[2015] 64 taxmann.com 219 (Bombay)

HIGH COURT OF BOMBAY

Commissioner of Income-tax-8, Mumbai

v.Chemosyn Ltd

IT APPEAL NO. 361 OF 2013

FEBRUARY  11, 2015

1. In this appeal by the revenue under section 260A of the Income Tax Act, 1961 (the Act) the challenge is to the order dated 7.9.2012 passed by the Income Tax Appellate Tribunal (for short the ' Tribunal'). The assessment year involved is A.Y. 2007-08.

2. Mr. Pinto learned counsel appearing for the revenue submits that following re-framed questions of law arise for consideration of this Court:

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| "1. |   | Whether in law and on the facts of the instant case the Tribunal was justified in holding that income in the form of 18000 sq.feet did not accrue to the company ignoring the fact that the Development agreement dated 16.06.2006 was executed by the company with M/s Dipti Builders; |
| 2. |   | Whether in law and on the facts of the case was the Tribunal right in coming to the conclusion that no capital gains arose during the year, ignoring the fact that during the year development rights were transferred to Dipti Builders during the relevant financial year. |
| 3. |   | Whether in law and on the facts of the instant case, was the tribunal justified in holding the amount spent in acquiring a shareholding in Umesh Shah group, revenue when the expenditure pertained to a stake in the assets of the latter group? |
| 4. |   | Whether in law and on the facts of the instant case was the Tribunal justified in its finding that the expenditure incurred on the family settlement is revenue, ignoring the finding of the CIT (A) who held it to be capital expenditure of a personal nature? |
| 5. |   | Whether on the facts and in the circumstances of the case and in law, was the finding of the Tribunal perverse failing to appreciate that the expenditure on the family settlement was money paid to enable an individual director namely Samir Shah to acquire a majority stake and not for the business of the company?" |

3. The questions as framed can be broadly divided into two issues:

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| "(i) |   | Questions 1 and 2 relate to the issue-whether under development agreement dated 16.6.2006 capital gains can be said to have arisen in the subject assessment year to the extent of the value of 18,000 sq.feet of constructed area to be provided by the developer even though the same was not provided for ?" |
| (ii) |   | While Questions nos. 3 to 5 is whether the amounts paid by the respondent-assessee for purchase and subsequent cancellation of the shares belonging to an estranged brother of the person in the management of the company is in the nature of revenue expenditure or not ? |

4. So far as the 1st issue is concerned, briefly the facts are that the respondent company owned two plots of land namely plot nos. 256 and 257. On 16.6.2006 the respondent-assessee entered into a development agreement with one M/s Dipti Builders to develop plot no. 257 for a consideration of Rs. 16.11 crores and construction of 18,000 sq.ft of built up area free of cost on plot No. 256. Thereafter on 5.7.2007 a tripartite agreement was entered into between M/s Dipti Builders, a new buyer and respondents under which both the plots were transferred to the new buyer at a total consideration of Rs.29.11 crores. Thus, in the return of income filed on 31.10.2006 for subject Assessment year, the petitioner offered only an amount of Rs. 16.11 crores for the purpose of capital gains tax. This was as the development agreement dated 16.6.2006 stand rescinded/modified by the sale agreement dated 5.7.2007.

5. For the following Assessment year viz. 2008-09 the respondent assessee did offer as capital gains an amount of Rs. 13 crores being the difference between Rs 29.11 crores and Rs. 16.11 crores received earlier from M/s Dipti Builders and duly offered in the A.Y. 2007-08. The respondent pointed out that the consideration in the form of constructed area of 18000 sq.feet is concerned, the same was neither received nor had accrued and therefore, no occasion to bring it to tax could arise. The Assessing Officer did not accept the contention of the petitioner and concluded that in view of the decision of this Court in Chaturbhuj Dwarkadas Kapadia of Bombay v. CIT [[2003] 260 ITR 491/129 Taxman 497](https://www.taxmann.com/fileopen.aspx?id=101010000000018425&source=link) capital gains tax would be payable on the market value of the 18,000 sq.feet of construction to be carried out by M/s Dipti Builders. Resultantly, an addition of Rs. 9.51 crores was made on the basis of Ready Rekoner rates as long term capital gains. Thus, determining the respondent-assessee's income at Rs. 19.94 crores for the A.Y. 2007-08 by order dated 2nd December, 2009.

6. In appeal, the Commissioner of Income Tax (Appeals) (CIT (A) did not accept the petitioner's contention and upheld the Assessing Officer's order by relying upon decision of this Court in Chaturbhuj Dwarkadas Kapadia of Bombay's case (supra). However, the CIT (A) held the consideration for the 18000 sq.feet of constructed area is to be arrived at on the basis of cost of construction and not the Ready Reckoner rates adopted by the Assessing Officer. Consequently, the consideration to be brought to tax was an amount Rs. 2.17 crores. On further appeal, the Tribunal set aside the orders of the Assessing Officer and the CIT (A) by holding that the decision of Chaturbhuj Dwarkadas Kapadia of Bombay (supra) would not apply in the facts of the present case as in this case there is no dispute as to transfer of property taking place as a result of the development agreement. The dispute is with regard to quantum of sale consideration to be taken for the purpose of computing capital gains. Moreover, the Tribunal also placed reliance upon decision of Kalpataru Construction Overseas (P.) Ltd. v. Dy. CIT [[2007] 13 SOT 194 (Mum.)](https://www.taxmann.com/fileopen.aspx?id=101010000000075058&source=link) wherein on similar facts the Tribunal had held that where consideration to be received originally was Rs. 1.25 crores but, finally settled at Rs. 1 crores then such a subsequent settling of the consideration of at Rs. 1 crores although arrived at a subsequent year it would relate back to an earlier assessment year. Further, the Tribunal also placed reliance upon the decision of this Court in CIT v. Shivsagar Estates (AOP) [[1993] 204 ITR 1](https://www.taxmann.com/fileopen.aspx?id=101010000000016606&source=link) to conclude that on the basis of real income theory in the facts of the present case no income on account of 18,000 sq.feet of constructed area has either been accrued or received for it to be brought to tax.

7. Grievance of the revenue is that the decision of this Court  in  Chaturbhuj Dwarkadas Kapadia of Bombay (supra) should apply to the present facts. As pointed out by the Tribunal, the issue before the Court in the above case was to determine the year in which the property was transferred for the purpose of capital gains. In this case the issue is what is the consideration received for the transfer of an asset. Thus, reliance upon Chaturbhuj Dwarkadas Kapadia of Bombay (supra) does not assist the revenue. We specifically asked the revenue whether the decision of the Tribunal in Kalpataru Construction Overseas (P.) Ltd. (supra) has been appealed to this Court and to which the answer was "we do not know".

8. We find that on facts the impugned order of Tribunal has held that no income has been accrued or received of the value of 18000 sq.feet of constructed area under the development agreement dated 16.6.2006. This on account of the fact that the agreement dated 16.6.2006 was not acted upon as it came to be superseded/modified by the Tripartite agreement dated 6.7.2007. This was the position when the return of income was filed. The income accrued and earned under the subsequent agreement dated 6.7.2002 was offered as capital gains in the subsequent years. Therefore, on the application of the real income theory, the Tribunal held that on these facts there would be neither accrual nor receipt of income to warrant bringing to tax to the constructed area of 18,000 sq.ft which has not been received by the respondent-assessee. As observed by the Apex Court in CIT v. Shoorji Vallabhdas & Co. [[1962] 46 ITR 144](https://www.taxmann.com/fileopen.aspx?id=101010000000078717&source=link) :

" 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 book keeping, an entry is made about a 'hypothetical income' which does not materialise. Where income tax, 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." (Emphasis supplied)

Thus no income has either accrued or received in the form of 18000 sq.feet of constructed area. No occasion to tax the same can arise. The Tribunal on consideration of facts has reached a finding of fact that no income in respect of 18000 sq.ft of constructed area has been accrued or received. This finding cannot be said to be perverse or arbitrary. According to us no substantial question of law arises to warrant interference with the order of the Tribunal. Thus, question nos. 1 and 2 are dismissed.

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IN THE ITAT MUMBAI BENCH 'C'

Chemosyn Ltd.

v.

Assistant Commissioner of Income-tax, 8(3) (OSD), Mumbai\*

IT APPEAL NO. 6382 (MUM.) OF 2011

[ASSESSMENT YEAR 2007-08]

SEPTEMBER 7, 2012

ORDER

P.M. Jagtap, Accountant Member - This appeal filed by the assessee is directed against the order of learned CIT(Appeals)-16, Mumbai dated 01-07-2011.

2. The issue raised by the assessee in ground No.1 of this appeal relates to the addition made by the AO and sustained by the learned CIT(Appeals) to the extent of Rs. 2,17,88,000/- on account of alleged consideration in the form of constructed area of 18000 sq.ft. as capital gain.

3. The assessee in the present case is a company which is engaged in the business of manufacturing and trading of pharmaceutical products. The return of income for the year under consideration was filed by it on 31-10-2007 declaring total income of Rs. 3,61,95,670/-. The assessee company was owner of two plots of land bearing CTS No. 256 and 257 at village Gundavali, Taluka Andheri, District Mumbai. The area of plot No. 257 was approximately 1713 sq.mtrs. and by a development agreement entered into with M/s Dipti Builders, the development rights therein were agreed to be sold by the assessee for consideration of Rs.16.11 crores. M/s Dipti Builders had also agreed to construct 18000 sq.ft. of carpet area for the benefit of the assessee on plot No. 256 which was admeasuring 3899.4 sq.mtrs. In the return of income filed for the year under consideration, capital gain arising from sale of plot No. 257 was computed and offered by the assessee by taking into account the consideration of Rs.16.11 crores. The constructed area of 18,000 sq.ft. was not taken into account while offering the capital gain. During the course of assessment proceedings, the assessee was called upon by the AO to explain why the market value of the constructed area of 18,000 sq.ft. should not be taken as part of consideration for sale of plot. In reply, it was submitted on behalf of the assessee that before M/s Dipti Builders could start the development/construction work, the entire property comprising of plot No. 256 and 257 was sold to a third party M/s Financial Technologies Ltd. by a tripartite conveyance deed executed on 5th July, 2007 for a total consideration of Rs.29.11 crores. It was submitted that the assessee thus never received the constructed area of 18,000 sq.ft. and whatever was received as additional consideration of Rs.13 crores (29.11 crores - 16.11 crores) was offered to tax in assessment year 2008-09 as capital gain arising as a result of conveyance deed executed on 5th July, 2007. It was contended that the constructed area of 18,000 sq.ft. thus could not be considered as part of sale consideration for computing the capital gain chargeable to tax in assessment year 2007-08 as the same was not actually received by the assessee.

4. The explanation offered by the assessee on this issue was not found acceptable by the AO. According to him, as a result of development agreement entered into by the assessee with M/s Dipti Builders, there was a transfer of property within the meaning of section 2(47)(v) of the Income-tax Act read with section 53A of the Transfer of Property Act in the year under consideration and the capital gain arising from the said transfer chargeable to tax was liable to be computed taking into consideration the sum of Rs.16.11 crores as well as the market value of constructed area of 18,000 sq.ft. For this conclusion, he relied on the decision of Hon'ble Bombay High Court in the case Chaturbhuj Dwarkadas. Kapadia of Bombay v. CIT [2003] [260 ITR 491](https://www.taxmann.com/fileopen.aspx?id=101010000000018425&source=link)/ [129 Taxman 497](https://www.taxmann.com/fileopen.aspx?id=101010000000018425&source=link) . Accordingly, the market value of 18,000 sq.ft. of commercial area was worked out by him at Rs.9,51,50,500/- as per the prevailing rate given in the ready reckoner and addition to that extent was made by him to the total income of the assessee on account of long term capital gain.

5. The addition made by the AO of Rs.9.51 crores on account of capital gain was challenged by the assessee in an appeal filed before the learned CIT(Appeals). It was submitted on behalf of the assessee company before the learned CIT(Appeals) that the consideration against development rights of plot No. 257 agreed to be paid by M/s Dipti Builders was a sum of Rs.16.11 crores and the construction of 18,000 sq.ft. free of cost. It was submitted that although the sum of Rs.16.11 crores was duly paid by M/s Dipti Builders to the assessee, the construction to be done by M/s Dipti Builders on plot No. 256 belonging to the assessee never happened. It was contended that the consideration to that extent thus was neither received nor accrued to the assessee and there was no question of taking into account the said consideration not received by the assessee for the purpose of computing capital gain. It was submitted that immediately within the period of 13 months from the development agreement entered into with M/s Dipti Builders, a tripartite conveyance deed was executed on 5th July, 2007 between the assessee, M/s Dipti Builders and M/s Financial Technologies Ltd. whereby entire property comprising of plot Nos. 256 and 257 was sold and conveyed to M/s Financial Technologies Ltd. for total consideration of Rs.29.11 crores. It was contended that the additional consideration received by the assessee in the monetary terms as a result of the said transfer of property was duly offered by the assessee to tax in assessment year 2008-09. It was contended that the net effect of this subsequent conveyance deed executed on 5th July, 2007 is that the earlier development agreement dated 16th June. 2006 stood modified and the consideration in the form of free of cost construction of 18,000 sq..ft. was cancelled. It was contended that no income on account of the said consideration thus accrued or arose to the assessee in real terms. It was also contended that the entire consideration finally received by the assessee on transfer of its property i.e. plot No. 256 and 257, in any case, was offered to tax in assessment years 2007-08 and 2008-09 resulting no loss to the Revenue on this count. Without prejudice to this main contention and as an alternative, it was also submitted on behalf of the assessee that the market value of 18,000 sq.ft. constructed area adopted by the AO at Rs.9.51 crores on the basis of ready reckoner rates was not correct as the construction of 18,000 sq.ft. was to be made by M/s Dipti Builders on plot No. 256 which was belonging to the assessee. It was contended that the role of the developer in so far as the construction of this area is concerned, was that of a mere contractor who had agreed to construct area of 18,000 sq.f. free of cost on the plot of land already owned by the assessee. It was contended that the value of this benefit thus at best could be construction cost that was to be incurred by M/s Dipti Builders which he had agreed to bear. It was contended that the said benefit in the form of construction of 18,000 sq.ft. free of cost, however, was never received by the assessee and the same, therefore, could not be subjected to tax in the hands of the assessee. In support of this contention, reference was made by the assessee to the doctrine of real income. It was contended that the position in this regard is well settled that subsequent events, developments or modifications in the terms of an agreement can be taken into consideration to determine the accrual and taxability of income. In support of this contention, reliance was placed on behalf of the assessee, inter alia, on the following judicial pronouncements :

(i) Kalpataru Construction Overseas (P.) Ltd. v. Dy. CIT [2007] [13 SOT 194](https://www.taxmann.com/fileopen.aspx?id=101010000000075058&source=link) (Mum.).

(ii) CIT v. Shoorji Vallabhdas & Co. [1962] [46 ITR 144](https://www.taxmann.com/fileopen.aspx?id=101010000000078717&source=link) (SC)

(iii) CIT v. Birla Gwalior (P.) Ltd. [1973] [89 ITR 266](https://www.taxmann.com/fileopen.aspx?id=101010000000078536&source=link) (SC)

(iv) Godhra Electricity Co. Ltd. v. CIT [1997] [225 ITR 746](https://www.taxmann.com/fileopen.aspx?id=101010000000080807&source=link) / [91 Taxman 351](https://www.taxmann.com/fileopen.aspx?id=101010000000080807&source=link) (SC).

(v) J.H. Doshi v. CIT [1995] [212 ITR 211](https://www.taxmann.com/fileopen.aspx?id=101010000000019198&source=link)/ [79 Taxman 392](https://www.taxmann.com/fileopen.aspx?id=101010000000019198&source=link) (Bom.).

(vi) CIT v. Shivsagar Estates (AOP) [1993] [204 ITR 1](https://www.taxmann.com/fileopen.aspx?id=101010000000016606&source=link) (Bom.).

6. After considering the submissions made by the assessee as well as the material available on record, the learned CIT(Appeals) did not find merit in the stand taken by the assessee that consideration in the form of constructed area of 18,000 sq.ft. to be given to the assessee by M/s Dipti Builders as per the development agreement had not accrued in the year under consideration. Relying on the decision of Hon'ble Bombay High Court in the case of Chaturbhuj Dwarkadas Kapadia of Bombay (supra), he held that there was a transfer of property i.e. plot No. 257 as a result of development agreement entered into by the assessee with M/s Dipti Builders giving rise to capital gain. He held that the said development agreement was not only executed but also acted upon by both the parties and, therefore, the consideration as agreed in terms of the said development agreement was chargeable to tax in the year under consideration in which there was a transfer of property. He held that constructed area of 18,000 sq.ft. to be built by M/s Dipti Builders for the benefit of the assessee free of cost was integral part of the said consideration. He, however, agreed with the alternative plea of the assessee that only the cost of construction of 18,000 sq.ft. should be taken as consideration and not the market value of 18,000 sq.ft. as taken by the AO on the basis of ready reckoner rates meant for stamp duty purposes. Accordingly, relying on the report of the Government approved valuer, he adopted the cost of construction of 18,000 sq.ft. at Rs.2,17,88,000/- and restricted the addition made by the AO on this issue to the income of the assessee to Rs.2,17,88,000/-.

7. The learned counsel for the assessee submitted that the constructed area of 18,000 sq.ft. as agreed to be given by M/s Dipti Builders as per the development agreement was never received by the assessee as a result of subsequent events that took place. He contended that consideration to that extent thus did not accrue to the assessee as a result subsequent events culminating into tripartite conveyance deed executed in July, 2007. He contended that the said conveyance deed executed subsequently modified the consideration originally agreed and this modification has to be taken into account to ascertain the income accrued to the assessee on account of capital gain. In support of this contention, he relied on the decision of the Tribunal in the case of Bio Pharma v. ITO [2006] [5 SOT 478](https://www.taxmann.com/fileopen.aspx?id=101010000000058007&source=link) (Ahd) (page 40 of the paper book) and in the case of Kalpataru Construction Overseas (P.) Ltd. (supra) (Page 135 of the paper – page 207 relevant.). He also relied on the decision of Hon'ble Bombay High Court in the case of CIT v. Smt. Shakuntala Kantilal [1991] [190 ITR 56](https://www.taxmann.com/fileopen.aspx?id=101010000000018944&source=link) / [58 Taxman 106](https://www.taxmann.com/fileopen.aspx?id=101010000000018944&source=link) to contend that the modification in the consideration as per subsequent conveyance deed relates back to the date of original development agreement. He then referred to the submissions made before the learned CIT(Appeals) in writing on the aspect of real income theory (page 6 of the paper book) and strongly relied on the same. He contended that real income theory applicable for ascertaining accrual of income also as held by Hon'ble Bombay High Court in the case of Shivsagar Estate (AOP) (supra ).

8. The learned DR, on the other hand, strongly supported the impugned order of the learned CIT(Appeals) in support of the Revenue's case on this issue. He submitted that all the judicial pronouncements cited by the learned counsel for the assessee in support of the assessee's case on this issue are distinguishable on facts. He submitted that for instance, in the case of Kalpataru Construction Overseas (P) Ltd. (supra), consideration was modified due to certain specific reasons which is not the case of the assessee. He submitted that similarly in the case of Bio Pharma (supra), consideration was reduced as a result of intervention of the Court under legal compulsion whereas in the case of the assessee the consideration was modified voluntarily without any such compulsion.

9. The learned DR relied on the decision of Hon'ble Calcutta High Court in the case of CIT v. Smt. Bharati C. Kothari [2000] [244 ITR 352](https://www.taxmann.com/fileopen.aspx?id=101010000000023819&source=link)/[2001] [117 Taxman 538](https://www.taxmann.com/fileopen.aspx?id=101010000000023819&source=link) as well as that of Mumbai Bench of ITAT in the case of Asstt. CIT v. Vidhata Textiles (P.) Ltd. [1999] [70 ITD 357](https://www.taxmann.com/fileopen.aspx?id=101010000000073992&source=link) to contend that consideration modified subsequently will not have any bearing on computation of capital gain. He also relied on the decision of Hon'ble Delhi High court in the case of Saraswati Insurance Co. Ltd. v. CIT [2001] [252 ITR 430](https://www.taxmann.com/fileopen.aspx?id=101010000000029114&source=link)/ [116 Taxman 306](https://www.taxmann.com/fileopen.aspx?id=101010000000029114&source=link) to contend that subsequent events are not relevant to ascertain the accrual of income. The learned DR submitted that capital gain in the present case had arisen in the year under consideration as a result of transfer of plot No. 257 by the assessee to M/s Dipti Builders on execution of development agreement as held by Hon'ble Bombay High Court in the case of Chaturbhuj Dwarkadas Kapadia of Bombay (supra) and the same was required to be computed on the basis of consideration agreed upon in terms of the said development agreement as rightly held by the AO as well as by the learned CIT(Appeals).

10. We have considered the rival submissions and also perused the relevant material on record. It is observed that the development rights in the property i.e. plot of land No. 257 owned by the assessee were agreed to be sold to M/s Dipti Builders as per the development agreement dated 16-06-2006 for a total consideration of Rs.16.11 crores and construction of 18,000 sq.ft. free of cost. The said construction was to be done by M/s Dipti Builders on another plot of land bearing No. 256 owned by the assessee. In the return of income filed for the year under consideration, capital gain arising from this transaction was offered by the assessee by taking into consideration the sale consideration of Rs.16.11 crores only and the area of 18,000 sq.ft. to be constructed by M/s Dipti Developers free of cost was not taken into account on the ground that the consideration in this form was never received by it as a result of tripartite agreement executed on 5th July, 2007 whereby the entire property comprising plot No. 256 and 257 was sold to a third party. As per the said tripartite agreement, consideration of Rs.13 crores was additionally received by the assessee and the capital gain arising from the said transaction was offered to tax in assessment year 2008-09. According to the assessee, the terms of development agreement with M/s Dipti Builders thus had got modified to the effect that consideration only to the extent of Rs.16.11 crores was actually received in monetary terms and the constructed area of 18,000 sq.ft. was never received. According to the assessee, the consideration in the form of constructed area of 18,000 sq.ft. thus was neither received nor accrued as per the real income theory and there was no question of any capital gain resulting from the said consideration.

11. The AO as well as the learned CIT(Appeals), however, did not accept the stand of the assessee on this issue based on real income theory. They held that there was a transfer of property bearing Plot of land No. 257 by the assessee on execution of development agreement with M/s Dipti builders in the year under consideration and capital gain arising from the said transfer was required to be computed taking into account the entire consideration as agreed in terms of the development agreement including the area of 18,000 sq.ft. In support of this stand, they have relied on the decision of Hon'ble Bombay High Court in the case of Chaturbhuj Dwarkadas Kapadia of Bombay (supra). A perusal of the judgment of Hon'ble Bombay High Court in the said case, however, shows that the issue involved therein was whether the assessee had transferred the property owned by him during the relevant previous year as a result of development agreement whereby complete control over the property was transferred by the assessee in favour of the developer giving rise to capital gains chargeable to tax. In the present case, the issue involved, however, is different inasmuch as the assessee has not disputed at any stage that there was a transfer of property as a result of development agreement entered into with M/s Dipti Builders giving rise to capital gain chargeable to tax in the year under consideration. As a matter of fact, the assessee has offered such capital gain to tax in the return of income filed for the year under consideration and the only dispute is relating to the exact quantum of sale consideration that is to be taken for the purpose of computing such capital gain. According to the assessee, although the total consideration as agreed in terms of development agreement was Rs.16.11 crores in monetary terms and constructed area of 18,000 sq.ft. free of cost, what has been finally received by it is only the monetary consideration to the tune of Rs.16.11 crores. The balance consideration in the form of constructed area of 18,000 sq.ft. was never actually received by it as a result of subsequent developments/events whereby the entire property owned by the assessee comprising of plot No. 256 and 257 was sold to a third party. The question, therefore, is what exactly is the consideration to be taken into account while computing the capital gain arising as a result of transfer of property of the assessee by way of development agreement entered into with M/s Dipti Builders in the year under consideration.

12. The provisions relating to computation of income from capital gains are contained in Chapter IV of the Income-tax Act, 1961. Section 45 of the said Chapter is a charging provision which provides that any profits or gains arising from a transfer of the capital assets effected in the previous year shall, save as otherwise provided in other sections, 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. Section 48 gives a mode of computation of capital gains and provides that the income chargeable under the head "Capital gains" shall be computed after allowing certain deductions from the full value of the consideration received or accruing as a result of the transfer of the capital asset. The question that arises for our consideration in the present case is what exactly is the full value of the consideration received or accruing to the assessee as a result of the transfer of the capital asset by the development agreement entered into with M/s Dipti Builders during the year under consideration. The claim of the assessee is that the consideration in the form of constructed area of 18,000 sq.ft. as stated in the development agreement having not been actually received by it, the same cannot be taken into account for computing the capital gains. It has been pleaded on behalf of the assessee that no such area having been actually constructed or handed over to it by M/s Dipti Builders as a result of subsequent events/developments, the consideration in the form of constructed area never accrued to it.

The stand of the Department is that the total consideration including the value of constructed area as agreed to be given to the assessee by M/s Dipti Builders in terms of the agreement had accrued to the assessee in the year under consideration and the same, therefore, was to be taken into account for computing the capital gains irrespective of the subsequent events/developments which are not relevant in this context.