing stock, as per return of income & Balance sheet submitted before AO.(**PB No.32-34**).

A.Y.2013-14

Op. stock	Purchase	Construction	sale	Cl. stock
B-6A, Devi Chiranjeevi Colony, Jaipur Rs.1221100/-		Nil	Nil	1221100/-
	121, R.K.Puram, Sanganer, Jaipur, purchased on 02.04.2012 for Rs.316280/- as claimed before AO vide letter dated 17.11.2014(PB No.104)	Construction of residential House for Rs.1175680/-	Sold on 09.05.2012 for Rs.1051000/-	Nil
	House No.46, Prem Nagar, Vistar, Gopalpura, Jaipur purchased on 19.11.2012 for Rs.474400/-	Nil	Sold on 28.02.2013 for Rs.533334/-	Nil
			Contract Work of Rs.680000/-	Nil
1221100/-	790680/-	1175680/-	2264334/-	1221100/-

Trading and Profit & Loss Account (PB No.39)

A.Y.2014-15

Op. stock	Purchase	Construction	sale	Cl. stock
B-6A, Devi Chiranjeevi Colony, Jaipur Rs.1221100/-		Nil	Nil	1221100/-

	352A, Surya Nagar, Gopalpura, Jaipur, purchased on 04.09.2013 for Rs.386567/- as claimed before AO vide letter dated 17.11.2014 (PB No.104/105)	Nil	Nil	386567/-
1221100/-	386567/-	Nil	Nil	1607667/-

Trading and Profit & Loss Account (PB No.42)

17. Thus the assessee is regularly engaged in the transactions of purchase, construction and sale of /houses to the extent considered favorable, appropriate and profitable, which constitute regular business activities carried on by the assessee, beginning from purchase of stock in trade in the preceding A.Y.2010-11.

18. The transaction of Purchase/construction and sale of land/house have been carried on between a short time interval of 1 to 7 months after the date of purchase.

19. The assessee during the relevant previous year purchased first property, (74 SMS colony) on 26.03.2010 and sold the same on 27.07.2010, i.e. within four month of purchase, just before one month from the sale of the first property purchased second property, (91, R.K.Puram) on 24.06.2010, which after construction sold on 31.01.2011 i.e. within 7 month of purchase, just before two month from the sale of the second property purchased third property, (B-6A, Devi Chiranjeevi Colony), which was lying as stock in trade along with construction thereon.

20. Such regular activities of purchase, construction and sale have also been carried on in succeeding years having short time interval of 1-3 months between sale and purchase.

21. Thus cyclical, regular, and frequent activities of purchase, construction and sales having short time interval of few months between sale and purchase are evident from the documents available on record

22. In view of the nature of the business, requirement of capital and other factors regulating the relevant trade there may be a case when the assessee may have no purchase, construction/sales during a particular period/year or there may be very limited/few transactions.

23. Every person has first year of its business without having any business in preceding year or in earlier years.

24. Therefore, the fact that the assessee was not having any business activities during the preceding year or in earlier year is not conclusive/ decisive to hold that the activities of the assessee carried on during the relevant previous year do not fall within the scope and nature of business activities.

25. The total income of the assessee was never exceeding the maximum amount not chargeable to tax, therefore assessee did not file any return of income prior to issuance of notice by the Intelligence Wing of the department, however return filed by the assessee within the extended period prescribed u/s 139(4) is a valid return.

26. Therefore no adverse inference can be drawn from the fact that the assessee has not filed here return of income before issuance of notice by the Intelligence Wing of the department showing business income.

27. When it is very much clear from the nature, cycle, frequency, time interval between the transactions of purchase and sale, and volume of profit/loss arising from the transactions carried on by the assessee that the relevant transactions constitute business activities, nature of such transactions do not change simply for the reason that such transactions were not carried on in preceding year or return of income in respect thereof has not been filed.

28. The AO is not justified in holding that the assessee has not produced any documentary evidence to show that the first property (74 SMS Colony) was purchased as stock in trade, there cannot be a documentary evidence to show the intention of the assessee, such nature of the transaction is liable to be decided from the future conduct of the assessee and in the light of totality of facts and circumstances of the case.

29. The assessee has purchased the property (74, SMS Colony) in preceding year which was kept as closing stock as claimed in the relevant Balance Sheet as on 31.03.2010 (PB No.27), and the same has been carried forward as opening stock in relevant previous year (PB No.31).

30. Thus the assessee never claimed conversion of same property from capital assets to stock in trade, therefore the AO has no justification in referring to relevant provisions of section 45(2) of IT Act 1961 and in holding/ alleging that capital assets converted in to stock in trade is a colourable device and sham transaction.

31. The business of purchase, construction and sale of land and house/flats is an eligible business and the assessee is an eligible assessee as prescribed u/s 44AD of IT Act, therefore there is nothing wrong in filing return u/s 44AD and in declaring profits there under without maintaining any books of accounts.

32. It is evident from registered sale Deed dated 21.07.2010 and annexed site Plan (PB No.60/62/65), that the assessee before sale of the property 74, SMC Colony, improved the same for realization of better sale price, by constructing one room and Boundary wall thereon, as affirmed by the assessee before the AO in response to Question No.10 of her statements. (PB No.43/45-46)

33. Thus the assessee was engaged in business of purchase, construction and sale of land, Houses and flats, where DLC value as provided u/s 50C of IT Act is not applicable. Section 43CA providing adoption of DLC value in case business transactions has been enacted w.e.f. 01.04.2014, therefore the same has no application in case of the assessee.

34. The assessee during the relevant previous year has undertaken regular and cyclical activities of purchase, construction of sale of land, house/flats, and there is no isolated activity, therefore the AO has no justification in holding that an isolated transaction or activity cannot be part of business.

35. Therefore under the facts and circumstances the AO is not justified in holding the sale of relevant land/house as transfer of capital assets and in determining the Short Term Capital Gain arising there from on the basis of DLC Value as provided u/s 50C of IT Act 1961.

36. Therefore Your Honour is requested to accept the business income of Rs.175491/- as declared by the assessee from sale of land/houses and delete the relevant addition of Rs.7128702/- and 705720/- made to returned income towards short term capital gain.

Alternative Plea

36. Without prejudice to the submission cited above it is humbly submitted that even if it is assumed that the assessee has transferred the capital assets and profit arising there from is chargeable as Short Term Capital Gain the enhanced DLC Value of Rs.7621852/- of the property 74, SMS Colony, is highly excessive and not reasonable.

37. At the time of purchase on 26.03.2010, DLC Value of the said property was adopted Rs.1858975/-, (**PB No.52/56**) at the time of sale on 21.07.2010, it was adopted Rs.2044872/- (**PB No.60**) and just within 4 months from the date of purchase the same has been enhanced to Rs.7621852/- by the DIG Stamps.

38. The assessee vide letter dated 19.12.2014 (**PB No.107/111**) objected before the AO towards such enhanced valuation adopted by DIG Stamps.

39. The relevant objection of the assessee should have been considered by the AO as provided u/s 50C(2) of IT Act 1961, however the same was not been considered by the AO at all.

40. The AO without giving any finding or even making any specific comment with respect to objections raised by the assessee or without asking the assessee to file any clarification or evidence in respect of the same applied such huge valuation of Rs.7621852/- as adopted by DIG Stamps, and determined short Term capital Gain of Rs.7128702/- from the sale of the relevant property just within 4 months from the date of its purchase.

41. Therefore the assessee as advised, got valued the said property by an independent and registered valuer as on date of sale i.e. on 21.07.2010 for Rs.2341080/- and submitted the same before Id. CIT(A) as additional evidence along with application u/r 46A of IT Rules 1962. **(PB No.13-26).**

42. The Id. CIT(A) too has not dealt with the objection raised by the assessee towards excessive valuation adopted by DIG Stamps and without properly appreciating the contention of the assessee denied to admit the above said additional evidences submitted by the assessee. (Page No.13 of CIT(A) order.)

43. Where the assessee raised objection regarding the valuation adopted by stamp valuation authority the AO is duty bound to consider the same. Kindly refer to ITO v. Gita Roy 17 ITR (Trib.) 431, (Kol), ITO v. Manju Rani Jain, 24 SOT 24 (Del), Trishla Jain v. ITO 11 ITR 579 (Del) Meghraj Baid vs. ITO 114 TTJ 841 (JD) and Rajendar Kumar Mankar v. SCIT (2015) 174 TTJ 409 (JD).

44. The valuation report of the relevant property submitted by the assessee before Id. CIT (A), goes to the root of the issue and is quite essential to arrive at the fair market value of the property.

45. The AO neither decided nor required the assessee to submit any evidence or clarification in respect of her objection raised vide letter dated 19.12.2014 towards valuation adopted by stamp valuation authority, therefore the assessee was prevented by sufficient cause from producing the above said valuation report before the AO.

46. The the acse of the assessee falls within the scope of circumstances prescribed u/r 46A(c) of IT Rules 1962, therefore Id. CIT(A) is not justified in holding that no reason as prescribed u/r 46A exist for admittance of such an evidence.

47. If the claim of the assessee that the relevant transaction of sale of the property is business transaction is rejected and the same is assessed as capital gain, the objections raised by the assessee towards higher and excessive valuation adopted by the stamp valuation authority is liable to be decided in the light of fair market value as per valuation report submitted by the assessee, therefore Id. CIT(A) is not justified in holding that no purpose is served by the valuation report.

48. Thus the Id. CIT(A) is not justified in not admitting the additional evidences submitted by the assessee and in not dealing with the objection raised by the assessee towards excessive and higher valuation of the property adopted by stamp valuation authority. Kindly refer to application filed before Id. CIT(A) u/r 46A of IT Rules 1962. **(PB No.13-14).**

49. The valuation report submitted by the assessee clearly support the contention of the assessee that the enhanced valuation of Rs.7621852/- adopted by stamp valuation authority is abnormally excessive and higher as compared to fair market value of the relevant property and such valuation has been made at imaginary figures.

50. As per valuation report fair market value of the property is Rs. 2341080/- against the sales consideration of Rs.1000000/- declared by the assessee, such variation being within reasonable limits may kindly be ignored.

51. Under the facts and circumstances of the case mentioned above, the AO is not justified in determining the Short term capital gain on the basis of enhanced DLC Value of Rs.7621852/- adopted by stamp valuation authority.

52. Therefore Your Honour is requested to accept the declared sales consideration of Rs.1000000/- in respect of the relevant property, 74 SMS Colony, and the AO may kindly be directed to determine the short term capital gain in respect of the same on the basis of such declared sales consideration or grant any other relief as deemed fit and appropriate in the interest of justice.

3.3 On the other hand, the supported the order of the Id. CIT(A)

3.4 We have heard the rival contentions and perused the materials available on record. The assessee during the relevant previous has sold two properties 74, SMS Colony, Durga Jaipur and 91, R.K. Puram, Sanganer, Jaipur. The first property 74, SMS Colony, has been sold vide Regd. Sale deed dated 21.07.2010 for sale consideration of Rs.10,00,000/-, the stamp valuation authority for the purpose of Registration adopted DLC Value of Rs.20,44,872/- which was later on enhanced to Rs. 76,21,852/- by the DIG stamps. The second property 91, R.K. Puram, Sanganer, Jaipur has been sold vide Regd. Sale deed dated 31.01.2011 for sale consideration of Rs.10,21,000/- which was more than the DLC Value of Rs.9,86,873/- adopted by the stamp valuation authority(PBP-71 backside). The registered sale deeds of both the

properties are placed at **Page No.60 and 71** of the Paper Book. The first property 74, SMS Colony, was purchased by the assessee vide Regd. Purchase deed dated 26.03.2010 for Rs.400000/- (PBP-52-59) and second property 91, R.K. Puram was purchased vide Regd. Purchase deed dated 24.06.2010 for Rs.3,00,000/-(PBP 66-70), which after certain construction thereon have been sold during the relevant previous year. The registered purchase deeds of both the properties are placed at **Page No.52 and 66** of the Paper Book. The assessee also vide Regd. Deed dated 25.11.2010 purchased another land B-6, Devi Chiranjeevi Colony, Jaipur for Rs.4,96,000/- (PBP 81-88) which is lying in hand at the end of relevant previous year. The assessee in response to certain inquiries conducted by the revenue, filed belated return u/s 139(4) of the IT Act 1961, declaring net profit of Rs.1,75,491/- from the above said transactions of purchase, construction and sale of properties. The relevant return of income and Trading and Profit & Loss Account and Balance Sheet are placed at **Page No.28-31 of Paper Book**. There is no dispute on these facts of the case, the only dispute involved in the case is that whether the relevant transactions of purchase, construction and sale of properties falls within the nature of carrying on business assessable

under the heading “profit and gains of business or Profession” u/s 28 of IT Act or falls within the nature of transfer of capital assets assessable as Capital gain u/s 45 of IT Act. The assessee has claimed the relevant transactions as business transactions assessable under the heading “profit and gains of business or Profession” u/s 28 of IT Act, and thus without taking into account the DLC Value adopted by stamp valuation authority, declared net profit on the basis of face value of sale consideration, whereas the AO has held the same as transfer of capital assets assessable as Capital gain u/s 45 of IT Act, and thus applying the enhanced DLC Value of Rs.76,21,852/-as provided u/s 50C of IT Act determined Short Term Capital Gain of Rs.71,28,702/-in respect of First Property 74, SMS Colony and of Rs.705720/- in respect of second property 91, R.K. Puram, Jaipur. The ld. A.R. drew our attention to the Balance Sheet for the preceding A.Y.2010-11, **placed at page No.27** of the paper book where in the closing stock of Rs.4,93,150/- has been shown. The ld. A.R. explained the same pertaining to the property 74, SMS colony, Jaipur purchased on 26.03.2010, comprising face value of Rs.4,00,000/-and registry exp. of Rs.93,150/-.The ld. A.R. further in support of his contention submitted that the assessee is regularly engaged in the

business of purchase, construction and sale of flats /houses and relied on return of income, Trading and Profit & Loss Account and Balance Sheet of the succeeding years **placed at Page No.32-42** of paper Book, wherein similar activities have been shown to be regularly carried on and claimed as business activities. The Id.A/R also referred to statements of the assessee and her husband recorded by the AO **placed at page No.43-51** of paper book , where in both the assessee and her husband affirmed the carrying of business of purchase, construction and sale of properties. The Id A.R. submitted that in case of business transactions provisions of section 50C are not applicable. It is evident that the property 74, SMS colony was purchased on 26.03.2010 in the form of land and the same was sold on 21.07.2010 after construction of boundary wall etc. as mentioned in regd. Sale deed .The second property 91, R.K.Puram was purchased on 24.06.2010 which after construction of complete residential house has been sold on 31.01.2011. Both the properties have been sold within short time interval of 4-7 months from the date of purchase. The similar purchase, construction and sale activities of flats/house are evident in succeeding years also. The assessee in her statements in response to Q. No.10 (PB No.45), has categorically stated that both the

properties sold during the relevant previous year are included in her business activities. The husband of the assessee in response to Q.No.3 (PB No.48) has also confirmed such business activities carried on by the assessee. Thus cyclical, regular, and frequent activities of purchase, construction and sales having short time interval of few months between sale and purchase are evident from the documents available on record which constitute business activities. Therefore we hold that the relevant transactions of purchase, construction and sale of properties carried on during the relevant previous year are falling within the nature of carrying on business assessable under the heading “profit and gains of business or Profession” u/s 28 of IT Act 1961. The assessee has already declared the net profit of Rs.1,75,491/-u/s 44AD of the Act, and filed relevant details before the AO which have been not doubted by the AO, therefore the additions of Rs.71,28,702/- and 7,05,720/- made by the AO towards Short term Capital Gain are deleted. Thus Ground No. 3 of the assessee is allowed. It is also pertinent to mention that we have deleted the additions, on the basis of evidences and material available on the record, therefore Ground No.2 relating to admission of additional evidences and alternative plea of the assessee do not require adjudication.

4.0 In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 11-10-2017.

Sd/-

(कुल भारत)

(KUL BHARAT)

न्यायिक सदस्य /Judicial Member

Sd/-

(भागचन्द)

(Bhagchand)

लेखा सदस्य /Accountant Member

जयपुर /Jaipur

दिनांक /Dated:-

11/10/ 2017

*Mishra

आदेश की प्रतिलिपि अग्रेषित /Copy of the order forwarded to:

1. अपीलार्थी /The Appellant- Smt. Manju Bansal, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 6(4), Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर /DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1088/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar