

आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 2950/Mum/2018

(निर्धारण वर्ष / Assessment Year 2011-12)

Mardia Extrusion Ltd. 96, C.P. Tank Road, Mumbai-400 004	Vs.	The Dy. Commissioner of Income Tax, Circle 4(2), Room No. 642, Aayakar Bhavan, Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAACM3024F		

अपीलार्थी की ओर से / **Appellant by** : Shri Shyam C. Agarwal, AR

प्रत्यर्थी की ओर से / **Respondent by** : Shri Rajat Mittal, DR

सुनवाई की तारीख / Date of hearing:	24.06.2019
घोषणा की तारीख / Date of pronouncement :	24.06.2019

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal of the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-9, Mumbai [in short CIT(A)], in Appeal No CIT(A)-9/Cir.4/416/2013-14 vide order dated 14.03.2018. The Assessment was framed by the Dy. Commissioner of Income Tax, Circle 4(2), Mumbai (in short 'ITO/ AO') for the A.Y.



2011-12 vide order dated 03.03.2014 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) in upholding the action of the AO in not allowing the set off of business loss against the deemed short term capital gain under section 50 of the Act on sale of depreciable effects. For this, assessee has raised the following ground No. 1: -

“Not allowing of B/f Business Loss Deemed Short – Term Capital Gain u/s 50 against Rs.1411859/- on of Business Assets:-

a. The learned C.I.T. (Appeal) erred in upholding the order of the Assessing Officer not allowing the set-off of business loss against the deemed Short Term Capital Gain u/s 50 on sale of depreciable assets.

b. The learned C.I.T. (Appeal) ought not to have confirmed disallowed of the set-off of business loss against the deemed Short Term Capital Gain u/s 50 on sale of depreciable assets.

c. The Set off of business loss against the deemed Short-Term Capital Gain u/s 50 on sale of depreciable assets requires to be allowed.”

3. I have heard the rival contentions and gone through the facts and circumstances of the case. Briefly stated facts are that as per



AIR detail and further enquiry during assessment proceedings it was noticed that the assessee company received a sum of Rs. 1,75,00,000/- towards sale of property at Silvassa, and the same was shown under the head 'Creditors for expenses' hence, not offered to tax. As explained by assessee, they had received the sum of Rs. 1,75,00,000/- as per transaction dated 08.02.2011 as mentioned in the AIR from B. Raj Tex-Technoplast towards sale of property at Silvassa, but the deal could not be finalized during the year due to the dispute and therefore the said amount was shown as deposit. The assessee company however gave the working of capital gain on said transaction, i.e. (i) Long Term Capital Gain on sale of Land computed at Rs. 46,26,018/-, & (ii) Short Term Capital Gain u/s 80 on sale of Factory Building computed at Rs. 14,11,859/- . The AO found that the assessee had entered into Sale Deed on 08.02.2011 which was registered and the assessee had received full sale consideration, and also the assessee had not brought on record any evidence to show that there was a dispute with the said purchaser of the property. Hence, the AO made addition of LTCG at ₹ 46,26,018/-, and STCG under section 50 of the Act at Rs. 14,11,859/- as per calculation submitted by the assessee. The AO also disallowed the Depreciation of Rs. 3,00,178/- claimed on Factory Building, since the assessee sold the same during the year. In computation of assessed income, the AO allowed the set-off against Current Year's business loss of Rs. 44,18,822/-, however, did not allow any set off against Brought Forward business losses. Aggrieved, assessee preferred the appeal before CIT(A). The



CIT(A) also confirmed the action of the AO in disallowing the claim of set off of short term capital gain under section 50 of the Act against the brought forward business losses. Aggrieved, assessee is in appeal before us.

4. I have heard the rival contentions and gone through the facts and circumstances of the case. I find that Hon'ble Bombay High Court in the given facts has considered this issue in the case of Manali Investments (supra), wherein, the question referred before the Hon'ble High Court reads as under:

"Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in holding that the assessee is entitled to set-off under Section 74 in respect of capital gain arising on transfer of capital assets on which depreciation has been allowed in the first year itself and which is deemed as short term capital gain under Section 50 of the Income Tax Act relying upon the judgment of this Court in the case of CIT v. Ace Builders (P.) Limited (281 ITR 210) even though the said decision was rendered in the context of eligibility of deduction under Section 54E."

5. Hon'ble Bombay High Court has considered the issue of allowance of set off of long term capital loss in terms of section 74 of the Act against the short term capital gain computed under section 50 of the Act. Hon'ble High Court has observed that by virtue of



Section 50 of the Act, only the capital gain is to be computed in terms thereof and be deemed to be short-term capital gains and this deeming fiction is restricted only for the purposes of Section 50 of the Act but the benefit of set off of long term capital loss under section 74 of the Act is to be allowed. Hon'ble High Court has also followed its decision in the case of CIT v. Ace Builders (P.) Ltd. [2005] 144 Taxman 855/281 ITR 210 (Bom).

6. As regards to set off of business loss against gain on sale of depreciable asset of factory building by the assessee, I find that the co-ordinate Bench of the Tribunal in the case of Raj Shree Roadlines (P.) Ltd. v. ITO [IT Appeal No.1627 (Mum.) 2012, dated 20-3-2013] has considered the issue of business loss of unabsorbed depreciation and eligible business loss can be set off against short term capital gain computed under section 50 of the Act. I find that the Tribunal after considering the provisions of section 32(2), 72(2) and 73(3) of the Act opined that while deciding the issue of carrying forward of loss/unabsorbed depreciation and the amendment made in these section from time to time are applicable for carrying forward of depreciation/loss with effect from 1.4.2002. For this proposition, the Tribunal has relied on the decision of Hon'ble Bombay High Court in the case of CIT v. Hathway Investments (P) Ltd., in [Income Tax Appeal (L) No.405 of 2012 dated 31-1-2013]. I find the above proposition is supported by the decision of Hon'ble Bombay High Court in the case of Manali Investments (supra), wherein, it is held that short term capital gain computed under section 50 of the Act can be set off against brought forward capital loss and also brought



ITA No.2950/Mum/2018

forward business loss. Accordingly, I reverse the orders of lower authorities and allow this issue of assessee's appeal.

7. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 24-06-2019.

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 24-06-2019

सुदीप सरकार, व.निजी सचिव / *Sudip Sarkar, Sr.PS*

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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai