

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : H : DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.992/Del/2021
Assessment Year: 2015-16

Palco Tex Fab Limited,
13/49, Punjabi Bagh West,
Delhi – 110 026.
PAN: AAACP5480G

Vs

ACIT,
Circle 19(2),
Delhi.

(Applicant)

(Respondent)

Assessee by	:	Shri Deepak Bansal, CA
Revenue by	:	Shri Raghunath, Sr. DR
Date of Hearing	:	03.05.2023
Date of Pronouncement	:	10.05.2023

ORDER

PER M. BALAGANESH, AM:

This appeal in ITA No.992/Del/2021 for AY 2015-16 arises out of the order of the Commissioner of Income Tax, Delhi-38 [hereinafter referred to as 'Id. CIT(A)', in short] in DIN & Order No.ITBA/APL/S/250/2020-21/1027757317(1) dated 20.08.2020 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.12.2017 by the Id. Assessing Officer, Circle 19(2), New Delhi (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal:-

- “1. That CIT(A) has erred in law and facts of the case in holding that Short Term Capital Gain has taken place without effecting any transfer of capital assets during the year under consideration.
2. That CIT(A) has erred in law and facts of the case in confirming the disallowance of depreciation u/s 32 of the IT Act on plant & machinery.

3. That CIT(A) has erred in law and facts of the case in holding that assets were discarded u/s 43(6) while applying provision of AS-28.

4. That CIT(A) has erred in law and facts of the case in holding that documentary evidence to support net realizable vale of Rs. 1.05 Crores was not submitted during appellant proceedings.”

3. We have heard the rival submissions and perused the material available on record. The assessee is a limited company engaged in the business of dyeing and printing of cloth for onward sales as well as carrying the same on job work basis. The return of income for the AY 2015-16 was electronically filed by the assessee on 29.09.2015 declaring loss of Rs.1,72,69,100/-. During the course of scrutiny proceedings, the Id. AO called for various details from the assessee which was duly responded by the assessee from time to time. The Id. AO noticed that the assessee in his books has shifted some plant & machinery from fixed assets to current assets at a value of Rs.1,05,00,000/- and booked impairment loss in the books. This impairment loss of Rs.27,25,782/- was *suo moto* disallowed by the assessee in the return of income. The Id. AO observed that the assessee had not made any corresponding effect of shifting of plant & machinery from fixed assets to current assets in the sum of Rs.1,05,00,000/- in the block of assets. Accordingly, the Id. AO issued a questionnaire dated 25.12.2017 stating that the assessee had discontinued its business and it had contracted for sale of plant & machinery for Rs.1,05,00,000/- and accordingly showcaused as to why the said transaction be not treated as transfer in terms of section 43(6) of the Act treating it as assets discarded and accordingly calculate depreciation u/s 32 of the Act, business loss and short-term capital gain/short-term capital loss u/s 50 of the Act. In other words, the main crux of the Id. AO's show cause notice is that the assessee should have reduced Rs.1,05,00,000/- from the block of assets of Plant & machinery on the ground that the assessee had discarded the same and, consequentially, the short-term capital gain/loss need to be computed in terms of section 50 of the Act. The assessee. The assessee replied before the AO as under:-

Show Cause Notice Para (iv)

34. That you have stated in para (iv) of your show cause notice as under:

"As per audited financial and as per your submissions, you have discontinued your business, and further you have contracted for sale of your plant & machinery for Rs.1.05 cr. Considering this you have made entries in your audited financials. Now you are required to show cause why the Plant & Machinery shall not be treated as transfer in terms of 43(6) of the Act for Rs.1.05 cr. In the year itself and accordingly calculations of depreciation u/s 32, business loss and STCG/STCL u/s 50 be computed."

35. That assessee company had closed its manufacturing process and since the plant & machinery was not required to be used for any new activity to be carried out by it, therefore, the same was put to sale. In terms of Accounting Standard 28 (AS-28) such change in business operations required impairment of assets as at the end of the financial year in which such decision has been taken. AS-28 require fair valuation of asset which is reasonably realizable. The assessee company had disposed of certain plant & machinery during the year under consideration. It had entered into an agreement dated 8th July 2015 to sell the remaining plant & machinery to a third party.
36. That the company adopted the said amount of Rs.105 lacs as fair value of its remaining plant & machinery as on 31st March 2015 and classified it as current asset held for re-sale. The balance amount under the head of plant & machinery was booked as loss on impairment, the same has also been explained in para 5 of our submission dated 19th December 2017.
37. That during the year under consideration the assessee company at no place transferred its balance plant & machinery of Rs. 1.05 crores to any party's account. It has not received any amount as advance against such agreement during the year under consideration.
38. That contract for sale of balance plant & machinery for Rs.1.05 crores was made in next financial year on 8th July 2015, copy of the same was filed at para 5 of our submission dated 11th September 2017 placed as enclosure 3.
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39. That in the said agreement of sale of plant & machinery, the buyer Dev Industrial Corporation was to deposit adjustable deposit of Rs.25,00,000/- which was to adjust at the end of the agreement, i.e., in last dispatch of plant & machinery.
40. That the said Dev Industrial Corporation issued cheques of various dates to be presented accordingly into assessee's bank, however, cheques of Rs.13.26 lacs could be cashed from bank, therefore, the agreement entered with such party also collapsed in later part of next financial year 2015-16. Such agreement stood cancelled as the said party could not honour its initial commitment of providing security cheques.
41. That neither any agreement nor any transaction was carried out during the year under consideration, therefore, the same cannot be treated as transfer in terms of Section 43(6) of the Act in the year itself. Hence, there is no requirement of calculating STCG/STCL u/s 50 of the Act.
42. That the assessee company has only transferred its plant & machinery from account of fixed assets to current assets, the same is evident from balance sheet as at 31st March 2015, copy already on your file.

4. The Id. AO, however, disregarded the aforesaid reply and concluded as under:-

- (a) The assessee company has discarded the plant & machinery in the year itself by shifting the same from fixed assets to current assets in its books;
- (b) This aspect is recorded in audited final accounts;
- (c) There is agreement for sale to this effect although entered into in July, 2015, but, given effect in audited final accounts in the year ending 31.03.2015;
- (d) The assessee recorded the difference as loss in audited final accounts;
- (e) The asset is no more being used in business by the assessee;
- (f) The provisions of section 43(6) of the Act uses the word 'discarded.'

5. Accordingly, the Id. AO concluded that the discarded price of plant & machinery was Rs.1,05,00,000/- which needs to be reduced from the block of assets of plant & machinery and the resultant gain or loss shall have to be determined in terms of section 50 of the Act as short term capital gain or short term capital loss. Accordingly, the Id. AO determined the short-term capital gain u/s 50 of the Act in the sum of Rs.42,42,174/- and reduced the claim of depreciation u/s 32 of the Act by Rs.9,38,674/- while completing the assessment. This action of the Id. AO was confirmed by the Id.CIT(A). Aggrieved, the assessee is in appeal before us.

6. We find that the assessee had submitted before the Id.CIT(A) that:

- 1. That the assessee company was carrying on business of dye and printing of cloth in Industrial Area at Bhiwadi, Rajasthan, area falls within Delhi NCR. It's manufacturing process used to generate lots of water pollution.

There were changes in Environment Policy at State and Central Government level, because of which it was no more feasible to function in the industrial area where it was carrying out its production. Therefore, it had to close its manufacturing operations of dye & printing of cloth during the year under consideration.

2. That assessee company had closed its manufacturing process and since the plant & machinery was not required to be used for any new business activity to be carried out by it, therefore, the same was put to sale. In terms of Accounting Standard 28 (AS-28) such change in business operations required impairment of assets as at the end of the financial year in which such decision has been taken. AS-28 require fair valuation of asset which is reasonably realizable.

7. The assessee also explained in writing the mandate of following Accounting Standard-28 on 'Impairment of Assets' issued by the Institute of Chartered Accountants of India (ICAI), the provisions of section 43(6) of the Act which defines 'written down value' together with Explanation-4 and Explanation to section 41(4) of the Act. The assessee also explained the provisions of section 50(2), section 2(47) together with Explanation 1 and 2 thereon of the Act before the Id.CIT(A). By the aforesaid factual and legal submissions made by the assessee before the Id.CIT(A), it was submitted that:-
 - (1) the assessee company has neither sold nor discarded its plant & machinery, therefore, depreciation u/s 32 should be allowed;
 - (2) the assessee company has not transferred any impaired block of assets for Rs. 105 lacs to any third party;
 - (3) no income has been received or accrued therefore, provisions of section 50 are not applicable to such impairment in respect of transfer of block of assets from Fixed Assets to current assets.

8. We find, the Id. CIT(A) has summarily dismissed the aforesaid factual and legal contentions raised by the assessee by merely stating that the assessee had not furnished any documentary evidences in support of his contentions.

9. At the outset, we find from page 2 of the paper book containing the balance sheet of the assessee as on 31.03.2015, a separate line item under the head "Current Assets", a sum of Rs.1,05,00,000/- is reflected as "Assets classified as held for sale." The assessee has also enclosed its significant accounting policies with respect to impairment of assets as under:-

"3.5 Impairment of Assets

The carrying amount of assets is reviewed at each balance-sheet date. If there is any indication of impairment based on internal and external factors, an impairment loss is recognised whenever the carrying amount of an asset exceeds its recoverable amount. The recoverable amount is the greater of the asset's net selling price and value in use. In assessing value the estimated future cash flows are discounted to their present value at the weighted average cost of capital. For the purpose of accounting of impairment due consideration is given to revaluation of reserves, if any.

After impairment depreciation is provided in the revised carrying amount of the assets over remaining useful life."

10. The assessee has explained the entire gamut of the transaction vide Note Nos.25 and 26 to the audited financial statements which is as under:-

"25. The Company has discontinued its business operations and laid off its workers during the current financial year. After the closure of business, the company has put up its plant and machinery for sale. The Company has incurred a net loss during the current and previous year, its net worth has been fully eroded as at the balance sheet date . During the year it has also disposed off certain plant & machinery and entire block of Office Equipment, Computers, part of its cars and other assets. These events f or conditions have cast significant doubt on the Company's ability to continue as going concerft. The Management holds the view, in light of valuation of Land & Building and agreement to sell the remaining plant & machinery, that net realizable value of its assets is much more than liabilities and the company will realize its assets and discharge liabilities in

due course of time. Accordingly, the financial statements have been prepared on the basis that the Company is going concern and that no adjustment are required to the carrying value of assets and liabilities except for remaining plant & machinery as the management, in view of agreement for sale of entire plant & machinery on lump sum basis with a party, is of the view that it will fetch an amount not exceeding Rs.105.00 lacs.

26. The Management of the Company expect to realise R.s.105 lacs from sale of remaining Plant & Machinery, therefore, in view of AS 28 it has transferred balance plant & machinery as Current Assets held for sale in the balance sheet and the loss amounting to Rs. 27,25,782 on such impairment has been shown separately in the profit & loss account."

11. From the aforesaid explanation given by the assessee in its audited financial statements and also before the lower authorities, we find that since the plant & machinery could not be further used for the purpose of business, the assessee has sought to shift the same from 'fixed assets' to 'current assets' held for resale. These assets were shifted at a value of Rs.1,05,00,000/- being the net realizable value of those assets based on the offer made by a prospective buyer pursuant to an agreement of sale entered into on 08.07.2015 which was after the balance sheet date. Accordingly, we find that the value of plant& machinery in the fixed assets schedule was reflected as Rs.Nil in the books of the assessee and the said plant & machinery has been shifted to current assets for a sum of Rs.1,05,00,000/-. We find that there was absolutely no transfer of assets (plant & machinery) which had taken place during the year in accordance with the provisions of the Act. Since the plant & machinery was no longer required for the purpose of business, the assessee has merely chosen to shift the same from fixed assets schedule to current assets. The shifting value has been based on agreement of sale dated 08.07.2015 wherein the consideration was arrived at Rs.1,05,00,000/-. In fact, by this process, the assessee had incurred an impairment loss of Rs.27,25,782/- in accordance with AS-28 issued by the ICAI and as the asset loss has been debited in the profit & loss account during the year the same was added back to the total income while filing the return of income by the assessee. The assessee had also brought on record that the agreement dated 08.07.2015 did not materialize. Subsequently, the buyer

Dev Industrial Corporation did not own the financial commitment as stipulated in the agreement and that the agreement for sale later stood cancelled. As stated earlier, in any case, there was absolutely no transfer of plant & machinery which had taken place in accordance with the provisions of the Income-tax Act. A very peculiar entry has been passed by the assessee in its books to reflect a true and fair view of the financial state of affairs and also in consonance with the mandate provided in AS-28 issued by the ICAI. It is needless to mention that accounting standard issued by the ICAI have to be mandatorily followed by any limited company as per the provisions of section 129 of the Companies Act, 2013 which has been done by the assessee in the instant case. We find that the shifting of plant & machinery from fixed assets to current assets in the value of Rs.1,05,00,000/- has been considered by the Id. AO as 'discarding of assets' by applying the provisions of section 43(6) of the Act. No doubt, discarding of assets would amount to transfer within the meaning of the Act, still, we find that there was no transfer of plant & machinery that had taken place at all. The plant & machinery held by the assessee were indeed reflected under the head 'current assets' in the balance sheet as on 31.03.2015. Hence, this sum of Rs.1,05,00,000/- cannot be construed as either sale price or discarded price as alleged by the lower authorities. All the documentary evidences in this regard were duly filed before the lower authorities. Hence, it is grossly incorrect on the part of the CIT(A) to state in para 4.1.1 that the assessee had not furnished any documentary evidences. In view of the above, we hold that since no transfer of assets has taken place during the year, there is no question of determination of short-term capital gain or short-term capital loss in terms of section 50 of the Act and consequentially there is no question of rejection of claim of depreciation of the assessee. Accordingly, we hold that the action of the lower authorities in this regard deserves to be dismissed. The grounds raised by the assessee are allowed.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 10.05.2023.

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 10th May, 2023.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi