

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
' B' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।  
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.622/CHNY/2017  
निर्धारण वर्ष /Assessment year : 2012-2013.

M/s. T.A. Taylor Private Ltd,  
No.10/5, Royal Enclave,  
Besant Avenue Road,  
Adyar,  
Chennai 600 020.

**Vs.** The Assistant Commissioner of  
Income Tax,  
Corporate Circle 3(1)  
Chennai.

[PAN AACT 4165G]  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri.R. Vijayaraghavan, Advocate  
प्रत्यर्थी की ओर से /Respondent by : Shri. Vijay Kumar Punna,  
Junior Standing Counsel.

सुनवाई की तारीख/Date of Hearing : 18-07-2018  
घोषणा की तारीख /Date of Pronouncement : 19-07-2018

**आदेश / ORDER**

**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

In this appeal filed by the assessee, which is directed against an order dated 31.01.2017 of Commissioner of Income-tax (Appeals)-11, Chennai, it has taken altogether four grounds of which ground No. 1 & 4 are general, needing no specific adjudication.

2. Vide its ground No.2, grievance of the assessee is that entire sale consideration of ₹18,31,00,000/- arising on a slump sale, was taken as income of the impugned assessment year.

3. Ld. Counsel for the assessee submitted that assessee engaged in the business of manufacturing and selling home appliances, had through a slump sale agreement dated 06.04.2011, with one M/s. Preethi Kitchen Appliances Pvt. Ltd, transferred its division at Thazhambur Road, Navalur Village & Post, Kancheepuram along with plant & machinery, furniture & fixtures, computers, inventories etc. As per the Id. Authorised Representative, though the total consideration agreed was ₹18,31,00,000/-, what was received during the previous year relevant to the impugned assessment year was only ₹16,02,00,000/- and the balance sum of ₹2,29,00,000/- was received in subsequent financial year 2012-2013. Further as per the Id. Authorised Representative, assessee had computed capital gains for the impugned assessment year, considering the sum of ₹16,02,00,000/- and the balance sum of ₹2,29,00,000/- was offered in the subsequent assessment year. However, as per the Id. Authorised Representative the Id. Assessing Officer held the date of actual receipt of consideration as irrelevant since the slump sale agreement was entered on 06.04.2011. Accordingly, to Id. Authorised

Representative, the Id. Assessing Officer computed the capital gains for the impugned assessment year taking ₹18,31,00,000/- as the sale consideration.

4. Continuing his submissions, the Id. Authorised Representative, stated that assessee had moved in appeal before Id. Commissioner of Income Tax (Appeals), but did not meet with any success. As per the Id. Authorised Representative, it was pointed out to the Id. Commissioner of Income Tax (Appeals) that assessee had received only ₹16,02,00,000/- during the financial year relevant to impugned assessment year and the balance was kept in Escrow Account as per clause 7 of the slump sale agreement. Further, as per the Id. Authorised Representative, assessee had brought to the attention of the Id. Commissioner of Income Tax (Appeals) the conditions subject to which assessee could encash the amount lying in the escrow account and why the sum of ₹2,29,00,000/- lying in the escrow account could not be considered for levy of capital gains in the impugned assessment year. However, as per the Id. Authorised Representative, Id. Commissioner of Income Tax (Appeals) dismissed all these observing that assessee could not offer any convincing reply for considering the balance consideration of ₹2,29,00,000/- in the subsequent assessment year. Relying on slump sale agreement dated

06.04.2011 placed at paper book pages 1 to 90, Id. Authorised Representative submitted that clause 3, though it mentioned purchase price as ₹18,31,00,000/-, clause 4.8 clearly specified depositing part of the consideration in an escrow account. Contention of the Id. Authorised Representative was that escrow amount could be encashed only if assessee performed its obligations as per slump sale agreement, after setting off claim for breach of seller's warranties and other due compensations arising from various clauses in the slump sale agreement. Placing reliance on the escrow agreement dated 11.04.2011, placed at page book pages 91 to 112, Id. Authorised Representative submitted that release of the escrowed amount, was subject to intimation of the closing date to the escrow agent, in form Schedule I in the agreement. As per the Id. Authorised Representative, Schedule I of the said agreement placed at paper book page 111 clearly indicated that escrow amount would be released by escrow agent only if both seller and purchaser agreed and signed. According to the Id. Authorised Representative, the amount placed in the escrow account had not crystallized as income during the relevant previous year and hence could not be considering for computing the capital gains for the impugned assessment year. Reliance was placed on the judgment of Hon'ble Bombay High Court in the case of *CIT vs. Hemal Raju Shete*, (2016) 136 DTR 417, that of Hon'ble Jurisdictional

High Court in the case of *CIT vs. Motor Credit Co. P. Ltd, (1981)127 ITR 572* and that of Hon'ble Apex Court in the case of *CIT vs. Hindustan Housing and Land Development Trust Ltd, 161 ITR 524*.

5. Per contra, Id. Departmental Representative submitted that slump sale agreement was clear regarding the question of consideration. According to him, just because a part of the consideration was to be released in the subsequent year would not mean that capital gains had to be distributed over various years.

6. We have considered the rival contentions and perused the orders of the authorities below. Slump sale agreement entered by the assessee on 06.04.2011 mentions the consideration at clause 3 thereof. The said clauses is reproduced hereunder:-

### **3 CONSIDERTION:-**

#### **3.1Purchase Price for the Business**

*The purchase price for the, Business (the "Purchase-Price") is INR 18,31.00,000 (Indian Rupees Eighteen crores thirty one lakhs only), provided that the Purchase Price shall be subject to a working Capital adjustment as agreed between the seller and Purchaser.*

#### **3.2Payment on the Closing Date**

*At Closing, Purchaser shall remit the. Purchase Price less the ,Escrow Amount to the bank account designated by the Seller to Purchaser in writing 'at least three Business Days prior to .the 'Closing Date, subject to any adjustments to the Purchase Price agreed to in writing*

*between the Parties.*

**3.3 Closing**

*Closing shall take place at the commencement of business hours on the day immediately following the date of execution of this Agreement In Chennai at the office of the Seller.*

**3.4 Value Added Tax**

*If any VAT becomes chargeable on the sale of any of the Business Assets as a result of the Transaction, such VAT will be borne by Purchaser against del/very 'of' a corresponding VAT' invoice by the Seller to Purchaser.*

**3.5 Adjustment to Purchase Price pursuant, to claims**

*All payments (including interest payments ) made under this agreement by the seller to purchaser or vice versa, shall be made on account of, and where applicable, as adjustment to the purchaser price. The foregoing includes any payment made in respect of any claim (i) for any breach of this agreement (including, for the avoidance of doubt, a breach of a seller's warranty) or any agreement entered into pursuant thereto or (ii) pursuant to an indemnity under this agreement)*

Conditions regarding escrow account as it appears at clause 4.8 of the very same agreement is also reproduced hereunder:-

*'On a date not later than 12 April, 20.11, the Purchaser shall deposit the Escrow Amount into the Escrow Account with the Escrow Agent to be held in the Escrow Account for a period, of 1 (one) year from the, Closing Date (the "Escrow Period"). The. Escrow Amount shall serve as security (without detracting from any other rights of Purchaser) for the due performance by the Seller of Its obligations,' to !De extent of (a) any claim for breach of :Seller's. Warranties filed' prior to expiry of the Escrow period, and have been paid pursuant to the procedure for third party claims under Clause 7 below (b) any claim in relation to the covenants set out in Clauses 4.22 through 4.55 which claim has been 'awarded by the arbitral tribunal constituted. Pursuant*

*to Clause 10.13 below, and (c).any claim under Clause 6.2 which have been paid pursuant to the procedure for claims under Clause 7 below. To the extent that any claim made pursuant to . any of the aforesaid clauses has not resulted in an indemnification obligation as on-the-date of the expiry of the Escrow Period, the amount of such claims shall be released from the Escrow Account to the Seller Without prejudice to the right of Purchaser to make an indemnification claim in respect of the same pursuant to Clause 7 below, if such claim were to crystallise on a future date. Save as provided in the foregoing provisions of this Clause 4.8.1, there shall be no other claim of set off, adjustment or deduction by Purchaser from the Escrow Amount*

*4.8.2 Within 5 (five) Business Days after expiry of the Escrow Period, the balance amount (being the Escrow Amount less any amounts deducted for claims filed by Purchaser pursuant to Clause 4.8.1 ),increased by interest accrued in the Escrow Account, shall be paid to the Seller*

*4.8.3 Purchaser shall not merge with any other entity belonging to the Purchaser Group or otherwise, and shall not dispose of the Business transferred pursuant to this Agreement, until the payment of the Escrow Amount to the Sellers In accordance with the terms of this Agreement. In the event of any proposal to merge or sell any portion of the Business transferred to the Purchaser, then, subject to Clauses 4.8.1 and 4.8.2, above, the Escrow Amount shall become immediately payable to the Seller in accordance with this Agreement as a condition for such transaction to become effective”.*

Contention of the assessee is that unless and until the escrow amount was released by the escrow agent, the amount lying in the escrow account could not be considered for computing capital gains. Paras A

to D of the escrow agreement dated 11.04.2011 which are very relevant is reproduced hereunder:-

*"(A) The Purchaser has entered into individual Slump Sale agreements dated April 6, 2011( each a "Slump Sale Agreement") 'with each of MAL, PHC, TAT, Deyem, Sigma; GKR., Rangamala,' (collectively referred to as the "Seller Group") to purchase the business relating to research and development, production, distribution and sale of kitchen appliances in southern India under the "Preethi" and "Preett" brands from the Seller Group ("Business") for consideration set out in the respective Slump Sale Agreement;*

*(B) The Purchaser and the Seller have, in connection with the purchase of the Business, requested the Escrow Agent to act as the escrow agent in relation to the Escrowed Amounts and otherwise in connection with the delivery and receipt of the Escrowed Amounts;*

*(C) The Purchaser and Sellers agree that the Purchaser shall remit the relevant proportion of the Escrow Amount attributable to each Seller as set out in Schedule 4 aggregating to the Escrowed Amount in the Escrow Account and the Escrowed Amounts shall be held and released by the Escrow Agent in accordance with the terms of this Agreement*

*(D)The Escrow Agent has agreed to act as an independent escrow agent and the Parties mutually agree to the escrow mechanism and other related matters set out in this Agreement".*

Conditions for the release of the escrow amount appear at para 7 and this is reproduced hereunder:-

**7 RELEASE OF THE ESCROWED AMOUNTS AND THE INTEREST AMOUNT**

*7.1. The Escrow Agent shall, subject to any Claim made under Clause 7.3, transfer the Escrowed Amounts to the Seller's Bank Account as per Clause 7.2 .*

*7.2 The Escrowed Amounts, and the Interest Amount, if any, shall be transferred to MAL's Bank Account within 5 (Five) Business Days after a period of 365 (Three Hundred and Sixty Five) days from the Closing Date ("Escrow Period") less any Damages notified by the Purchaser under an Indemnity Letter to the Escrow Agent in accordance with Clause 7.3. The Escrow Agent shall release the amount of Damages, if any, to the Purchaser in accordance with Clause 7.3; Provided in the event that the Escrowed Amounts reduced by Damages as specified in the Indemnity Letter(s), is reduced to zero on account of adjustments made by the Purchaser on account of Damages suffered by it or claims made against the Seller Group, the Escrow Agent shall not be required to transfer any monies to Seller's Bank Account. The Damages in respect of a Seller shall be in the proportion as detailed in Schedule 4. Provided further that under no circumstances will the amount of Damages to be adjusted, in respect of a Seller from the Escrow Account exceed the proportion of the Escrowed Amount attributable to such Seller as set forth in Schedule 4. In the event the Damages exceed the amount as detailed in Schedule 4 with respect to each Seller, the Parties hereby agree and understand that such excess claim shall not form part of this Escrow Agreement. The Purchaser and Sellers shall deal with such excess claims, separately between each other. The responsibility and liability of the Escrow Agent shall be deemed to be completed on making the payment in accordance with the proportion as detailed in Schedule 4.*

*7.3 If at any time before the expiry of the Escrow Period, the Purchaser and the Sellers notifies the Escrow Agent in writing substantially in the form set out in Schedule 3 that any or all of the members of the Seller Group is liable to indemnify the Purchaser on account of any Damages (subject to the maximum of the amounts specified against each of the Sellers in Schedule 4) in terms of the Slump*

*Sale Agreement ("Indemnity Letter", the Escrow Agent shall, upon the expiry of the Escrow Period, release from the Escrow Account (including the Fixed Deposit Accounts); an amount equivalent to the Damages . for the purposes together with any proportionate interest accrued thereon from the date of notification to the Escrow Agent through the Indemnity Letter. till the expiry of the Escrow Period on the amount of Damages, and transfer the same to the Purchaser or .its nominee as specified 'in the Indemnity Letter. The Escrow Agent shall and is hereby authorized to take all such actions as may be necessary for releasing from the. Escrow . Account (including any one of the Fixed Deposit Accounts) ,. For avoidance of doubt, the Escrow Agent shall rely exclusively on the instructions as provided in the Indemnity Letter and shall release the amount stated in the Indemnity Letter to the Purchaser, upon receipt' of the Indemnity Letter and shall not be required to verify the contents/documents submitted along with Schedule 3. The balance amount shall be released by the Escrow Agent to the Seller's Account in proportion, set out in Schedule 4.*

*7.4 . The Seller's Group shall be entitled to seek immediate "release of the Escrowed Amounts in its favour, in the event of any proposal by the Purchaser to merge or sell any -portion of the Business transferred to the Purchaser notwithstanding that the. Escrow Period has not expired, .The Escrowed Amount shall become immediately 'payable to the Seller Group in accordance with this Agreement as a condition for such transaction to become effective 'and the 'Escrow Agent shall immediately release the Escrowed Amounts in . favour of the Seller Group upon receipt of Written notification in the form set out ID . Schedule 5 from Purchaser and Seller Group pursuant to this clause 7.4. The Escrow Agent shall rely exclusively on such written notification and shall release the Escrowed Amounts to Seller Group, upon receipt of such written notification, and is not required to verify the contents or authenticity of the letter.*

*7.5. Any payment by the Escrow Agent under this Agreement will be made without any deduction or withholding for or on account of any tax unless such deduction or withholding is required to be made by the Escrow Agent. in its capacity as an Escrow Agent by Applicable Law.*

*7.6 The Escrow Agent shall not be obliged to check or*

*ensure, and the Escrow Agent shall be entitled to presume, that any Communication/s from the other Parties to the Agreement are correct, accurate and in accordance with Applicable Law, and shall merely be required to act as per such Communication /s. . Specimen signatures of the aforesaid .. this Agreement, and the Escrow Agent shall at all times be entitled to rely on the same without any further verification. The other Parties undertake to give the Escrow Agent p.ye (5) Business Days' notice in writing of any amendment to their respective Authorised 'representatives or callback contacts giving the details specified in Schedule 2".*

Release of the amount lying in the escrow account is subject to issue of a letter from seller and purchaser to the escrow agent. No doubt, release of the escrow amount, is dependent on satisfaction of various responsibilities undertaken by the assessee in relation to the slump sale. However, in our opinion, this by itself would not be a reason to hold that consideration for the slump sale was not ₹18,31,00,000/-. Consideration is clearly mentioned in the slump sale agreement as ₹18,31,00,000/-. Segregating such consideration to two parts, one part payable in the relevant previous year and other part payable in the next year could not be in our opinion to a reason to say that capital gains arose only with reference to first part, even though release of the second part was subject to the seller abiding by certain conditions of the slump sale agreement.

7. Section 50B of the Income Tax Act, 1961 (in short "the Act") which deals with computation of capital gains in a case of slump sale is reproduced hereunder:-

*“(1) Any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place :*

*Provided that any profits or gains arising from the transfer under the slump sale of any capital asset being one or more undertakings owned and held by an assessee for not more than thirty-six months immediately preceding the date of its transfer shall be deemed to be the capital gains arising from the transfer of short-term capital assets.*

*(2) In relation to capital assets being an undertaking or division transferred by way of such sale, the "net worth" of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48.*

*(3) Every assessee, in the case of slump sale, shall furnish in the prescribed form along with the return of income, a report of an accountant as defined in the Explanation below sub-section (2) of section 288 indicating the computation of the net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at in accordance with the provisions of this section.*

*Explanation 1.— For the purposes of this section, "net worth" shall be the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account :*

*Provided that any change in the value of assets on account of revaluation of assets shall be ignored for the purposes of computing the net worth.*

*Explanation 2.— For computing the net worth, the aggregate value of total assets shall be,-*

*(a) in the case of depreciable assets, the written down value of the block of assets determined in accordance with the provisions contained in sub-item (C) of item (i) of sub-clause (c) of clause (6) of section 43 ;*  
*(b) in the case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD, nil ; and*  
*(c) in the case of other assets, the book value of such assets”.*

What is chargeable to tax is profits or gains arising from the slump sale. Profits or gains arising from a slump sale can be correctly computed only if the total consideration arising to an assessee on account of sale is reckoned. There is no provision which allows the assessee to segregate the consideration as per slump sale agreement in accordance with the year of receipt.

**8.** Coming to the judgment of Hon'ble Bombay High Court in the case of *Hemal Raju Shete* (supra) relied on by the Id. Authorised Representative, the agreement considered by their lordships clearly divided the consideration to initial consideration and deferred consideration. It is for this reason their lordships directed the exclusion of the deferred consideration for computing the capital gains. Here in the case before us, there is no deferred consideration mentioned in the slump sale agreement. Depositing a part of the consideration in an escrow account will not be, in our opinion be equivalent to a deferred consideration. As for the judgment of Hon'ble

Jurisdictional High Court in the case of *Motor Credit Co. P. Ltd (supra)* the question there was regarding method accounting and recoverability of debt. We do not find any similarity in the facts of this case with the one before us. As for the judgment of Hon'ble Apex Court in the case of *Hindustan Housing and Land Development Trust Ltd (supra)* the question considered was taxability of total consideration on compulsory acquisition of land. In our opinion this case also has no relevance on the facts before us. For the aforesaid reasons, we do not find any reason to interfere with the order of the Id. Commissioner of Income Tax (Appeals). Ground No.2 of the assessee stands dismissed.

**9.** Vide its ground No.3, grievance of the assessee is that Id. Commissioner of Income Tax (Appeals) restricted the of allowance of expenditure to ₹17,125/- against ₹10,41,749/- claimed by the assessee.

**10.** Ld. Counsel for the assessee submitted that Id. Assessing Officer had disallowed all the regular expenditure incurred by the assessee for maintaining its corporate structure, citing a reason that there was no business activity after slump sale dated 06.04.2011. As

per the Id. Authorised Representative, Id. Assessing Officer had disallowed the whole of the expenditure of ₹10,41,749/- debited by the assessee in its profit and loss account. Id. Authorised Representative submitted that Id. Commissioner of Income Tax (Appeals) allowed the claim on pro-rata basis for six days, considering the slump sale agreement entered on 06.04.2011. Contention of the Id. Authorised Representative was that type of expenditure incurred by the assessee was necessary to maintain its legal status as a company and ought not have been disallowed.

**11.** Per contra, Id. Departmental Representative strongly supported the orders of the lower authorities

**12.** We have considered the rival contentions and perused the orders of the authorities below. What was disallowed by the Id. Assessing Officer is reproduced hereunder:-

**13.**

Expenses				
Sl.No	Particulars			Amount
<b>1</b>	<b>MANUFACTURING EXPENSES</b>			<b>2,84,847</b>
		Power and fuel	14,056	
		factory rent	2,49,265	
		repairs to machinery	460	
		Insurance	1,628	
		Factory security charges	19,228	
		Factory maintenance Navaloor	210	

2	<b>EMPLOYEE BENEFITS</b>			<b>1,51,097</b>
		Salaries and incentives	1,02,680	
		Gratuity fund contributions	21,028	
		Staff welfare expenses	27,389	
3	<b>Finance Costs</b>			<b>50,468</b>
		Interest charges	16,900	
		Bank Charges	33,568	
4	<b>Administrative &amp; Other expenses</b>			<b>5,55,337</b>
		Rates and taxes	3,53,174	
		Legal and Professional Fees	1,39,460	
		Postage, Telephone & fax charges	8,089	
		Filing fees	7,061	
		Vehicle maintenance	3,900	
		Miscellaneous expenses	6,209	
			37,444	
		Grand Total		<b>10,41,749</b>

Admittedly, assessee had transferred its business on 06.04.2011 in a slump sale. Even if we accept that it was necessary for the assessee to incur some expenditure for maintaining its corporate status, we cannot understand why assessee incurred manufacturing expenses. The table reproduced by us clearly indicate that assessee incurred manufacturing expenses of ₹2,84,847/-. At the best, assessee would be eligible for 6/365 of the manufacturing expenditure of ₹2,84,847/-, since it transferred its business on 06.04.2011. This works out to ₹4,683/-. However, assessee's claim with regard to

employee benefits, finance costs and administrative and other expenses ought not have been disallowed since these were necessary to maintain its corporate status. Therefore out of the total claim of ₹10,41,749/-, we direct the Id. Assessing Officer to allow ₹7,61,585/-. Balance of the disallowance is sustained. Ground No.3 of the assessee is partly allowed.

**14.** In the result, the appeal of the assessee is partly allowed.

Order pronounced on Thursday, the 19<sup>th</sup> day of July, 2018, at Chennai.

**Sd/-**

(एन.आर.एस. गणेशन)

**(N.R.S. GANESAN)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

**Sd/-**

(अब्राहम पी. जॉर्ज)

**(ABRAHAM P. GEORGE)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated:19<sup>th</sup> July, 2018

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- |                          |                              |                         |
|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |