

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F' NEW DLEHI**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 4719/Del/2017  
Assessment Year: 2013-14**

Continental Device India Ltd., vs. ACIT, Circle 06(2),  
C-120, Naraina Industrial Aread, New Delhi  
New Delhi.

**PAN : AAACC1835E**  
(Appellant)

(Respondent)

Appellant by : Sh. R.K. Kapoor, CA  
Respondent by: Sh. Anil Gandhi, Sr. DR

Date of hearing: 09/12/2021

Date of order : 09/12/2021

**ORDER**

**PER K. NARASIMHA CHARY, J.M.**

Aggrieved by the order dated 21.03.2017 passed by the learned Commissioner of Income Tax (Appeals)-2, New Delhi ("Ld. CIT(A)") for the assessment year 2013-14, Continental Device India Ltd ("the assessee"), preferred this appeal.

2. Brief facts of the case are that the assessee is a company, engaged in the business of manufacturing of semiconductor devices, chips, subassemblies and electronic instruments. For the assessment year 2013-14, they have filed the return of income on 30/9/2013 declaring an income of Rs. 30,01,118/-. Assessment under section 143(3) of the Income

Tax Act, 1961 (for short "the Act") was, however, complete by determining the income of the assessee at Rs.3,55,44,997/-by making addition of Rs. 2,18,19,347/-on account of disallowance under section 14A of the Act read with Rule 8D of the Income Tax Rules1962 ("the Rules"), Rs.4,88,515/-on account of disallowance under section 36 (1)(iii) of the Act and a sum of Rs. 24,59,941/-under section 50C of the Act.

3. All these three additions were challenged before the Ld. CIT(A) but without any success. Hence the assessee is before us in this appeal.

4. Insofar as ground No. 1 and 2 are concerned, they are against the addition by invoking section 14A of the Act read with Rule 8D of the Rules and enhancing the book profits under section 115 JB of the Act by such amount of addition. During the year the assessee received a dividend income to the tune of Rs. 38,41,508/-from the investment in shares and mutual funds and *suo moto* disallowed expenses of Rs.2,81,262/-. Assessee pleaded before the Assessing Officer that for the purpose of computing the disallowance, only such investments which yielded the exempt income should be considered but not the entire investment. Learned Assessing Officer, however, did not take into consideration this request of the assessee but proceeded to compute the disallowance under rule 8D of the Rules by taking the entire investments into consideration.

5. It is the settled principle of law by way of the decision of the Hon'ble jurisdictional High Court in the case of ACB India Ltd. vs. ACIT, 374 ITR 108 (Delhi) that only those investments on which tax free income was earned during the year should be considered in computing the disallowance under section 14A of the Act read with Rule 8D of the Rules but not the entire investments.

6. It is contended on behalf of the assessee that it is submitted before both the authorities that during the year the assessee's own funds far exceeded the amount of investment inasmuch as own funds are to the tune of Rs. 102.99 crores whereas the total of all the investments was only Rs. 85.91 crores. So far as this plea of the assessee is concerned, we find no adverse comment by the authorities. Going by this fact we hold that when the own funds of the assessee exceed the investments, the presumption is that the assessee made the investment from out of their own funds, though all the funds are held in the same account.

7. Record does not reveal the quantum of the investment which yielded exempt income. We therefore, restore the issue to the file of the learned Assessing Officer to consider only such investments which yielded the tax free income, but not the entire investments. Further in Vireet Investments Private Limited 165 ITR 27, it is held by the Special Bench of the Tribunal that the disallowance made under section 14A of the Act read with Rule 8D of the Rules cannot be considered for the purpose of enhancing the book profits under section 115JB of the Act. Learned Assessing Officer will take note of it. Accordingly, ground No. 1 is allowed and ground No. 2 is allowed for statistical purpose.

8. Ground No. 3 of the appeal relates to the addition of Rs.24,59,941/- made by the Assessing Officer by invoking the provisions of section 50C of the Act, as was upheld by the Ld. CIT(A). Facts on this aspect are that during the year assessee sold a property being the land and building situated in Chandigarh for a sum of Rs. 4.25 crores, executed a registered agreement to sale on 13.08.2012, received a sum of Rs. 4.22 crores in the year 2012 itself and the balance amount was left to be received on the date of registration which took place on 28/02/2013. Out of this total

consideration of Rs. 4.25 crores, an amount of Rs. 3.06 crores was shown towards the consideration for land and a sum of Rs.1.19 crores was shown towards the building.

9. Insofar as the consideration for building is concerned, according to the agreement dated 13/08/2012 it was shown as Rs. 1.19 crores whereas according to the collector's rate it was Rs. 90,17,840/-and as on the date of the registration of the sale deed it was Rs. 99,19,624/-. Since the consideration shown in the agreement at Rs. 1.19 crores was more than the collector's rate as on the date of the sale deed at Rs. 99.19 Lacs, learned Assessing Officer did not dispute the same. However insofar as the consideration for land is concerned, according to the agreement it was Rs. 3.06 crores, according to collector's rate as on such date it was Rs. 3.00 crores, but as on the date of registration of sale deed it was Rs. 3.30 crores. Since there is difference in the consideration mentioned in the sale deed and the prevailing collector's rate as on the date was Rs. 3.30 crores, learned Assessing Officer sought to add a sum of Rs.24,59,941/-.

10. Submissions on behalf of the assessee are twofold. Firstly, that according to the proviso to section 50C of the Act, as inserted by finance Act, 2016, when the date of registration for the transfer of capital asset is not the same as the date of agreement, for fixing the amount of consideration, then the stamp value rates as existing on the date of agreement to sell are required to be adopted. Ld. AR submits that the retrospective effect of the amendment to section 50C of the Act is no longer *res integra* and squarely covered by the decisions of Hon'ble Madras High Court in the case of CIT vs. Shri Vummudi Amarendran (2020) TMI 517 and also by the decisions of the Tribunal in the cases of ITO vs. Modipon (2015) 57 taxmann.com 360 (Delhi), Alok Swaroop vs. ITO 2020-

TIOL-5097-ITAT-Delhi, M/s. Jai Laxmi Developers(P)Ltd.vs. DCIT, 2018 (6) TMI 1753-ITAT Delhi, Amit Bansal vs. ACIT, 2018 (11) TMI 1699-ITAT Delhi, Rahul G. Patel vs. DCIT, 2018(9) TMI 1696-ITAT Ahmedabad, Dharamshibhai Sonani vs. ACIT (2017) 57 ITR(Trib), ITO vs. Modipon Ltd. 2015(1) TMI 609-ITAT Delhi, Lalit Mohan Gupta vs. ITO (ITA No. 3678/Del/2014-ITAT Delhi, Mr. Prakash Chand Bethala vs. DCIT, 2021 (2) TMI 215-ITAT Bangalore and Shri N.A. Haris vs. Addl. CIT, 2021(2) TMI 624-ITAT Bangalore.

11. Other argument advanced on behalf of the assessee is that under the provisions of section 50C of the Act, there is no scope for bifurcating the consideration into land and building, the stamp valuation/circle rates for both the properties should be examined together, and if under the proviso to section 50C of the Act, the issues is examined, the entire sale consideration under the agreement of sale has to be considered, in which case the difference less than 1% does not require any interference at the end of the learned Assessing Officer.

12. Learned DR places reliance on the orders of the authorities below.

13. We have gone through the record in the light of submissions made on either side. Coming to the retrospective nature of the amendment to section 50C of the Act by inserting the proviso, we find that in the case of CIT vs. Shri Vummudi Amarendran (supra), Hon'ble High Court held that the amendment made by the Finance Act, 2016 inserting proviso to section 50C is clarificatory in nature and therefore, had the retrospective application. For the sake of completeness, we extract the relevant observations of the Hon'ble High Court at paragraph No. 10 and 12 therein, which read as under :

*“10. Reading of the above proviso would show that the legislature took note of the fact that there are several occasions where the Agreements are entered into between a willing vendor and willing purchaser on an agreed sale consideration, the Agreement is reduced into writing and in many a cases a substantive portion of the sale consideration is given to the vendor as advance on the date of execution of the Agreement. There are other types of transaction where the vendor executes Power of Attorney in favour of the intending purchaser empowering him to sell the property at any time he proposes to do so. In fact this was also a subject matter of consideration, when the legislature thought to introduce the amendment to Section 50C of the Act. There may be cases where the sale consideration will be taken as deferred payment subject to certain contingencies. However the case on hand is very straight forward case, where there is an Agreement for Sale, agreeing to sell the property at Rs. 19 Crores and a sum of Rs. 6 Crores has been received as advance sale consideration. The proviso to Section 50C(1) of the Act deals with cases where the date of the agreement, fixing the amount of consideration and the date of registration for the transfer of the capital assets are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer. Thus an amendment by insertion of proviso seeks to relieve the assessee from undue hardship*

*12. The Honble Supreme Court in Kolkata Export Company took note of the earlier decisions on the same issue in the case of Allied Motors Private Limited Vs. CIT [1997 (224) ITR 677 (SC)], Whirlpool of India Limited Vs. CIT, New Delhi [2000 (245) ITR 3], CIT Vs. Amrid Banaspati Company Limited [2002 (255) ITR 114] and CIT vs. Alom Enterprises [2009 (319) ITR 306] and held that the new proviso should be given retrospective effect from the insertion on the ground that the proviso was added to remedy unintended consequences and supply an obvious omission.*

*-The proviso ensured reasonable interpretation and retrospective effect would serve the object behind the enactment. Thus by taking note of the above decisions, we have no hesitation to hold that the proviso to Section 50C(1) of the Act should be taken to be retrospective from the date when the proviso exists. The CIT(A) while allowing the assessee's appeal vide order dated 25.07.2019, took note of the submissions made by the assessee wherein they placed reliance on the decision of the Ahmadabad Bench of the Tribunal in the case of Dharamshi bhai Sonani Vs. ACIT [2016 75 taxmann.com 141 (Ahmedabad- Trib)], order of the Delhi Bench of the ITAT in the case of Income Tax officer Vs. Modipon Limited [2015 (57) taxmann.com 360 (Delhi Tribunal)].”*

14. Same was the view taken by the Tribunal in the case of ITO vs. Modipon (2015) 57 taxmann.com 360 (Delhi), Alok Swaroop vs. ITO 2020-TIOL-5097-ITAT-Delhi, M/s. Jai Laxmi Developers(P) Ltd. (supra) and Amit Bansal (supra) and several other cases, relied by the Id. AR, as mentioned above. No contrary decision is brought to our notice and since the decision of Hon'ble Madras High Court in Shri Vummudi Amarendran (supra) and the coordinate Benches of Tribunal are applicable to the facts of the case, in view of such consistency of view, while respectfully following the same, we hold that the amendment in section 50C by inserting proviso is curative and retrospective in nature and has to be given effect thereof in this case. In view of our this finding, we are of the considered opinion that the adjudication of the alternative plea is only academic in nature and is not required. Accordingly, we allow ground No. 3 of the appeal.

15. In the result, appeal of the assessee is allowed in part and for statistical purpose.

Order pronounced in the open court on this the 9<sup>th</sup> day of December, 2021.

Sd/-

**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(K. NARSIMHA CHARY)**  
**JUDICIAL MEMBER**

Dated: 09/12/2021

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