

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA Nos. 1469/Hyd/2017 & 284/Hyd/2020 Assessment Years: 2013-14 & 2015-16		
Hyderabad Galvanising Pvt. Ltd., Hyderabad. PAN - AACCH 2547J	Vs.	1. Asst. Commissioner of Income-tax, Circle - 2(2), Hyderabad. 2. Income-tax Officer, Ward - 2(3), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Shri Sai Prasad
Revenue by:		Shri Rohit Mujumdar
Date of hearing:		12/01/2022
Date of pronouncement:		18 /01/2022

ORDER

PER L.P. SAHU, A.M.::

ITA No. 1469/Hyd/2017 for AY 2013-14

This appeal filed by the assessee is directed against CIT(A) - 2, Hyderabad's order dated 20/06/2017 for AY 2013-14 involving proceedings u/s 143(3) of the Income Tax Act, 1961 ; in short "the Act".

2. The only ground in this appeal is against the action of the CIT(A) in confirming the addition of Rs. 39,51,885/- made by the AO towards assessee's claim of depreciation.

3. Briefly the facts of the case are that the assessee company engaged in the business of manufacturing of steel structural, filed its return of income for the AY 2013-14 on 01/10/2013 declaring a total loss of Rs. 38,54,141/-. Subsequently, the case was selected for scrutiny under CASS and accordingly, statutory notices were issued to the assessee.

3.1 During the course of assessment proceedings, the AO observed that the assessee had entered into an MoU with M/s Kotagi Structural Sand Galvanizing Pvt. Ltd. (in short "KSGPL") and agreed to take over all the assets and liabilities of the KSGPL towards the Indian Bank loan to an extent of Rs. 8,79,45,150/-. Subsequently, an amendment to the MoU was entered into between the parties as per which the assessee agreed to take over the liabilities only to an extent of Rs. 6,29,45,150/- . Further, the AO observed as under:

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4.2. During the course of assessment proceedings, the assessee company was asked to furnish evidence in support of cost of acquisition of the assets taken over by it from KSGPL. The assessee relied upon the MoU and submitted that as per the amended MoU the assessee agreed to take over the bank loan liability to an extent of Rs. 6,29,45,150/- and all assets of the company except land. The assessee further submitted that since, Rs. 6,29,45,150/- included the consideration towards 2Acres of land not owned by KSGPL but by individual and even HGPL has purchased fixed assets without lands and the land was registered in the name of individual name of promoters, cost of the land was reduced from total consideration and thus the cost of gross block is Rs. 6,18,08,650/- (i.e. Rs. 6,29,45,150 - Rs.11,36,500/-). The assessee was asked to furnish the Depreciation schedule of KSGPL prepared as per Income tax Act, 1961 as on the date of transfer of the assets. The Depreciation schedule of KSGPL and the assessee company as on 31.03.2016 is as follows:

Kotagi Structurals and Galvanising Pvt Ltd depreciation schedule

s.no.	Description/Block of asset	Opening WDV as on 01.04.2012	Deductions 180 Days more.	Closing WDV as on 31.03.2013
1.	Building	15672182.40	24969044	92762820
2.	Furniture and fittings	125756	173407	476510
3.	Machinery and plant	17300963	36366579	19065640
4.	Computers	43928	299620	2556920
	Total	33142829	61808650	28665821

Hyderabad Galvanising Pvt Ltd depreciation schedule.

s.no.	Description/Block of asset	Opening WDV as on 01.04.2012	Additions	Depreciation	Closing WDV as on 31.03.2013
1.	Building	0	24969044	2496905	22472139
2.	Furniture and fittings	0	173407	17341	156066
3.	Machinery and plant 15%	0	36366579	5459162	30907417
4.	Machinery and plant 60%	0	299620	179772	119848
	Total	0	61808650	8153180	53655470

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On perusal of the said depreciation schedule of KGSPL it was observed that the WDV of the assets as on the date of transfer was only Rs. 3,31,42,829/- as against Rs. 6,18,08,650/- debited by the assessee to fixed asset schedule of its books. Thus, the assessee has debited Rs.2,86,65,821/- in excess of the WDV of the assets as on the date of transfer. It is pertinent to mention here that Sri. N. Srikanth Reddy is a common share holder in both the companies. As on 31/03/2013, he was holding 30% shares each in KSGPL as well as the assessee company. Thus, it is evident that both the companies are related parties.

4.3. In view of the above facts, the AR of the assessee was asked vide order sheet entry dtd:21/01/2016, justify the cost of acquisition and depreciation claimed by the assessee on the assets taken over from KSGPL. In response, the assessee submitted that Rs. 6,18,08,650/- is bank loan liability which in turn is the consideration paid for the fixed assets and hence the same was taken as cost of acquisition. The assessee further submitted that seller i.e. KSGPL also accounted Rs. 6,18,08,650/- and treated the excess consideration of Rs.2,86,65,821/-, over the WDV as short term capital gain and offered it to tax.

The assessee's submission was considered and found to be not satisfactory for the following,

- i) Both the companies are closely related to each other as mentioned above. Before the date of transfer, the assets were being used by KSGPL for the purpose of its business.
- ii) KSGPL is loss making company. For A.Y. 2013-14 it reported a business loss of Rs.3,91,90,871/- against which it set off the short term capital gain of Rs.2,86,65,821/- and arrived at taxable income at Rs. Nil. Hence, there is no merit in the assessee's submission that there is no tax effect as KSGPL has admitted short term capital gain.
- iii) The assessee company started its commercial operations during F.Y. 2012-13 relevant to A.Y. 2013-14 and it returned a loss of Rs. 38,54,141/- after claiming depreciation of Rs.81,53,180/- as per income tax Act. The depreciation as per the WDV of KSGPL as on the date of transfer works out to Rs.42,01,295/- only. Thus the assessee company claimed excess depreciation of Rs.39,51,885/- (i.e. Rs. 81,53,190 - Rs. 42,01,295) by enhancing the cost of acquisition by Rs. 2,86,65,821/-.

4.4. In view of the above, I am satisfied that the main purpose of the transfer of the above mentioned fixed assets to the assessee company, was the reduction of a liability to income tax (by claiming depreciation of Rs.39,51,885/- with reference to enhanced cost of Rs. 2,86,65,821/-). Hence, the actual cost of the above mentioned fixed assets are determined at Rs. 3,31,42,829/- (i.e. WDV in the books of KSGPL as on the date of transfer) as provided in Explanation 3 to S. 43(1) of the Income Tax Act, 1961, with the prior approval of the Addl. Commissioner of Income Tax, Range-2, in F.No. 120/R-2/43/1/2016-16 dt; 09/03/2016.

4.5. In view of the facts and discussions Rs. 39,51,885/- being the excess depreciation claimed by the assessee on the enhanced cost of Rs. 2,86,65,821/- is disallowed and added to the income of the assessee.



Addition Rs. 39,51,885/-

4. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) and the CIT(A) after considering the submissions of the assessee dismissed the appeal of the assessee by holding that the AO has rightly disallowed the assessee's excess claim of depreciation of Rs. 39,51,885/-.

5. Aggrieved by the order of CIT(A), the assessee is in appeal before the ITAT.

6. Before us, the ld. AR of the assessee reiterated the submissions made before the revenue authorities and submitted that the entire fixed assets of KSGPL was taken over by the assessee company at a value of Rs. 6,18,08,650/-, which was recorded by the KSGPL in its books of account as sale price and the difference had been offered as a short term gains during the impugned AY and, he therefore submitted that there is no loss to the revenue. He submitted that both the parties have entered into MoU and accepted purchase and sales price by both the companies, i.e., purchaser and seller. He also submitted that in the latter year, the same assets were sold by the assessee company on 24th December, 2014 for Rs. 5,20,00,000/- for a much higher amount than the WDV of assets in the assessee's hands, to M/s ePower Energy India Pvt. Ltd. , which is an unrelated company and offered a short term capital gains of Rs. 52,59,061/- for the AY 2015-16. He,

therefore, submitted that the assessee did not obtain any undue benefit or advantage on the purchase of the assets at a higher rate than the WDV in the case of seller as held by the AO in his assessment order. He, therefore, submitted that the assessee has not claimed excess depreciation.

7. The Id. DR, on the other hand, besides relying on the orders of revenue authorities submitted that the assessee company has not taken any scientific methods for arriving valuation of the assets as on the date of transfer between two companies and, therefore, the AO has rightly applied section 43(1), Explanation - 3 and there are undue benefits taken by the assessee for claiming excess depreciation by adopting excess value, which was the value over and above from the erstwhile company. He submitted that the AO was not satisfied with the valuation of assets by the assessee and obtained permission before passing the order as per the explanation given in the IT Act.

8. After considering the rival submissions and perusing the material on record as well as the orders of revenue authorities, we find substance in the submissions of the Id. DR that there should be a proper method to value the fixed assets as on the date of purchase of the same, which was not done by the assessee while purchasing the assets of KSGPL. He submitted that merely evaluating the value of the fixed assets with Bank loan is not proper as observed by

the AO in his order. The assessee has debited Rs. 2,86,65,821/- in excess of WDV of the assets as on the date of transfer. The AO has also observed that 30% shares in both the companies are held by a person, namely, Shri N. Srikanth Reddy, who is a common shareholder in both the companies. We observe from the order of AO that during the assessment proceedings, the assessee has not produced any documentary evidence except the MoU and financial statements to establish that the correct value has been adopted by the company for purchasing assets of KSGPL for the satisfaction of the AO. In this connection, we reproduce the provisions of section 43(1) as under:

“43. (1)⁵ " actual cost" means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority:

Explanation 3.- Where, before the date of acquisition by the assessee, the assets were at any time used by any other person for the purposes of his business or profession and the⁵ Assessing] Officer is satisfied that the main purpose of the transfer of such assets, directly or indirectly to the assessee, was the reduction of a liability to income- tax (by claiming depreciation with reference to an enhanced cost), the actual cost to the assessee shall be such an amount as the⁶ Assessing] Officer may, with the previous approval of the⁷ Deputy] Commissioner, determine having regard to all the circumstances of the case.

8.1 From the above, it is clear that the AO has rightly invoked section 43(1), Explanation - 3 when the assessee failed to value the actual cost of the assets purchased by it. Therefore, considering the totality of the facts of the case, we find no infirmity in the order of the CIT(A) in upholding the action of the AO in disallowing the excess claim of

depreciation by the assessee. Accordingly, the grounds raised by the assessee on this issue are dismissed.

9. In the result, appeal of the assessee is dismissed.

ITA No. 284/Hyd/2020 for AY 2015-16

10. On perusal of record, we find that the CIT(A) dismissed the appeal of the assessee when the assessee failed to appear before him and substantiate its ground of appeal with evidences. Further, on merits also, the CIT(A) discussed the issue and confirmed the order of AO on the ground that the assessee failed to appear before him and substantiate its claim with evidences.

11. After considering the submissions of both the parties and perusing the material on record as well as the orders of revenue authorities, we are of the view that interest of justice will be served if the appeal of the assessee is remitted to the file of CIT(A) with a direction to give one more chance to the assessee to present its case before him on merits with documentary evidence to substantiate its claim. The CIT(A) is directed to reasonable opportunity of hearing to the assessee in the matter. We direct the assessee to appear before the CIT(A) with all the relevant evidences to substantiate her claim; at its own risk and

responsibility to be followed by three effective opportunities of hearing.

12. In the result, appeal of the assessee is treated as allowed for statistical purposes.

13. To sum up, appeal in ITA No. 1469/Hyd/2017 is dismissed and the appeal in ITA No. 284/Hyd/2020 is allowed for statistical purposes.

Pronounced in the open court on 18th January, 2022.

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 18th January, 2022.

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5	<i>PR. CIT - 2, Hyderabad.</i>
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S.No.	Details	Date
1	Draft dictated on	
2	Draft placed before author	
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	