

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **1049/CHNY/2019**

निर्धारण वर्ष/Assessment Year: 2014-15

**Pricol Engineering Industries  
Ltd.,**  
109, CPM Towers, Race Course  
Road, Coimbatore – 641 018.

**The ACIT,**  
vs. Corporate Circle – 2,  
Coimbatore.

**PAN: AABCP 8787H**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri T. Banusekar, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri R. Mohan Reddy, CIT

सुनवाई की तारीख/Date of Hearing

: 05.01.2023

घोषणा की तारीख/Date of Pronouncement

: 11.01.2023

**आदेश / O R D E R**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal by the assessee is arising out of the Revision order passed by the Principal Commissioner of Income Tax (Appeals)-1, Coimbatore in C.No.120(25)/263/PCIT-1/CBE/2017-18 dated 14.02.2019. The assessment was framed by the ACIT, Corporate Circle-2, Coimbatore for the assessment year 2014-15 u/s.143(3) of

the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 26.12.2016.

2. The only issue in this appeal of assessee is as regards to the revision order of PCIT revising the assessment framed by the AO u/s.143(3) of the Act by directing the AO to treat the negative net worth of Rs.1,83,92,317/- for the purpose of computation of capital gains arising out of slump sale of Medical Ventilator Division of assessee company, as the assessment framed is erroneous and prejudicial to the interest of Revenue.

3. Brief facts are that the assessee company is engaged in the manufacturing of drive instruments panel etc., including medical ventilators. The assessee company filed its return of income on 30.09.2014. Subsequently, the assessment was framed under MAT provisions by applying provisions of section 115JB of the Act. Subsequently, the PCIT issued show-cause notice No.C.No.120(25)/PCIT-1/CBE/2017-18 dated 10.08.2018 wherein he observed from the annual financial reports for the year ended 31.03.2014 that the assessee has sold one division i.e., Medical Ventilator Division on slump sale basis. The assessee in its computation statement declared negative net worth of Rs.1,83,92,317/- which was deducted from the net profit to arrive

at the income from business or profession. The PCIT noted that the capital gain declared u/s.50B of the Act was shown at 'nil'. He noted that excess of liability over assets of the said division was disclosed by assessee as an exceptional item to the extent of Rs.1,83,92,317/- as per annual accounts note No.2.25. According to PCIT, this is nothing but cessation of liability which is to be treated as business income u/s.41 of the Act. Secondly, as per show cause notice and without prejudice to the above, it was noted by the PCIT that the purpose of section 50B of the Act is that the net worth should be deducted from the sale consideration to arrive at the profit or loss on sale of undertaking and net worth means the excess of assets over liabilities. He noted that in the present case since the value of liability is more than the asset value, the net worth is negative figure. Negative figure of net worth cannot be ignored for working out capital accounts in the case of slump sale. Therefore, the capital gain on the profit of sale to the tune of Rs.1,83,92,317/- should have been taxed. According to PCIT, the AO has framed assessment u/s.143(3) on 26.12.2016 without proper verification of this aspect of negative net worth and hence, the assessment order is erroneous and prejudicial to the interest of Revenue. Accordingly show cause notice was issued.

4. The PCIT noted the above facts and after discussing various case laws and more particularly the ITAT, Mumbai Special Bench in the case of DCIT vs. Summit Securities Ltd., [2012] 135 ITD 99 (Mumbai) (SB) observed that the amount of net worth will be negative figure of Rs.1,83,92,317/- and the same amount will be chargeable to tax under the head 'capital gains'. For this, he observed in para 27, 28 & 29 as under and directed the AO to redo the assessment afresh after allowing reasonable opportunity of being heard to the assessee:-

“27. The summary and thereby the conclusion is that the amount of “Net worth” will be a negative figure of Rs.1,83,92,317/- and not Zero. Resultantly the amount of capital gain chargeable to tax will be on Rs.1,82,92,317/-. Reliance is also placed on the decision of the ITAT Mumbai Bench ‘I’(Special Bench) [2012] 19 taxmann.com (Mum). In the case of DCIT Vs. Summit Securities Ltd.

28. In view of the above the order made by the AO dated 26-12-2016 for the Asst. Year 2014-15 in the case of the captioned assessee, since made without due verification is set aside in exercise of the powers vested in me u/s.263 of the Act.

29. The Assessing Officer is hereby directed to re-do the assessment afresh, after determining the quantum of capital gain chargeable to tax u/s.50B of the Act in view of the discussions above. The Assessing Officer shall give adequate opportunity of being heard to the assessee before passing the fresh Assessment order.”

Aggrieved, now assessee is in appeal before Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. Before us, the Id.AR for the assessee

made the facts very clear and he took us through the assessee's paper-book consisting of pages 1 to 16 that the entire details in regard to net worth of Rs.1,83,92,317/-, the gain on slump sale of Medical Ventilator Division which has been shown as Exceptional item was filed before the AO during the assessment proceedings. He took us through the assessee's paper-book page 2, wherein Form No.3CEA dated 28.11.2014 is enclosed and the date of slump sale of the undertaking or division referred to in item No.2 i.e., manufacturers of medical ventilators / respirators / accessories is 14.11.2013, which is falling in the FY 2013-14 relevant to this AY 2014-15. The Id.AR stated that amount of consideration received for slump sale is zero and hence, net worth of undertaking or division referred to in item 2 above is a negative net worth i.e., (-)1,83,92,317/-. The Id.AR referred to the following item 6 of Form No.3CEA:-

6 Net worth of the undertaking or division referred to in item 2:					
S.No.	(a) In the case of depreciable assets, written down value of the assets of the undertaking or division transferred by way of slump sale, determined in accordance with sub-item (c) of item (i) of sub-clause (c) of clause (6) of section 43.	(b) In the case of other assets, book value of such assets	(c) Aggregate value of total assets of the undertaking or division transferred by way of slump sale [(a) + (b)]	(d) Value of liabilities relating to the undertaking or division as appearing in the books of accounts	(e) Net worth of the undertaking or division [(c)-(d)]
1	<b>2639078</b>	<b>14484116</b>	<b>17123194</b>	<b>35515512</b>	<b>-18392318</b>

5.1 The Id.AR also took us through page 4 of assessee's paper-book wherein working for sale of ventilator division and computation made u/s.115JB of the Act is taken at 'Nil'. The Id.AR also took us through the note submitted before the AO during the course of assessment proceedings and in its audit report i.e., Note on Exceptional Item, which is enclosed in assessee's paper-book at page 5 and the same reads as under:-

During the Financial Year 2013-14 an amount of Rs.1,83,92,3177- has been shown as an exceptional item in the Profit and Loss Account which represents the gain on transfer of Medical Ventilator Division on a Slump Sale Basis. The Medical Ventilator Division was incurring heavy losses mainly due to the fact that it was not the core business of the Assessee. However considering the potential of the low cost Medical Ventilators, Skanray Technologies Private Limited, Mysore took over the Medical Division on a Slump Sale Basis at Zero Value taking over all the assets and liabilities "as is where is" basis as on 14.11.2013. The Assessee, considering cash losses that were being incurred, decided to transfer the Division without any further liability. The total value of the assets of the Division was Rs.17.123 Mn. and the total liability of the Division was Rs.35.516 Mn. The difference of Rs.18.392 Mn. was the gain on Slump Sale of the Medical Ventilator Division which has been shows as exceptional item.

With regard to its treatment for the purpose of Income-Tax, the provisions of Section 50B and Section 115JB are applicable. As far as Section 50B is concerned, the excess of sale consideration over the net-worth is to be assessed under capital gains, in the said case the Assessee's Medical Ventilator Division had a negative net-worth of Rs.18.392 Mn. and the sale consideration was NIL. Hence there was no capital gain on transfer of the Division as per provision of Section 50B of the Income-Tax Act. Since there is a specific provision under capital gains in the case of transfer of assets/undertaking, the gain on transfer was excluded in the statement of total income to be separately assessed under Section SOB of the Income-Tax Act.

With regard to application of Section 115JB of the Income-Tax Act the Assessee has offered the same for tax and paid the taxes as per Law.

5.2 The Id.AR also took us through page 6 of assessee's paper-book wherein the division of medical ventilators is enclosed. The Id.AR stated that once there is a negative net worth of Rs.1,83,92,318/- but the amount of consideration received for slump sale is zero i.e., no value in that eventuality even if AO will go through the provisions and consider this exceptional item of negative net worth of Rs.1,83,92,317/-, the ultimate result will be '0'. He explained that in the case law of Summit Securities Ltd., *supra*, referred by the PCIT in his order, the capital gain arising on transfer of undertaking as positive figure i.e., the consideration is not nil, no doubt he argued that the Special Bench has held that negative figure of the net worth cannot be ignored while working out capital gain but in case, the figure is '0' as in the present case in regard to consideration, the computation of income will fail, which is not the case in the case of Summit Securities Ltd., *supra*. The Id.AR took us through the para 20 of Summit Securities Ltd., and the relevant part he stated that the resultant amount of capital gain in that case was Rs.300 crores because the consideration was Rs.300 crores on the slump sale which is to be treated as long term capital gains of slump sale i.e., Rs.143 crore + negative net worth of Rs.157 crore. The Id.AR stated that he is arguing the matter on merits and on merits even if negative worth of Rs.1,83,92,317/- will be added to the sale consideration of '0', it will remain minus (-).

Hence, he stated that the assessment order passed by AO may be erroneous but not prejudicial to the interest of Revenue because no capital gain will be chargeable to tax. Hence, he requested that the revision order passed by PCIT is liable to be quashed.

6. On the other hand, the Id.CIT-DR argued that in this case, the AO framed assessment u/s.143(3) of the Act but has not brought the capital gain arising of slump sale to tax and hence, the assessment order is erroneous and prejudicial to the interest of Revenue. The Id.CIT-DR stated where the order passed by AO is erroneous he cited the following reasons:-

- “(i) Admitted position
- (ii) Slump Sale
- (iii) Negative Networth
- (iv) AO has not brought the capital gains arising on Slump sale to tax

He argued that once the slump sale is accepted, the AO has simply followed the method of computation of capital gains and determined the amount of capital gain arising out of the same. He argued that the computation of capital gain is simple arithmetic i.e., capital gains= sale consideration minus net worth. He has relied on the written submissions and recorded the relevant fact as under:-

“Once the slump sale is accepted, what is left for the AO is simply follow the method of computation of capital gains and determine the amount of capital gain arising. Now computation of capital gain is a simple arithmetic Capital gains= sale consideration minus net worth.”

When a query was put to Id.CIT-DR by the Bench, what is the sale consideration, he admitted that it is zero and what is to be deducted from zero i.e.,(-) net worth or negative net worth of Rs.1,82,93,317/- then what will be chargeable to capital gains, he could not answer. Rest of the arguments were on the erroneous order but he could not specify what is prejudice cost to the Revenue because there is no tax liability or capital gain tax liability on the above transaction because net consideration of slump sale is zero.

7. We noted from the above facts which are clear that admittedly the slump sale consideration declared by assessee is '0' i.e., 'nil' and admittedly there is negative net worth because the assessee had incurred loss continuously. The negative net worth is Rs.1,82,93,317/- and even if we reduce this from the slump sale consideration of zero, the ultimate capital gain will be zero. Hence, we are of the view that the revision passed by PCIT is right to the extent that negative net worth is to be considered while computing capital gains but in case of positive consideration. But in the present case, the slump sale value is zero and hence, computation will fail and secondly, there is no prejudice caused to the Revenue by the order of the AO. Hence, the revision order passed by PCIT

has not fulfilled the two conditions which the Revenue itself admitted in its written submissions as under:-

“2. To invoke the powers under 263 the twin conditions to be met are (i) the order of AO is erroneous and (ii) the order is prejudicial to the interests of revenue.”

Once the second condition of prejudice caused to Revenue is not fulfilled, the revision order has to fail. We quash the revision order and allow the appeal of assessee.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 11<sup>th</sup> January, 2023 at Chennai.

Sd/-

(जी. मंजुनाथ)

**(G. MANJUNATHA)**

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 11<sup>th</sup> January, 2023

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त (अपील)/CIT(A) |
| 4. आयकरआयुक्त /CIT     | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF.           |