

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 3825/Mum/2019

(Assessment Year: 2011-12)

Nelco Limited
El-6, Electronic Zone,
Mahape, Navi Mumbai-400710

Vs.

Asst. Commissioner of
Income Tax, Range 15(2)(1)
Room No.357, 2nd Floor,
Aaykar Bhavan,
M.K. Road,
Mumbai-400 020

(Appellant)

(Respondent)

PAN No. AAAC1983C

Assessee by : Shri Percy Pardiwala, Sr. Adv.
Shri Paras Savla, Adv.
Shri Harsh Shah, Adv.
Revenue by : Shri S. Srinivasu, CIT DR

Date of hearing: 25.09.2023

Date of pronouncement 15.12.2023

:

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by Nelco Limited (Assessee / Appellant) for A.Y. 2011-12, against the appellate order passed by The Commissioner of Income-tax (Appeals)-24, Mumbai, [The Id. CIT (A)] dated 29th March, 2019, wherein the appeal filed by the assessee against the assessment order passed under Section 143(3) of The

Income-Tax Act, 1961 (The Act), by The Asst. Commissioner of Income Tax, 15(2)(1), Mumbai, (The Ld. AO), was partly allowed.

02. Assessee is aggrieved with that and has preferred this appeal raising following grounds of appeal.

"The appellant objects to the order dated 29 March 2019 passed by the Commissioner of Income Tax (Appeals) 24 for the abovementioned assessment year on the following amongst other grounds:

1. The learned CIT(A) has erred in confirming the action of the assessing officer in reducing bank liability of Rs. 15,00,00,000 for the purpose of arriving at the net worth of the undertaking for computation of capital gains under section 50B of the Act.

2. The learned CIT(A) has erred in confirming the action of the assessing officer in reducing sundry creditors of Rs. 1,30,41,920, other liabilities of Rs. 1,94,17,656 and the differential amount of payment of gratuity and leave encashment of Rs. 69,98,167 for the purpose of arriving at the net worth of the undertaking for computation of capital gains under section 50B of the Act.

3. Without prejudice to the above grounds, the learned CIT(A) erred in not appreciating the submissions of the appellant that as the sales consideration for the slump sale was negotiated based on the fact that the liabilities would not be



transferred, the same should not be considered for calculating net worth.

4. Each one of the above grounds of appeal is without prejudice to the other.

5. The appellant reserves the right to add, alter or amend to the above grounds of appeal”

03. Brief facts of the case shows that assessee is a domestic company engaged in the business of manufacturing and marketing of electrical products and real estate development.
04. Assessee filed its return of income on 30 September 2011, at a total income of ₹ 28,75,61,880/- as long-term capital gain taxed at the rate of 20%. Assessee has also shown book profit under Section 115JB of the Act at ₹35,49,82,410/-. It was revised on 1 September 2012, where the book profit income was offered higher. The return was picked up for scrutiny by issue of notice under Section 143(2) of the Act dated 31 July 2012.
05. Assessment order was passed on 143(3) of the Act, wherein total income of the assessee was computed at ₹ 52,44,73,900/-. The main dispute in this appeal is with respect to computation of capital gain on sale of three business undertaking by the assessee on slump basis to Crompton Greaves Limited as per the BUSINESS TRANSFER AGREEMENT [BTA] dated 29th April, 2010. The assessee computed the capital gain chargeable under Section 50B of the Act at ₹ 51,03,42,064/-. The learned Assessing Officer in its computation of total income computed the capital gain chargeable under Section 50B



of the Act at ₹71,45,53,632/-. The assessment order was passed on 30 March 2014.

06. Assessee preferred the appeal before the learned CIT (A) against the computation of capital gain under Section 50B of the Act, wherein the computation made by the learned Assessing Officer on slump sale is upheld.
07. Therefore, the only issue in this appeal is with respect to the computation of capital gain under Section 50B of the Act. While computing the net worth of the undertaking sold, the learned Assessing Officer has reduced net worth by ₹15 crores of the bank liability. Further, the learned Assessing Officer also reduced the net worth of the undertaking sold by the Sundry Creditors amounting to ₹1,30,41,920/-, other liabilities of ₹1,94,17,656/- and the differential amount for payment of gratuity and leave encashment of ₹69,98,167/-. Thus, the dispute in this appeal is with respect to the computation of net worth of the industrial undertaking for computation of capital gain under Section 50B of the Act, which is the cost of acquisition to be reduced from sale consideration.
08. During the year, assessee has sold its business concern of [1] Traction Electronics, [2] SCADA and [3] Industrial Drives divisions on slump sale basis to Crompton Greaves Limited as per Business Transfer Agreement dated 29 April 2010. The assessee computed the net worth of the undertaking transferred at ₹24,26,88,429/-. The sale consideration was undisputed at ₹81 crores. Assessee also claimed expenditure of ₹5,69,69,507/- incurred for transfer of the business for computation of capital gain, the above two amounts were claimed as deduction under



Section 50B of the Act and determined long term capital gain of ₹51,03,42,064/-.

09. The learned Assessing Officer found that the enterprise value of the undertaking was arrived at ₹82 crores, however, it was also provided that if the assessee was unable to transfer bank liability of ₹15 crores, the enterprise value stand reduced to ₹89 crores. It was further provided that the consideration of the enterprise shall be reduced by above ₹15 crores and further, ₹11 crores, if some financial targets are not met by the assessee. As the assessee could not transfer the bank debt of ₹15 crores and could not reach at the financial target, the assessee received total consideration of only ₹81 crores. Therefore, assessee considered of ₹81 crores as consideration received because of slump sale for computation of capital gain under Section 50B of the Act. The Id AO did not dispute this.
010. The learned Assessing Officer further noted that while computing the net worth of the undertaking transferred value of fixed assets as per Written-down value as per income-tax Act, was considered at ₹1,58,18,035/- and value of other assets as per book of accounts was considered at Rs.41,64,86,734/-. Therefore, the total value of assets was considered at ₹43,23,04,769/-. The liabilities of the transferred business was derived at ₹18,96,16,340/- and thus, net worth was shown at ₹24,26,88,429/-.
011. On examination of the business transfer agreement, the learned Assessing Officer found that as per clause no.1.3, the assumed liabilities were defined as the liabilities of

the assessee, which shall be assumed by the buyer on the closing date pursuant to the agreement described in schedule VII of the agreement. In that schedule VII, an amount of ₹15 crores of bank liability was to be assumed by the purchaser in terms of business transfer agreement, however, while working out the liabilities of the transfer business, the assessee did not consider this bank debt of ₹15 crores which should have gone to reduce the net worth of the business.

012. Further, as per the audit report of Deloitte Haskin and Sells for examination of net working capital on 29 July 2010, in connection with the business transfer agreement, provision for gratuity and accumulated leave of employees pertaining to the transferred division was not to be transferred. Similarly, certain liabilities of statutory nature were also not taken by the buyer. However, the assessee did not consider the liabilities amounting to ₹302,87,856/- for computing the net worth of transfer division. Further, certain sundry credit balances amounting to ₹1,30,41,920/- of the transferred division were also not considered.
013. Therefore, assessee was issued notice to explain the above. Assessee explained that the bank liability and other above stated liabilities, which are not taken by the buyer, have not been considered for negotiating the sale consideration and therefore, these items could not be taken for reducing the computation of net worth of transfer industrial divisions.
014. The learned Assessing Officer referred to the definition of 'Net worth' and relying upon the definition as well as

several judicial precedents held that bank liability pertaining to the transferred division is required to be reduced for computing the 'net worth'.

015. He further held that liabilities of ₹1,94,17,656/- pertaining to the transferred undertaking were not considered and therefore, to that extent the net worth of the undertaking deserves to be reduced. Similarly, sundry creditors balances pertaining to the transfer division of ₹1,30,41,920/- as well as differential amount of provision for gratuity and leave encashment of ₹69,98,167/- was also required to be reduced from net worth of the undertaking. He therefore held that total non transferred liability of ₹18,85,57,743/- should be included in liabilities of the undertaking and consequently reduced from the net worth computed by the assessee.
016. Accordingly, the learned Assessing Officer computed the capital gain on slump sale under Section 50B of the Act, where full value of consideration received undisputedly is ₹81 crores, the net worth of the undertaking was determined at ₹ 5,32,30,686/-. The expenses incurred for the transfer of undertaking was also distributed by excluding the provision for doubtful debts amounting to ₹1,20,69,875/-. Thus, such expenses were considered at ₹4,22,15,682/-. Accordingly, the long-term capital gain computed under Section 50B of the Act was determined at ₹71,45,53,632/-.
017. In nutshell, the net worth of the undertaking transferred as computed by the assessee is ₹24,26,88,429/-, which is computed by the learned Assessing Officer at ₹5,32,30,686/- and expenses incurred towards transfer

of the business claimed by the assessee of ₹5,69,69,507/- was computed at ₹4,22,15,682/-. Thus, the long term capital gain computed by the assessee of ₹57,03,42,069/- was computed by Id AO at ₹71,45,53,632/-.

018. The learned CIT (A) held that the bank liability was the liability of the undertaking and therefore, all the assets and liabilities pertaining to the undertaking of the business transferred are to be considered while computing the net worth. With respect to the reduction of sundry creditors of ₹1,30,41,920/-, other liabilities of ₹1,94,17,656/- and gratuity and leave encashment of ₹69,98,167/-, he rejected assessee's contention that these liabilities which have not been taken over, which required to be reduced from the net worth. Accordingly, on these issues, he dismissed the appeal of the assessee. Thus, assessee is aggrieved and in appeal before us.
019. The learned Authorized Representative submitted that assessee is only aggrieved against the computation of net worth of the transferred industrial undertaking for computation of capital gain under Section 50B of the Act, where the net worth is decreased by ₹15 crores on account of bank liability and further other three expenditure and items. He referred to paper book containing 177 pages wherein at page no.3 to 91 is Business Transfer Agreement between the assessee and Crompton Greaves Limited dated 29 July 2010, was referred to the details of undertaking transferred and the assumed liabilities at clause no.1.3 of the agreement. He also referred to Schedule VII of the assumed liabilities at



page no.65 of the agreement. He submitted that the amount of ₹15 crores of bank liability would be assumed by the purchaser in accordance with the terms of the agreement and subject to the consent of the bank. He also referred to Schedule 1A at page no.2 of the agreement to show that what is the business that has been transferred in terms of Article no.1.7 of the agreement. He further referred to clause no.3 at page no.8 of the agreement to show that the undertakings are transferred as a going concern. He further referred to clause no.4 where the clauses of enterprises value, closing consideration earn out and payments are mentioned. Referring to clause no.4.1, he submitted that the enterprises valuation was ₹92 crores and the earn out is ₹11 crores. He further referred to clause no.4.2 of the agreement to show that closing consideration shall be the enterprise value as reduced by the bank debt of ₹15 crores and the earn out of ₹11 crores. He further referred to letter dated 21 March 2014, submitted before the learned Assessing Officer stating that why the liabilities taken over by the buyer should be excluded from the net worth computation. He referred to the Para B of that letter and reiterated that why the bank liability of ₹15 crores and other items are not required to be adjusted for computation of net worth of the industrial undertaking. He further referred to the provision of Section 50B of the Act to explain that when there is a slump sale of undertaking, the profits and gains computed by reduction of net worth of the undertaking or the division, which shall be considered as the cost of acquisition for computation of capital gain. He further referred to explanation 1, where net worth is the aggregate value of



the total assets of the undertaking as reduced by value of liabilities of such undertaking as appearing in books of accounts. He further referred to the balance sheet of the assessee company placed at paper book page no.101 to 168 for the year ended on 31st March, 2010, to show the details of secured loans as per schedule B where the cash credit with banks of ₹15,09,00,000/- is shown. He further referred to page no.130 of the paper book, wherein as per note no.18 the transfer of undertaking is mentioned and further at page no.132, the summary of assets and liabilities of three discontinued industrial undertaking were shown. He submitted that the bank liability with respect to cash credit was not shown in the discontinued operation but in continuing operation of the assessee. He therefore submitted that bank liability was not part of discontinuing operation. He further submitted that as per balance sheet of 31 March 2011, placed at page no.138 of the Paper Book refereeing to schedule C of secured loans, he submits that for the year ended 31 March 2011, the cash credit with the bank is still shown in the balance sheet. Therefore, it cannot be considered as liability of the transferred undertaking. He further referred to page no.152 of the paper book, which is part of Schedule VII of the notes on account wherein note no.2, the revenue and expenses and assets and liabilities of the continuing and discontinuing operations are shown. He further referred to paragraph no.5.3.8 to paragraph no.5.3.12 of the order of the learned CIT (A) and submitted that if a liability is not transferred then same cannot be considered as the liability of the undertaking with respect to the bank debt of ₹15 crores. To support his contentions, he referred to the decisions of the co-



ordinate Bench in case of Universal Diary Products Ltd. 144 Ltd 420, to shown that decision relied upon by the learned Assessing Officer is not applicable. He further stated that Para 7 of the decision of PVR Limited vs. ACIT 124 taxmann.com 593, clearly shows that no evidence is brought on record by the Revenue that the buyer has paid the assessee any amount more than the amount stated by which the net worth of undertaking is required to be reduced. He further referred to the decision of the Hon'ble Delhi High Court in case of Truine Projects Pvt. Ltd. vs. JCIT at 77 taxmann.com 40.

020. Coming to ground no.2 with respect to the Sundry Creditors after referring to the facts of the issue, he referred to the decision of Hon'ble Bombay High Court in case of Premier Automobiles Limited Vs. ITO at page no. 233 of the decision. In end, he submitted that the adjustment made by the learned Assessing Officer to the computation of net worth of the industrial undertaking and confirmed by the learned CIT (A) are not correct. In nutshell, he submitted that the net worth of the industrial undertaking cannot be reduced by the bank debt of ₹15 crores as it has not been taken by the buyer as well as various other liabilities. He therefore submitted that the order of the learned Assessing Officer and learned CIT (A) are not sustainable.

021. The learned Departmental Representative referred to the provisions of Section 50B of the Act to show that the computation is required to be made of capital gain by reducing the sale consideration by net worth of the undertaking being cost of acquisition. He submitted that



if the asset is not taken over by the buyer but is the liability of the undertaking same is required to be reduced being part of the net worth. He referred to the provisions of Section 2 sub section 42C stating that slump sale means the transfer of undertaking for a lump sum consideration. Therefore, there is no option left to the assessee or to the Revenue to reduce or exclude any of the liabilities whether taken by the buyer or not taken by the buyer from computation of capital gain. He further referred to explanation 2 to Section 50B of the Act where the provisions of net worth computations are provided and he referred to explanation 1, wherein net worth shall be the aggregate value of the assets of the undertaking as reduced by the value of liabilities undertaking as appearing in its books of account. He therefore, submitted that whether the buyer has taken this liability or not if it is part of the industrial undertaking as recorded in the books of account of the assessee it is required to be computed for computing net worth. He therefore, submitted that the bank liability of ₹15 crores is pertaining to the units transferred by the assessee and therefore, the lower authorities have correctly treated the same as the liability of the undertaking. On bank loan of Rs 15 crores, he submitted that if the same is not the liability of undertaking, then there is no reason that it is mentioned in the BTA. Thus, mention of it in BTA itself shows that the bank liability of Rs 15 Crores was the liability of undertaking. He submits that assessee does not deny that but seeking exclusion only for the reason, that buyer has not taken this liability. If assessee says that bank liability is not the liability of the undertaking then the claim of the assessee of slump, sale fails as it

become itemized sale and not sale of undertaking as lump sum sale. Further, with respect to all the other items, he submitted that the assessee has failed to show that this items are not pertaining to the transferred undertaking, he further referred to the decision of co-ordinate Bench in case of Universal dairy products Pvt. Ltd. which squarely covers the issue in favor of the Revenue, so far as bank loan is concerned. He further stated that the decision relied upon by the learned Authorized Representative of PVR Limited and Trine Projects Pvt. Ltd.(supra) as well as Premier Automobiles Limited, does not help the case of the assessee as same are rendered on its own facts which are distinguished.

022. The conclusion of the hearing, Bench asked that the provisions of Section 50B (3) of the Act requires report of the accountant which has not been produced, Assessee was directed to submit. Assessee was also directed to submit the computation of the capital gain working along with the computation of the total income. Vide separate letter assessee submitted the computation of income along with working of the income under the head capital gain. Assessee also submitted from no 3CA issued by the accountant M/s Subramanian Swami and Associates dated 21 September 2011.
023. We have carefully considered rival contentions and perused the orders of the lower authorities. Undisputedly claim of the assessee is that assessee has sold three undertaking to Crompton Greaves limited on slum sale basis as per Business Transfer undertaking. Therefore, the capital gain is required to be computed u/s 50 B of



the Act. According to section 50 B of the Act, capital gain is computed by reducing from sales consideration, net worth of the business transferred and expenses incurred on transfer of undertaking. Net worth of the business is defined as per Explanation 1 of the section that "net worth" shall be the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account. How the value of total assets is to be computed is narrated in explanation 2 to that section. As there is no dispute on the value of assets, it need not be considered. Therefore, to compute the net worth of the business, the liabilities recorded in the books of accounts of the assessee is required to be reduced from the Total value of assets. There is no dispute that sum of Rs 15 crs of bank liability is the liability of the transferred business. Assessee does not deny the same. It is also for the reason that had these bank liability is not the liability of the undertaking recorded in the books of the assessee, then why it should be referred to at all in the Business Transfer agreement. Further in the computation of net worth, whether the buyer takes over the liability or does not take the liability, such liability are to be considered for computation of capital gain because liabilities to be reduced from the total value of assets is what is recorded in the books of accounts irrespective of their treatment by the parties. The language of the definition of 'Net worth' is plain, clear, and unambiguous. Further, what is transferred is the undertaking and cost of acquisition of such undertaking is the net worth of the

undertaking as per books of accounts. Computation of net worth is also explained how it is to be computed.

024. Further assessee submits that it has continued to show the liabilities in the books of accounts of the assessee and further while disclosing the net effect of discontinued business, this liability is shown in continuing operation. We find that as the liability has not been taken by the buyer does not change the net worth of the assessee for computing capital gain u/s 50 B of the Act. As the liability has not been taken by the buyer it cannot be transferred to the buyer's accounts naturally, therefore it continued as liability in the books of the assessee and as part of continuing operation of the assessee. Therefore, it does not affect the computation of capital gain u/s 50 B of the Act.

025. On appeal before Id CIT (A) , he decided the issue as under :-

“5.3.6 I have perused the facts of the case and submissions made before this office The Ld. AO in the impugned assessment order has observed that the sales consideration as per BTA entered into by the appellant states as under-

(i) Enterprise value of undertaking of business transferred was arrived at Rs 92,00,00,000/-, however, if the appellant was unable to transfer the bank liability of Rs. 15,00,00,000/-, the Enterprise Value would be reduced to Rs.89,00,00,000/-

(ii) The consideration shall be Enterprise Value as reduced by debt of Rs.15,00,00,000/- to be transferred

and Rs. 11,00,00,000/- (called Earn Out) if some financial targets of FY 2009-10 were not met.

During the assessment proceedings, the appellant had submitted that it could transfer the bank debt of Rs.15 cr and also it could not meet the financial targets as agreed upon and hence, appellant received a total consideration of Rs.81 crore (Rs.92 crore Rs.11 crore), which is the sale consideration of slump sale.

5.3.7 Before proceeding to the issue in hand, it is important to analyze certain relevant provisions of the Act.

Section 2(42C) of the Act states

(42C) "slump sale" means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.

Explanation 1- For the purposes of this clause, "undertaking" shall have the meaning assigned to it in Explanation 1 to clause (19AA).

Explanation 2-For the removal of doubts, it is hereby declared that the determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities:

As per Explanation 1 to section 2(19AA), the term 'undertaking' includes any part of an undertaking, or a unit or division of an undertaking or a business activity



taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

Section 50B of the Act, which lays down the method prescribed to compute the capital gains states as under-

"Special provision for computation of capital gains in case of slump sale. 50B. (1) Any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place:

Provided that any profits or gains arising from the transfer under the slump sale of any capital asset being one or more undertakings owned and held by an assessee for not more than thirty-six months immediately preceding the date of its transfer shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

(2) In relation to capital assets being an undertaking or division transferred by way of such sale, the "net worth" of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48.

(3) Every assessee, in the case of slump sale, shall furnish in the prescribed form along with the return of income, a report of an accountant as defined in the

Explanation below sub-section (2) of section 288, indicating the computation of the net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at in accordance with the provisions of this section.

Explanation 1-For the purposes of this section, "net worth" shall be the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account:

Provided that any change in the value of assets on account of revaluation of assets shall be ignored for the purposes of computing the net worth.

Explanation 2-For computing the net worth, the aggregate value of total assets shall be,-

(a) in the case of depreciable assets, the written down value of the block of assets determined in accordance with the provisions contained in sub-item (C) of item (1) of sub-clause (c) of clause (6) of section 43;

(b) in the case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD, nil; and

(c) in the case of other assets, the book value of such assets."

Thus, on a conjoint reading of section 48 and 50B, the capital gains in the case of slump sale is to be computed by reducing the expenditure incurred in connection with

the slump sale and net worth of the undertaking as computed u/s. 50B from the sales consideration received on account of slump sale.

5.3.8 Now coming to the facts of the case, the appellant had agreed to the consideration of Rs.92 crores if the bank liability of Rs.15 crores was transferred to CGL. In case the said liability was not transferred, the consideration would be reduced to Rs.89 crores. The appellant also had an Earn Out target and if the same was not met the final consideration payable for the slump sale would be reduced by Rs. 11 crores.

In this case, the appellant has considered the full value of consideration on account of slump sale at Rs.81 crores, which is Rs.92 crores as reduced by Rs.11 crores as the earn out targets were not met by the appellant company. There is no dispute as regards this fact. The fact that the appellant is has only reduced Rs. 11 crores from the agreed sales consideration goes down to reflect that no adjustment in the consideration value was made for the bank liability that has not been transferred to CGL under the slump sale agreement.

5.3.9 The appellant has argued that the said bank liability was a corporate liability and not specific to any undertaking that was sold under the slump sale. If this argument of the appellant is accepted, I do not see any reason as to why the said bank liability was to be referred to in the BTA and be considered for transfer under slump sale arrangement. In fact, the BTA expressly provides



that in case the bank liability is not transferred, the gross consideration would be reduced to Rs.89 crores. This in itself proves and establishes that the fact that the bank liability pertained to these divisions considered under slump sale.

Further, the appellant has contended that the bank liability was not a part of the business transferred as it was a corporate liability. It is pertinent to note that the BTA was executed on 29.07.2010, wherein the reference to the bank liability is explicitly made and in fact, the consideration is to be modified / altered basis the bank liability is transferred or not is recorded. The audited accounts that the appellant is relying upon are made as on 30.09.2011, much after the BTA was executed. Thus, this clearly reflects that there has been a re-classification of assets and liabilities in the balance sheet to establish the stand to be adopted by the appellant company.

5.3.10 Having said the above, now coming to the issue that when the liability of the undertaking is not transferred under the slump sale, whether the same is to be considered for the purposes of computation of net worth.

The Ld. AO has relied on the decision of the Delhi Tribunal in the case of Universal Dairy Products Pvt. Ltd. (ITA No.2217/Del/2012) to reduce the liabilities not taken over from the total assets for the purposes of computing the net worth of the company. The appellant has argued that in that case the secured loans pertained to the division sold and were not transferred and thus, not applicable to the facts of the appellant company.



On the contrary, the appellant has relied on various decisions to support its argument. The one being the case of Delhi High Court in the case of Triune Projects (P.) Ltd. v. DCIT 77 taxmann.com 40 wherein it was held that if certain assets or properties are left out because they would inconvenience or lead to some kind of trouble for the purchasing party, it is well within its right to exclude it from the list of assets. I have perused this decision relied upon by the appellant. The issue in this case primarily pertains to the AO holding the slump sale as sham transaction and designed to avoid the tax liability by inflating the value of the assets. The Hon'ble Delhi High Court has held that even if certain assets are excluded from list of assets, the slump sale qualifies for deduction u/s. 50B of the Act.

The Mumbai Tribunal also in the case of Rohan Software (P.) Ltd. [2008] 21 SOT 258 (Mum) held that the applicability of Section 50B of the Act cannot be avoided merely because certain assets were excluded as long as the business was transferred as a whole.

In this case, there is no question or issue on whether the transaction qualifies for deduction u/s. 50B of the Act. The limited question is whether the bank liability not transferred to the business sold should be reduced while computing the net worth especially considering the fact that the same was considered while negotiating the agreeing to the consideration under the BTA. Accordingly, in light of these facts, the decision relied upon by the appellant is not applicable to the facts of the issue under consideration.

Further, the other decisions relied upon by the appellant are pertaining to whether the sale qualified as slump sale u/s. 50B, which is not the issue in hand in the present case and hence, the reliance on the same is out of context.

5.3.11 The computation provision is governed by section 48 r.w.s. 50B of the Act. These sections do not consider or provide any exclusions of the liabilities not taken over and hence, all the assets and liabilities pertaining to the undertaking or business transferred are to be considered while computing the net worth.

5.3.12 In light of the above facts and circumstances, I do not find any infirmity in the Ld. AO reducing the bank liability of Rs. 15,00,00,000/- while computing the net worth of the undertaking. Accordingly, this ground of appeal is dismissed.”

026. Ld AR has relied up on the decision of coordinate bench in case of PVR Ltd **[2021] 124 taxmann.com 593 (Hyderabad - Trib.) [04-01-2021]** where in the facts are as under :-

“7. Having regard to the rival contentions and the material on record, the un-disputed facts are that the assessee has sold its asset (Luxe Cinemas) by way of slump sale to Jazz Cinemas Pvt. Ltd., and Clause-3 of the said slump sale deed clearly mentions that the total sale consideration that is agreed to was Rs. 51.50 Crores and that out of the same the buyer would pay a sum of Rs. 21.50 Crores directly to the creditor *i.e.*, SBI, and only the balance of Rs. 30 Crores would be paid to



the assessee. Therefore, the AO in para 5(b) of his order has rightly observed that the assessee has applied the sale consideration for making the payment to the creditor *i.e.*, the bank. After observing so, AO has treated the liability of Rs. 21.50 Crores as subsisting liability at the time of sale and has accordingly reduced the net worth of the asset. By doing so, the liability continues to be the liability of the purchaser and if it were so, then the computation of net worth would be at a lower figure resulting in Short Term Capital Gain.

7.1 However, once AO has accepted that payment of part consideration directly to the bank is the application of its sale proceeds by the assessee, then it is to be considered that the liability has been discharged by the assessee and is no longer the liability of the purchaser. Hence, the net worth of the assets does not include the liability of Rs. 21.50 Lakhs, (as it is discharged by the assessee). There is no evidence brought on record by the department that the buyer has paid the assessee any amount more than Rs. 51.50 Crores. The buyer has received the assets without any liability and therefore the net worth of the asset is Rs. 55,14,38,969/-. In such circumstances, it cannot be said that the net worth of the asset has to be further reduced by the liability because the liability has already been discharged by the assessee only.”

027. Comparing the facts of the present case with the facts of the case cited before us, we find that those are distinguishable. In this case, bank liabilities have not at all been discharged by neither the buyer nor the seller. In



fact, the Assessee has shown in his arguments that such bank liability is still outstanding in the books of the assessee. Thus, the liability is recorded in the books of accounts, as on the date of transfer of undertaking and according to the explanation 1 it is required to be reduced from the total value of assets to determine the net worth of the undertaking. Further decision relied up on by assessee, did not consider earlier decision of coordinate bench of Universal Dairy products Limited 144 ITD 420. Therefore, reliance on this judicial precedent does not help case of assessee.

028. Assessee has further placed reliance up on decision of Honourable Delhi high court in case of Triune projects Limited [2017] 77 taxmann.com 40 (Delhi) where in the issue was whether slump sale was a sham transaction to reduce tax liability or not where some of the assets of the undertaking are not transferred. Honorable High court held that same is not sham. In the case of the assessee, issue is of computation of net worth, which was not the issue before high court. In case of assessee revenue authorities have accepted that the transaction is slump sale and also accepted the computation of such capital gain to be made u/s 50 B of the Act. Here the issue is only of the computation of net worth as cost of acquisition of Transferred undertaking. Therefore, that decision does not render any assistance in the issue before us.
029. Revenue has relied on the decision of the coordinate bench in case of Universal Dairy Products (P.) Ltd [2013] 36 taxmann.com 586 (Delhi - Trib.) where in it has

been held that Amount of bank loan relating to undertaking has to be reduced while calculating net worth under section 50B. facts of the case before us and facts of the case cited are similar.

030. We have also perused from No 3CEA dated 21/09/2011 issued by the Accountant, we have also perused annexure 3 of the certificate where book values of liabilities of transferred business was mentioned. On perusal of Note, it was stated that on mutual understanding of the parties certain liabilities are not included. It is not at all mentioned that how these do not form part of liabilities recorded in the books of account of the assessee pertaining to transferred undertaking. There is no question of taking any mutual understanding into account for computation of cost of acquisition transferred undertaking, it has to be strictly in accordance of the law which provides that all the liabilities recorded in the books of account of such transferred undertaking should be considered, irrespective whether taken over by the buyer or not.
031. Hence we do not find any infirmity in the orders of the lower authorities in reducing the net worth of the transferred undertaking by bank liability of Rs 15 crores being the liability of the undertaking for computation of capital gain u/s 50 B of the Act. Accordingly, Ground no 1 and 3 of the appeal is dismissed.
032. Ground No 2 of the appeal is against considering certain liabilities though not taken by the buyer, reduced by the Id AO from the net worth. The claim of the assessee is Sundry Creditors amounting to Rs. 1,30,41,920/- were

not taken over by CGL as the same were old outstanding debts and legal proceedings were going on and hence, not transferred. The liabilities aggregating to Rs. 1,94,17,656/- were also not transferred to the undertaking sold as the same pertained to the corporate division. Differential amount of gratuity and leave encashment of Rs.69,98,167/- which was not transferred to the undertaking and hence, all these liabilities should not be reduced while computing the net worth of the undertaking. We find that we have given reasons in detail in Ground no 1 and 3 of the appeal that why the liability, even if not taken but is related to the undertaking, is required to be taken in to account for computing net worth of the undertaking as cost of acquisition for computation of capital gain u/s 50 B of the act. Same reasoning also applies to all these items of adjustment claimed by the assessee.

033. The Id CIT (A) has deal with this issue as under :-

“5.4 Ground No. 3 to 6 Reduction of Sundry Creditors of Rs.1,30,41,920/-, Other Liabilities of Rs.1,94,17,656/-, Gratuity and Leave Encashment of Rs.69,98,167/- to arrive at Net Worth u/s. 50B of the Act

5.4.1 The appellant submitted that Sundry Creditors amounting to Rs. 1,30,41,920/- were not taken over by CGL as the same were old outstanding debts and legal proceedings were going on and hence, not transferred. The liabilities aggregating to Rs. 1,94,17,656/- were



also not transferred to the undertaking sold as the same pertained to the corporate division. Differential amount of gratuity and leave encashment of Rs.69,98,167/- which was not transferred to the undertaking and hence, all these liabilities should not be reduced while computing the net worth of the undertaking.

5.4.2 On a perusal of the assessment order, it is noted that there have been discrepancies in the Net Working Capital report submitted by Deloitte Haskin and Sells on 29.07.2010 as the appellant has made submissions before the Ld. AO stating that the amounts were erroneously included or not considered. All the differences have been worked upon by the Ld. AO in his impugned order and the appellant has not disputed the same and hence, the amounts are considered by the Ld. AO are being considered.

5.4.3 Having discussed in the foregoing paras in Ground No. 2 that the sales consideration was arrived at after considering the assets and liabilities of the undertaking that were proposed to be transferred. The exclusions or reservations were mentioned as regards to the bank liability and earn out targets set. This clearly reflects that CGL and the appellant had considered all the assets and liabilities of the undertaking proposed to be transferred while executing the BTA and the net working capital report issued by Deloitte Haskins and Sells dated 29.07.2010 (same dated as on which the BTA was executed) also considered the same. The appellant, during the course



of the assessment proceedings, has pointed out that there were errors or erroneous consideration of the liabilities in the report, which has not been substantiated by way of any agreements or letters executed by CGL and / or appellant to clarify the same. Moreover, the transaction value or the sales consideration as agreed upon under the BTA has not changed or altered even when the liabilities as contested by the appellant are not taken over. Further, the provisions of section 48 r.w.s.50B does not allow the deduction of the liabilities not taken over. Thus, the appellant's contention that the liabilities in questions are not to be considered while computing the net worth is not tenable in facts and in law.

5.4.4 I have already discussed in Ground No. 2 above on the judicial precedents relied upon by the appellant. The same does not hold waters and are not applicable to the facts of the case. It may importantly be noted that Slump sale is simply defined as a sale where no particular value is given to the assets and liabilities of a business. It is known as a going-concern transfer or an as-is transfer. In this case, the agreed price of sales or consideration was made on the basis of the net working capital report wherein all the liabilities were considered at the time of executing the BTA. Thus, the same has to rightfully reduced while computing the net worth of the undertaking or division transferred to CGL.

5.4.5 In light of the above facts and in law, I find no infirmity in the Ld. AO reducing the liabilities while



computing the net worth. Accordingly, these grounds of appeal are dismissed.”

034. On perusal of letter dated 21/03/2014 submitted before Id AO, It is not the case of assessee that all these liabilities are not pertaining to the undertakings transferred, only claim that these liabilities could not be transferred because of some commercial reasons, such as in case of old creditors some litigations were going on, statutory liabilities are to be paid by the assessee and it was not possible to transfer. These are not the consideration permitted by law for considering the net worth of the undertaking as cost of acquisition.
035. With respect to Gratuity and leave encashment are pertaining to units transferred but though employees are transferred to buyer, same was to be considered as expenses on transfer, therefore same is required to be considered as expenditure incurred for transfer of unit. These expenses are not with respect to transfer but arising as liabilities shared by the buyer and seller. Thus it is not the expenditure on transfer but liabilities taken on its own by the assessee.
036. Assessee relied on decision of Honourable Bombay high court in Premier Automobiles limited 264 ITR 193 referring to page no 233 was that whether the sale of kalian business was a slump sale or not. The court held yes. In this case it is not the issue as everyone agrees that it is slump sale.
037. In view of above facts we do not find any infirmity in the orders of lower authorities in not considering the Rs



12069875/- as the expense incurred on transfer, considering the liability of transferred undertaking of Rs69,98167/- of differential amount of Gratuity and leave encashment, Rs 13041920 of creditors balance of transferred undertaking Rs 19417656 of the current liabilities of the undertaking. Therefore we confirm the order of the Id lower authorities and dismiss Ground no 2 of Appeal.

038. In the result, appeal of assessee is dismissed.

Order pronounced in the open court on 15.12.2023.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 15.12.2023
Sudip Sarkar, Sr.PS/ Dragon

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai