Pr. Commissioner of Income Tax-1 v. M/s. Ansal Properties and Infrastructure Limited

ITA 194/2023 (CM APPL. 15570-71/2023)

2023:DHC:2697-DB; ITA 194/2023 | 2023-03-29

Section 47(iv): surplus on transfer of capital work-in-progress to wholly owned Indian subsidiary remains outside capital-gains charge despite inclusion in return.

Income-tax Act, 1961: 45, 47(iv)

High Court of Delhi | Division Bench | Rajiv Shakdher, J. | Tara Vitasta Ganju, J.

Assessment years: 2012-13

01 FACTS OF THE CASE

For AY 2012-13, transfer of trunk infrastructure, including roads, to wholly owned Indian subsidiary Ansal API Infrastructure Ltd. generated Rs.70,05,71,000 surplus. The taxpayer included it in its return with an explanatory note but claimed section 47(iv) relief. CIT(A)'s 27 November 2014 order rejected the claim because the assets were employed in its real-estate business. ITAT reversed on 16 July 2021; Revenue appealed.

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02 DISCUSSION BY THE HON'BLE COURT

The Court distinguished capital assets from trading assets even when both are used in business. The trunk infrastructure was capital work-in-progress. Whole ownership and the subsidiary's Indian status were undisputed, satisfying the recorded section 47(iv) conditions. Revenue's objection that the surplus was offered in the return failed: the return contained a caveat and an inadvertent offer cannot make an otherwise non-taxable receipt chargeable.

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03 JUDICIAL DECISION

No substantial question of law arose and Revenue's appeal was closed without interference with ITAT's order. The 200-day filing delay was separately condoned.

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04 OUTCOME / IN WHOSE FAVOUR

The section 47(iv) relief for this capital-asset transfer survived. The Court did not decide tax consequences of a transfer of trading stock, partial subsidiary ownership or later changes in the relevant circumstances.

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05 EXPERT COMMENTS

AKHB EXPERT COMMENTS — editorial analysis, distinct from the Court's findings.

Business use does not settle capital versus trading character — CIT(A)'s reasoning treated use in the developer's business as sufficient for taxability. The Court rejected that shortcut because a business can employ both capital and trading assets, and it accepted this infrastructure as capital work-in-progress. Comparable reliance requires evidence of asset character; merely transferring an asset used in business does not reproduce the finding.

The subsidiary conditions are factual prerequisites — The Court identified complete share ownership by the parent or nominees and Indian-company status, and recorded no dispute over their fulfilment. Ownership records and the transferee's status therefore form part of the basis for applying the decision. The ruling supplies no general exemption for every intra-group transfer or for a merely controlling shareholding.

A return entry does not create the charge, but the caveat mattered — The Court relied both on the explanatory note and the principle that an inadvertent offer cannot tax a receipt outside the statutory charge. This supports examination of the legal character despite the return entry. It does not dispense with proof of section 47(iv) conditions or decide every procedural route for a later claim; the actual context was appellate relief on a disclosed transfer.

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SOURCE & VERIFICATION

High Court of Delhi source judgment/order

Complete 5-page source PDF; corrected note based on this document.

All 5 original pages read and visually inspected; all five panels audited.

Open cited source rendition

All five original pages read and visually inspected; statutory conditions and disclosed return caveat retained.

STATUTORY SCOPE

Source-era statutory provisions only; no Income-tax Act, 2025 equivalence asserted.

LATER TREATMENT

Source checked 2026-10-21. Subsequent treatment has not been independently verified.

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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