आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ, चण्डीगढ़

IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A' CHANDIGARH

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT AND
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 899/CHD/2024
निर्धारण वर्ष / Assessment Year: 2008-09

Shri Devi Dayal, Pundri Anaj Mandi, Kaithal-Haryana 136026.	Vs	The ITO, Ward – 1, Kaithal.
स्थायी लेखा सं./PAN NO: AAJPD5851H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Assessee by : Shri Parikshit Aggarwal, CA and
Ms. Shruti Khandelwal, Advocate

Revenue by : Shri Manav Bansal, CIT, DR

Date of Hearing : 30.07.2025
Date of Pronouncement : 08.09.2025

PHYSICAL HEARING

O R D E R

PER RAJ PAL YADAV, VP

The assessee is in appeal against the order of ld. Commissioner of Income Tax (Appeals) [in short 'the CIT (A)'] dated 18.05.2024 passed for assessment year 2008-09.

2. The Registry has pointed out that appeal is time barred by 38 days. In order to explain the delay, assessee has filed

an application for condonation of delay. In the application, main reason assigned by the assessee is that due to inadvertent reason, the e-mail containing the order of ld. CIT (Appeals) was directed to the spam/junk folder of the e-mail of the assessee. Hence, he was unaware of the communication of the said order. The assessee just made a routine check about the pending matter and only then it came to his notice that his appeal was dismissed by the CIT (Appeals).

3. The ld. counsel for the assessee submitted that there is no deliberate attempt to make the appeal time barred. It was a bonafide mistake.

3.1 The ld. CIT DR, on the other hand, contended that assessee should be more vigilant in taking care of income tax proceedings and therefore, delay in filing the appeal should not be condoned.

4. Sub-section 5 of Section 253 contemplates that the Tribunal may admit an appeal or permit filing of memorandum of cross- objections after expiry of relevant period, if it is satisfied that there was a sufficient cause for not presenting it within that period. This expression sufficient cause

employed in the section has also been used identically in sub-section 3 of section 249 of Income Tax Act, which provides powers to the ld. Commissioner to condone the delay in filing the appeal before the Commissioner. Similarly, it has been used in section 5 of Indian Limitation Act, 1963. Whenever interpretation and construction of this expression has fallen for consideration before Hon'ble High Court as well as before the Hon'ble Supreme Court, then, Hon'ble Court were unanimous in their conclusion that this expression is to be used liberally. We may make reference to the following observations of the Hon'ble Supreme court from the decision in the case of Collector Land Acquisition Vs. Mst. Katiji & Others, 1987 AIR 1353:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

5. Similarly, we would like to make reference to authoritative pronouncement of Hon'ble Supreme Court in the case of N. Balakrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123 dated 03.09.1998. It reads as under:

> *"Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finislitium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time. A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient*

cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi lain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Could should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss".

6. In the light of above, if we examine the facts and circumstances of the case, then it would reveal that by making this appeal time barred, assessee would not gain anything. He would be under a huge tax liability without getting adjudication of the dispute on merit. Thus, it was not delayed deliberately nor it was adopted as a strategy to litigate with the Revenue. Accordingly, we condone the delay and proceed to decide the appeal on merit.

7. A perusal of the ground of appeal would reveal that assessee has taken five grounds of appeal, however, his grievance revolves around two-fold of issues, namely ;

a) The ld. CIT (Appeals) has erred in upholding the re-opening of assessment,

b) The ld. CIT (Appeals) has erred in upholding that ld. AO has rightly made addition on account of capital gain resulted to the assessee in terms of Section 45(1) of the Income Tax Act.

8. The brief facts of the case are that assessee is an individual. He has filed his return of income for assessment year 2008-09 on 06.10.2008 declaring total income of Rs.2,70,600/-. This return was processed u/s 143(1) of the Act on 04.12.2009. This is the second round of assessment proceedings. Originally assessment was completed u/s 144/147 of the Act on 11.03.2016. The appeal was dismissed by the CIT (Appeals) on 23.05.2017. The assessee filed an appeal before the Tribunal bearing No. 1157/CHD/2017. This appeal was allowed for statistical purposes on 03.04.2018 and impugned orders were set aside with the direction to pass a fresh assessment order. The ld. AO has passed the impugned assessment order on 30.12.2019 u/s 143(3) read with Section 256 of the Income Tax Act.

8.1 A perusal of the record would indicate that assessee was co-owner in agricultural land measuring 24 kanal 9 marla situated in the revenue asset of village Jagadhari, Tehsil and District – Yamuna Nagar, Haryana. The assessee has 1/6th

share in the land in dispute. The assessee alongwith co-owner had entered into an Agreement for development of this land with M/s Rising Son Developers & Infrastructure on 19.05.2006. Copy of this Agreement has been placed on record at page No. 95 to 105, however, no development taken place according to this Agreement and ultimately it must have been rescinded. Thereafter, assessee alongwith co-owner entered into second Agreement with M/s Omaxe Ltd. on 10.11.2006. Copy of this Agreement has also been placed on record at page No. 105 to 112 of the Paper Book. According to this Agreement also, no development could have been taken place and ultimately land owners entered into a Collaboration Agreement with M/s Uppal Housing Ltd. on 29.08.2007 but rights under this Agreement were also further assigned to M/s Uppal Buildtech Pvt. Ltd. who ultimately sold the developed area and assessee has recognized the income as per that incident. The ld. counsel for the assessee further submitted that during this process of execution of Agreements and development of the land, all the vendors have formed an AOP and converted land into Stock-in-trade.Therefore, in any case, on sale of this Stock-in-trade, no capital gain would result to the assessee. The profit of sale of developed area has already

been offered for taxation by the assessee in the subsequent years.

8.2 The ld. counsel for the assessee while impugning the orders of Revenue Authorities has summarized his proposition and submitted that on execution of Collaboration Agreement with M/s Uppal Housing Ltd. on 29.08.2007 and M/s Uppal Buildtech Pvt. Ltd. on 30.11.2008 would not constitute transfer of any capital asset which would result in earning of Long Term Capital Gain upon whom tax liability is to be discharged by the assessee/land owners. For buttressing this proposition, he took us through the alleged Collaboration Agreements as well as the following judgements :

1.	CIT Vs Najoo Dara Deboo	218 taxman 473	Allahabad HC
2.	Aarti Sanjay Kadam vs ITO	172 ITD 362	Mumbai ITAT
3.	Seshasayee Steels (P) Ltd. vs ACIT	421 ITR 46	Supreme Court
4.	C.S. Atwal vs. CIT	59 taxmann.com 359	P&H HC
5.	CIT vs. Balbir Singh Maini	398 ITR 531	Supreme Court
6.	CIT vs Atam Prakash Sons	219 CTR 164	Delhi HC
7.	K. Radhika vs DCIT	149 TTJ 736	Hyderabad ITAT
8.	K.V. Satish Babu [HUF] vs. ITO	37 NYPTTJ 802	Bangalore ITAT
9.	PCIT vs Fardeen Khan	411 ITR 533	Bombay HC
10.	R. Gopinath (HUF) vs. ACIT	133 TTJ 595	Chennai ITAT
11.	Alapati Venkataramiah vs. CIT	57 ITR 185	SC
12.	Abdul Rashid vs Bidhan De Sarkar & Anr	GA No. 2 of 2024	Calcutta HC

9. On the strength of Agreement, it was contended that it was a joint development Project. No independent rights have

been granted to the other side, rather only a licence was given for entering to land for achieving of the Joint Development Agreement. The sum of Rs.5 Crores paid to the first party in assessee alongwith co-owners was not towards purchase consideration, rather it was a refundable security deposit. The land owne3rs were to receive portion in the developed area at the ratio of 34:66. In other words, all the land owners would get 34% of the constructed area whereas the second party, namely the builder, would keep 66%. He took us through relevant clauses for this purpose and then demonstrated that no capital gain arose to the assessee.

10. The ld. CIT DR, on the other hand, relied upon the orders of Revenue Authorities. He also read over clauses of the Development Agreement and submitted that possession was handed over by the assessee to the second party, meaning thereby, transfer has taken place within the meaning of Section 2(47) of the Income Tax Act, 1961 read with Section 53A of Transfer of Property Act. In other words, if sub-clause (vi) of Section 2(47) is being perused alongwith Section 53A, then it would reveal that any arrangement made by an assessee through an Agreement or otherwise which has the effect of transferring or enabling the enjoyment of any

immovable property would constitute transfer. Thus, according to him, the case of the assessee falls within sub-clause (iv) and (vi) of Section 2(47) of the Income Tax Act.

11. We have duly considered the rival contentions and gone through the record carefully. There is no dispute qua the fact that agricultural land measuring 24 kanal 9 marla situated in the revenue Estate of Village Jagadhari was owned by six persons. The assessee was having 1/6th right in the land. It is also not disputed that these persons have taken change of land user certificate, meaning thereby agriculture land could be used for other purpose i.e. residential/commercial.

12. The short controversy is whether Agreement dated 29.08.2007 entered by these six persons with M/s Uppal Housing Ltd. and thereafter assignment of rights under a triparty Agreement with M/s Uppal Buildtech Pvt. Ltd. on 30.11.2008 would constitute that assessee has transferred the alleged land in favour of the collaboration partner which would result earning of capital gain or not ?

12.1 At this stage, first we deem it appropriate to take note of the relevant clauses of this Agreement, namely, clause No. 4, 5, 6, 12, 13, 15, 20 and 29. The ld. CIT DR emphasized on

clause No. 15 and some other clauses as referred above. Therefore, we take note of these clauses, which read as under:

"4. That the Second Party shall he responsible for the development and construction of the said Complex on the said Land at its own cost and also for carrying out the lease / sales and marketing of saleable units of the said Project. However the expenses on account of brokerage payable for the leasing/ selling and marketing of the saleable units shall be made from the joint sale proceeds. The Second Party shall provide report with regard to lease / sale of saleable area in the project to the First Party on monthly basis.

5. That the Second Party has paid to First Party (in the joint names of parties of the First Part) a total sum of Rs. 5,00,00,000/- (Rupees five crores only) vide Cheque No. 671649 dated 27.8.2007 drawn on Punjab & Sind Bank, IFB, Madras Hotel Building, Connaught Place, New Delhi as security deposit for due performance of the obligations undertaken under this agreement on signing of this agreement, the receipt whereof the First Party hereby admits and acknowledges. The aforesaid entire amount of security deposit ofRs.5.00 Crores shall be refundable without any interest by the First Party to the Second Party in the manner appearing hereinafter.

6. The First Party shall also execute Power of Attorney (s) in favour of the Second Party or its nominee(s) to do all necessary things and carry out necessary activities pertaining to construction, development and sale / lease of units of the said Project and / or to achieve the objective of this Collaboration Agreement.

12. That it is agreed by and between the First Party and the Second Party that the value of the said Land, which inter-alia includes all expenses, fees paid for grant of license, including renewal of license, change of land use, sanction of Zoning plan, sanction of Building Plans, External Development Charges (already paid or payable), Infrastructural Development Charges (already paid or payable), any Bank Guarantee for EDC & IDC or any other fees which has been paid, or payable in respect of land and any fees or charges of any competent authority (ies), has been fixed at Rs. 32,00,00,000/- (Rupees Thirty Two Crores Only). It is agreed that the Second Party shall bear the cost of development, construction, which inter-alia shall also include the promotional and marketing expenses (collectively referred to as 'Construction. Cost') and the same shall' not exceed Rs. 2000/-per sq.

ft. of the saleable area in the said Project. The construction cost, as per the sanctioned saleable area as well as the services, facilities etc., to be provided, initially works out to Rs.54,00,00,000/-(Rupees fifty crores only) approximately. However, the exact construction cost as per the above rate and for the actual saleable area will be ascertained only when the proposed Project is constructed by the Second Party.

13. That after making provisions for the funds required for payment of brokerage (to be shared by the Parties in equal proportion i.e., 50:50) for lease / sale achieved, the balance of the lease / sale proceeds in the said Account shall be withdrawn by the parties in the following manner:

(a) A sum of Rs. 5,00,00,000/- (Rupees Five Crores Only) shall first be transferred to the joint account of the Parties of the First Part.

(b) The balance sale proceed, as and when received, shall be diverted in the individual accounts of both the parties in the ratio of34:66, (i.e. First Party — 34% and Second Party -66%) until the land cost of Rs. 32,00,00,000/- stand recovered by the First Party and development and construction cost of @Rs. 2000/-per sq. ft. of the saleable area (which works out to Rs. 54.00 Crores approximately) is received by the Second Party. Thereafter, the parties shall share the profit and loss of the project in the ratio of 50:50.

15. That First Party has delivered and handed Vel possession of the entire said Land, the original documents of title such as sale deed, jamabandi etc., along with License, Zoning Plan, Sanctioned Building Plans etc. (in original) to the Second Party simultaneously with the signing of this Collaboration Agreement for carrying out the necessary activities of survey, to commence the construction work and for all other activities, including sales and marketing.

20. That the First Party shall supply and provide all documentary evidence as may be required to be submitted to the Authority concerned with the matter and further that the First Party shall also, sign and execute such other documents, letters, etc., as may be necessary for the development, construction and completion of the said Project/Complex and for giving effect to the terms of this agreement.

29. That this agreement is not and shall not however, be deemed to be construed as a partnership between the First Party and the Second party nor will the same be ever deemed to constitute one as the agent of the other, except to the extent specifically recorded herein."

13. We have duly considered the rival contentions and gone through the record carefully. The solitary issue before us is whether on entrance of a Joint Development Agreement, would it be construed that assessee has transferred his capital rights in the land which would result in any capital gain for assessment in assessment year 2008-09.

14. Before adverting to the specific clauses of the JDA, we would like to first take note of the proposition laid down by the Hon'ble Supreme Court in the case of CIT Vs Balbir Singh Maini reported in 251 taxman 202/398 ITR 531. The facts of this case, as emerging out from the judgement are that assessees were the members of Punjab Cooperative Housing Building Society Ltd. The society consisted of 95 members and was the owner of 21.2 acres, of which 500 square yards plots were held by 65 members, 1000 square yards plots by 30 members and the remaining 4 plots of 500 square yards each were being retained by it. The bone of contention in that appeal was a tripartite Joint Development Agreement JDA) dated 25.02.2007 for development of 21.2 acres of land in the village Kansal. This JDA was entered into between the

owner i.e. Punjabi Cooperative Housing Building Society Ltd., Hash Builders Pvt. Ltd., Chandigarh (HASH) and Tata Housing Development Company Ltd. (THDC). Under the JDA, it was agreed that HASH and THDC viz., the developers, will undertake to develop 21.2 acres of land owned and registered in the name of the society. The agreed consideration was to be disbursed by THDC through HASH to each individual member of the society, and different amounts and flats were payable and allotable to members having different plot sizes. The developers were to make payments in four instalments. A sum of Rs.3.87 crores was paid on execution of the JDA. Rs.15.48 crores was to be paid against a registered sale deed for land of an equivalent value of 3.08 acres, earmarked on the demarcation plan annexed to the JDA, which was effected by a Registered Conveyance dated 02.03.2007. The second instalment payment, being Rs. 23.22 crores, was for land of an equivalent value of 4.62 acres, also earmarked on the demarcation plan, which was effected by a registered deed of conveyance dated 25.04.2007. The third instalment payment of Rs.31.9275 crores was to be made within six months from the date of execution of the agreement or within two months

from the date of approval of plans/design and drawings and grant of the final licence to develop, whichever was later. This was to be for land of an equivalent value of 6.36 acres, also earmarked on the demarcation plan. The balance payment of Rs.31.9275 crores was to be made within two months from the date of the last payment, towards full and final settlement of the entire payment of Rs.106.425 crores, for which a registered sale deed for land of an equivalent value being 7.14 acres, also earmarked on the demarcation plan, was to be conveyed.

14.1 The developers made payments only up to the 2nd instalment payment, and 7.7 acres of land was conveyed as mentioned, suffered payment of capital gains tax for assessment years 2007-2008 & 2008-2009. Due to pending proceedings, first in the Punjab and Haryana High Court and thereafter in the Delhi High Court, the necessary permissions for development were not granted and JDA did not take off the ground. For the previous year relevant to the assessment year 2007-08, the assessee filed an original return of income on 07.12.2007, declaring an income of Rs.2,50,171/-. The return

of income tax for the assessment year was later revised, on 07.10.2009, declaring an income of Rs.30,08,606/-, which included capital gains of Rs.27,58,436/-. According to the assessee, Rs.36 lakhs received in the subsequent assessment year 2008-09 were also offered for tax under the head "capital gains.

14.2 The Assessing Officer vide an order dated 30.12.2009, passed under Section 143(3) of the Act, held that since physical and vacant possession had been handed over under the JDA, the same would tantamount to "transfer" within the meaning of Sections 2(47)(ii), (v) and (vi) of the Income Tax Act. He further held that, in the case of an assessee owning a 1000 square yards plot, the full value of consideration would be Rs.3.675 crores less cost of acquisition of Rs.12,81,724/-. The long term capital gain was, therefore, stated to be Rs.3,54,68,276/-.

15. Dissatisfied with the assessment of income at Rs.3,54,68,276/-, assessee carried the matter in appeal before the ld. CIT (Appeals) who has dismissed the appeal. The appeal to the ITAT also did not bring any relief to the assessee.

Though Hon'ble High Court has allowed the appeal of the assessee and revenue carried the matter in appeal before the Hon'ble Supreme Court, the Hon'ble Supreme Court has held no capital gain tax has resulted to the assessee. The discussion made by the Hon'ble Supreme Court from paragraph No. 17 to 29 is worth to note, which read as under:

17. The relevant sections that are necessary for us to decide the present matter are as under:

Transfer of Property Act

"53A . Part performance. - Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.]

Income Tax Act

Section 2 - Definitions
In this Act, unless the context otherwise requires, -(47) "transfer", in relation to a capital asset, includes, —

*(i) to (iv)*** ** **

(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in Section 53A of the Transfer of Property Act, 1882 (4 of 1882); or

(vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a cooperative society, company or other association of persons or by way of any

agreement or any .arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.

***45. Capital gains** - (1) Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H, be chargeable to income-tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place.*

***48. Mode of computation** - The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely:*

(i) expenditure incurred wholly and exclusively in connection with such transfer;

(ii) the cost of acquisition of the asset and the cost of any improvement thereto:"

18. Section 53A, as is well known, was inserted by the Transfer of Property Amendment Act, 1929 to import into India the equitable doctrine of part performance. This Court has in Shrimant Shamrao Suryavanshiv: Pralhad Bhairoba Suryavanshi [2002] 3 SCC 676 stated as follows:

> *"16..But there are certain conditions which are required to be fulfilled if a transferee wants to defend or protect his possession under Section 53-A of the Act. The necessary conditions are:*
>
> *(1) there must be a contract to transfer for consideration of any immovable property;*
>
> *(2) the contract must be in writing, signed by the transferor, or by someone on his behalf;*
>
> *(3) the writing must be in such words from which the terms necessary to construe the transfer can be ascertained;*
>
> *(4) the transferee must in part-performance of the contract take possession of the property, or of any part thereof;*
>
> *(5) the transferee must have done some act in furtherance of the contract; and*
>
> *(6) the transferee must have performed or be willing to perform his part of the contract."*

19. It is also well-settled by this Court that the protection provided under Section 53A is only a shield, and can only be resorted to as a right of defence. Rambhau Namdeo Gojre v. Norayan Bapuji Dhgotra [2004] 8 SCC 614, para 10. An agreement of sale which fulfilled the ingredients of Section 53A was not required to be executed through a registered instrument. This position was changed by the Registration and Other Related Laws (Amendment) Act, 2001. Amendments were made simultaneously in Section 53A of the Transfer of Property Act and Sections 17 and 49 of the Indian Registration Act. By the aforesaid amendment, the words "the contract, though required to be registered, has not been registered, or "in Section 53A of the

1882 Act have been omitted. Simultaneously, Section 17 and 49 of the 1908 Act have been amended, clarifying that unless the document containing the contract to transfer for consideration any immovable property (for the purpose of Section 53A of 1882 Act) is registered, it shall not have any effect in law, other than being received as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by a registered instrument. Section 17(1 A) and Section 49 of the Registration Act, 1908 Act, as amended, read thus:

"17(1A). The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then they shall have no effect for the purposes of the said Section 53A."

"49. Effect of non-registration of documents required to be registered. No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall—

(a) affect any immovable property comprised therein, or {b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1887 (1 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument."

20. The effect of the aforesaid amendment is that, on and after the commencement of the Amendment Act of 2001, if an agreement, like the JDA in the present case, is not registered, then it shall have no effect in law for the purposes of Section 53A. In short, there is no agreement in the eyes of law which can be enforced under Section 53A of the Transfer of Property Act. This being the case, we are of the view that the High Court was right in stating that in order to qualify as a "transfer" of a capital asset under Section 2(47)(v) of the Act, there must be a "contract" which can be enforced in law under Section 53A of the Transfer of Property Act. A reading of Section 17(1 A) and Section 49 of the Registration Act shows that in the eyes of law, there is no contract which can be taken cognizance of, for the purpose specified in Section 53A. The ITAT was not correct in referring to the expression "of the nature referred to in Section 53A" in Section 2(47)(v) in order to arrive at the opposite conclusion. This expression was used by the legislature ever since sub-section (v) was inserted by the Finance Act of 1987 w.e.f. 01.04.1988. All that is meant by this expression is to refer to the ingredients of applicability of Section 53Ato the contracts mentioned therein. It is only where the contract contains all the six features mentioned in Shrimant Shamrao Suryavanshi {supra), that the Section applies, and this is what is meant by the expression "of the nature referred to in Section 53A". This expression cannot be stretched to refer to an amendment that was made years later in 2001, so as to then say that though registration of a contract is required by the Amendment Act of 2001, yet the afore: expression "of

the nature referred to in Section 53A" would somehow refer only to the nature contract mentioned in Section 53A, which would then in turn not require registration. As been stated above, there is no contract in the eye of law in force under Section 53A after 2 unless the said contract is registered. This being the case, and it being clear that the said was never registered, since theJDA has no efficacy in the eye of law, obviously no "transfer" be said to have taken place under the aforesaid document. Since we are deciding this case this legal ground, it is unnecessary for us to go into the other questions decided by the H Court, namely, whether under the JDA possession was or was not taken; whether only a licei was granted to develop the property; and whether the developers were or were not ready a willing to carry out their part of the bargain. Since we are of the view that sub-clause (v) Section 2(47) of the Act is not attracted on the facts of this case, we need not go into any otl factual question.

21. However, the High Court has held that Section 2(47)(vi) will not apply for the reason that there was no change in membership of the society, as contemplated. We are afraid that cannot agree with the High Court on this score. Under Section 2(47)(vi), any transaction which has the effect of transferring or enabling the enjoyment of any immovable property would cor within its purview. The High Court has not adverted to the expression "or in any other manr whatsoever" in sub-clause (vi), which would show that it is not necessary that the transacts refers to the membership of a cooperative society. We have, therefore, to see whether t impugned transaction can fall within this provision.

22. The object of Section 2(47)(vi) appears to be to bring within the tax net a de facto transfer any immovable property. The expression "enabling the enjoyment of takes color from the earlier expression "transferring", so that it is clear that any transaction which enables the enjoyment of immovable property must be enjoyment as a purported owner thereof- The idea to bring within the tax net, transactions, where, though title may not be transferred in law, there is, in substance, a transfer of title in fact.

23. A reading of the JDA in the present case would show that the owner continues to be tr owner throughout the agreement, and has at no stage purported to transfer rights akin to ownership to the developer. At the highest, possession alone is given under the agreement, an that too for a specific purpose -the purpose being to develop the property, as envisaged by a the parties. We are, therefore, of the view that this clause will also not rope in the present transaction.

24. The matter can also be viewed from a slightly different angle. Shri Vohra is right when he ha referred to Sections 45 and 48 of the Income Tax Act and has then argued that some real income must "arise" on the assumption that there is transfer of a capital asset. This income must have been received or have "accrued" under Section 48 as a result of the transfer of the capital asset.

25. This Court in E.D. Sassoon & Co. Ltd. v. CITAIR 1954 SC 470 at 343 held:

"It is clear therefore that income may accrue to an assessee without the actual receipt of the same. If the assessee acquires a right to receive the income, the income can be said to have accrued to him though it may be received later on its being ascertained.

The best conception is that he must have acquired a right to receive the income. There must be a debt owed to him by somebody. There must be as is otherwise expressed debitum in presenti, solvendum infuturo; See W.S. Try Ltd. v. Johnson (Inspector of Taxes) [(1946) 1 AER 532 at p. 539], and Webb v. Stenton, Garnishees [11 QBD 518 at p. 522 and 527]. Unless and until there is created in favour of the assessee a debt due by somebody it cannot be said that he has acquired a right to receive the income or that income has accrued to him."

26. This Court, in CIT v. Excel Industries f20131 358 ITR 295/219 Taxman 379/38 taxmann.com 100 (SC). at 463-464 referred to various judgments on the expression "accrues", and then held:

'14. First of all, it is now well settled that income tax cannot be levied on hypothetical income. In CITv. Shoorji Vallabhdas and Co. [CITv. Shoorji Vallabhdas and Co., (1962) 46 ITR 144 (SO] it was held as follows: (ITR p. 148)

"... Income tax is a levy on income. No doubt, the Income Tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in bookkeeping, an entry is made about a 'hypothetical income', which does not materialise. Where income has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account."

15. The above passage was cited with approval in Morvi Industries Ltd. v. CIT [Morvi Industries Ltd. v. CIT, (1972) 4 SCC 451 : 1974 SCC (Tax) 140 : (1971) 82 ITR 835] in which this Court also considered the dictionary meaning of the word "accrue" and held that income can be said to accrue when it becomes due. It was then observed that: (SCC p. 454, para 11)

"11.... the date of payment... does not affect the accrual of income. The moment the income accrues, the assessee gets vested with the right to claim that amount even though it may not be immediately."

16. This Court further held, and in our opinion more importantly, that income accrues when there "arises a corresponding liability of the other party from whom the income becomes due to pay that amount".

17. It follows from these decisions that income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then can it be said that for the purposes of taxability that the income is not hypothetical and it has really accrued to the assessee.

18. Insofar as the present case is concerned, even if it is assumed that the assessee was entitled to the benefits under the advance licences as well as under the duty entitlement passbook, there was no corresponding liability on the Customs Authorities to pass on the benefit of duty-free imports to the assessee until the goods are actually imported

and made available for clearance. The benefits represent, at best, a hypothetical income which ma may not materialise and its money value is, therefore, not the income of the assessee.'

27. In the facts of the present case, it is clear that the income from capital gain on a transaction which never materialized is, at best, a hypothetical income. It is admitted that, for want of permissions, the entire transaction of development envisaged in the JDA fell through. In point of fact, income did not result at all for the aforesaid reason. This being the case, it is clear that there is no profit or gain which arises from the transfer of a capital asset, which could be caught to tax under Section 45 read with Section 48 of the Income Tax Act.

28. In the present case, the assessee did not acquire any right to receive income, inasmuch as such alleged right was dependent upon the necessary permissions being obtained. This being the case, in the circumstances, there was no debt owed to the assessees by the developers and therefore, the assessees have not acquired any right to receive income under the JDA. This being so, no profits or gains "arose" from the transfer of a capital asset so as to attract Sections 45 and 48 of the Income Tax Act.

29. We are, therefore, of the view that the High Court was correct in its conclusion, but for the reasons stated by us hereinabove. The appeals are dismissed with no order as to costs."

15.1 The Hon'ble jurisdictional High Court has also considered the identical issue in the case of Shri C.S.Atwal Vs CIT, Ludhiana and held that unless Sale Deed is being registered, it would not be construed as transfer of land under the Joint Development Agreement.

16. Let us revert to the facts of the present case. A perusal of clause (5) of the Agreement would reveal that second party to the Agreement, namely M/s Uppal Housing Ltd. had agreed to pay Rs.5 Cr to the AOP of the land owners, however, this Rs.5 Cr was marked as a security deposit which would be refundable without any interest to the second party by the

first party, namely by the assessee to M/s Uppal Housing Ltd. Thus, it would demonstrate that no consideration was received, it was only a security deposit and prime reason for such a deposit was that earlier two agreements have failed without taking any concrete shape of the development. If clause (13) of the Agreement is being perused, then it would reveal that out of the total developed area, the AOP of the land owners would get 34% shares and M/s Uppal Housing Ltd. would get 66% shares. Thus, reading as a whole of this Agreement would only reveal that it assigns specific rights and liabilities to each collaboration partners for development of this land. The assessee has contributed the land as a value and the developer would infuse capital, so that this Project can be developed. If these facts are being perused in the light of the judgement of Hon'ble Supreme Court in the case of CIT Vs Balbir Singh Maini, then it would reveal that under this execution of JDA, no capital asset has been transferred which can result capital gain assessable in the hands of the assessee. Apart from above, we have been informed that assessee alongwith other land owners have already taken change of Land User Certificate for development of this

property as a residential/commercial and also converted it from capital asset to stock-in-trade, thus no capital gain would be taxable upon the assessee. Because of conversion of this capital asset in stock-in-trade, incidence of taxation would arise at that point of time. Accordingly, no capital gain is assessable in the hands of the assessee for assessment year 2008-09 because nothing was sold in assessment year 2008-09. The Project was developed later on and it was sold later on. We have been informed that due returns have been filed subsequently. Therefore, we delete the addition and allow the appeal of the assessee.

17. In the result, appeal is allowed.

Order pronounced on 08.09.2025.

Sd/-	Sd/-
(KRINWANT SAHAY)	**(RAJPAL YADAV)**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

"Poonam"

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, HANDIGARH
5. गार्ड फाईल/ Guard File

सहायक पंजीकार/ Assistant Registrar