

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI
BEFORE SHRI R.C. SHARMA, AM AND SHRI RAVISH SOOD, JM**

आयकर अपील सं./I.T.A. No.5697/Mum/2014

(निर्धारण वर्ष / Assessment Year: 2011-12,)

AFL Private Limited AFL House, Lok Bharati Complex, Marol Maroshi Road, Andheri (E), Mumbai- 400 059.	बनाम/ Vs.	The ACIT, Central Circle 13 10 th Floor, CGO Building, Mumbai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.		AABCA2213P
(अपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri Nitesh Joshi & Sunil S. Jhunjhunwala.
प्रत्यर्थी की ओर से/ Respondent by	:	Shri. Saurabh Kumar, Sr. A.R

सुनवाई की तारीख/ Date of Hearing	:	10/02/2017
घोषणा की तारीख/ Date of Pronouncement	:	17/02/2017.

आदेश / O R D E R

PER RAVISH SOOD, JM:

The present appeal arises from the order of the CIT(A)-37, dated. 01.07.2014, which in turn arises from the order passed by the A.O u/s 143(3) of the Income-tax act, 1961 (for short 'Act'), dated. 13.12.2013. The assessee assailing the order of the CIT(A) had carried the matter in appeal before us, therein raising the following grounds of appeal:-

"Grounds of Appeal:

(The Grounds of Appeal stated herein below are without prejudice to each other)

- 1) *The learned Commissioner of Income Tax (Appeals) erred in confirming disallowance of additional amount of Rs.47,90,000/- (Rs.49,90,000/- less Rs.2,00,000/-) u/s 14 A of the Act.*
- 2) *The learned Commissioner of Income Tax (Appeals) erred in confirming the re-computation of disallowance under section 14A of the Act by invoking the provisions of Rule 8D. He failed to appreciate that the pre-conditions necessary for invoking the provisions of Rule 8-D has not been fulfilled in its case.*
- 3) *The appellants submit that the disallowance computed u/s 14A is excessive and unreasonable.*
- 4) *The learned Commissioner of Income Tax (Appeals) erred in confirming addition of excess of liabilities over assets of the two divisions to sale consideration for the purposes of computation of Long Term Capital Gains.*
- 5) *The learned Commissioner of Income Tax (Appeals) erred in confirming re-computation of Long Term Capital Gain on sale of two divisions at Rs.244,21,16,734/- instead of Rs,132,34,03,976/- offered by the Appellant in its computation of income.*

6) *The Appellants crave leave, to alter, amend and/or add any other ground of appeal.”*

2. Briefly stated, the facts of the case are that the assessee company which is engaged in the business of courier service, money transfer, domestic surface distribution, freight forwarding, carting financial and forex services, had e-filed its return of income as on 30/09/11 declaring income of Rs.32,33,94,350/-, which was revised as on 21/03/2013 at Rs.31,98,33,844/-. The return of income of the assessee was processed as such u/s 143(1) of the Income tax act, 1961 (for short ‘Act’). The case of the assessee was thereafter taken up for scrutiny proceeding u/s 143(2) of the ‘Act’. The A.O during the course of the assessment proceedings not finding favor with the *suo motto* disallowance of Rs. 2 lac carried out by the assessee u/s 14A in its return of income, therein recomputed the disallowance u/s 14A r.w Rule 8D at Rs. 49,90,000/-, as under:-

“(Amount in lacs)

Particulars	Rs.	Rs.
Disallowance under Section(i)		
Disallowance under Section (ii)		
A. Amount of interest	437.54	
B. Average Value of Investments		
Value of investments as on 31.03.2010	2655.30	
Value of investments as on 31.03.2011	397.05	
Total	3052.35	
Average value of investments	1526.18	
C. Average Value of Total assets		
Book value as on 31.03.2010	15114.08	
Book value as on 31.03.2011	12099.56	
Total	27213.64	
Average value of total assets	13606.82	
Disallowance under clause (ii) [(A*B)/C]		49.08

<i>Disallowance under clause (iii)</i>		
<i>0.5% of the average value of Investments</i>		0.82
<i>Total Disallowance (i)+(ii)+(iii)</i>		49.90''

, and thus made a consequential addition of Rs.47.90 lacs over and above Rs.2,00,000/ offered as disallowance by the assessee.

3. The A.O during the course of the assessment proceedings observed that the assessee company which had in its return of income shown capital gain of Rs.132,34,03,976/- on account of slump sale of business of logistics and domestic courier division to M/s FedEx Express Transportation and supply chain service (India) Pvt. Ltd, had though while computing the income under Sec. 50B, worked out the 'net worth' of the divisions at (-)Rs.111,87,12,758/-, but thereafter taking support from the order of the Tribunal in the case of : **Zuari Industries Ltd. Vs. ACIT (2007) 105 ITD 569 (Mum)** had taken the cost of the two divisions at Rs. NIL. The A.O however being of the view that the ITAT order in the case of : Zuari Industries Ltd. (supra) did no longer hold the ground, as the '**Special Bench**' of the Tribunal in the case of **DC1T vs. Summit Securities Ltd. (2012) 135 ITD 0099 (SB)** had held that the Negative figure of 'net worth' cannot be ignored for working out the capital gains in case of slump sale under Sec. 50B of the 'Act', and as such would be required to be added to the sale consideration for determining the capital gains, thus did not find favor with the computation of capital gain by the assessee company. The A.O in the backdrop of his aforesaid conviction, thus declined to accept the working of the capital gain by the assessee, wherein the latter had taken the 'net worth' of the divisions at Rs. Nil, despite the fact that the same was computed at (-) Rs. 111,87,12,758/-, and thus going

by the order of the '**Special bench**' in the case of : **Summit Securities Ltd. (supra)**, therein recomputed the capital gain in the hands of the assessee at Rs. 244,21,16,734/- (i.e Rs. 132,34,03,976/- (+) Rs. 111,87,12,758/-).The A.O thereafter deliberating on certain other issues, therein assessed the income of the assessee at Rs. 145,49,93,242/-(i.e after giving effect to the B/forward unabsorbed depreciation for earlier years).

4. The assessee assailed the assessment order before the CIT(A), who though partly allowed the appeal of the assessee but upheld the computation of the disallowance u/s 14A r.w Rule 8D by the A.O at Rs. 49,90,000/-, therein leading to sustaining of the consequential addition of Rs.47.90 lacs over and above the disallowance of Rs.2,00,000/- offered by the assessee in its return of income. That still further the CIT(A) being of the view that the recomputing of the capital gain by the A.O was in conformity with the order of the 'Special bench' of the Tribunal in the case of **DC1T vs. Summit Securities Ltd. (2012) 135 ITD 0099 (SB)**, thus finding no reason to dislodge the same, therefore also upheld the computation of the capital gain by the A.O.

5. The assessee being aggrieved with the order of the CIT(A) had therein carried the matter in appeal before us. That at the very outset of the hearing of the appeal the Ld. Authorized representative (for short 'A.R') for the assessee adverting to the 'Ground of appeal No. 5' & 'Ground of appeal No. 6', therein assailed the order of the CIT(A) who had upheld the recomputation of the capital gain by the A.O at Rs. 244,21,16,734/-, as against Rs. 132,34,03,976/- reflected by the assessee in its return of income. That however during the course of hearing of the appeal the Ld. A.R very fairly assisted the bench and therein submitted that the issue under

consideration, viz. the treatment to be accorded to a Negative figure of 'net worth' for working out the capital gains in case of slump sale under Sec. 50B of the 'Act' was covered against the assessee by the order of the '**Special bench**' of the Tribunal in the case of : **DC1T vs. Summit Securities Ltd. (2012) 135 ITD 0099 (SB)**. The Ld. A.R assailing the order of the CIT(A) therein submitted that the computation of the capital gain by the assessee did not suffer from any infirmity and the authorities below had erroneously dislodged the same by misconstruing the scope and the gamut of mode of computation as stood contemplated under Sec. 50B of the 'Act'. The Ld. A.R further submitted that the order of the 'Special bench' of the Tribunal in the case of : Summit Securities Ltd. (supra) which had weighed in the mind of the lower authorities for dislodging the computation of the capital gain as stood reflected in the return of income of the assessee had not attained finality and had been assailed before the **Hon'ble High Court**, which as on date was pending adjudication. That on the other hand the Ld. Departmental representative (for short 'D.R') heavily relied on the orders of the lower authorities and therein averred that the A.O following the order of the 'Special bench' of the Tribunal in the case of : Summit Securities Ltd. (supra) had rightly recomputed the capital gain in the hands of the assessee, and the CIT(A) finding no infirmity in the order of the A.O, had as such rightly dismissed the appeal of the assessee. It was thus submitted by the Ld. D.R that the appeal of the assessee was squarely covered by the 'Special bench' of the Tribunal, and thus being devoid of any merits was liable to be dismissed.

6. We have heard the Ld. Representatives of both the parties, perused the orders of the lower authorities and the material

produced before us. We have given a thoughtful consideration to the facts of the case and are of the considered view that the issue involved in the present appeal, viz. the treatment to be accorded to a Negative figure of 'net worth' for working out the capital gains in case of slump sale under Sec. 50B of the 'Act' had been adjudicated upon by the '**Special bench**' of the Tribunal in the case of : **DC1T vs. Summit Securities Ltd. (2012) 135 ITD 0099 (SB)**, wherein the Tribunal after deliberating on the manifold contentions put forth before it in context of the issue under consideration, had therein held as under:-

“In view of the detailed discussion made above, we are with utmost respect unable to concur with the view expressed by the Mumbai Bench of the Tribunal in the case of Zuari Industries Ltd. (supra) and Delhi Bench of the Tribunal in the case of Paper Base Co. Ltd. (supra). Thus the question referred to the Special Bench is answered in negative by holding that the Assessing Officer was not right in adding the amount of liabilities being reflected in the negative net worth ascertained by the auditors of the assessee to the sale consideration for determining the capital gains on account of slump sale. However, we allow ground no.2 raised by the Revenue in its appeal by holding that the CIT(A) was not correct in coming to the conclusion that the negative figure of the net worth of Rs.157 crore should be ignored for working out the capital gains in case of a slump sale. The summary of our conclusion is that the amount of 'Net worth' will be a negative figure of Rs.157 crore and not Zero. Resultantly the amount of capital gain chargeable to tax will be Rs.300 crore and not Rs.143 crore as declared by the assessee.”

We have perused the aforesaid order of the 'Special bench' of the Tribunal in the case of Summit Securities Ltd. (supra), and in the absence of any 'material' being placed on our record which could persuade us to conclude that the facts involved in the present appeal were in any way distinguishable as against the facts involved in the case before the 'Special bench', are thus unable to subscribe to the contention of the Ld. A.R who had assailed the dislodging of the computation of the capital gain by the lower authorities. We are of the considered view that as the issue involved in the present case before us is squarely covered against the assessee by the order of the 'Special bench' in the case of Summit Securities Ltd. (supra), therefore we are unable to accept the contentions of the Ld. A.R. who had assailed before us the recomputation of the capital gain by the lower authorities. That in the backdrop of our aforesaid observations, as no infirmity emerges from the order of the CIT(A) on the issue under consideration before us, we therefore uphold the order of the first appellate authority to the said extent and dismiss the 'Ground of appeal No.5' and 'Ground of appeal No. 6' raised before us.

7. The Ld. A.R adverting to the 'Ground of appeal Nos. 1 to 3', had at the very outset submitted that the issue pertaining to disallowance under Sec. 14A r.w Rule 8D had earlier come up before a coordinate bench of the Tribunal in the assessee's own appeal for A.Y. 2008-09, titled as : **AFL Private Limited Vs. ACIT, Mumbai (ITA No. 3123/Mum/2011; dated. 14.08.2013)** (Copy placed on record), wherein the Tribunal observing that as the interest bearing borrowed funds of the assessee had already been utilized for the specified purpose for which they had been availed,

had thus restored the matter to the file of the A.O for making necessary verifications, by observing as under:-

“ 6.7 So however, a mere browse of the assesses balance sheet for the relevant year end (PB pgs. 4-16), reveals term loans (from banks) at Rs. 2864.87 lacs and working capital advances (from banks) at Rs. 1401.12 lacs. The corresponding year end balances of fixed assets (net of depreciation) and net current assets are at Rs. 5237.52 lacs and Rs. 3328.29 lacs respectively, signifying complete absorption of the borrowed funds for the specified purposes, i.e, for which they stand contractually availed. The assessee, therefore, in our view, has a strong prima facie case of entire bank borrowings being applied for the respective purposes, so that no part thereof could be said to have been invested in relevant securities yielding tax-free income. If so, no part of the interest expenditure thereon could be attributed to the said investments on the assumption of the same comprising the general pool of funds. The matter, accordingly, is to be restored to the file of the A.O, who shall confirm the utilization of the borrowed funds for the specified purposes for the entire year, returning a finding in the matter.”

We have been informed by the Ld. A.R that the A.O giving effect to the directions of the Tribunal, had vide his order passed u/s. 143(3) r.w Sec. 254 of the ‘Act’, dated. 31.03.2015, had therein held that the interest bearing loan funds had been utilized by the assessee for the purpose of its business and no part of it was utilized towards purchase of investments yielding tax free income. In the backdrop of the aforesaid observations of the A.O, it was thus averred by the Ld. A.R that now when the year under consideration, viz. A.Y. 2011-

12 had witnessed reduction of the secured loans to Rs. Nil, as in comparison to A.Y. 2008-09 wherein it stood reflected at Rs. 4,265.99 lacs, and no interest bearing borrowings during the year under consideration were made for purchase of investments yielding tax free income, therefore no disallowance of any part of the interest was called for in the hands of the assessee company under Sec. 14A of the 'Act'. That on the other hand the Ld. D.R supported the orders of the lower authorities.

8. We have heard the Ld. Authorized representatives for both the parties, perused the orders of the lower authorities and the material produced before us. We have given a thoughtful consideration to the facts of the case and find substantial force in the contention of the Ld. A.R that after the case of the assessee company for A.Y. 2008-09 was restored to the file of the A.O, the latter had vide his order passed u/s 143(3) r.w Sec. 254, dated. 31.03.2015, had returned a finding that as the interest bearing loan funds had been utilized by the assessee for the purpose of its business and no part of it was utilized towards purchase of investments yielding tax free income, therefore no disallowance u/s 14A in respect of the interest paid was called for in the hands of the assessee. We thus in the backdrop of the aforesaid facts, keeping in view the very fact that the year under consideration, viz. A.Y. 2011-12 had witnessed reduction of the secured loans to Rs. Nil as in comparison to A.Y. 2008-09 wherein it stood reflected at Rs. 4,265.99 lacs, and no fresh interest bearing borrowings were raised during the year for purchase of investments yielding tax free income, therefore are of the considered view that no disallowance of any part of the interest charges was called for in the hands of the assessee under Sec. 14A of the 'Act'. We thus in light of our aforesaid observations herein

vacate the addition of Rs.47.90 lacs over and above Rs.2,00,000/- offered as disallowance by the assessee in its return of income, and consequent thereto allow the 'Ground of appeal No. 1 to 3', and delete the disallowance of Rs. 47.90 lacs which had been assailed by the assessee before us.

5. The appeal of the assessee is partly allowed in terms of our aforesaid observations.

Order pronounced in the open court on 17/02/2017.

Sd/-
(R.C Sharma)

Sd/-
(Ravish Sood)

लेखा सदस्य/Accountant Member

न्यायिक सदस्य/Judicial Member

मुंबई Mumbai; दिनांक Dated : 17.02.2017

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.
Registrar)**

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

