IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri R.K. Panda, Vice President
AND
Shri Laliet Kumar, Judicial Member

Sl. No	ITA No	A.Y.	Appellant /Revenue	Respondent / Assessee
1	1751/Hyd/2019	2012-13	ITO, Ward – 16(1), Hyderabad.	Shri Satish Babu Kethineedi, Flat No.1002, Royal Pavilion Apartments, Ameerpet, Hyderabad. PAN : ADFPK5459F.
2	1752/Hyd/2019	2012-13	-do-	Sri Nihar Ranjan Pradhan, Plot No.110, Flat No.304, Hanuman Mansion, Sri Nagar Colony, Hyderabad. PAN : AJGPP0350F.

Appellant by : Shri Shakeer Ahamed, Sr.A.R.

Respondent by : Shri M.V. Anil Kumar, Advocate

Date of Hearing : 02.11.2023

Date of Pronouncement : 08.11.2023

O R D E R

PER SRI LALIET KUMAR, J.M:

The captioned two appeals filed by Revenue are against the separate orders passed by the learned Commissioner of Income Tax (Appeals) – 7, Hyderabad dt.23.08.2019 for the assessment year 2012-13.

2. The grounds raised by the Revenue in both the appeals are similar in nature, except the amounts involved. Hence, we are reproducing the grounds of ITA No.1751/Hyd/2019 only, for the sake of brevity and the same read as under :

> *"1. The Ld. CIT(A) erred in deleting the addition made u/s 45 of the Act.*
>
> *2. The ld.CIT(A) erred in allowing exemption of capital gains u/s 47(xiii) of the Act, in the absence of any evidence in support of the assessee's claim that the company [in which they have transferred 'intangible asset'] is formed by succession if a partnership firm in which the assessee is stated to have been a partner."*

3. As the facts and issues in both the appeals are same, except the amounts involved, we are reproducing the facts of appeal in ITA No.1751/Hyd/2019 for the sake of brevity.

4. Facts of the case, in brief, are that assessee is an individual filed his return of income for the AY 2012013 on 29.03.2014 by declaring taxable income of Rs.2,40,000/- which comprises of income from other sources. The case was selected for scrutiny and during the assessment proceedings, it was found that the assessee along with Sri Nihar Ranjan Pradhan has incorporated a company by name M/s. Digital Campus Services Private Limited and got allotted shares of the company which was in lieu of introduction of the ERP package in the ratio of 60:40 and accordingly, the assessee received shares worth Rs.8,92,98,000/- which attract provisions of section 45 of the Act. As the assessee did not admit the income from capital gains or otherwise in the

return filed for A.Y. 2012-13, assessment was reopened u/s 147 of the Act and notice u/s 148 of the Act was issued. However, there was no reply from the assessee to the notice and the assessee also failed to reply to the show cause notice dt.27.11.2017. Hence, the Assessing Officer was constrained to complete the assessment and accordingly passed assessment order on 26.12.2017 u/s 144 r.w.s 147 of the Act interalia making an addition of Rs.8,92,98,000/- towards undisclosed income, thereby determining the total income at Rs.8,95,38,000/-.

5. Feeling aggrieved with the order of Assessing Officer, assessee carried the matter before ld.CIT(A), who partly allowed the appeal of assessee.

6. Feeling aggrieved with order of ld.CIT(A), Revenue is now in appeal before us.

7. Before us, ld. DR submitted that assessee has not filed copy of partnership deed before the Assessing Officer to know its details and to prove that the transfer has been made by the firm and shares have been received by partners. Thereafter, before the 1st appellate authority, assessee filed the copy of partnership deed as additional evidence. On perusal of the said deed, ld.CIT(A) found that the said deed was executed with the name of M/s. Digital Campus Services between the assessee and Sri Nihar Ranjan Pradhan for carrying the development of software and the

said deed came into existence w.e.f. 01.40.2010. However, the said deed was not registered with the Registrar of Firms and had no PAN and hence, it is difficult to believe that the said partnership deed is genuine, more particularly, when the assessee has not disclosed the existence of the firm during the scrutiny proceedings.

8. On the other hand, ld. AR supported the order of ld.CIT(A) submitting that the same is in accordance with law.

9. We have heard the rival submissions and perused the material on record. The Assessing Officer has submitted in the remand report to the ld.CIT(A) wherein it was submitted that the partnership deed dt.01.04.2018 filed by the assessee to prove his case was neither registered nor was witnessed by any individuals at the time of formation of Partnership Deed nor any ITR for A.Y. 2011-12 was filed. The ld.CIT(A) despite the remand report, while granting the relief to the assessee, had blindly believed that the partnership firm was in existence and thereafter granted the relief relying upon Sections 184 / 185 of Income Tax Act read with Sections 47(XII) of the Act. The relevant portion of the finding of the ld.CIT(A) vide pages 13 to 17 reads as under :

> *"5. .....*
>
> *In the present 'case there is no doubt that there exists a Partnership Deed executed on 01-04-2010. However, the same was not brought to the notice, of the Assessing Officer during the assessment proceedings. The same was submitted as an additional evidence and the Assessing Officer has not objected to*

the admission of the same. In my opinion, based on 'the decision of the Ho'nble Madhya Pradesh High Court in the case pf Murlidhar Kishangopal Vs CIT 50 ITR 628, even in absence of the registration of the Partnership deed with the Registrar of Firm and PAN number based on the above finding of facts that there are two persons who have carried on business and have entered into a partnership deed with profit sharing ratio, there exist a Partnership between them. It is optional for the partners to set, the Firm registered under the partnership Act,' 1932. Registration of the firm under the Partnership Act, 1932 is not mandatory requirement. Secondly, for the purpose of the Income Tax Act, 1961 also, there is no mandatory requirement to obtain PAN and to file returns of income in order to' be assessed as Firm as the provisions of the section 184 and 185 of the Income Tax Act, 1961 have been amended in the year 1993. For the purpose of getting deductions such as salary and interest, bonus; commission as allowance from the profits of' the Firm, 'the Firm needs to comply the various provisions under section 184 of the IT Act, 1961. In. case where the firm does not comply with the provisions of 'the section 184 for any assessment year, the firm shall be so assessed that no deduction by way of' any payment of interest, salary, -bonus, commission etc. made by such firm to any partner of such firm shall be all6wed'in computing income chargeable under the head profits and gains of business and profession. It is further seen that the firm was succeeded by the company Which took over entire asset in liabilities of the firm. As per the Companies Act, a firm cannot be a member (share holder) of the company. After succession of the firm by the company the, shares of the 'company were held on behalf of the firm in their individual names. On plain reading of the various provisions of the partnership Act 1932 and related commentaries 'and circular no.4/72 dated 09-03-1972 issued by the Department of Company Affairs under the companies Act, 1956 and on the facts, of the case, I am of the considered view that registration of the Firm is not compulsory under the Partnership Act, 1932 and partners of the firm can hold the shares in their individual names, on behalf of the firm in the company. In view of the above facts and legal view on the subject, I am convinced that there existed a genuine partnership firm consisting of partners Sri. Sathish Babu Kethinedi and Nihar Ranjan Pradhan in the. name and style of Digital Campus Services w.e.f. 01-04-2010 carrying the business of development of software in profit and loss sharing ratio 60:40 and the same was succeeded by company by name M/s. Digital Campus Services Private Limited which was incorporated on 15-09-2011 with these two persons as promoter Directors and share holders of the company.

Having, said that there is a Partnership, provision of section 47(xiii) are applicable to the, facts of the case, which deals with "Transactions not regarded as transfer". The relevant extract of section 47(xiii) is extracted for convivence :

8[(xiii) [any transfer of a capital asset or intangible asset by a firm to a company as a result of succession of the firm by a company in the business carried on by the firm, or any transfer of a capital asset to 'a company in the course of50 [demutualization or] corporatization of a recognized stock exchange in India as a result of which an association of persons or body of individuals is succeeded by such company .

Provided that—

(a) all the assets and liabilities of the firm 51 [or of the association of persons or bo4 of individuals] relating to the business immediately before the succession become the assets and liabilities of the company,

(b) all the partners of the firm immediately before the succession become .the shareholders of the company in the same proportion in which their capital. accounts stood. In the books of the firm on the date of the succession;

(c) the partners of the firm do not, receive any consideration or benefit, directly or indirectly, in any form or manner, other than by wd of allotment of shares in the company; and

('d) 'the aggregate of the shareholding in the company of the partners of the firm is not less than fifty per cent of the total voting power in company and their shareholding continues to be as such for a period of five years from the date of the succession;

52[(e) the 531demutua11sati0n or] corporatization of a recognized stock exchange in India is carried out in accordance with a scheme for. 53 [demutualization or] corporatization which is approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992),]

In the present case there is transfer of software developed by the promoters of the. Company, which is an intangible asset, the promoters have not received any monies other than allotment of shares. All the assets and liabilities have been taken over by the company therefore there is succession of firm business by the company. Therefore, provision of the section 47(xiii) are applicable to the facts of the case.

In fact, each of the Promoters of the Company are partners and every partner of the firm is the Shareholder of the Company. and has been allotted shares: Furthermore, no money was received as consideration. The shareholding of the promoters put together is more than 510/a of the total shareholding. In fact, they hold 100% of the shareholding. In view these facts, all relevant conditions of section 47(xiii) have been complied with, there is no transfer to attract capital gains. Hence, the Assessing Officer is directed to delete the addition made under the Capital Gains.

Before parting, it is pertinent to mention here that on perusal of the accounts of the Partnership, the partners have introduced as their capital in their respective capital accounts of Rs. 6,00,000/- by the assessee and Rs. 4,00,000/- by Sri. Satish Babu Kethineedi, which has to be taxed as unexplained investment in the firm, as the assessee has not offered any explanation before me nor before the assessing officer. The AR of the appellant did not object to the proposed addition of Rs.6,00,000/- in the hands of the appellant vide hearing dated 22-08-2019. Hence, the Assessing officer is directed to tax Rs.6,00,000/- in the hands of the appellant as explained investment in the firm under section 69 of the Income Tax Act, 1961."

9.1. We found that no evidence of the existence of the partnership was shown either to the Assessing Officer or to the ld.CIT(A) or to us. It is essential for a partnership firm, in which both the assessee were partners, to show that it was doing business from the premises after taking it on rent and were incurring expenditure for the development of the software. However, no expenditure has been shown to have been incurred during this period nor any bank account or Balance Sheet were shown to have been maintained or opened by the assessee. The relevant portion of remand report filed by the assessee is as under :

"4.....

As per deed, both the partners are working partners. As per deed, Partnership firm was made with name and Style of M/s. Digital Campus Services and came into existence w.e.f. 01.04.2010. However, the said deed was neither got registered nor filed ITR for A.Y. 2011-12. Even, the partners did not apply for PAN for the Firm. Further, during the assessment proceedings of the company as well as in individual cases, the assessee did not disclose the facts of existence of the said Firm: As the said Partnership deed is not registered with the Registrar of Fims and had. no. PAN and even the fact of existence of the firm was not disclosed by the assessee during the scrutiny proceedings, it is difficult to believe that the, said partnership deed is genuine.

5. Further, in this regard, an opportunity was given to the assessee and the assessee was appeared before the undersigned on 16.04.2019 and reiterated the facts and furnished the copy. of Memorandum of Association and Article of Association of company M/s. Digital Campus Services P. Ltd. On perusal of the same it is found that the said company was incorporated by Shri Satish Babu Kethineedi in association with Shri Nihar Ranjan Pradhan on 15.09.2011. However, it is not evident from the above documents that the firm was succeeded by the company in the business carried on by the firm. Hence, it is amply evident that it is an afterthought of the assessee to circumvent the provisions of the law. The succession of the firm by the company is not evidenced by an instrument."

9.2. The entire submission of the assessee is self-serving statement and has no legs to stand. Undoubtedly, in the present case, the shares for huge amount were allotted to the assessee without any consideration. There is no evidence that the assessee was the owner of the software which was forming part of the capital of the assessee and which was contributed by the assessee as their capital contribution in the partnership firm and which was subsequently acquired and taken over by the company.

10. We also found that the Memorandum of association and Articles of association of the company which has allegedly taken over the partnership firm had not made any reference to the existence of the partnership firm and its acquisition by the company. In view of the above, we do not find any merit in the decision passed by the ld.CIT(A).

11. The ld.CIT(A) had granted relief to the assessee by relying upon the provisions of section 47(12) of the Income Tax Act and the findings of the ld.CIT(A) are reproduced hereinabove. From the perusal of Section 47(12) of the Act, it necessarily requires the fulfillment of the following conditions :

1) The transfer of capital asset / intangible asset by a firm to a company happens either on account of succession of the firm by company or it happens in the course of demutualization or corporatization of the recognized stock exchange.
2) There has to be a transfer of a capital asset or intangible asset by a firm (it means there has to be an existing capital asset of a firm which means there has to be an existence of the firm owning the capital asset / intangible asset.

11.1 In the present case, there is no succession of the firm by a company as the very existence of the firm and owning the intangible asset is missing and assessee failed to establish the existence of firm in accordance with law. Unless the firm is in

existence owning the intangible asset is proved, there cannot be any transfer of that capital asset / intangible asset to the company by way of succession as mentioned hereinabove. There is no evidence of either succession of the firm by a company or demutualization / corporatization of the firm to a company. In the absence of any such documents or evidence proving the existence of firm and its succession with the company etc., it cannot be said that merely because the alleged two persons owning the shareholding in the ratio mentioned therein, there will not be any transfer and consequent thereof, no capital gain will be attracted.

12. In fact, identical issue has been considered by the Hon'ble Supreme Court in the case of CIT Vs. Mansukh Dyeing and Printing Mills (2023) 151 taxmann.com 306 (SC) wherein the Hon'ble Supreme Court after considering the provisions of law had come to conclusion that the amount is chargeable to capital gains and the relevant portion of the said decision provides as under :

> *"5. We have heard the learned counsel appearing for the respective parties at length.*
>
> *6. The short question, which is posed for the consideration of this Court is the applicability of Section 45(4) of the Income-tax Act as introduced by the Finance Act, 1987.*
>
> *7. The relevant portion of section 45, with which we are concerned, is sub-section (4), which reads as under:-*
>
> *"(4) The profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals (not being a company or a co-operative society) or otherwise, shall be chargeable to tax as the*

income of the firm, association or body, of the previous year in which the said transfer takes place and for the purposes of section 48, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration received or accruing as a result of the transfer."

7.1 Sub-section (4) of section 45 came to be amended by the Finance Act, 1987 w.e.f. 1-4-1988. From a reading of the above sub-section, to attract the capital gains, what would be required is as under:-

1. Transfer of capital asset by way of distribution of capital assets;
a. On account of dissolution of a firm;
b. Or other association of persons;
c. Or body of individuals;
d. Or otherwise;
shall be chargeable to tax as the income of the firm, association or body of persons."

7.2 The object and purpose of introduction of section 45(4) was to pluck the loophole by insertion of section 45(4) and omission of section 2(47)(ii). While introduction to section 45(4), clause (ii) of section 2(47) came to be omitted. Earlier, omission of clause (ii) of section 2(47) and Section 47(ii) exempted the transform by way of distribution of capital assets from the ambit of the definition of "transfer". The same helped the assessee in avoiding the levy of capital gains tax by revaluing the assets and then transferring and distributing the same at the time of dissolution. The said loophole came to be plucked by insertion of section 45(4) and omission of section 2(47)(ii). At this stage, it is required to be noted that the word used "OR OTHERWISE" in section 45(4) is very important.

7.3 In the present case, it was the case on behalf of the assessee relying upon the decision of this Court in the case of Hind Construction Ltd. (supra) that unless there is a dissolution of partnership firm and thereby the transfer of the amount on revaluation to the capital accounts of the respective partners, section 45(4) of the Income-tax shall not be applicable. It is the case on behalf of the assessee that there can be no income just due to revaluation of the capital assets unless capital assets is also transferred. According to the assessee, the amount credited on revaluation to the capital accounts of the partners is only notional or book entry, which is not represented by any additional tangible assets or income. Therefore, the sum and substance of the submission on behalf of the assessee is that unless there is a dissolution of the partnership firm, and there is only transfer of the amount on revaluation to the capital accounts of the respective partners, Section 45(4) of the Income-tax Act shall not be applicable.

7.4 However, in view of the amended section 45(4) of the Income-tax Act inserted vide Finance Act, 1987, by which, "OR OTHERWISE" is specifically added, the aforesaid submission on behalf of the assessee has no substance. The Bombay High Court in the case of A.N. Naik Associates (supra) had an occasion to elaborately consider the word "OTHERWISE" used in section 45(4). After detailed analysis of section 45(4), it is observed and held that the word "OTHERWISE" used in section 45(4) takes into its sweep not only the cases of dissolution but also cases of subsisting partners of a partnership, transferring the assets in favour of a retiring partner. While holding so, it is observed in paragraphs 14, 21, 22 and 24 as under:-

"14. Pursuant to the inclusion of sub-section (4) in section 45, on the dissolution of a partnership the profits or gains arising from the transfer of capital asset are chargeable to tax as income of the firm. It is contended on behalf of the assessee that even after introduction of section 45(4), the position will be the same as the definition clause i.e. namely section 2(47) has not been amended. Secondly it is contended that the expression "otherwise" must be read edjusdem generis with the expression dissolution of firm. So considered, there is no dissolution on the firm. So considered, there is no dissolution on the facts of the case. On behalf of the revenue, it was, however, argued that the amendment was brought about to remove the mischief occasioned by parties avoiding to pay tax, considering the law as declared and to plug the loopholes. The expression otherwise must be read to mear transfer of capital assets of the assessee firm include to a partner. As the section is a self contained code, there was no need to amend the definition of transfer under section 2(47) of the Act. The Position therefore, will have to be examined in the context of the law as amended after 1988.....

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21. With the above, we may now proceed to answer the issue. On retirement of a partner or partners from an existing firm, and who receives assets from the firm, the law before 1998 would really be of no support, as by section 45(4) what was otherwise not taxable has been made taxable. Section 45(4) seems to have been introduced with a view to overcome the judgment of the Apex Court in Malabar Fisheries Co. v. Commissioner of Income-Tax, Kerala (supra) and other judgments which took a view that the firm on its own has no right but it is the partners who own jointly or in common the asset and thereby remedy the mischief occasioned. Distribution of capital assets on dissolution now is subject to capital gains tax unless it does not fall within the definition of transfer under section 2(47) What would be the effect of partners of a subsisting partnership distributing assets to partners who retire from the partnership. Does the asset of the partnership, on being allotted to the retired partner/partners fall within the expression "otherwise". As noted

earlier on behalf of the assessee it has been contended that the expression "otherwise" would have to be read "ejusdem generis" with "dissolution of partner or body of individuals" and for that purpose reliance was placed on a judgment of the Division Bench in (Commissioner of Income-Tax, Bombay City II v. Trustees of Abdulcadar Ebrahim Trust), 1975 (100) I.T.R. 85. Section 45 is a charging section. The purpose and object of the Act of 1988 was to charge tax arising on distribution of capital assets of firms which otherwise was not subject to taxation. If the language of sub-section (4) is construed to mean that the expression "otherwise" has to partake in the nature of dissolution or deemed dissolution, then the very object of the amendment could be defeated by the partners, by distributing the assets to some partners who may retire. The firm then would not be liable to be taxed thus defeating the very purpose of the Amending Acts. Prior to the Finance Act, 1987 in case of a partnership it was held that the assets are of the partners and not of the partnership. Therefore if on retirement a partner receive his share of the assets, may be in the form of a single asset, it was held that there was no transfer and similarly on dissolution of the partnership. Another device resorted to by an assessee was to convert an asset held independently as an asset of the firm in which the individual was a partner. The decision of the Supreme Court in (Kartikeya v. Sarabhai v. C.I.T.), 1985 (156) I.T.R. 509 took a view that this would not amount to transfer and, therefore, fell outside the scope of capital gain. The rationale being that the consideration for the transfer of the personal asset was indeterminate, being the right which arose or accrued to the partner during the subsistence of the partnership to get his share of profit from time to time and on dissolution of the partnership to get the value of his share from the not partnership asset. Parliament with the avowed object of blocking this escape route for avoiding capital gains tax by the Finance Act, 1987 has introduced sub-section (3) of section 45. The effect of this was that the profits and gains arising from the transfer of a capital asset by a partner to a firm is chargeable as the partner's income of the previous year in which the transfer took place. On a conversion of the partnership assets into individual assets on dissolution or otherwise also formed part of the same scheme of tax avoidance. To plug these loophole the Finance Act, 1987 brought on the statute book a new sub-section (4) in section 45 of the Act. The effect is that the profits or gains arising from the transfer of a capital asset by a firm to a partner on dissolution or otherwise would be chargeable as the firm's income in the previous year in which the transfer took place and for the purposes of computation of capital gains, the fair market value of the asset on the date of transfer would be deemed to be the full value of the consideration received or accrued as a result of transfer. Therefore, if the object of the Act is seen and the mischief it seeks to avoid, it would be clear that intention of Parliament was to bring into the tax not transactions whereby assets were brought into a firm or taken out of the firm.

22. The expression "otherwise" in our opinion, has not to be read ejusdem generis with the expression, dissolution of a firm or body or assets of persons. The expression "otherwise" has to be read with the words 'transfer of capital assets" by way of distribution of capital asset's. If so read, it becomes clear that even when a firm is in existence and there is a transfer of capital assets it comes within the expression "otherwise" as the object of the amending Act was to remove the loophole which existed whereby capital gain tax was not chargeable. In our opinion, therefore, when the asset of the partnership is transferred to a retiring partner the partnership which is assessible to tax ceases to have a right or its right in the property stands extinguished in favour of the partner to whom it is transferred. If so read it will further the object and the purpose and intent of amendment of section 45. Once, that be the case, we will have to hold that the transfer of assets of the partnership to the retiring partners would amount to the transfer of the capital assets in the nature of capital gains and business profits which is chargeable to tax under section 45(4) of the I.T. Act. We will, therefore, have to answer question No. 3 by holding that the word "otherwise" takes into its sweep not only the cases of dissolution but also cases of subsisting partners of a partnership, transferring assets in favour of a retiring partner.

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24. Considering this clause as earlier contained in section 47, it meant that the distribution of capital assets on dissolution of a firm etc. were not regarded as transfer. The Finance Act, 1987 w.e.f. 1-4-1988, omitted this clause, the effect of which is that distribution of capital assets on the dissolution of a firm would henceforth be regarded as 'transfer'. Therefore, instead of amending section 2(47), amendment was carried out by the Finance Act, 1987, by omitting section 47(11), the result of which is that distribution of capital assets on the dissolution of a firm would be regarded as 'transfer'. Therefore, the contention that it would not amount to a transfer has to be rejected. It is now clear that when the asset is transferred to a partner, that falls within the expression otherwise and the rights of the other partners in that asset of the partnership is extinguished. That was also the position earlier but considering that on retirement the partners only got his share, it was held that there was no extinguishment of right. Considering the amendment, there is clearly a transfer and if, there be a transfer, it would be subject to capital gains tax."

7.5 In the present case, the assets of the partnership firm were revalued to increase the value by an amount of Rs. 17.34 crores on 1-1-1993 (relevant to A.Y. 1993-1994) and the revalued amount was credited to the accounts of the partners in their profit-sharing ratio and the credit of the assets' revaluation amount to the capital accounts of the partners can be said to be in effect distribution of the assets valued at Rs. 17.34 crores to

the partners and that during the years, some new partners came to be inducted by introduction of small amounts of capital ranging between Rs. 2.5 to 4.5 lakhs and the said newly inducted partners had huge credits to their capital accounts immediately after joining the partnership, which amount was available to the partners for withdrawal and in fact some of the partners withdrew the amount credited in their capital accounts. Therefore, the assets so revalued and the credit into the capital accounts of the respective partners can be said to be "transfer" and which fall in the category of "OTHERWISE" and therefore, the provision of Section 45(4) inserted by Finance Act, 1987 w.e.f. 1-4-1988 shall be applicable.

7.6 Now, so far as the reliance placed upon the decision of this Court in the case of Hind Construction Ltd. (supra) is concerned, at the outset, it is required to be noted that the said decision was pre-insertion of Section 45(4) of the Income-tax Act inserted by Finance Act, 1987 and in the earlier regime - pre-insertion of Section 45(4), the word "OTHERWISE" was absent. Therefore, in the case of Hind Construction Ltd. (supra), this Court had no occasion to consider the amended/inserted section 45(4) of the Income-tax Act and the word used "OTHERWISE". Under the circumstances, for the purpose of interpretation of newly inserted section 45(4), the decision of this Court in the case of Hind Construction Ltd. (supra) shall not be applicable and/or the same shall not be of any assistance to the assessee. As such, we are in complete agreement with the view taken by the Bombay High Court in the case of A.N. Naik Associates (supra). We affirm the view taken by the Bombay High Court in the above decision.

8. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court and that of the ITAT are unsustainable and the same deserves to be quashed and set aside and are accordingly quashed and set aside. The order passed by the Assessing Officer is hereby restored."

13. In view of the above, considering the totality of the circumstances and the judgment of the Hon'ble Supreme Court cited (supra), we are of the opinion that the ld.CIT(A) had wrongly granted the relief to the assessee and therefore, we set aside the order passed by the ld.CIT(A) and restore the order passed by the Assessing Officer. Accordingly, the appeal of the Revenue is allowed.

14. In the result, the appeal of Revenue in ITA No.1751/Hyd/2019 is allowed.

15. Now coming to the other appeal i.e. ITA No.1752/Hyd/2019, which is identical to the facts and issues raised in ITA 1751/Hyd/2019, our decision in ITA No.1752/Hyd/ 2019 would apply mutatis mutandis. Accordingly, the appeal of Revenue in ITA No.1752/Hyd/2019 is allowed.

16. In the result, the appeal of Revenue in ITA No.1752/Hyd/2019 is allowed.

17. To sum up, both the appeals of Revenue are allowed. The copy of the same may be placed in all respective case files.

Order pronounced in the Open Court on 8th November, 2023.

Sd/-	**Sd/-**
(RAMA KANTA PANDA) **VICE PRESIDENT**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 8th November, 2023.
TYNM/sps

Copy to:

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3	ITO, Ward – 16(1), Hyderabad.
4	Principal Commissioner of Income Tax - 5, Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order