

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES 'B': NEW DELHI.**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER  
and  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.448/Del/2025  
(Assessment Year: 2012-13)**

DCIT, Circle 4 (2),  
Delhi.

vs.

Cyberwalk Tech Park Pvt. Ltd.,  
Select City Walk 6<sup>th</sup> Floor,  
A-3, District Centre Saket  
New Delhi – 110 017.

**(PAN : AADCS8089F)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Sh. R.S. Ahuja, CA &  
Sh. P.S. Sodhi, Adv

REVENUE BY : Sh. Rajesh Kumar Dhanesta, Sr. DR

Date of Hearing : 13.11.2025

Date of Order : 06.02.2026

**ORDER**

**PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :**

1. The Revenue has filed appeal against the order of the Learned Commissioner of Income Tax (Appeals), Delhi-31 ["Ld. CIT (A)", for short] dated 25.11.2024 for the Assessment Year 2012-13
2. Brief facts of the case are, during the assessment proceedings, Assessing Officer observed that assessee was allotted land measuring 38212 sq

mtrs. in Manesar by HSIIDC for development of majority IT/ITES space with a small percentage of residential and commercial space. After the start of construction in 2008, because of slow down in IT/ITES industry but the assessee had to construct the project due to the policy of HSIIDC that if the project is not completed at least 75% within two years, the allotment will be cancelled.

3. During the assessment year under consideration, the assessee completed some towers and left part of the building to be constructed in future. The assessee converted 50% of the land into stock in trade and continued to hold balance 50% into fixed assets. The fair market value on the date of conversion of land into stock in trade was the same as cost, there was no appreciation of land in the market, the assessee converted the 50% land into stock in trade at cost without even taking the benefit of cost indexation as the same would have resulted into Long Term Capital Loss which was not adjustable against the profit.
4. Further, Assessing Officer observed that the assessee sold during the year under consideration, part of the area on percentage completion method by assuming 90.6% completion in Tower E and about 93.3% completion in Tower D. The assessee sold 1,20,000 sq. ft. area in Tower E and 39037 sq. ft. area in Tower D for a consideration of Rs.42,17,66,600/- and with

applying percentage completion method of 90.6% and 93.3% respectively in the Profit and Loss account was shown as Rs.38,41,19,450/-.

5. The Assessing Officer invoked the provisions of Section 45(2) of the Act and observed that assessee has not booked the Long Term Capital Gain arising on the transfer of land from capital asset to stock in trade. He observed that the land amounting to Rs.9,32,25,739/- was transferred from capital asset to stock in trade for the current year. Therefore, the assessee while filing its return of income have failed to compute the capital gain arising on transfer of such land. Accordingly, he reworked the Long Term Capital Gain and determined the Long Term Capital Gain of Rs.7,34,80,130/-, added to the total income of the assessee.
6. Aggrieved with the above order assessee preferred an appeal before Ld. CIT(A) Delhi 31. Before Ld. CIT(A), assessee has submitted detailed submissions which is reproduced at Pages 4 to 8 of the appellate order.
7. After considering the submissions of the assessee Ld. CIT(A) observed that Assessing Officer had charged the capital gain to tax arising out of conversion of capital asset being land into stock in trade at the time of its sale u/s. 45(2) of the Act at a fair market value as calculated by him. However, while computing the business profit of the assessee arising out of the sale of stock in trade was converted, Assessing Officer has not taken the same fair market value of land was adopted for computing

capital gains at the time of conversion of the said capital asset into stock in trade as cost of purchase. But taken the value was shown by the assessee in its books of accounts. The provisions of Section 45(2) of the Act are very clear which provide that when the fair market value is taken for the purpose of conversion of capital asset into stock in trade then that fair market value, having been deemed as value of consideration by that section becomes the cost of purchase for the purpose of calculation of business profit.

8. Further, he observed that the Assessing Officer has overlooked the principles involved in conversion of a capital asset into stock in trade in the instant case. He found merit in the contentions of the assessee that while computing the business profit of the assessee arising out of the sale of stock in trade so converted, the Assessing Officer ought to have taken the fair market value of land was adopted by him for computing capital gains at the time of conversion of the said asset into stock in trade as cost of purchase or alternatively, he could have taken book value of the said to compute capital gains and taken that book value as available on stock in trade to compute the business profit arising out of the sale of such stock in trade. The capital gains in the first scenario would be greater than the capital gains in the second scenario. However, the business profit would be greater in the second scenario than in the first scenario. He observed

that Assessing Officer has adopted the first scenario and compute fair market value of the assets to arrive at capital gains but at the same time has adopted the book value of the assets to arrive at the business profit out of the sale of such assets as stock in trade. He observed that the provisions of Section 45(2) of the Act do not permit such an approach to be adopted. Accordingly, he deleted the principle addition made by the Assessing Officer.

9. Aggrieved, with the above order the revenue is in appeal before us raising following grounds of appeal:-

1. Whether the learned CIT(A) erred in deleting the addition of Rs.7,34,80,130/- made by the Assessing Officer (AO) without considering the detailed facts and circumstances of the case. The CIT(A) ought to have set aside the matter to the AO for proper examination and verification of the methodology adopted for computation of both capital gains and business profits, instead of outrightly deleting the addition.

2. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of hearing of the appeal.

10. At the time of hearing Ld. DR brought to our notice the relevant facts on record and specifically he brought to our notice page 9 of the appellate order and brought to our notice findings of Ld. CIT(A). In this regard he brought to our notice grounds of appeal and submitted that Ld. CIT(A) has granted no opportunity to the Assessing Officer. He prayed that the issue may be remitted back to Assessing Officer.

11. On the other hand, Ld. AR of the assessee referring to the submissions of the Ld. DR, he submitted that Ld. CIT(A) has no power to remit the issue to the Assessing Officer. In this regard, he brought to our notice page 11 of the paper book which is the assessment order passed by the Assessing Officer for subsequent assessment year AY 2013-14 also he brought to our notice page 13 of the paper book which is the assessment order for assessment year AY 2014-15. He submitted that the same Assessing Officer has accepted the method of accounting adopted by the assessee in the subsequent assessment years. Accordingly, he relied the findings of Ld. CIT(A).
12. Considered the rival submissions and material placed on record, we observed that assessee has converted 50% of the land acquired by it from HSIIDC to construct Tower E and Tower D. Since the assessee has converted the above said land from capital asset to stock in trade and after completion of the construction, assessee has realised sale consideration of substantial portion of Tower E and Tower D and adopted the percentage completion method, accordingly, declared 90.6% and 93.3% respectively in Tower E and Tower D in its Profit and Loss account. Accordingly, it declared the profit during assessment proceedings. The Assessing Officer observed that since the assessee has converted the land as stock in trade and failed to adopt the provisions of Section 45(2) of the Act at the time

of conversion. Accordingly, he reworked Long Term Capital Gain earned by the assessee at the time of conversion and added to the total income of the assessee under the head 'capital gains'.

13. However, we observed that Assessing Officer has adopted a fair market value at the time of conversion of land as stock in trade and he proceeded to complete the assessment without giving the effect of adopting fair market value at the time of conversion while determining the profit under the head 'income from business' when the Assessing Officer recalculated the fair market value at the time of conversion, the same market value had to be adopted while computing the profit under the head 'income from business' while determining the cost of acquisition by adopting the fair market value as determined at the time of conversion. Therefore, there is mistake apparent on record the method adopted by the Assessing Officer.
14. We observed that Ld. CIT(A) has appreciated the above facts and law on record, gave the relief to the assessee. Further, we observed that at the time of hearing Ld. DR prayed that this issue may be remitted back to the Assessing Officer. However, we observed that the mistake was apparent on record and Ld. CIT(A) has applied the proper law, he has applied his power as per Section 251(1) of the Act. Therefore, we do not see any reason to disturb the well reasoned order of the Ld. CIT(A).

15. In the result, grounds raised by the revenue are dismissed.
16. In the result, appeal filed by the revenue is **dismissed**.
17. **Order pronounced in the open court on this 6<sup>th</sup> day of February, 2026.**

**Sd/-**  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(S.RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Dated: 06.02.2026**

**\*Mittali Sr. PS**

Copy forwarded to:

1. Appellant
2. Assessee
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

1.	Date of dictation of Tribunal order	02.02.2026
2.	Date on which the typed draft Tribunal Order is placed before the Dictating Member	02.02.2026
3.	Date on which the typed draft Tribunal order is placed before the other Member (in the case of DB)	
4.	Date on which the approved draft Tribunal order comes to the Sr. PS/PS	
5.	Date on which the fair order is placed before the Dictating Member for sign	
6.	Date on which the fair order is placed before the other Member for sign (in the case of DB)	
7.	Date on which the order comes back to the Sr.PS/PS for uploading on ITAT website	
8.	Date of uploading, if not, reason for not uploading	
9.	Date on which the file goes to the Bench Clerk	
10.	Date on which order goes for Xerox	
11.	Date on which order goes for endorsement	
12.	Date on which the file goes to the Superintendent /O.S. for checking	
13.	Date on which the file goes to the Assistant Registrar for signature on the order.	
14.	Date on which the file goes to dispatch section for dispatch the Tribunal Order	
15.	Date of dispatch of the order	
16.	Date on which file goes to Record Room after dispatch the order	