

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER**

ITA NO. 590/MUM/2020 (A.Y: 2016-17)

DCIT – Circle – 12(1)(1) Room No. 128C, 1 st Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	v.	M/s. Archroma India Pvt. Ltd., 9 th Floor, D Building MBC Park, Ghodbunder Road Kasawadavali, Thane Mumbai - 400615 PAN: AAACA8270F
(Appellant)		(Respondent)

Assessee by	:	Shri Madhur Agrawal
Department by	:	Ms. Shailaja Rai
Date of Hearing	:	07.06.2022
Date of Pronouncement	:	29.06.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the Revenue against order of the Learned Commissioner of Income Tax (Appeals)-20, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 09.10.2019 for the A.Y.2016-17.

2. Revenue has raised following grounds in its appeal: -

"i) Whether on the facts and in the circumstances and law was right in holding that with respect to the assets taken over from BASF India Ltd there was no succession of business and accordingly the assessee's case does not falls within the ambit of provision of section 170 of the IT Act. whereby the 6th proviso to section 32 is not

applicable ignoring the facts as evident from the agreement with BASF India Ltd., that the business of the said company has been succeeded by the assessee company."

"ii) Whether on the facts and the circumstances and law, the Ld.CIT(A) was justified in concluding with respect to the claim of depreciation on assets taken over from Clariant Chemicals (India) Ltd that the subject matter of the present appeal was consequential in nature thereby directing the AO to rework the allowable depreciation by taking the closing WDV for preceding year i.e. AY 2014-15 as the opening WDV for the relevant year without appreciating that the decision for AY 2014-15 has not been accepted by the department and appeal is still pending before the Hon'ble ITAT?."

iii) "The appellant prays that the order of the Ld. CIT(A) on the grounds be set aside and that of the Assessing Officer be restored."

iv) "The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary".

3. At the time of hearing, Ld. AR brought to our notice that similar grounds were raised before the Coordinate Bench in ITA.No. 306/Mum/2014 for the A.Y. 2014-15 and the Coordinate Bench has considered and adjudicated the issue in favour of the assessee and against the revenue, he brought to our notice Para No. 13 to 27 of the order.

4. Ld. DR has fairly accepted the submissions of the Ld.AR.

5. Considered the rival submissions and material placed on record, we observed that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case for the A.Y. 2014-15 and

decided the issue in favour of the assessee. While holding so the

Coordinate Bench held as under: -

"13. We have heard both the Counsel and perused the records. Ld.Counsel of the assessee submitted that this is not a case in which provisions of section 170 are attracted. He submitted that succession doesn't encompass purchase of business. He submitted that there are separate provisions for taxation of slump sale of business and therefore it is not in the nature of succession. In this regard he referred to the provisions of section 2(42)C and provisions of section 50B. He further submitted that Customer Distribution Network (CDN) is an eligible intangible assets or the same can be recharacterised as goodwill for the purpose of applying tax depreciation under section 32(1)(ii) of the income tax act.

14. Learned counsel further submitted that even if WDV of the transferor is adopted the balancing figure of goodwill adopted by the assessee on which tax depreciation has been allowed by the assessing officer will increase from Rs. 61,34,59,000/- to Rs. 1,30,69,08,315/- increased by the value of CDN of Rs. 54,12,20,000/-. Learned counsel further relied upon several case laws in support of his proposition

15. Per contra learned Departmental Representative relied upon the orders of the authorities below. In support thereof learned DR also relied upon several case laws.

16. Upon careful consideration we note that in the present case assessee has acquired the assets under a slump sale. The income tax act under section 2(42)(C) defines slump sale as under:

"slump sale means the transfer of one or more undertakings as a result of the sale for a lump-sum consideration without value being assigned to the individual assets and liabilities in such sales."

From the above it is clear that slump sale is a specie of transfer by way of sale. The provision of section 50B reads as under :-

50B. (1) Any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place:

Provided that any profits or gains arising from the transfer under the slump sale of any capital asset being one or more undertakings owned and held by an assessee for not more

than thirty-six months immediately preceding the date of its transfer shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

(2) In relation to capital assets being an undertaking or division transferred by way of such sale, the "net worth" of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48.

(3) Every assessee, in the case of slump sale, shall furnish in the prescribed form along with the return of income, a report of an accountant as defined in the Explanation below sub-section (2) of section 288, indicating the computation of the net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at in accordance with the provisions of this section.

[Explanation 1.—For the purposes of this section, "net worth" shall be the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account :

Provided that any change in the value of assets on account of revaluation of assets shall be ignored for the purposes of computing the net worth. Explanation 2.—For computing the net worth, the aggregate value of total assets shall be-

(a) in the case of depreciable assets, the written down value of the block of assets determined in accordance with the provisions contained in sub-item (c) of item (i) of sub-clause (c) of clause (6) of section 43

[(b) in the case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD , nil; and

(c) in the case of other assets, the book value of such assets.]

16. A reading of the above makes it clear that the above section deals with the mode of charging to tax, the profit or the gain arising out of the slump sale. It nowhere deals with the issue of depreciation on the assets acquired under slump sale. When there is no mention whatsoever about the issue of depreciation on assets acquired under slump sale under section 50B the natural, corollary is that the depreciation on assets acquired under slump sale is to be governed by the general provisions given in the income tax act for the

depreciation on assets. In this regard we may refer to the 5th proviso to section 32(1). The said proviso is as under :-

Provided also that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the predecessor and the successor in the case of succession referred to in clause (xiii), clause (xiiib) and clause (xiv) of section 47 or section 170 or to the amalgamating company and the amalgamated company in the case of amalgamation, or to the demerged company and the resulting company in the case of demerger, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation or the demerger, as the case may be, had not taken place, and such deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the demerged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them.

17. A reading of the above makes it clear that the above proviso deals with the depreciation on transfer of assets in case of succession referred in 47(xiii), 47(viib) and 47(xiv) or section 170(1) or to the amalgamating company or to the demerged company.

18. Section 47(xiii) deals with the case of transfer of a capital asset by a firm. Section 47(xiiib) deals with transfer of capital asset by a private company or unlisted company, limited liability partnership on transfer's which are result of conversion of the company into a limited liability partnership. Section 47(xiv) deals with succession of sale proprietorship. Hence the present case is not coming under the ambit of transfer under section 47 as mentioned in the said proviso.

Section 170 of the income tax act is as under :-

(1) Where a person carrying on any business or profession (such person hereinafter in this section being referred to as the predecessor) has been succeeded therein by any other person (hereinafter in this section referred to as the successor) who continues to carry on that business or profession:-

(a) the predecessor shall be assessed in respect of the income of the previous year in which the succession took place up to the date of succession;

(b) the successor shall be assessed in respect of the income of the previous year after the date of succession.

19. *A reading of the above shows that this section deals with transfer of assets pursuant to succession to business by any person otherwise than death.*

20. *In the present case we find that assessee had acquired the said assets under slump sale. There is a business transfer agreement and by way of this agreement the assessee has purchased an undertaking under slump sale. In our considered opinion the facts in the present case clearly show that the assessee company has acquired the assets under a business transfer agreement. Hence it has succeeded the transferee company. The provisions of section 170 are clearly applicable on the facts of the present case.*

21. *The submission of the learned counsel of the assessee that there are separate provisions for dealing with slump sale is not sustainable with regard to the depreciation on assets obtained under slump sale. As we have already noted above the concerned sections that is section 2(42)c and section 50B referred by the learned counsel of the assessee do not deal with the issue of depreciation on assets acquired under slump sale. As submitted by learned Counsel of the assessee the Assessing Officer has accepted the value of goodwill attributed by the assessee as a balancing figure in the value of slump sale and value attributed to specific asset taken over.*

22. *The distinction between the case of the assessee and succession envisaged u/s. 170 as submitted by learned Counsel of the assessee also fails on the touchstone of Hon'ble Supreme Court decision in the case of CIT Vs. K.H. Chambers [1965] 55 ITR 674 . In this view of the matter other decisions referred by learned Counsel of the assessee cannot take precedence. Moreover, an obiter dicta in the case of Tribunal decision in Saipem Triune Engineering Pvt. Ltd. (supra) cannot be said to be a conclusive law that slump sale does not come under the realm of section 170.*

23. *We can consider the present issue from another angle for the invocation of the 5th proviso to section 32(1) to the case of Slump Sale.*

24. *As evident from the reading of the 5th proviso to section 32(1) the said proviso deals with the deprecation on transfer of assets in case of succession amalgamation and demerger. As per the principle of construction enshrined in the dictum Noscitur a sociis, meaning of an unclear word may be known from the accompanying words. Under this doctrine the meaning of questionable or doubtful words or phrases in a statute may be ascertained by reference to the meaning of other words or phrases associated with it. In Maxwell interpretation of the statutes this doctrine is explained that the*

meaning of that expression is stated as that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. The words take colour from each other and are quantified by the meaning of each other, more general is restricted to a sense analogous to that looks of the less general.

24. *Examining on the anvil of the above rule of construction we find that the said section deals with depreciation on transfer of assets in case of succession amalgamation and demerger, and there is no exclusion anywhere in the income tax act regarding issue of depreciation on slump sale from the ambit of depreciation taxation under section 32. Hence, in our considered opinion, on the principle of the Noscitur a sociis, the asset transferred under slump sale would fall under the sweep of this section, i.e., 5th proviso to Section 32(1), despite the word slump sale not used therein specifically. As the accompanying word suffice for the inclusion thereof on this principle by the amalgamation, succession and demerger in there cognate sense. Accordingly the depreciation on assets transferred under slump sale has to be considered from the prescription of this proviso, even without invoking the provision of section 170(1).*

25. *From the above discussion it is evident that 5th proviso to section 32 is evidently applicable for the computation of depreciation on assets which have been taken over from the transferor company. Hence the computation of depreciation on assets which have been taken over has to be in accordance with the said proviso. Hence the computation of depreciation on these assets transferred in terms of the said proviso by the assessing officer is correct.*

26. *Now we deal with the issue of value of treatment of difference between the WDV of assets taken over and the slump sale amount. Honourable Supreme Court in the case of Arevat T&D India Ltd. (supra) has confirmed the order of honourable Delhi High Court. The Hon'ble High Court held that excess amount paid over and above the tangible assets for acquisition of various business and commercial rights under slump sale can be categorised under the head goodwill. This view also supported by Hon'ble Delhi High Court decision in the case of Triune Energy Services Pvt. Ltd. Vs. DCIT (65 taxmann.com 288). The Tribunal in that case has set aside the issue of valuation of goodwill to the file of the Assessing Officer. The Hon'ble High Court held that the same being a balancing figure the value of goodwill was to be allowed. Hence the direction to treat the balance amount of WDV of assets taken over and slump sale as goodwill is correct and in accordance with the above case law. Accordingly, in the background of the aforesaid, we conclude as under:*

No. 1 the invocation of 5th proviso to section 32 is correct to the extent of computation of depreciation on the WDV of assets taken over from the transferor company

No. 2 the balancing figure between the value of slump sale and the value of WDV of assets taken over shall qualify as goodwill, and eligible for consequent depreciation.

27. Accordingly, the assessee's appeal and the cross objection are dismissed and the Revenue's appeal is partly allowed."

6. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2014-15, we dismiss the grounds raised by the revenue.

7. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 29th June, 2022

Sd/-

(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Mumbai / Dated 29.06.2022
Giridhar, Sr.PS

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum