

IN THE INCOME TAX APPELLATE TRIBUNAL A BENCH, PUNE

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

ITA No. 2344/PUN/2016
(Assessment Year: 2003-04)

M/s. Automotive Stampings and Assemblies Ltd. G 71/2, MIDC, Bhosari Pune 411026	Vs.	DCIT, Circle - 8 Pratyakshakar Bhavan Sec. 26, Dr. Ambedkar Marg Akurdi, PradhikaraP Pune 411044
		PAN – AAACJ2116

Appellant

Respondent

Appellant by: Ms. Aarti Sathe
Respondent by: Shri S.P. Walimbe

Date of Hearing: 28.04.2022
Date of Pronouncement: 06.05.2022

ORDER

Per S.S. Godara, JM

This assessee's appeal for AY 2003-04 is directed against the CIT(A)-6, Pune's order dated 30.06.2016 passed in case No. PN/CIT(A)-V/DCIT Cir-8/73/2009-10 involving proceedings under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short the Act).

Head both the parties. Case file perused.

2. The assessee's first the foremost substantive ground challenges correctness of both the learned lower authorities' action taken recourse to Sections 148/147 mechanism for disallowing its alleged long term capital loss claim of Rs.1,50,42,735/-. Learned counsel's vehement arguments during the course hearing is that both the lower authorities have invoked Sections 148/147 mechanism merely on the basis of revenue audit objection as per the Assessing Officer's letter submitted before the CIT(A) (page 537 of the case record). We find no merit in the assessee's instant legal argument as the

Assessing Officer had duly applied his independent mind before recording the following reasons of the assessee's taxable having escaped assessment.

"Reasons for assessment reopened U/s 147

While verification of the assessment record for A.Y. 2003/04 is has observed that in the schedule IV to the computation of income you has claimed long term capital loss of Rs.1,50,42,735/- on transfer of share application money paid to Thyseen Krupp JBM Pvt. Ltd. On verification of the claim with the annual report for F.Y. 2001-02 schedule 6 to the balance sheet it is seen that no such share application money were paid to the said company, but infact you have made advance payment towards purchase of shares of that company amounting to Rs.5.590 crores. It is also seen that the said amount have been seen to be squared of in F.Y. 2002-03.

Apparently it is looks like the advances given early have been received back during the F.Y. 2002/03 where as you have given treatment that transfer of capital assets and computed the capital loss by adopting the index value of acquisition of assets.

In fact the advances were given in order to purchases the shares no transaction of purchase were took place against the advance paid. Hence you were not in receipt of and tangible or intangible assets within the meaning of provisions of section 2(14) of the I.T. Act 1961. The advances given refunded on 11/04/2002, which were in excess of what was given as advance. The excess money received is in lien of the money utilized by the said company which has to be offered for taxation under the head income from other sources but you have regarded as the advance paid as share application money and according claimed long term capital loss by adopting the index value of acquisition. Infact there was just simple transaction that advance was paid for purchase of share same were shown as outstanding every year and received back on 11/04/2002 with interest which has to be should have offered for taxation under the head income from other sources. Instead of that you have claimed as loss of transfer of capital assets under the head income from capital gain by taking the index cost as cost of acquisition.

Thus there is reason to believe that there is escaped assessment within the meaning of provisions of section 147 of the I.T. Act and accordingly notice u/s 148 dated 28/03/2008 were issued and served on you.

However, there is no compliance from the companies side. Hence you are requested to please furnish the details of advances paid to Thyseen Krupp Pvt. Ltd. towards the purchase of share and amount received back being no shares were purchased on by you and no shares were transferred to you.

You are also requested to substantiate your claim of capital loss being nothing was explained during the assessment proceedings u/s 143(3) and material fact was on record which substantiate the claim of capital loss. You are also requested to produce the material fact which may

evidenced to lead that there was acquired the capital assets and also transferred the same which attract the provisions of I.T. Act to regards it as income from capital gain.”

We accordingly reject the assessee's instant legal ground.

3. Next comes the latter issue of disallowance of the assessee's impugned long term capital loss amounting to Rs.15,42,735/- in both the lower proceedings. The precise dispute between the parties is for the corresponding deed of transfer of the assessee's capital asset, ie in the nature of right to subscribe the joint venture's stake. The Assessing Officer has taken its Board's meeting dated 21.07.2000 whereas the assessee's case is that it was only in light of the tripartite assignment deed executed on 11.04.2002 between itself acting as vendor, Mr. S.K. Arya and vendee and joint venture indeed M/s. Krupp Camford Ltd. that the asset in issue had been transferred. We notice at this stage that the assessee had never produced its so called assignment deed either before the Assessing Officer or in the lower appellate proceeding. It therefore amounts to additional evidence only. Faced with this situation, learned counsel raised an alternative plea that the instant issue of date of transfer of the assessee's foregoing capital asset be restored back to the Assessing Officer for its verification since the taxpayer could not file a copy of the assigning deed dated 11.04.2000 in both the lower proceedings. We find prima facie merit in assessee's latter plea as the above stated assignment deed indeed forms very relevant evidence going to root of the matter. We accordingly restore the instant second issue back to the Assessing Officer for his afresh adjudication/factual verification in consequential proceedings. Ordered accordingly.

4. This assessee's appeal is partly allowed for statistical purposes in above terms.

Order pronounced in the open court on 6th May, 2022.

Sd/-
(Dipak P. Ripote)
Accountant Member

Sd/-
(S.S. Godara)
Judicial Member

Pune, Dated: 6th May, 2022

Copy to:

- 1. The Appellant*
- 2. The Respondent*
- 3. The CIT(A) -6, Pune*
- 4. The Pr. CIT - 5, Pune*
- 5. The DR, "A" Bench, ITAT, Pune*

By Order

//True Copy//

*Assistant Registrar
ITAT, Pune Benches, Pune*

n.p.