

आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकरअपील सं./ I.T.A. No.5881/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2015-16)

M/s Jasani Textile Processors Pvt. Ltd. 264, Madhav Mansion, Samuel Street, Vadgadi, Mumbai-400 003	बनाम/ Vs.	DCIT-6(3)(1) R. No. 506, 5 th floor, Aayakar Bhavan M. K. Road, Mumbai-400 020.
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAACJ-1227-F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Virendra Jariwala– Ld. AR
Revenue by	:	Ms. Usha Gaikwad– Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	28/07/2021
घोषणा की तारीख / Date of Pronouncement	:	02/08/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2015-16 arises out of the order of learned Commissioner of Income-Tax (Appeals)-12, Mumbai [CIT(A)], dated 04/06/2019 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) of the Act on 26/12/2017. The grounds of appeal read as under: -

1. On facts and in the circumstances of the case and in law learned CIT (Appeals) failed to appreciate that the capital assets were transferred along with all advantages, benefits, claims, appurtenances, use and rights etc and hence the cost of assets transferred also includes the cost of acquiring such advantages, benefits, claims, appurtenances, use and rights such as water supply and electric supply for which deposits of Rs.1,49,256/-were given to MIDC, MSEB etc.
2. Alternatively on facts and in the circumstances of the case and in law learned CIT (Appeals), having found that assessee had given deposits of Rs.1,49,256/- to MIDC, MSEB etc for supply of water and electricity etc in or upon the capital asset transferred, ought to have allowed the deduction thereof as cost of improvement of such capital asset.
3. Learned CIT (Appeals) having held that written down value (WDV) of Rs.4,78,083/- of fixed assets discarded and written off in books is not deductible while computing capital gains as it does not form part of cost of acquisition or cost of improvement of assets sold and having further observed that deduction of WDV of these assets is allowable u/s 32(i)(iii) of the I.T.Act, learned CIT (Appeals) ought to have allowed the same u/s 32(i)(iii) because the appellant is entitled to the same and it was also claimed before CIT (Appeals).
4. The appellant craves leave for permission to add, amend or alter any ground of appeal at the time of hearing.

As evident, the subject matter of dispute is computation of capital gains. Having heard rival submissions, our adjudication would be as given in succeeding paragraphs.

2. The material facts are that the assessee being resident corporate assessee sold plot and shed for aggregate consideration of Rs.225 Lacs during the year. In the deed of agreement, the value assigned to land was Rs.51.47 Lacs whereas the value assigned to shed was Rs.173.53 Lacs. The agreement is composite agreement by which the assessee has transferred its interest in land as well as built up shed admeasuring 972.81 Square Meters together with outhouses, office, building, courtyard, areas compound, swear ditches fences, trees, drains, ways, paths, passages, privileges, easements etc. attached with the leasehold land as well as with shed.
3. The shed formed part of depreciable fixed assets. While computing short-term capital gains from shed, the assessee deducted not only the

WDV of shed but also deducted WDV of other assets and deposits as per MIDC (authority) for Rs.13.21 Lacs. These include assets written-off for Rs.4.78 Lacs and deposits written-off for Rs.1.49 Lacs. The deduction of these two components was denied by Ld. AO.

4. During appellate proceedings, the assessee submitted that it had given various deposits to MIDC towards water, additional water etc. These deposits were part and parcel of allotted land which also got assigned in favor of assignee. The MIDC would not refund the deposits as long as the said premises were occupied by assignee. The assessee received composite consideration for assignment of land along with deposits & claims. However, Ld. CIT(A) rejected the same since the write-off do not constitute cost of acquisition or cost of improvement of the property.

5. Regarding other assets written-off, the position was summarized as under: -

No.	Particulars	WDV as on 31/03/2014	Remarks
1.	Air Conditioner	990	Remaining useful life was less
2.	Computer	135	No scrap value
3.	Electric Installation	81,361	It could not be removed as it was fitted
4.	Fax Machine	2,088	Remaining useful life was less
5.	Furniture & Fixture	35,769	It could not be removed as it was fitted
6.	Plant & Machinery	3,49,006	It was outdated and embedded in Earth
7.	Telecom System	1,284	Remaining useful life was less
8.	Typewriters	542	Remaining useful life was less
9.	Vehicles	1,290	Remaining useful life was less
10.	Weighing Machinery	3,091	Remaining useful life was less
11.	Refrigerator	2,527	Remaining useful life was less
	Total	4,78,083/-	Remaining useful life was less

it was submitted that the lease of land was granted by MIDC in the year 1984 and the above assets installed at the land & shed were outdated or could not be removed. The cost of removing would be more than cost of

scrap. Since these assets were discarded, the deduction of the same should be allowed u/s 32(1)(iii). Though Ld. CIT(A) concurred that the deduction could be allowed u/s 32(1)(iii) but the same could not be a part of cost of acquisition. Aggrieved, the assessee is in further appeal before us.

6. So far as the write-off of deposits is concerned, we find that the rights in land and shed have been assigned along with all the rights, privileges etc. through composite agreement. The deposits have been paid to MIDC for various purposes in connection with lease of land and therefore, these form part & parcel of the land & shed. Since, the rights have been transferred, these would also stand transferred to the assignee. This being so, there is no reason as to why the deduction of the same is not available to the assessee while computing the capital gains. Therefore, we direct Ld. AO to allow the deduction of the same.

So far as the write-off of other assets is concerned, we find that fixed assets have been reduced to nil at year-end which is evident from assessee's Balance Sheet as placed on record. Hence, the fixed asset block has ceased to exist. Therefore, the deduction of WDV of assets as attached to above land & shed would be available to the assessee. We order so. The Ld. AO is directed to allow the same.

7. The appeal stands allowed.

Order pronounced on 2nd August, 2021.

Sd/-

(Amarjit Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 02/08/2021

Sr.PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.