

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCHE, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.261/Ind/2016
Assessment Year:2012-13**

Smt. Anita Singh, EF-14, Sch. No.54, Vijay Nagar, Indore (Appellant)	बनाम/ Vs.	ACIT-2(1), Indore (Revenue)
P.A. No.AERPA9561K		

**ITA No.474/Ind/2017
Assessment Year: 2013-14**

Smt. Anita Singh, EF-14, Sch. No.54, Vijay Nagar, Indore (Appellant)	बनाम/ Vs.	ACIT-2(1), Indore (Revenue)
P.A. No. AERPA9561K		

Appellant by	Shri S.S. Deshpande CA
Revenue by	ShriRajiv Jain, Sr. DR
Date of Hearing:	10.07.2018
Date of Pronouncement:	28.08.2018

आदेश / O R D E R

PER MANISH BORAD, A.M.:

These two appeals filed by the assessee pertaining to A.Ys.
2012-13 & 2013-14are directed against the order of Ld.

Commissioner of Income Tax(Appeals)-I, Indore,(in short 'CIT(A)'), vide appeal No. IT-752/14-15 & No.IT-23/2016-17 order dated 04.11.2015 & 01.05.2017 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 28.01.2015 & 29.01.2016 by ACIT-3(1), Indore.

2. As the issues raised in both these appeals relates to same assessee and issues are identical, these were heard together and being disposed off by this common order for sake of convenience and brevity.

3. Briefly stated facts, as culled out from the records are that the assessee is engaged in the business of retail trade of country made liquor and foreign liquor. Return of income for Assessment Year 2012-13 and Assessment Year 2013-14 were filed on 23.1.2013 and 29.4.2014 declaring income of Rs.3,22,49,498/- and Rs. 2,47,87,020/- respectively. Cases for both the years were picked up for scrutiny through CASS, followed by the issuances of statutory notices u/s 143(2) of the Act and u/s 142(1) of the Act which were duly served upon the assessee. Detailed questionnaire was issued and were duly replied by the assessee. The Ld. A.O while framing the assessment observed that the assessee has earned significant amount of income shown under the head Capital Gain from sale of land. Ld.A.O also noticed that the assessee owned the land in the same vicinity and some portion of the land were purchased during the financial year 2005-06 and 2006-07 and the

remaining were purchased during the financial year 2011-12. The capital gain was accordingly declared as Short Term Capital Gain and Long Term Capital Gain as per the period of ownership. On making further investigation Ld. A.O revealed that the alleged land which has been sold during the Assessment Year 2012-13 and Assessment Year 2013-14 were sold with the assistance of Developer company namely M/s. Aarone Developers Pvt. Ltd who was appointed as holder of power of attorney by the assessee and acted on behalf of the assessee for arranging the sale. M/s. Aarone Developers Pvt. Ltd (ADPL) also contacted other owners of the land in the very same vicinity and combined deal was made in which the sale deeds were executed by the assessee along with various other persons. As far as sale consideration is concerned M/s. ADPL was to provide an account with total sales for the year and after claiming the expenses incurred for the project, the assessee used to receive its share. Ld. A.O on the basis of detailed investigation came to a conclusion that the *modus operandi* adopted by the assessee is purely an adventure in the nature of trade and as such he assessed the profit earned from sale of land as business profits as against Capital Gain declared in the income Tax return. Apart from this Ld. A.O also made disallowances u/s 14A of the Act at Rs.13,00,145/- for Assessment Year 2012-13 and Rs.8,49,934/- for Assessment Year 2013-14 and assessed the income at Rs.3,36,49,643/- and Rs.2,58,46,160/- for Assessment Year 2013-13 and 2013-14 respectively.

4. Aggrieved assessee preferred appeal before Ld. CIT(A) but could succeed only in relation to disallowances made u/s 14A of the Act.

5. Now the assessee is in appeal before the Tribunal against the common issue of the treatment of the profit earned on sale of land pleading that the alleged profit for both the years is Capital Gain whereas both the revenue authorities have treated it as its business profit.

6. The Ld. Counsel for the assessee referring to the written submissions made before the Ld. CIT(A) submitted that the assessee's main business is of trading of liquor. Investments were made to purchase land and they were shown under the head of Fixed Assets, and the assessee is not engaged in the activity of purchase/sale of land. The purpose of approaching M/s. Aarone Developers Pvt. Ltd was only to fetch better price for the land and also to find the buyers who were interested to purchase the land She held these lands as a capital asset. The amounts received from this company for the sale of the land has been shown as a long term capital gain/short term capital gain in accordance with the period of holding of the properties. The accounts are audited and

the Tax Audit Report is obtained. The assessee acquired the agricultural land of 6.53 Htrs. at village Jhalaria in the year 2006. This land was held by the assessee as an investment. The assessee entered into an understanding with M/s Aarone Developers Pvt. Ltd., Delhi, for development and sale of this land. The Company Aarone had entered into similar understanding with various land owners holding the surrounding lands. A common map was sanctioned for developing all these lands. It was agreed between the parties to share a particular percentage of the sale consideration of the land. Accordingly the assessee's share for each sale came to approximately 4.5. Special weightage was given to the assessee for the prime location of her lands. The Company Aarone developed the whole land of approximately 96 Htrs and effected various sale deeds of the developed plots to various purchasers. These sale deeds were executed with the signature of all the land owners along with two of the representatives of Aarone. The assessee received an amount of Rs.3,32,22,388/- during the year and accordingly showed the long term capital gains on the sale of these lands. While framing the assessment the Ld AO observed on page 5 para 3.2 that it is a business activity of the assessee carried out through the Company

Aarone and it is in the nature of trading. The Ld AO further observed in para 3.3 that the exact piece of land sold by the builder is not ascertainable. The Ld AO stated in para 3.6 page 7 that the assessee has purchased four plots during the year and as such it establishes that she is engaged in the trading activity. This remark is totally unjustified based on pure surmises since three plots are still held by the assessee as a capital investment. In para 3.8 the Ld AO observed that the capital gains are not quantifiable exactly but it is an estimate which is not acceptable. The Ld AO relied on the decision in the case of Raja Rameshwar reported in 42ITR 179 and ultimately concluded that the activity of the assessee is nothing but an adventure in the nature of trade and the income arising out of it is taxable as a business income.

7. It was further submitted that the said land was purchased as an agricultural land and was held by the assessee for more than four years as a capital asset. On being approached by M/s Aarone the assessee decided to sale this capital asset and for better realisation agreed to receive the consideration in part. The said consideration was received from Aarone on the sale of plots. The Ld AO totally overlooked to the fact that the possession of the land was handed

over to Aarone for development. The map for the colony was sanctioned in the name of the Aarone and on the sale deed two of the directors of Aarone have signed along with all the owners. The assessee along with the other owners also signed the sale deeds because the transfer can be effected only by the owners. It is worth noting fact that the total sale consideration was received by Aarone and was deposited in their bank - account. The proportionate consideration was received by the assessee from Aarone in installments. Thus, it establishes the factual position that the assessee has not dealt with the said land as a trading activity but has received the consideration in parts on the sale of a capital asset from the developers. Under these circumstances the capital gains is correctly shown by the assessee on the sale of the capital asset and cannot be taxed as a business profit. The case laws cited by the Ld AO are not applicable in the instant case since the assessee had purchased this land not with the intention of doing any business but held the same as a capital asset. We would like to draw your honours kind attention to the following judgments wherein it has been held that if the plots are sold for getting better price then it would be a capital gain and not the business income.

CIT v/s Suresh Goyal 298 ITR P. 277 (MP)

CIT v/s Gajanana Enterprises 314 ITR P. 247 (Kar)

CIT v/s Sohan Khan 304 ITR 194

8. On the other hand the Ld. Departmental Representative vehemently argued and supported the orders of lower authorities.

9. We have heard rival contentions and perused the records placed before us. The sole issue raised in these two appeals is that whether the profits earned by the assessee from sale of land is to be assessed as business income or Capital Gain.

10. We find that the assessee is mainly engaged in liquor business. Investments were also made in the agricultural land and other properties. The impugned land under consideration of these two appeals are the chunk of land situated at village Jhalaria. Assessee purchased piece of agricultural land at Village Jhalaria near Indore during the financial year 2005-06 and 2006-07 and purchases of another portion of land in the very same area were made during the Financial Year 2010-11. As accepted by the Ld. Counsel for the assessee that the assessee entered into an understanding with M/s. Aerone Developers Pvt. Ltd, Delhi (ADPL) for development and sale of this land. ADPL entered into similar

understandings with various land owners holding the surrounding lands. A common map was sanctioned for developing all these lands. It was agreed between various parties to share a particular percentage of the sale consideration and special weightage was given for the land in prime location. As informed by the assessee before the lower authorities that the developer Company M/s. ADPL developed approximately 96 hectares of land and thereafter sold the duly developed plot of lands to various purchasers.

11. We find that for the Assessment Year 2012-13 and 2013-14 following amounts have been disclosed by the assessee as Short Term Capital and Long Term Capital gain from sale of impugned land owned by the assessee.

Assessment Year 2012-13

S.No	Date of purchase	Cost of acquisition & Survey No. of the land	Date of sale	Sales consideration	Capital Gain offered in Rs.
1	13/08/2010	3075429 (Survey No.27)	31.03.2012	54,68,011	23,92,582(STCG)
2	01/04/2010	1564292 (Survey No.62/22)	31.03.2012	1883489	3,19,197 (STCG)
3	10/07/06	548209 (Survey No. 17/ 2, 54/2,	31.03.2012	20323345	1,97,75,136 (LTCG)

		29/1, 64/1			
4	10/02/06	123477	31.03.2012	5547543	54,24,066 (LTCG)

Assessment Year 2013-14

S.No	Date of purchase	Cost of acquisition & Survey No. of the land	Date of sale	Sales consideration	Capital Gain offered in Rs.
1	13/08/2010	2236365 (Survey No.27)	31.03.2013	46,890,752	23,53,387(STCG)
2	01/04/2010	1529420 (P-3)	31.03.2013	44,90,799	29,51,379 (STCG)
3	F.Y 2006-07	432667 (Survey No. 29/1,, 54/2, 58/2, 64/1, 17/1, 17/2	31.03.2013	1,10,59,788	1,06,27,121(LTC G)
4	F.Y 2005-06	97,542 (Country Walk Survey No.62/2)	31.03.2013	47,52,449	46,54,997 (LTCG)

12. Ld. A.O while examining the impugned transactions as well as the circumstantial evidences procured from the assessee in the proceedings concluded that the profits earned from sale of land should be taxed as business income and not as Capital Gain because the action of the assessee proves that she entered into an adventure in the nature of trade and for coming to this conclusion Ld.A.O observed as follows while framing the assessment for A.Y. 2012-13.

“3.1 Before commenting upon the Capital Gain offered by the assessee on the said land it would be pertinent to discuss the *modus operandi* of the business carried out by the assessee. The assessee has purchased agriculture land with a view to fetch better price. The said land has been sold through M/s Aarone Developers Pvt. Limited. The said company has received land from assessee i.e owner of the land who carried out trading of land after developing the said land and company has been selling the land into pieces and has charged the 'Development Charges' from the assessee. The developer company namely M/s Aarone Developers Pvt. Ltd. has been appointed as holder of 'Power of Attorney' by the assessee and acted on behalf of the assessee arranging the sale and sold the pieces of land to various customers for which registered documents were executed in name of the assessee. In each 'Sale Deed' executed the assessee along with other persons have appeared and director of the Company Shri Sanjay Phawa along with Shri Mukesh Kumar are exercising 'Power' of Attorney' on behalf of sellers. During the F.Y.2011-12 relevant to the A.Y.2012-13 M/s Aarone Developers Pvt. has executed several sale deeds as a result the company has received a sale consideration amounting to Rs.78,69,83,437/- out of which the 'assessee's shares sustain at Rs3,32,22,388/-. The certificate to this effect admitting the transaction given by M/s Aarone Developers is reproduced as under-

Anita singh

Aarone Developers Pvt.Ltd

6th Floor, Select City Walk,
A-3, District Center, Saket
New Delhi

aarone
group

Date:- 27 12 2014

To,
Ms. Anita Singh
EF-14, Schme No.54, Vijay Nagar
Indore.

PAN- AERPA9561K

Dear Sir.

This is confirm that we have accounted for the FY 2011-12 amount payable to you against the sale of your land.

Total sales of the year	-786,983,437
Less: Expejnse paid by us on various A/c	-21,751,725
Net Amount received by us	-765,231,712
Share of Ms.Anita Singh Amt. of total sale	- 33,222,388

This letter is being given to you for your purpose and request

Thanks,



Director
Aarone Developers Pvt. Ltd.
6th Floor. Select City Walk.
A-3, District Center, Saket,
New Delhi
PAN AAACV0276C

3.2 Further, as submitted by the assessee she has .given a plot of land measuring 6.03 hectares to M/s .Aarone developers Pvt. Ltd. for sale and received consideration from the said company as and when the land was sold by the company. The assessee has reduced her part of land given to

M/s Aarone Pvt. Ltd to that proportion from which the company has sold the assimilated plots of land. For example, if company declares that it has sold 10% of land received from these 18 persons then assessee assumes that 10% of land given by her to the company has been sold. But, it is not ascertainable as to whether 10% of land exclusively pertaining to the assessee has actually been sold or not. From plain reading of mode of operation of the business activity carried out by the assessee, it establishes that the assessee is carrying out business activity of trading of land through the company *M/s Aarone Pvt. Ltd.* and land is being sold which is of the nature of trading and is nothing but a business.

3.3 Further, It is not ascertainable from the details given by the assessee as to which piece of land owned by her was sold by the builder. In case assessee is able to quantify that the piece of land which is owned by her has been sold by way of registered documents signed by her sold through builder then only the question of Capital Gain arises in her hands leading to the actual transfer of Capital assets within the meaning of sec.2(47) r.w.s 53A of the Transfer of Property Act. But in the assessee's case this is not the situation leading to fact that no capital asset has been transferred by her and' is out of the purview of charging of Capital Gain in her hand. Since the activity carried out by her is trading of land amounting to business.

3.4 Vide note sheet entry dated *21/12/2014* the assessee was categorically

asked to explain as why shall not Capital Gain be treated as Business Income being sale of plot after development through M/s Arone Developer Pvt. Ltd . In compliance to the said query vide letter dated 13/01/15 the assessee replied as under.-

"In this regard this is to submit to the assessee is making her investments in properties. She is not a regular trader or buying and selling frequently as required for a trading activity. She was holding the current land for a long time' and was not doing any trading activities. She gets the property registered in her name and sells when good pricing are achieved. Normally, in the property business the properties are not registered and then sold as it is a costly affair incurring around 20 expenses on registration first at the time of buying and then at the time of selling which inflates the price by 20. Normally on the basis of agreement the business of property is done by doing regular sales and purchases but in the present case, the assessee has never undertaken any such activities. In fact, assessee was not acting even as a builder during the relevant point of time and therefore this land was purchased only as an investment and was also reflected in the Balance Sheet as an investment. If a person invests money in land intending to hold it, enjoys its income for some time and then sells it at a profit, it would be a clear case of capital accretion and not profit derived from an adventure in the nature of trade.

It is important to understand the distinction between dealer mid investor

status. The term 'dealer' is widely used to denote one who holds real property for sale rather than for investment purposes.

Factor to consider in determining dealer versus investor status include the following

The nature and purpose of the property acquisition and period of ownership,

The length of time the property Was held,

The reason that the property was held

The nature and extent of any improvements

The extent of developing and subdividing the property including advertising to increase sales. :Prior and current dealings in similar property

The efforts of the taxpayer to sell the property

The number, substantiality, extent, and continuity of the sales(frequency):

The use of a business office in the sale of the property:

The degree and character of control or supervision' that the taxpayer exercises over any representative selling the property; and

The time and effort that the taxpayer devoted to the sales,

The frequency and substantiality of the sales are considered the most important factor in attaining investor status. Profit motive would always be there in all investment transactions, but because of it same cannot be treated as an adventure in the nature of trade that assessee was not a

trader in land. No activity was done to improve the quality of land by assessee herself. No activity similar to the activities required for trading operations was carried on. The activity is not done on repetitive basis, therefore, the investment in the plot could not be held to be an adventure in the nature of trade and in this regard reliance was placed on the decision of Hon'ble Delhi High court in the case of CIT Vs .Raunaq Singh Swaran Singh[85 ITR 22],

3.5 The argument put forth by the assessee was considered carefully but didn't find plausible on following grounds:-

3.6 As regards the claim of the assessee that she is not a regular trader or buying and selling land frequently is concerned the same is not true in light of the reply furnished by the assessee. Since 01/04/10 the assessee 'has purchased four plots of land with an intent to earn profit by selling it. Even during the F.Y.2011-12 relevant to the A.Y.2012-13 she has purchased plots of land of worth Rs.781ac.For the sake of clarity the plots of land purchased by the assessee is reproduced as under:-

Details of immovable assets purchased after 01.04.09	Date of purchase	Amount	Source
County Walk P-3	13-08-2010	70,87,866/-	Sale proceed of County Walk
Residential Plot at Sch.No.78	29-01-2010	16,37,3101-	-do-
Residential Plot at JhaJaria	13-10-2011	83,58,365/-	-do-
Agricultural Land at Sulakhdi	27.01.2012	1,85,86,260/-	-do-

3.7 From the above chart, it amply establishes that the assessee is frequently purchasing plots of land since 01/04/2010 and is engaged in the trading activity through M/s Aarone Developers Pvt. Ltd .

3.8 The claim of the assessee with regard to Capital Gain arising on account of 'sale of land is not considerable. in view of the facts that the assessee has failed to 'quantity the actual land exclusively pertaining to her which was sold by MIs .Aeron Pvt. Ltd during the year whereas no actual transfer of specific piece of land owned by the assessee is ascertainable. To compute and claim Capital Gain the cost of acquisition of the capital asset being sold must be ascertainable from the documents against 'purchase of land which is being transferred, otherwise the Capital Gain so computed would not be actual and authentic. In the assessee's case the cost of acquisition of the land (exclusively pertaining to the assessee) and sold through M/s Aarone Pvt. Ltd. is not quantifiable and capital gain offered by the assessee on that land is not actual but an estimation which is not acceptable being claimed as Capital Gain within the meaning of Section 45 of the Act. The assessee' has assumed purchase cost of her land to the proportion by which M/s Aarone Pvt Ltd. has sold the assimilated plots of land. For example, if company declares that it has sold the 10% of land received from various 'persons then assessee assumes that 10% of land given by her to the company has actually been sold. This estimation is unwarranted and contrary to the belief that whether the actual Sale having regards To

those plots of land exclusively pertaining to the assessee has been done or not.

As the land taken from various persons have been merged by M/s Aarone Pvt Ltd. and thereafter it is being sold by M/s Aeron Pvt. Ltd on behalf of all the persons and in each sale execution, land of all the parties (reflecting in the sale deed) concerned have not actually been sold and hence capital gain doesn't arise thereof. During the A.Y under consideration M/s Aarone Pvt Ltd. has intimated to the assessee that 29 of land pertaining to her have been sold. The assessee reduced the plots of land given by her to M/s Aarone Pvt. Ltd. to the extent of 29 and has taken purchase price on that part of land to compute cost of acquisition with a view to claim Capital Gain and accordingly had offered Capital Gain. The method adopted by the assessee is just an estimation contrary to the reality hence Capital Gain offered by her is not an authentic' one. Further the method adopted by the assessee to fetch better profit is nothing but a business carried out through M/s. Aarone Pvt.Ltd .

4. On being specifically queried as per order sheet dated 30/12/2014 with regard to any agreement being signed by assessee with the developer M/s Aarone Developers Pvt. Ltd, vide letter received in this office on 23/01/15 the assessee submitted as under:-

Respected Sir,

In reference to the captioned subject, we wish to put forth following information/documents:

The assessee was having investment in agriculture land situated as Village Jhalaria Indore admeasuring 6.53 hectare land. She was intending to fetch better price of this investment. If the land were to be sold out as it is condition, it could not have fetched better price secondly she was not interested to dispose off the land in whole therefore she had a verbal understanding with M/s Aarone Developers to sale the land available with her by making value addition to the land so as to fetch better price and when the good pricing is available in the market.

Since both the parties were not interested to fix up the prices as the guidelines in the coming years were bound to change hence they have not agreed to enter into any official agreements. The land was not transferred to M/s Aarone. The ownership remained with assessee and was to be part with in Piece as and when the piece of land is sold, It was given to M/s Aarone just to complete the development work and no document was registered for the purpose.

M/s Aarene developers has made similar arrangements with various other land owners of adjoining lands. After making value addition to the land the land was to be sold out to different persons. Since M/s Aarone has combined all the lands and has got single map sanctioned from the competent authority, it was difficult to identify individual piece of land and area. combined by individual land owners after development hence, whenever any particular area/plots are sold M/s Aarone distributes the total amount among various land owners after keeping a certain portion towards his cost of value addition and his compensation which is

60% of the total amount received. The total amount received by sale of total area of land in a particular financial year is distributed among land owners and not as per the area as the area available to individual owner was not available, it is the proportion which formed the basis of distribution. The assessee deducts the proportionate cost of the total cost of land of 6.53 hectare land which she has contributed. The total saleable area is available with Aarone and it has to sale the total area as per sanctioned map and total amount to be received is to be distributed among land owners as per their individual contribution over the years till the total area is sold off.

Under the circumstances the proportion of assessee was fixed as follows;

Total area of land as per sanctioned map	95.028 Hectare
Area of assessee out of total land	06.53 Hectare
40% share of assessee in the total land	2.75%

Thus the assessee was to get 2.75% of the total sale consideration received during a particular financial year. During the year under assessment the cost of land has undergone changes towards positive side hence with the mutual understanding the Aarone has given to assessee additional 1.4 contribution extra for the year under assessment. We have already submitted the confirmation from M/s Aarone for the total amount received from them”.

In view of above submission, it is evident that there do not exist any agreement/MOU between M/s Aerone Pvt.Ltd and the assessee, which deepens the belief that M/s Aerone Pvt. Ltd is conducting business on behalf of the assessee and other 17 persons independently. In this regard,

reliance is placed upon the landmark decision of the Apex Court in the case of Raja J. Rameshwar Rao Vs CIT(SC) 42ITR 179 wherein it was held that :-

"Even a single venture may be regarded as in the nature of trade or business. When a person acquires land with a view to selling it later after developing it, he is carrying on an activity resulting in profit, and the activity can only be described as a business venture. Where the person goes further and divides the land into plots, develops the area to make it more attractive and sells the land not as a single unit and as he bought it, but in parcels, he is dealing with land as his stock-in-trade; he is carrying on business and making a profit. "

The same fora was delved by the Hon'ble Karnatka High Court in the case of CIT Vs. Ramaiah &Ors.146ITR 39 and P. Kannan Vs CIT(Kar) 154ITR 441 wherein the Hon'ble High Court held that 'Sale of land after plotting is a Business Venture '. The decision of the above judicial pronouncements are squarely applicable in this case.

3. It is also beyond doubt that the activity carried out by the assessee is nothing but purchase and sale of land amounting to trading with a view to earn more profit. In light of the discussion held hereinabove, it establishes that the activity of the assessee is nothing but an adventure having nature of Trade. Hence, Capital Gain offered on account of Sale of land is treated as Business Income. M/s Aerone Pvt. Ltd has borne all the expenses arising on account of Development and sale of land and the assessee has received her share from net sale receipts of M/s Aerone Pvt. Ltd. Hence, no expenses are allowable in the case of the assessee. Further, during the Assessment Year under consideration the assessee has carried out business on account of Trading in Sale & Purchase of land through M/s Aerone Developers Pvt. Ltd. as per detailed submissions made during the Assessment proceedings. Therefore, net sale proceeds received by the assessee amounting to Rs.2,79,10,981/- as admitted and disclosed in the form of STCG/LTCG in

the return filed is treated as Income from Business and taxed accordingly.

13. We further find that Ld.CIT(A) confirmed the view taken by the Ld.A.O by distinguishing the facts with facts of the cases relied by the assessee, observing as under;

“4.1 In view of above submission, it is evident that there do not exist any agreement IMOU between M/s Aarone Pvt. Ltd. and the assessee, which deepens the belief that M/s Aarone Pvt. Ltd. is conducting business on behalf of the assessee and other 17 persons independently. In this regard, reliance is placed upon the landmark decision of the Apex Court in the case~ of Raja J. Rameshwar Rao Vs CIT(SC) 42ITR 179 wherein it was held that :_

"Even a single venture may be regarded as in. the-nature of trade or business. When a person acquires land with a view to selling it later after developing it, he is carrying on an activity resulting in profit, and the activity can only be described as a business venture. Where the person goes further and divides the land into plots, develops the area to make it more attractive and sells the land not as a single unit and as he bought it, but in parcels, he is dealing with land as his stock-in-trade; he is carrying on business and making a profit."

4.2 The *same fora* was delved by the Hon'bls Karnatka High Court in the case of CITVs. Rarnaiah &Ors.146ITR 39 and P. Kannan VsCIT(Kar} 154 ITR 441 wherein' the Hon'ble High Court held that '*Sale of land after plotting is a Business Venture*'. The decision of the above judicial pronouncements are squarely applicable in this case.

4.3 It is also beyond doubt that the activity carried out by the assessee is nothing but purchase- and sale, of land amounting to trading with a view to earn more profit. In light of the discussion held hereinabove, it establishes that the activity of the assessee is nothing but an adventure

having nature-of Trade. Hence, Capital Gain offered on account of sale of land is treated as Business Income. MJs Aarone Pvt. Ltd has-borne all the expenses arising on account of Development and sale of land and the assessee has received her share from net sale receipts of M/s Aarone Pvt. Ltd. Hence, no 'expenses' are allowable in the case of the assessee.

4.4 Further, during the Assessment Year under consideration the assessee has carried out business on account of Trading in Sale & Purchase of land through M/s Aarone Developers Pvt. Ltd. as per detailed, submissions made during the Assessment proceedings. Therefore, net sale proceeds received by the assessee amounting to Rs.2,79,10,951/- as admitted and disclosed in the form of STCG/LTCG in the return filed is treated as Income from Business and taxed accordingly.

14. After careful perusal of the detailed findings of fact by the Ld. Assessing Officer as well as Ld. CIT(A) and the submissions made by the Ld. Counsel for the assessee before us and before the lower authorities, it can be construed that for assessing the profit from transaction of sale of asset as Capital Gain or business income, depends on circumstantial evidences, frequency of the transaction and the modus operandi to conclude the transaction. At this juncture we would like to refer to the findings of Hon'ble Apex Court given in the case of CIT V/s Holck Larsen (1986) 160 ITR 67 where Hon'ble Supreme Court held that *“consideration of all relevant facts involves appreciation of all the facts for their proper perspective. If*

that is not done, then, it cannot be said that there has been consideration of all relevant factors. Whether any transaction is an adventure in nature of trade or not must be decided on consideration of all the relevant facts and circumstances, which are proved in particular case. As such the determination of such transaction depends solely on the merits of a case”.

15. Hon'ble Apex Court also held in the case of Khan Bahadur Ahmad Alladin & Sons (1968) 68 ITR 574 as well as in the of Jankiram Bahaduram Vs CIT (1965) 57 ITR 21, *that where a commodity is purchased and sub divided, altered or repaired and is sold or is converted into a different quantity and then sold, an intention to launch upon an adventure in the nature of trade may readily be inferred. If a person buys land with a view to sell and thereafter carries on certain operations so as to bring a greater profit and facilities, the sale of plots, it can be said even if it is a single transaction that his activity is adventure in the nature is a relevant factor that raises a strong presumption. As matter of fact, whatever test have been laid down to determine a transaction to be in the nature of trade or not, no one test is in itself conclusive. It is a cumulative effect of all the factors, which can help to arrive at a*

conclusion as to whether the transaction was an instance of investment or an adventure in the nature of trade.

16. We further find that Hon'ble Supreme Court held in the case of Raja J. Rameshwar Rao Vs. CIT (1961) 42 ITR 179 held that *“the activity of the assessee in providing the land into plots and not selling it as a single unit as he acquired goes to establish that he was carrying on the business in a real property and it is business venture. To sum up ordinarily where a person acquired a land with a view to selling it later on after development and dividing could only be described as a business adventure. Generally speaking the original intention of the party in purchasing the property, the length of its ownership and holding, conduct and the subsequent dealing of the assessee in respect of the property, the manner of disposal and the frequency and multiplicity of transactions offers a valuable guide in determining whether the assessee was carrying on a trading activity and whether a particular transaction should be stamped with the character of a trading adventure”.*

17. So the crux of the above discussions is that we will have to consider the cumulative effects of all the factors as well as the action taken by the assessee in order to sale the land.

18. Firstly we find that the assessee kept on purchasing land in the same very area on various dates which was falling in the financial year 2005-06 and 2006-07 and financial year 2010-11. Secondly, sale of land have been effected with the assistance of developer M/s. ADPL, New Delhi. Thirdly, as per the sale deed the assessee has transferred the title in their land along with 17 other owners of other pieces of land. Fourthly, assessee has received the consideration of sale at the year end i.e. as on 31.3.2012 and 31.03.2013 which shows that at the end of the year the account has been made and the share of the assessee has been given after the finalization of the accounts paid by M/s. ADPL. Fifthly, the total area of land available with ADPL was given under power of attorney by around 18 persons including the assessee. The assessee received 40% share in the total land of 6.53 hectare during A.Y. 2012-13.

19. Sixthly and most important aspect which we observe from going through one of the sale deed placed at Page-39 to 76 of the paper book, which reveals that the project in the name of "Country Walk" was proposed to be developed measuring 43.929 hectare of land. In this sale deed 18 persons including the assessee are termed as seller along with two power of attorney holders namely Mr. Sanjay Phawa, Director of ADPL Mr. Mukesh Kumar, Indore and party of second part Smt. Sandhya Chordia who has purchased plot No. C 168 in the "Country Walk" colony. In para one of this sale deed at page 42 it is mentioned that registration No.40/206

dated 21.08.2006 has been issued to the parties of first part as referred above under the Madhya Pradesh Gram Panchayat Rules 1999 (colonizer) for the purpose of development of colony. Thereafter in para-2 the details of various survey numbers of the lands acquired by the alleged 18 owners who had given their land in the common pool for the purpose of developing a colony along with a club house. M/s. ADPL was entrusted with the work of the development and it charged for its work on yearly basis. As per the letter dated 27.12.2014 Ms/ ADPL has accepted that during the financial year 2011-12 total sales stood at Rs.78.70 crores and an expenditure of Rs.2.17 crores was incurred leaving behind the amount of Rs.76.52 crores and the share of the assessee out of this total remaining amount have been shown at Rs.3.32 crores approximately.

20. All these above series of events and facts clearly shows that in the year 2006 itself the assessee along with other persons initiated the process of developing a colony which is proved by the Registration No.40/2006 issued on 21.8.2006. Few months before and the period thereafter all these 18 persons kept on purchasing the land from various land owners and parallelly M/s. ADPL was working to develop the project named "Country Walk". Once the area was developed then the sales were effected by demarcating them in various plots sizes and the ADPL was having the power of attorney to decide about the sale and development of the land bank. All the sale transactions were effected through it and the land

owners used to get their share excluding the expenditure as well as excluding the portion of land which has been used for development. Through this process the assessee gained substantial amount which has been spread over to A.Y 2012-13 and 2013-14.

21. In our considered view as well as in the given factual matrix it is crystal clear that it was a well thought business project carried out by the assessee jointly with 17 other persons by way of taking the services of Developer M/s. ADPL and the intention of entering into an adventure of business was very clear from the very first day of purchase of impugned land and completed on selling the residential plots. We are of the considered view that both the lower authorities have rightly appreciated the facts and concluded that the profits from sale of land situated at Village Jhalaria, Tehsil Indore is a business profit and cannot be taxed as Short Term Capital Gain or Long Term Capital Gain. In the result these common issue raised for both the assessment years is decided against the assessee. We therefore dismiss all the grounds raised in both these appeals of the assessee.

22. In the result, appeals of the assessee for Assessment Year 2012-13 and Assessment Year 2013-14 are dismissed.

Order was pronounced in the open court on 28.08.2018.

Sd/-
(**KUL BHARAT**)
JUDICIAL MEMBER

Sd/-
(**MANISH BORAD**)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 28/08/2018

Dev/

Anita singh

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Private Secretary/DDO, Indore