

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “B” BENCH: HYDERABAD

BEFORE SHRI D. MANMOHAN, VICE PRESIDENT AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA. No.874/Hyd/2016
Assessment Year: 2005-2006

Navabharat Enterprises Limited, Hyderabad. PAN: AACN 6936 D (Appellant)	vs.	DCIT, Circle-16(1), IT Towers, Hyderabad. (Respondent)
---	-----	---

For Assessee:	Shri N. Venkataram
For Revenue :	Smt. Dr. Divya K.J - DR

Date of Hearing :	10.01.2018
Date of Pronouncement :	10.01.2018

ORDER

PER D. MANMOHAN, VP.

This appeal by the assessee is directed against the order passed by Ld. CIT(A)-4, Hyderabad and it pertains to Assessment Year 2005-06.

2. Facts in brief are that assessee-company is engaged in the business of ‘export of tobacco’ and declared loss of Rs. 9.78 Crs for the year under consideration whereas assessment was completed by determining the loss at Rs. 3,43,62,633/-.

3. A.O. noticed that the assessee entered into an agreement with Instring Technology Private Limited for transfer of RCC house together with 1.95 acres of land for a consideration of Rs. 14,51,780/-. Assessee received part consideration and has also given possession of the

property. Since the assessee has not declared short term capital gains on that, in the proceedings u/s 147 of the Act, the A.O. issued a show cause notice as to why the same should not be brought to tax.

4. Similarly the A.O. was of the opinion that the assessee gained an amount of Rs. 1.75 Crs towards one time settlement of loan with Union Bank of India and Vijaya Bank which is in the form of remission of interest liability, allowable for deduction, and the assessee having not declared the same in its return of income, the same amounts to 'escapement of income'.

5. Assessee in its reply submitted that the interest was not claimed as deduction in the earlier years and hence the question of application of section 41(1) does not arise. A.O. rejected the contention on the ground that the assessee is duty bound to furnish details of the fact that interest was not claimed as deduction in the earlier years.

6. During the course of assessment proceedings, A.O. noticed that the assessee sold certain depreciable assets and admitted long term capital loss whereas it is a transaction coming within the provisions of section 50(1) of the Income Tax Act, 1961. He was also of the opinion that the assessee still continues to be in the business and what has been transferred is only a part of the assets and thus it cannot be treated as 'slump sale' u/s 51B of the Act.

7. In response, the assessee submitted that it had sold an entire tobacco unit which is an undertaking by itself and hence, the provisions of section 50B comes into play. Elaborating further, it was submitted that in order to seek the benefit of section 50B, it is not necessary to transfer the entire undertaking so long as an unit as such is transferred.

8. A.O. observed that in the assets schedule, few assets still remain with the assessee and hence it cannot be treated as a transfer of the entire business. Assessee has never admitted any income from the tobacco unit separately and has been showing consolidated revenues. Further, the assessee has not demonstrated as to how the assets transferred relate to the tobacco unit, since it has not maintained any separate books with regard to the undertaking which goes to show that only a part of the assessee's business was sold, thus he invoked the provisions of section 50B of the Act to compute the capital gains.

9. On an appeal filed by the assessee on both the issues, Ld. CIT(A) affirmed the action of the A.O. It may be noted that the case of the assessee was that it has not provided any interest in the books and it has never claimed any expenditure in the previous years in which event at the time of one-time settlement with the banks, the same cannot be brought to tax u/s 41(1) of the Act. It was also stated that the factual matrix, explained to the Assessing Officer, was not properly taken cognisance of. Despite that, Ld. CIT(A) confirmed the action of the AO without giving any reasons. In fact there is no discussion by the Ld. CIT(A) on both the issues. It was a non-speaking order passed by the Ld. CIT(A). Similarly with regard to the claim of slump sale there was no discussion in the order of the Ld. CIT(A) while confirming the action of the A.O. Thus the assessee is in appeal before the Tribunal on two grounds i.e., invoking the provisions of section 41(1) of the Act is bad in law and the A.O. erred in not taking into consideration the plea of applicability of section 50B instead of section 50(1) of the Act.

10. Ld Counsel for the assessee filed a detailed paper book to submit that the entire record of the earlier years along with annual reports etc., were placed before the A.O. as well as the Ld. CIT(A) in support of the contention of the assessee-company that the interest was not claimed

as deduction / deducted to Profit & Loss Account in the earlier Financial Years but the same was overlooked by the A.O. as well as the Ld. CIT(A).

11. We have also heard the Learned Departmental Representative and carefully perused the record. Since the facts were placed before the Assessing Officer, the Ld. CIT(A) ought to have considered the same, if not the A.O. Since the order passed by Ld. CIT(A) is not a speaking order, we set aside the order of the Ld. CIT(A) with a direction to reconsider the matter afresh.

12. In the result, appeal filed by the assessee-company is treated as allowed.

Order pronounced in the open court on 10th January, 2018.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Hyderabad, Dated: 10th January, 2018.

OKK, Sr.PS

Copy to

1.	Navabharat Enterprises Limited, 8-2-325, Road No.3, Banjara Hills, Hyderabad.
2.	DCIT 16(1), IT Towers, Hyderabad.
3.	CIT (A)-4, Hyderabad.
4.	Pr. CIT-4, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File