

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH, PANAJI
(AT e-Court, PUNE)

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S.VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.118 & 119/PAN/2019
निर्धारण वर्ष / Assessment Years : 2009-10 & 2010-11

Umicore Autocat India Private Limited (Original appellant Umicore Anandeya India Private Limited), 429, G-Wing, 4 th Floor, Kanakia Zillion LBS Marg, Kurla (West), Mumbai Maharashtra 400 070 PAN : AABCU0407H	Vs.	ITO, Ward-2, Margao ACIT, Circle-2, Margao
Appellant		Respondent

Assessee by Shri R.K. Pikale
Revenue by Shri N. Shrikanth

Date of hearing 04-10-2023
Date of pronouncement 05-10-2023

आदेश / ORDER

PER R.S.SYAL, VP :

These two appeals by the assessee relate to the assessment years 2009-10 & 2010-11. Since a common issue is raised in these appeals, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

A.Y.2009-10 :

2. The assessee has raised an additional ground to the effect that the Assessing Officer wrongly assessed short term capital gain of Rs.2.96 crore and odd on conversion of partnership firm into a Private Limited Company under Part IX of the Companies Act, 1956. This being a legal ground, going to the root of the matter, is admitted for disposal on merits.

3. Briefly stated, the facts of the case are that there was a partnership firm with the name and style of M/s. Anandeya Zinc Oxides Pvt. Ltd., which set up its plant for manufacture of high purity white zinc oxide in 1994 and commenced production in 1995. The partnership firm continued to claim depreciation. Later on, M/s. Anandeya Zinc Oxides Pvt. Ltd. was incorporated succeeding the erstwhile firm M/s. Anandeya Zinc Oxides. The conversion of firm into a Private Limited company was effected on 13-09-2005 under Part IX of Indian Companies Act. Thereafter, M/s.Umicore Finance Luxembourg, a non-resident company, firstly purchased 99.96% of the shares of the Indian company, namely, M/s. Anandeya Zinc Oxides Pvt. Ltd. and later on the remaining shares as well. Control and Management of M/s.Umicore Finance Luxembourg is outside India. M/s. Anandeya Zinc Oxides Pvt. Ltd.

is a wholly owned subsidiary company of M/s.Umicore Finance Luxembourg. The conversion of partnership firm into M/s. Anandeya Zinc Oxides Pvt. Ltd. was not regarded as a transfer within the meaning of section 2(47) of the Act and no capital gain was charged to tax in the A.Y. 2006-07. The AO opined that, by acquisition of the entire share capital of M/s. Anandeya Zinc Oxides Pvt. Ltd. by M/s.Umicore Finance Luxembourg, it violated the mandate of proviso to clause (d) of section 47 (xiii) of the Act and hence, exemption from capital gain enjoyed by the assessee firm upon conversion into company became chargeable to tax. M/s.Umicore Finance Luxembourg, being, a non resident company approached the Authority for Advance Ruling (AAR) on the taxability of such capital gain. The Authority held that no capital gain accrued or arose at the time of conversion of partnership firm into Private Limited company and the position did not change in terms of non-compliance of section 47(xiii) by reason of the premature transfer of shares. The Revenue preferred writ petition against the ruling of the AAR. During the pendency of the writ petition, the AO held that there was such short term capital gain of Rs.2.00 crore to the assessee and as such depreciation of Rs.68,79,894/- was not allowed. The Id. CIT(A) affirmed the view

point of the AO, against which the assessee has approached the Tribunal.

4. After considering the rival submissions and perusing the relevant material on record, it is found as an admitted position that the AAR ruled in favour of the assessee that no liability towards the capital gain was attracted on the assessee acquiring the full share capital of the company. This was done through its order dated 12-03-2010. The Revenue's writ petition before the Hon'ble Bombay High Court came to be dismissed on 25-11-2016, thereby, affirming the view point of the AAR. The effect of the affirmation of the ruling by the Hon'ble High Court is that no liability is attracted towards the capital gain - whether short term or long term. Resultantly, the depreciation allowed has to be withdrawn. In view of this, Ground No.1 of the assesses' appeal against the disallowance of depreciation on the transfer value of the asset to the extent of Rs.68,79,894/- is dismissed and Ground No.2 against the gain on transfer of technical know-how being treated as short term capital gain to the extent of Rs.2.00 crore, as against the without prejudice claim of the assessee of the same being long term capital gain, is also dismissed as having become infructuous. The

assessee's additional ground about no liability towards capital gain is allowed.

A.Y. 2010-11 :

5. The only issue raised in this appeal is against not allowing depreciation on the transfer value of the asset to the tune of Rs.55,51,642/-. The ld. AR fairly admitted that in view of the judgment of Hon'ble Bombay High Court affirming the AAR ruling, this ground is to be decided against the assessee. We order accordingly.

6. In the result, the appeal for the A.Y. 2009-10 is partly allowed and that of A.Y. 2010-11 is dismissed.

Order pronounced in the Open Court on 05th October, 2023.

Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 05th October, 2023
सतीश

आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The respondent
3. The Pr.CIT , Panaji
4. DR, ITAT, Panaji Bench, Panaji
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	04-10-2023	Sr.PS
2.	Draft placed before author	04-10-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

*