

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

ITA No. 5005/DEL/2019 [A.Y 2015-16]

The A.C.I.T.  
Central Circle - 13  
Delhi

Vs.

BSBK Engineers Pvt Ltd  
L-8, Beekay House  
Green Park Extension  
Delhi

PAN: AADCB 6420 B

(Applicant)

(Respondent)

Assessee By : Shri Rohit Jain, Adv  
Ms. Tejasvi Jain, Adv

Department By : Shri Kanv Bali, Sr. DR

Date of Hearing : 18.05.2023  
Date of Pronouncement : .05.2023

**ORDER**

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

This appeal by the Revenue is directed against the order of  
the CIT(A) - 23, New Delhi dated 29.03.2019 pertaining to A.Y 2015-16.

2. The solitary grievance of the Revenue is that the Id. CIT(A) erred in deleting the addition by way of disallowance of capital loss of Rs. 7,50,24,307/- without appreciating the fact that no real change in ownership has taken place because of amalgamation and the real ownership remained with the assessee company, M/s BSBK Engineers Pvt Ltd.

3. Briefly stated, the facts of the case are that the assessee filed return of income electronically on 12.01.2016 declaring total income of Rs. 3,43,18,940/-. Return was selected for scrutiny assessment through CASS under Limited Scrutiny Category and, accordingly, statutory notices were issued and served upon the assessee.

4. The assessee is engaged in the business of generation of electricity through wind turbine generators. The assessee company was primarily engaged in the business of providing services relating to designing and manufacturing. The assessee entered into a Scheme of Arrangement u/ss 391 to 394 of the Companies Act, 1956. The scheme was entered into between the following entities:

- a) BSBK Engineers Pvt Ltd [BEPL], the assessee
- b) Macawber Beekay Pvt Ltd [MBPL]
- c) BSBK Enviro Systems Pvt Ltd [BESPL]
- d) Ecopulse Infra Limited [EIL]

5. This Scheme of Arrangement was two-fold:

- (i) EPC business of the assessee company and then MBPL were transferred to BESPL on a going concern basis, by way of slump sale w.e.f 01.04.2014.
- (ii) Then MBPL and EIL stood amalgamated into the assessee company w.e.f 01.04.2015.
- (iii) BESPL was renamed to MBPL on scheme becoming effective after approval from the High Court.

6. This scheme was approved by the Hon'ble High Court of Allahabad vide order dated 19.11.2015. Separate slump sale agreement dated 24.03.2015 was also entered into by the assessee and BESPL in respect of the aforesaid Section 1 of the Scheme. Pursuant to the approval by the

Hon'ble High Court, the Scheme was given effect to from the appointed dated. i.e., 01.04.2014. Accordingly, for the year under consideration, the assessee accounted for slump sale of EPC business to BESPL in the audited financial statements.

7. The assessee has disclosed loss on such slump sale in view of provisions of section 50B of the Act at Rs. 7,50,24,307/-. Taking into account the consideration received at Rs. 62 crores and cost of acquisition being net asset value at Rs. 69,50,24,307/- and claimed the same as current year's capital loss in the return.

8. During the course of scrutiny assessment proceedings, the assessee was asked to justify such claim of loss.

9. In its reply, the assessee explained the transaction in light of agreement between the assessee and the party involved and assets and liabilities are transferred as per the arrangement approved by the Hon'ble High Court of Allahabad.

10. On examination of the details, the Assessing Officer formed a strong belief that ultimate beneficial ownership rests with the share holders of the company and even after affecting the Scheme of Arrangement, real ownership remained with the assessee as the company BESPL became subsidiary of the holding company, which is the assessee, and there is no change in ownership of net assets prior to taking effect of the Scheme of Arrangement and post effect of arrangements but the assessee claimed to have incurred loss to the extent of Rs. 7.50 crores without any change in ownership.

11. The Assessing Officer was of the opinion that on paper, net assets were transferred and had changed hands, but in effect, no real change in the ownership has taken place in any commercial sense and the real ownership remained with the assessee company and went on to disallow the claim of loss to the extent of Rs. 7,50,24,307/-.

12. The assessee challenged the assessment before the Id. CIT(A) and was successful in convincing the Id. CIT(A) that on facts, the Assessing Officer has taken an erroneous view.

13. Representatives of both the sides were heard at length. Case records carefully perused. Judicial decisions relied upon by the rival representatives duly considered.

14. It would be better to understand the rationale behind the Scheme of Arrangement. The most relevant clauses are as under:

*“(i) The Scheme will integrate the BSBK EPC business and MBL. EPC Business of the Transferor Companies in Transferee Company and, as a result, create an operating entity with significant operational and financial strength comprising the EPC business of all the companies and will lead to synergies of operations and create a stronger balance sheet with wider capital und financial base for future growth and expansion, which will offer a strong and stable financial structure to the creditors and achieve better cash flows. This will contribute substantially towards enhancement of the shareholder value of the Companies involved;*

*(ii) The transfer will enable consolidation and integration of the PC operations of the Transferor companies and Transferee Company and enable the Transferee Company to offer end to end solutions from one entity as opposed to multiple entities;*

*(iii) Consolidate and enhance both Technical pre-qualification and financial qualification (i.e. the net worth) presently residing in different entities and enable the Transferee Company to compete and bid for new and bigger projects more competitively and effectively*

*with the combined credentials, experience and track record of the companies (i.e. technical pre-qualification) and stronger financial qualification;*

*(iv) As the EPC businesses of all the three companies will be integrated, it will lead to better utilization of assets, infrastructure and resources presently residing in three different companies and result in more economic and efficient management, control and running of the businesses of the companies concerned, and will lead to advantages of economies of scale and facilitate growth and development of business concerned;*

*(V) Reduction of overheads, administrative, managerial and other expenditure, and bring about operational rationalization, tax and organizational efficiency, and optimal utilization of various resources;*

*(vi) To provide an opportunity to fully leverage combined assets, capabilities and infrastructure;*

*(vii) Significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by different companies and also avoid duplication of administrative functions and eliminate multiple record-keeping as the businesses will be consolidated in one single entity; and*

*(viii) The said scheme is beneficial to the companies, their shareholders, creditors, employees and all concerned and will enable these companies to achieve and fulfill their objectives more efficiently and economically.”*

15. The Hon'ble Allahabad High Court was pleased to approve the Scheme of Arrangement vide order dated 19.11.2015. This order of the Hon'ble High Court comprises of two sections:

*1. It would be of relevance to note here that the said order of the Hon'ble High Court(enclosed at page nos. 17 to 56 of the P/b), comprised of two sections:*

*i) Section I, which provides for the transfer of the EPC business of the assessee company (M/s. BSBK Engineers Private limited) and the EPC business of the company, M/s. Macawber Beekay Private Limited on a going concern basis and vesting of the same with the Transferee Company, M/s.BSBK Enviro Systems Pvt. Ltd. which shall be effective from 01/04/2014.*

*ii) Section II, which provides for the merger of the company, M/s. Macawber Beekay Private Limited and the company, M/s.Ecopulse Infra Limited with the assessee company (M/s BSBK Engineers Private Limited) which shall become effective from 01/04/2015, i.e. after coming into effect of Section I. It may be noted here that pursuant to the scheme becoming effective(i.e. when the erstwhile amalgamating company, Ms. Macawber Beekay Private Limited cease to exist post Effective*

*Date), the name of M/s. BSBK Enviro Systems Private Limited shall be changed to "Macawber Beekay Private Limited"*

16. The entire quarrel revolves around the wrong interpretation done by the Assessing Officer in respect of Section 2. The Assessing Officer has grossly erred in taking effective date as 01.04.2014 instead of 01.04.2015, which means that the entire findings of the Assessing Officer are the result of erroneous understanding of the order of the Hon'ble High Court of Allahabad.

17. It was only EPC business of the assessee and MBPL transferred to BESPL by way of slump sale effective from 01.04.2014 and MBPL and EIL amalgamated with the assessee effective from 01.04.2015 which is F.Y. 2015-16 relevant to A.Y 2016-17, which is not the impugned A.Y. Since the Assessing Officer has proceeded on a wrong assumption of facts, his entire findings became erroneous and the ld. CIT(A) having correctly understood the implication of Scheme of Arrangement and effective date relevant for the transaction for the year under consideration, we do not find any reason to interfere with the findings of the ld. CIT(A).

18. In the result, the appeal of the Revenue in ITA No. 5005/DEL/2019 is dismissed.

The order is pronounced in the open court on 23.05.2023.

Sd/-

Sd/-

**[CHALLA NAGENDRA PRASAD]**  
**JUDICIAL MEMBER**

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

Dated: 23<sup>rd</sup> May, 2023.

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

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