

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No. 2514/DEL/2014
[Assessment Year: 2006-07]

Sahara Global Vision Pvt. Ltd
CTR 40-44, Sahara India Point
S.V. Road, Goregaon
Mumbai

Vs.

The A.C.I.T
Central Circle-6
New Delhi

PAN : AAFCS 2904 P

[Appellant]

[Respondent]

Date of Hearing : 27.08.2018
Date of Pronouncement : 30.08.2018

Assessee by : Shri Ajay Vohra, Sr. Adv
Shri Aditya Vohra, Adv

Revenue by : Smt. Aanchal Khandelwal, Sr.DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals]-1, New Delhi dated 11.02.2014 pertaining to assessment year 2006-07.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) has erred in confirming the disallowance of Rs. 2,92,31,861/- representing loss on Joint Venture in USA which was written off during the year by the appellant.

3. Briefly stated, the facts of the case are that the assessee company was formed with the object to carry on refining, manufacturing and dealing etc., petroleum and chemical products. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has written off the investment made by it in joint venture company in USA. The assessee was asked to explain the write off and furnish the details of investment. The assessee furnished requisite details. On perusal of the details, the Assessing Officer found that the assessee has made investment in a joint venture company in the name of Global Energy LIC. The Assessing Officer further found that the joint venture company was dissolved w.e.f 31.12.2004 and against the initial contribution of 3 million US Dollars, the

assessee received a sum of Rs. 24,82,743.3. The difference of Rs. 2,92,31,861/- was written off.

4. The Assessing Officer was of the firm belief that since the assessee has invested in shares of the joint venture company, the amount written off is nothing but a capital loss and cannot be allowed as a deduction. The Assessing Officer disallowed Rs. 2,92,31,861/-. The assessee carried the matter before the CIT(A) but without any success.

5. Before us, the ld. AR stated that the investment in joint venture company was a business investment for carrying on the business and it was not an investment simpliciter. It is the say of the ld. AR that the intention of the assessee is paramount and has to be considered. In supports of its contention, the ld. AR relied upon several judicial decisions which are placed on record in the form of paper book.

6. Rebutting the claim of the ld. AR, the ld. DR strongly supported the orders of the lower authorities.

7. We have carefully considered the orders of the authorities below. There is no dispute that the appellant company was incorporated with the following objects:

"i) To carry on the business of refining, blending processing, storing, transporting, supplying, Selling and distributing petroleum and petrochemicals and chemicals any products, by-products and derivatives thereof and to purchase or otherwise acquire invests and undergo joint ventures and to import, store, export, trade and deal in Petrochemicals and chemicals of all kinds, their products, by-Products and derivatives.

ii) To purchase or otherwise acquire, manufacture, refine, treat, reduce, distil, blend, purify, pump, store, hold, transport, use experiment with market, distribute, exchange, supply sell and otherwise dispose of import, export and trade and generally deal in and all kinds of petroleum and petroleum products, oils and chemicals and any products, by-products and derivatives thereof.

iii) To carry on all or any of the business of agents for sale, of dealers in and refiners of petroleum and

chemicals and their products, by products and derivatives directly or by way of joint venture in India or abroad."

8. Consequent to its main objects, the assessee entered into joint venture by way of participating in a company in USA for distribution of petroleum and chemical products after obtaining approval from RBI. There is also no dispute that the joint venture company in USA was liquidated. The facts on record show that the assessee had invested 3 million US Dollars and on liquidation of the joint venture company, a sum of Rs. 24,82,746.3 US Dollars could only be recovered and the balance amount has been written off in the accounts of the year under consideration. The claim of the assessee that the write off represents loss occurred against business investment cannot be brushed aside lightly. There is no dispute that the assessee made investment in furtherance of its objects.

9. The Hon'ble Bombay High Court in a similar case in CIT Vs. Colgate Palmolive [India] Ltd 59 Taxmann.com 139 was, inter alia, seized with the following question of law:

“Whether on the facts and in the circumstances of the case and in law the Income tax Appellate Tribunal is justified in holding that the loss incurred on the sale of shares of Camelot a wholly owned subsidiary was a business loss when the investment made in the latter was not a business asset but investment for obtaining an enduring benefit?”

10. Answering to the aforesaid question of law, the Hon'ble High Court observed as under:

“6. The facts necessary for that question are that the assessee is engaged in the business of manufacturing and trading of oral care products. In the course of the assessment proceedings, the Assessing Officer noted that the assessee claimed deduction on account of loss on sale of shares held in Camelot Investment Pvt. Ltd. ("Camelot", in short) amounting to Rs. 5,50,00,000. The assessee had made investment in 100 per cent owned subsidiary Camelot as claimed for purely business reasons. The stand of the assessee that the investment was made because and for the purposes of business, the loss on sale of such investment is required to be treated as business loss. The assessee placed reliance, inter alia, on a judgment of the hon'ble Supreme Court in

the case of Patnaik & Co. Ltd v. CIT [1986] 161 ITR 365/27 Taxman 287 and of this court in the case of CIT v. Investa Industrial Corpn Ltd . [1979] 9 ITR 380. The alternative argument and which was canvassed without prejudice need not detain us.

7. The Commissioner and the Tribunal concurrently found that the Camelot was fully owned subsidiary of the assessee and engaged in the manufacturing of tooth brushes exclusively for the sole client, namely, the assessee. Shares purchased of Camelot were also sold by the assessee to one Ramesh Sukharam Vaidya for a consideration of Rs. 45,00,000. The Assessing Officer held that the sum of Rs. 5,50,00,000 which was invested by the assessee in the equity of Camelot on March 17, 2003, and which have been used to repay the loan to the assessee-company, amounting to Rs. 5.50 crores, before March 1, 2003, would demonstrate that the purpose of investment was to give a long-term enduring benefit to the assessee. Merely because it was made in the normal course of business, it cannot be termed as anything but long term investment. This conclusion of the Assessing Officer was challenged in the appeal before the first appellate authority and the Commissioner concluded that the main

reason for setting up Camelot was to manufacture tooth brushes exclusively for the assessee. Since the assessee was relying on Camelot for manufacturing of tooth brushes to be traded by the assessee, the investment is nothing but a measure of commercial expediency to further business objectives and primarily related to the business operations of the assessee. At no point of time the investment in Camelot was made with an intention to realise any enhancement value thereof or to earn dividend income. The investment was made to separately house the integral part of the business activity. In such circumstances, the Commissioner relied upon the above judgments and allowed the appeal. He concluded that the loss of Rs. 5.50 crores is a business loss in the hands of the/assessee. He set aside the order of the Assessing Officer.

8. The Revenue carried the matter in appeal and the Tribunal has dealt with this issue extensively. In para 7 of its order, the Tribunal has upheld the conclusion of the Commissioner and by giving reason.

9. Upon a perusal of this material, we are unable to agree with Mr. Pinto that question 5.1 reproduced above is a substantial question of law. Given the peculiar facts and

circumstances and the nature of the investment so also being for commercial expediency, the view taken by the Commissioner and the Tribunal concurrently cannot be termed as perverse. That view being imminently possible in the given facts and circumstances. It does not raise any substantial question of law."

11. Substantial question of law considered by the Hon'ble Bombay High Court has facts similar to the facts of the appellant company. In that case also, the company wrote off loss on sale of shares and the facts of the case in hand show that the assessee could not recover investment amount on liquidation of joint venture company thereby sustaining a loss of Rs. 2,92,23,186/-.

12. Finding parity in the facts of the case in hand with the facts considered by the Hon'ble High Court of Bombay [supra], we respectfully following the decision of the Hon'ble Bombay High Court [supra], set aside the order of the CIT(A) and direct the Assessing Officer to delete the addition of Rs. 2,92,31,861/-.

13. In the result, the appeal filed by the assessee in ITA No. 2514/DEL/2014 is allowed.

The order is pronounced in the open court on 30.08.2018.

Sd/-

[KULDIP SINGH]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 30th August, 2018

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Bench	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Bench	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	