

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,  
NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER, AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 2858/DEL/2019 [A.Y 2015-16]

M/s Aditya Olibchem Pvt Ltd  
B-23/1, Phase - II,  
Okhla Industrial Area  
New Delhi

Vs.

The Dy. C.I.T.  
Circle -1(2)  
New Delhi

PAN: AACCA 3576 G

(Applicant)

(Respondent)

Assessee By : Shri Rajeev Saxena, Adv  
Shri Shyam Sundar, Adv

Department By : Shri Kanav Bali, Sr. DR

Date of Hearing : 07.12.2022

Date of Pronouncement : 25.01.2023

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the  
ld. CIT(A) - 1, New Delhi dated 24.01.2019 pertaining to A.Y. 2015-16.

2. The grievances of the assessee read as under:

*“1. That Ld. CIT(A) has erred in law as well as on facts in upholding the order of Ld.AO by making the following adjustments:*

*i) Addition of Long-term Capital Gain on sale of industrial plot amounting to Rs.91,90,000/-*

*ii) Upholding the disallowance of Rs. 17,00,000 on account of 100% of bad debts claimed cannot be allowed*

*iii) Upholding the disallowance of claim of excise duty to the tune of Rs. 12,00,624/-*

*iv) Setting aside for statistical purposes the expenses on account of Additional excise duty pf Rs.2,61,180/- and Rs. 1,30,435/- relating to alleged non-business expenses.*

*2. That the Ld. CIT(A) has erred on facts and circumstances of the case in confirming addition of Rs. 91,90,000/- made by Ld. AO on account of Long-Term Capital Gain on the sale of property in the hand of the appellate company without appreciating:*

*(a) that ownership cannot be transferred to a person without consideration.*

*(b) The company cannot become owner who has not made any payment to director.*

*(c) that HSIDC only permitted company to use the plot for manufacturing and thus cannot make it owner.*

*(d) that capital gain if any, can be charged only in the hands of owner but not on the name of lender for purchases of HSIDC.*

*(e) that owner of the property was Director of the assessee company Shri S. K. Gupta as per the sale deed executed at the time of purchase in his name and the assessee company was only authorized to use the property.*

*(f) that while computing capital gains no benefit of indexation has been allowed.*

*3. That the Ld. CIT(A) has erred in law as well as on facts in confirming the disallowance made by Ld. AO of claim of bad debts of Rs. 17,00,000/- being short payment received on full and final settlement of debts with M/s Park Non-Woven Pvt. Ltd. the debtor of the company.*

*4. That the Ld. CIT(A) has erred in confirming the disallowance made by Ld. AO of Rs. 12,00,624/- being excess paid which was excise duty written off.*

*5. That the Ld. CIT(A) erred in not allowing reversal of excise duty of Rs. 2,61,180/- as sales return and service tax of Rs. 1,30,435/-.*

*The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of all of the appeal.”*

3. The representatives of both the sides were heard at length, the case records carefully perused and relevant documentary evidences brought on record duly considered in light of Rule 18(6) of ITAT Rules.

4. The underlying facts in issues vide Ground No. 2 are that during the course of scrutiny assessment proceedings, on perusal of Schedule - 7 of fixed asset, the Assessing Officer noticed that one building at Plot No. 80 has been shown in the fixed assets and further found that the assessee has sold a Plot No. 80, HSIDC, Industrial Estate, Faridabad for a total consideration of Rs. 90.55 lakhs.

5. The assessee was asked to produce a copy of conveyance deed.

6. On perusal of the same, the Assessing Officer found that the plot has been sold to M/s Poly Medicure Limited and the vendor is the assessee, through its Director Shri Surender Kumar Gupta. The Assessing Officer found that the assessee has not shown capital gains from the sale of the plot. The assessee was asked to explain why the capital gains arising from sale of the plot should not be taxed as capital gains.

7. In its reply, the assessee stated that the said plot was property belonging to Shri Surender Kumar Gupta and it was given by Shri Surender Kumar Gupta for manufacturing uses to the assessee without any consideration in the year 2009. It was strongly contended that the property never belonged to the assessee and there was a mistake in the conveyance deed wherein the assessee has been shown as the seller/owner.

8. It was explained that the assessee was having only user right and not ownership right over the said plot. It was brought to the notice of the Assessing Officer that the consideration received by the assessee was immediately transferred to Shri Surender Kumar Gupta who was the real owner of the said property.

9. The explanation of the assessee was dismissed by the Assessing Officer who was of the firm belief that the plot in question has been sold to M/s Poly Medicure Limited by way of conveyance deed in which the assessee has been shown as the vendor/seller in the capacity of the company and the deed has been executed by Shri Surender Kumar Gupta in the capacity of the director and authorized signatory of the company.

10. The Assessing Officer observed that the seller of the property, as per record of the Registration Authority, is the assessee company and consideration has been received by the assessee company and went on to make addition of Rs. 91.90 lakhs.

11. The assessee carried the matter before the ld. CIT(A) but without any success.

12. Before us, the ld. counsel for the assessee vehemently reiterated what has been stated before the lower authorities and pointed out that Supplementary Agreement for industrial plot/shed was entered into by the assessee on 28.05.2009 wherein it has been clearly mentioned that the said industrial plot was allotted to Shri Surender Kumar Gupta for the purpose of setting up of an industry and by this agreement, Shri Surender Kumar Gupta requested for change in constitution and request was accepted and allottee was changed in the name of the assessee.

13. It is the say of the ld. counsel for the assessee that because of this Supplementary Deed, the assessee executed conveyance deed, though the said plot belonged to Shri Surender Kumar Gupta and as

soon as the consideration was received, the assessee transferred the same to the account of Shri Surender Kumar Gupta.

14. The ld. DR strongly supported the findings of the Assessing Officer/CIT(A) and read the relevant findings of the ld. CIT(A).

15. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that the conveyance deed was signed by the assessee through its director Shri Surender Kumar Gupta. It is also not in dispute that the sale consideration was received by the assessee. In our considered opinion, no purchaser would pay a consideration of Rs. 90 lakhs unless he is satisfied with the title of the property. The title was in the name of the assessee though the assessee has given a different color by referring to Supplementary Agreement, but most relevant clauses of Supplementary Agreement read as under:

*“Change in shareholding will be allowed by the HSIDC only if original allottee or his family members retain a minimum of 51% share in the project/company/firm. In case the original allottee and his family fail to retain the prescribed shareholding of 51%, it would amount to transfer and dealt with under the relevant provisions. In case where a Private Limited Company becomes a Public Limited Company, the change in constitution may be*

*considered subject to the condition that the allottee retains the largest shareholding otherwise it will be treated as a case of transfer.*

*Transfer of plots/sheds shall be allowed only by lawful allottee if he has constructed atleast 25% of the permissible covered area and satisfies the HSIDC that he had taken effective steps for the implementation of the project, but the project has become unviable, subject to payment of transfer fee to HSIDC at the rate determined from time to time. This transfer would be subject to the conditions that the transferee would set up the unit and start commercial production on the plot/shed within a period of three years from the date of transfer, failing which same shall be resumed by the HSIDC -*

*However, the transfer of plot will be allowed without the above conditions in case of inheritance, succession due to death of the owner/majority shareholders or take over by the public financial institutions.*

*No transfer fee will be levied in cases of industrial units which have been in commercial production for more than five years and are free from encumbrances Similarly no transfer fee will be leviable in cases of transfers necessitated on account of inheritance, family transfer or take over by a financial institution. Only a processing fee of Rs.5000/- (or as revised from time to time) will be charged in all such cases However-prior permission of HSIDC is mandatory.”*

16. The aforementioned clauses clearly show that the ownership was changed from Shri Surender Kumar Gupta to the assessee and hence there should not be any dispute in so far as who is the seller of the property is. Facts on record clearly demonstrate that the seller of the property is the assessee and the property has been sold by Shri Surender Kumar Gupta in the capacity of being the director of the assessee company. Facts which have not been controverted by any documentary evidences and rightly appreciated by the first appellate authority read as under:

**“5.3.1        The page 2 to 4 of the registered sale deed reads as under:**

*Whereas the VENDOR M/s. Aditya Olibchem Private Limited, having its Registered Office at B-23/1, Okhla Industrial Area, Phase-II, New Delhi - 110020, through its Director Shri Surender Kumar Gupta son of Shri P.O. Gupta, Resident of House NO. 10/23, Nehru Enclave, Kalkaji, New Delhi- 110019, is seized and possessed of in its own right as a full absolute owner and otherwise well and sufficiently entitled to piece and parcel of Industrial Plot bearing No. 80, Sector-59, measuring 450 sq. metres (538.2 sq, yards) consisting thereon with roof rights having its covered area is 1787 sq. ft. approximately situated at F(SIIDC, Industrial Estate, Faridabad (hereinafter called the “said Property”) i falling within the Jurisdiction of Sub-Registrar, Ballabgarh and wish to sell the same to the VENDEE.*

*AND WHEREAS an Industrial Plot bearing No.80, Sector-59, measuring 450 sq. meters (532.8 sq. yards of the HSIIDC, Industrial Estate, Faridabad was allotted by the HSIIDC in the name of- Smt. Shalini Gupta and Smt. Shivanigupta vide Regular Letter of Allotment No. HSIDC:EO:5767, dated 17/10/1994 (hereinafter referred to as the Original Allottee).*

*AND WHEREAS vide letter\dated 18/05/2005 the original allottee requested HSIIDC for grant of permission to transfer the said plot in favour of Shri Surender Kumar Gupta for setting up an Industrial Project of Automobile Adhesive.*

*AND WHEREAS the HSIIDC acceded to the request of the original allottee and agreed to allow the transfer of the said plot vide letter the HSIIDC executed the Co Gupta son of Late Shri P.C., thus, Shri Surender Kumar; No.HSIA:FBD:2005:972, dated 06/12/2005 in favour of Shri Surender Kurr'a Gupta (hereinafter called the allottee) for setting up an Industrial Project Automobile Adhesive on the 'terms and conditions contained in the Agreement dated 14/12/2005 executed between the allottee and the HSIIDC. Therefore conveyance Deed in favour of Shri Surender Kumar i Gupta vide Conveyance Deed dated 01/10/2006 Gupta son of Late Shri P.C. Gupta became the absolute owner of the land and factory building at Plot No. 80, Sector-59, HSIIDC, Industrial Estate, Faridabad for manufacturing of Automobile Adhesive (PF Resins) and therefore the said company applied for change in constitution in respect of Plot No. 80, Sector-59, HSIIDC, Industrial Estate, Faridabad and the same permission was granted HSIIDC vide their letter dated 13/07/2009. Hence the Company M/S. Aditya Olibchem Private Limited was using the said land and building at Plot No. 80, Sector-59, HSIIDC, Industrial Estate, Faridabad knee 2009 till date of sale of the said property.*

- AND WHEREAS previously, the Industrial Plot bearing No. 80, Sector-59, measuring 450 sq. metres (538.2 sq. yards) of the HSIIDC, Faridabad has been purchased by Shri Surender Kumar Gupta son of Shri P.C. Gupta Resident of 10/23, Nehru Enclave, Kalkaji, New Delhi-110019 out of his own money from the office of Haryana State Industrial Infrastructure Development Corporation Limited, having its Registered Office at C-13-14, Sector-06, Panchkula and the Conveyance Deed of the said Plot was executed from the office of HSIIDC, Faridabad/Panchkula on dated 13/03/2002 and the said Conveyance Deed of the said Plot had been registered in favour of Shri Surender Kumar Gupta in, the office of Sub-Registrar, Ballabgarh vide Document No. 6919, dated 03/10/2006;.*
- Thereafter the said Industrial Plot bearing No. 80, Sector-59, measuring 450 sq. metres, HSIIDC, Industrial Estate, Faridabad has change in constitution from Shri Surender Kumar Gupta son of Shri P.C. Gupta to M/S Aditya Olibchem Private Limited from the office of the HSIIDC, Faridabad/Panchkula bearing Memo No. HSIIDC/BO/FBD/09/443, dated 25/05/2009. Now, the VENDOR is the absolute owner and in possession of industrial Plot bearing No. 80, Sector-59, measuring 450 sq. metres HSIIDC, Industrial Estate, Faridabad as per the HSIIDC's letter No, HSIIDC/BO/FBD/09/443, dated 25/05/2009. Now the VENDOR have full right to transfer, sale, dispose off the said property to any person in future.*

*5.3.2 As per the said sale deed the Industrial Plot bearing No. 80, Sector-59, measuring 450 sq. metres (5<sup>8</sup>.2 sq. yards) of the HSIIDC, Faridabad was purchased by Shri Surender Kumar Gupta son of Shri P.C. Gupta Resident of 10/23, Nehru Enclave, Kalkaji, New Dolhi-110019 from Haryana State Industrial Infrastructure Development Corporation Limited, having its Registered Office at*

*C-13 & 14, Sector-06, Panchkula and the Conveyance Deed of the said Plot had been registered in favour of Shri Surender Kumar Gupta in the office of Sub-Registrar, Ballabgarh.. vide document No. 6919, dated 03/10/2006. Thereafter the said Industrial Plot bearing No. 80, Rector-59, measuring 450 sq. metres, HSIIDC, Industrial Estate, Faridabad has changed in constitution from Shri Surender Kumar Gupta son of Shri P.C. Gupta to MAS Aditya Olibchem Private Limited from the office of the HSIIDC, Faridabad/Panchkula bearing Memo No. HSIIDC/BO/FBD/09/443, dated 25/05/2009. Accordingly, M/s. Aditya Olibchem Private Limited became the absolute owner and in possession of Industrial Plot bearing No. 80, Sector-59, measuring 450 sq. metres HSIIDC, Industrial Estate, Faridabad as per the HSIIDC's letter No, HSIIDC/BO/FBD/09/443,-dated 25/05/2009. M/s. Aditya Olibchem Private Limited had full right to transfer, sale, dispose off in the said property to any person in future. The registered sale deed is an important piece of evidence and Shri Surender Kumar Gupta has signed on the said sale deed as the director of M/s. Aditya Olibchem Private Limited.; Shri Surender Kumar Gupta cannot deny the truthfulness as well as the genuineness of the said sale deed. In view of it, I hold that M/s. Aditya Olibchem Private Limited was the absolute owner and in possession of Industrial Plot bearing No. 80, Sector-59, measuring 450 sq. metres HSIIDC, Industrial Estate, Faridabad. Accordingly, I hold that the AO has correctly added the amount of Rs. 91,90,000/- to the total income of the appellant company on account of sale of the said Industrial Plot bearing No. 80, Sector-59, measuring 450 sq. metres, HSIIDC, Industrial Estate, Faridabad. This ground of appeal is decided against the appellant.”*

17. In light of the afore-stated uncontroverted facts, we do not find any reason to interfere with the findings of the ld. CIT(A). Ground No. 2 with its sub-grounds is dismissed.

18. Ground No. 3 relates to the disallowance of claim of bad debts of Rs. 17 lakhs.

19. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has written off Rs. 17 lakhs as provision for bad debts. Since the provision for bad debts is not an allowable expenditure, the Assessing Officer disallowed the same.

20. The assessee carried the matter before the ld. CIT(A) but without any success.

21. Before us, the ld. counsel for the assessee stated that inadvertently the nomenclature has been given as provision for bad debt, but in fact, the same is write off of bad debts.

22. Per contra, the ld. DR supported the findings of the lower authorities.

23. We have given thoughtful consideration to the orders of the authorities below. On a perusal of Schedule 21 being “Other expenses/Indirect expenses”, we find that the assessee has written off provision for bad debt Rs. 17 lakhs and has credited the account of Park Non Woven Pvt Ltd by the said provision which is evident from Exhibits 89 and 90 of the Paper Book.

24. The assessee has clearly written off provision for bad and doubtful debt which is not allowable and interestingly, on 31.03.2015, outstanding debit balance in the account of Park Non Woven Pvt Ltd was Rs. 90,74,626/- from which provision was written off to the tune of Rs. 17 lakhs and balance carried forward was Rs. 51,03,331/-.

25. Interestingly, after provision for bad debt, the assessee has received entire outstanding amount of Rs. 51,03,331/-. We fail to understand, if the debtor was not in a position to pay debt as on 31.03.2015, then how the assessee has received Rs. 51 lakhs after write off. Facts on record clearly go against the assessee and, therefore, Ground No. 3 is, accordingly, dismissed.

26. Ground No. 4 relates to the disallowance of Rs. 12,00,624/- being Excise Duty written off.

27. The Assessing Officer noticed that the assessee has written off Rs. 12,00,624/- The assessee was asked to explain the write off.

28. The assessee explained that it has no stock left as on 31.03.2015 and the amount in credit lying with the Excise Department, as per Excise law, could not be claimed from the department. Therefore, the assessee had to write off the claim.

29. The Assessing Officer was not satisfied with the explanation of the assessee and made addition of Rs. 12,00,624/-.

30. The assessee carried the matter before the Id. CIT(A) but without any success.

31. The undisputed fact is that the assessee was having credit balance with the Excise Department to the tune of Rs. 12,00,624/-. As the assessee was left with no stock, the assessee could not claim the set off of the said Excise balance and, therefore was left with no

choice but to write off the same. We do not find any error in this write off as the same has to be allowed as business loss. The Assessing Officer is directed to allow the claim of Rs. 12,00,624/-. Ground No. 4 is, accordingly, allowed.

32. Ground No. 5 relates to the denial of reversal of Excise Duty of Rs. 2,61,180/- as sales return and service tax of Rs. 1,30,435/-.

33. While scrutinizing the return, the Assessing Officer noticed that the assessee has written off Rs. 2,6,180/-, which the assessee claimed as reversal of duty claim, as detected by the audit party of the Excise department.

34. The Assessing Officer further noticed that Service Tax amounting to Rs. 1,30,435/- on transport of material was also charged by the audit party and the same amount was adjusted against Excise Duty in the record. Since no evidence was produced before the Assessing Officer to substantiate the claim, the Assessing Officer made the addition of Rs. 3,91,615/-.

35. The assessee challenged the addition before the Id. CIT(A) but without any success.

36. We have carefully perused the documentary evidence brought on record, which are copies of ledger account of Excise Duty RG 23A Part II at pages 95 to 98 of the Paper Book. We find that on 20.08.2014, there is a reversal entry of sales return amounting to Rs. 2,61,180/- and on 07.01.2015, there is a debit of Rs. 1,36,723/- being service tax transferred to closure of factory.

37. As per Exhibit 104, the assessee has paid basic Excise Duty in the month of May 2014 and as per Exhibit 106 which is ledger account of service tax, the assessee has credited Excise Duty RG -23A Part 2 being balance transfer of closure of factory.

38. Copy of ledger account show that the amount debited earlier has been reversed during the year under consideration. In our considered opinion, when the amounts were debited, they were claimed as expenditure and since now the entries have been reversed, the same become income of the assessee. Therefore, we do not find any reason

to interfere with the findings of the Id. CIT(A). Ground No. 5 is dismissed.

40. In the result, the appeal of the assessee in ITA No. 2858/DEL/2019 is partly allowed.

The order is pronounced in the open court on **25.01.2023**.

Sd/-

**[C.M. GARG]  
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 25<sup>th</sup> January, 2023

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	