

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND

SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1568/Bang/2016
Assessment Year : 2012-13

M/s. Deccan Emerging Business Ventures Pvt. Ltd., Old No. 148, New No. 43, Ground Floor, Embassy Square, Infantry Road, Bangalore – 560 001. PAN: AAACL6112B	Vs.	The Deputy Commissioner of Income Tax, Circle – 1 [1] [1], Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	Shri Narendra Sharma, Advocate
Revenue by	:	Ms. Neera Malhotra, CIT (DR)
Date of hearing	:	04.06.2019
Date of Pronouncement	:	07.06.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A)-2, Bangalore dated 16.06.2016 for Assessment Year 2012-13.

2. The grounds raised by the assessee are as under.

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] is not justified in upholding the disallowance of Rs.55,82,25,000/- being the provision for diminution in value of assets under the facts and in the circumstances of the appellant's case.

3. The learned CIT[A] is not justified in upholding the disallowance of Rs.37,07,396/- u/s.14A of the Act under the facts and in the circumstances of the appellant's case.

4. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s. 234A, 234B and 234C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

5. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

3. At the very outset, it was submitted by Id. AR of assessee that ground nos. 1 and 5 are general and ground no. 4 is consequential and hence, ground nos.

2 and 3 are to be decided. Regarding ground no. 2, he placed reliance on the Tribunal order rendered in the case of ACE Designers Ltd. Vs. Addl. CIT (LTU) in ITA No. 1150/Bang/2009 dated 14.12.2012. He submitted a copy of this Tribunal order and in particular, our attention was drawn to para 14 of this Tribunal order and it was pointed out that in that case, the matter is restored back to the file of AO for the limited purpose of ascertaining as to whether there was extinguishment of right in the shares held by the assessee in WOS during the previous year and it was directed that the assessee should bring evidence to prove its claim and it is also directed in that case that if a transfer byway of extinguishment happens in any other Assessment Year, then the assessee would be entitled to claim long term capital loss in that Assessment Year. He submitted that in the present case also, this issue should be decided on similar line because in the present case also, the investee company is in the process of liquidation. The Id. DR of revenue supported the orders of authorities below. She also submitted that assessee has not brought on record any evidence regarding the process of liquidation of the company in which shares investment was made and hence, the issue should be decided against the assessee.

4. We have considered the rival submissions. First of all, we reproduce para nos. 3,3.1 and 3.2 of the order of CIT(A) because in these paras, Id. CIT(A) has noted the facts and dispute and its decision is also contained in these paras. These paras are as under.

“3. Disallowance of provision for diminution in value of assets - Rs. 55,82,25,000/-

3.1 The Assessing officer, in the course of assessment, noticed that the appellant had reduced the value of investments made in its subsidiary company M/s. Deccan Cargo & Express Logistics Pvt. Ltd from Rs. 62,02,50,000 to Rs. 6,20,25,000 for which a provision of Rs. 55,82,25,000 for diminution in the value of the investment was made and debited to the profit & loss account. As there is no provision in the Income tax Act which allows for the claim of the said provision, the Assessing officer made disallowance of the said amount and completed the assessment.

3.2 The relevant grounds of appeal is as under:

"The learned AO is not justified in disallowing a sum of Rs. 55,82,25,000 being the provision for diminution in value of assets under the facts and in the circumstances of the case."

Apart from raising the said ground in appeal, no argument in writing or verbally during the course of hearing has been advanced on this issue. The said 'loss' claimed as expenditure is a 'notional capital loss', if any. It is not an allowable revenue expenditure allowable u/s

37(1) or any other provisions of the Income tax Act. The same has rightly been disallowed by the Assessing officer. The action of the Assessing officer is upheld.”

5. Now we examine the applicability of Tribunal order cited by Id. AR of assessee having been rendered in the case of ACE Designers Ltd. Vs. Addl. CIT (LTU) (supra). We also reproduce para 14 of this Tribunal order which is as under.

“14. The next argument of the counsel for the assessee was that there was an extinguishment of right in the shares consequent to winding up of WOS and therefore, there was a transfer of shares resulting in long term capital loss which should be allowed to be carried forward. In this regard, we do not find the required details on record. In this regard, we observe that the assessee has shown the investment in subsidiary as investment in its balance sheet. Any loss on account of transfer of such capital asset would give rise to long term capital gains or loss. However, u/s 45 of the Act, the computation of capital gain will arise only when there is a transfer. The facts with regard to the winding of the subsidiary in USA was not brought on record. If the subsidiary is wound up, and the liquidation proceedings come to an end and further if the assessee does not get any payment in full satisfaction of the shares held by him in WOS then there would be an extinguishment of right in the shares held by the assessee by operation of law. In this regard, we notice that the Hon’ble Supreme Court in the case of CIT Vs M/s Grace Collis 240 ITR 323 (SC) has taken a view that where consequent to an amalgamation rights in the shares held by the assessee are extinguished even then there would be transfer within the meaning of sec.2(47) of the Act. In other words, even involuntary transfers are within the ambit of Sec.2 (47) of the Act. We therefore, remand the issue for the limited purpose of ascertaining as to whether there was only extinguishment of right in the shares held by the assessee in WOS during the previous year. The assessee should let in evidence in this regard before the AO to prove its claim. In case a transfer byway of extinguishment happens in any other Assessment Year, then the assessee would be entitled to claim long term capital loss in that assessment year. Thus, these grounds are treated as partly allowed for statistical purposes.”

6. From the above para of the Tribunal order, it is seen that in that case, this was the claim of the assessee that there is winding up of the company in whose shares, investment was made by the assessee but the relevant details were not available on record and therefore, the Tribunal restored the matter back to the file of AO for fresh decision after finding out the factual aspect and it was directed that if assessee is able to establish that there was extinguishment of right in the shares held in the concerned company during the relevant year, the loss shall be allowed as capital loss and if such extinguishment is not in the relevant year but in a later year then in such year

in which the extinguishment of right has taken place, the loss should be allowed as long term capital loss. In the present case also, the assessee is making the same argument that the investee company is in the course of winding up and in para 6.1 of statement of facts filed before CIT(A), it was submitted that the said company M/s. Deccan Cargo and Express Logistics Pvt. Ltd. (DCEL) suffered mounting losses year after year and ultimately, an order of winding up was passed by the Hon'ble High Court. But apart from this statement in the statement of facts filed by assessee, there is no details or evidence available in this regard and there is no finding of CIT(A) or AO in this regard and hence, in the facts of present case, we feel it proper to set aside the order of CIT(A) on this issue and restore the matter back to the file of AO for fresh decision with similar directions as were given by the Tribunal in the case of ACE Designers Ltd. Vs. Addl. CIT (LTU) (supra). Hence we set aside the order of CIT(A) and restore the matter back to the file of AO for fresh decision with the direction that we are remanding this matter back to the file of AO for the limited purpose of ascertaining as to whether there was extinguishment of right in the shares held by the assessee in M/s. DCEL during the present year. We also direct that the assessee should bring on record evidence in this regard before the AO to prove its claim. We also direct that in case, the assessee is able to establish that in the present case, there is transfer by way of extinguishment of rights in the shares in question in the present year then loss may be allowed as capital loss in the present year. If such extinguishment of rights in the shares in question takes place in any other year, then the assessee would be entitled to claim long term capital loss in that Assessment Year. Hence, this ground of assessee is partly allowed for statistical purposes.

7. Regarding ground no. 3, it was submitted by Id. AR of assessee that the issue involved in this ground is squarely covered in favour of the assessee by the Tribunal order rendered in the case of M/s. BPL Limited Vs. ACIT in ITA No. 1055/Bang/2017 dated 03.11.2017. He submitted a copy of this Tribunal order and pointed out that in this case, the Tribunal followed the judgment of Hon'ble Delhi High Court rendered in the case of Cheminvest Ltd. Vs. CIT as reported in (2015) 378 ITR 33 (Delhi). He also submitted that in the same Tribunal order, the Tribunal has also considered the applicability of judgment of Hon'ble Apex Court rendered in the case of Maxopp Investment Ltd. v.

Commissioner of Income-tax. He also pointed out in para 22 of this Tribunal order, it is noted by the Tribunal that in that case i.e. Maxopp Investment Ltd. Vs. CIT (supra), admittedly there was dividend earned on such investment and therefore, it was noted that it was not a case where no exempt income was earned in the year of question and therefore, it was held that this judgment is not applicable in the facts of present case. The Id. DR of revenue relied upon the judgment of Hon'ble Apex Court rendered in the case of Maxopp Investment Ltd. Vs. CIT (supra).

8. We have considered the rival submissions and we find that on page no. 14 of paper books is Profit and Loss Account of the assessee company for the present year and as per the same, there is no income and therefore, it is admitted fact that the assessee has not earned exempt income in the present year. Under these facts, the Tribunal order cited by Id. AR of assessee and secondly the judgment of Hon'ble Delhi High Court rendered in the case of Cheminvest Ltd. Vs. CIT (supra) are squarely applicable and respectfully following these judgments, we decide the issue in favour of the assessee. Ground no. 3 is allowed.
9. In the result, the appeal filed by the assessee is partly allowed in the terms indicated above.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 07th June, 2019.
/MS/

Copy to:

- | | |
|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.