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

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT, AND SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 2659/DEL/2004 [A.Y. 1997-98]

M/s SIEL Limited 5th Floor, Kirti Mahal Rajendra Place New Delhi	Vs.	The A.C.I.T. Circle -8(1) New Delhi
PAN – AAACS 4902 Q		
(Applicant)		(Respondent)

Assessee By : Shri Tarandeep Singh, Adv

Department By : Shri Subhra Jyoti Chakraborty, CIT-DR

Date of Hearing : 22.01.2024
Date of Pronouncement : 31.01.2024

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the ld. CIT(A) – XI, New Delhi dated 29.03.2004 pertaining to A.Y. 1997-98.

2. The grievances of the assessee read as under:

1. That on the facts and circumstances of the case and in law the Commissioner of Income-tax (Appeals) erred in confirming the action of the Assessing Officer in treating the non-compete fee of Rs.64,42,20,000/- received by the appellant, as revenue receipt liable to tax.

2. That on the facts and circumstances of the case and in law the Commissioner of Income-tax (Appeals) erred in holding that the profit of Rs. 1,73,91,898/- on cancellation of own debentures by the appellant was liable to tax.

3. That on the facts and circumstances of the case and in law the Commissioner of Income-tax (Appeals) erred in confirming the action of the Assessing Officer in disallowing the claim of Rs.6,43,000/- being provision for premium on redemption of debentures.

4. That on the facts and circumstances of the case and in law the Commissioner of Income-tax (Appeals) erred in confirming the action of the Assessing Officer in disallowing the claim of deduction Rs.1,95,00,000/- being payment made to another bidder for loss of business / investment opportunity.

5. That on the facts and circumstances of the case and in law the Commissioner of Income-tax (Appeals) erred in holding that the Assessing Officer had correctly worked out capital gains on transfer of Compressor business (subject to arithmetical mistake) and on transfer of Hard Metal business.

6. That the Commissioner of Income-tax (Appeals) ought to have held that in absence of any direction in the assessment order to charge interest, interest u/s 234B & 234C could not be charged.

7. That the order passed by the CIT (A) is bad in law and void ab-initio.

3. The assessee has also raised additional grounds, which are more or less alternative pleas in respect of grounds taken in Form No. 36.

4. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

5. Briefly stated, the facts of the case are that the assessee filed its return of income on 28.11.1997 showing net loss of Rs. 11,78,54,540/- and computed tax u/s 115J of the Income-tax Act, 1961 [the Act, for short]. Return was revised on 31.03.1999 at a loss of Rs. 43,93,95,404/- and tax u/s 115J of the Act was computed at Rs. 18,37,60,360/-.

6. Return was selected for scrutiny assessment and accordingly, statutory notices were issued and served upon the assessee.

7. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has received non-competition fee from Collaborator amounting to Rs. 64,42,20,000/-. The Assessing Officer further noticed that this non-compete fee has

been treated as capital receipt in the return of income and claimed as not liable to tax under the Act.

8. The assessee was asked to justify its claim.

9. The assessee filed detailed reply explaining that this non-compete fee has been received under agreement for restrictive covenant in respect of restrain on the source of income, hence, treated as capital receipt. It was explained that the assessee and its Chairman and Managing Director Shri Siddharth Shriram entered into non-compete agreements whereby the assessee company and Shri Siddharth Shriram and his family agreed not to engage directly or indirectly in the manufacturing, selling or repairing of compressors and parts thereof, as would compete with Tecumseh Products Company, TPC Mauritius Holdings, Tecumseh India Pvt Limited and SIEL Compressors Ltd. in any country of the world for a period of 15 years from the date of agreements for which the assessee company and Shri Siddharth Shriram received a sum of Rs. 64.42 crores. Copies of agreements were also supplied to the Assessing Officer.

10. After considering the agreements, the Assessing Officer was of the opinion that the business of compressor unit was transferred to a subsidiary company by means of a scheme of demerger, approved by the Hon'ble High Court of Delhi.

11. The Assessing Officer formed a strong belief that prior to receipt of non-compete fee, the assessee had already transferred all assets of its compressor limited and, therefore, non-compete fees is not a consideration received for transfer of any asset as all assets were already transferred.

12. The relevant observations of the Assessing Officer read as under:

> *"..... Therefore, whatever might have been written in the agreement, it is clear that the restrictive covenant is only in respect of any future adventure which could otherwise be taken by the assessee company or its promoters because of their goodwill they have created. It is not in respect of any existing assets tangible but in respect of future adventure which mayor may not take place and the goodwill of the assessee. In other way, this is a payment received by the assessee company for a future likely profit which it is otherwise capable of earning by being in similar business as mentioned in the agreement as exploit its goodwill. It is also important to note that the payment is also not compensation for any asset (tangible or*

intangible) or any profit-making structure which might have been taken away from the assessee. Thus, it will be seen that the assessee company has only realized its future profits in present and they cannot be treated as a capital receipt."

13. After giving thoughtful consideration to the observations of the Assessing Officer, we are of the considered view that none of the lower authorities have doubted that the receipts are on account of restrictive covenants mentioned in the agreement.

14. The impugned quarrel is now well settled by the decision of the Hon'ble Supreme Court in the case of Guffic Chem Pvt Ltd 332 ITR 602. The relevant findings read as under:

"5. The position in law is clear and well settled. There is a dichotomy between receipt of compensation by an assessee for the loss of agency and receipt of compensation attributable to the negative/restrictive covenant. The compensation received for the loss of agency is a revenue receipt whereas the compensation attributable to a negative/restrictive covenant is a capital receipt.

6. The above dichotomy is clearly spelt out in the judgment of this Court in Gillanders' case (supra) in which the facts were as follows. The assessee in that case carried on business in diverse fields besides acting as managing agents, shipping agents, purchasing agents

and secretaries. The assessee also acted as importers and distributors on behalf of foreign principals and bought and sold on its own account. Under an agreement which was terminable at will assessee acted as a sole agent of explosives manufactured by Imperial Chemical Industries (Export) Ltd. That agency was terminated and by way of compensation the Imperial Chemical Industries (Export) Ltd. paid for first three years after the termination of the agency two-fifths of the commission accrued on its sales in the territory of the agency of the appellant and in addition in the third year full commission was paid for the sales in that year. The Imperial Chemical Industries (Export) Ltd. took a formal undertaking from the assessee to refrain from selling or accepting any agency for explosives.

7. Two questions arose for determination, namely, whether the amounts received by the appellant for loss of agency was in normal course of business and therefore whether they constituted revenue receipt? The second question which arose before this Court was whether the amount received by the assessee (compensation) on the condition not to carry on a competitive business was in the nature of capital receipt? It was held that the compensation received by the assessee for loss of agency was a revenue receipt whereas compensation received for refraining from carrying on competitive business was a capital receipt. This dichotomy has not been appreciated by the High Court in its impugned judgment. The High Court has misinterpreted the judgment of this Court in Gillanders' case (supra). In the present case, the Department has not impugned the genuineness of the transaction. In the present case, we are of the

view that the High Court has erred in interfering with the concurrent findings of fact recorded by the CIT(A) and the Tribunal. One more aspect needs to be highlighted. Payment received as non-competition fee under a negative covenant was always treated as a capital receipt till the assessment year 2003-04. It is only vide Finance Act, 2002 with effect from 1.4.2003 that the said capital receipt is now made taxable [See: Section 28(va)]. The Finance Act, 2002 itself indicates that during the relevant assessment year compensation received by the assessee under non- competition agreement was a capital receipt, not taxable under the 1961 Act. It became taxable only with effect from 1.4.2003. It is well settled that a liability cannot be created retrospectively. In the present case, compensation received under Non-Competition Agreement became taxable as a capital receipt and not as a revenue receipt by specific legislative mandate vide Section 28(va) and that too with effect from 1.4.2003. Hence, the said Section 28(va) is amendatory and not clarificatory. Lastly, in Commissioner of Income-Tax, Nagpur v. Rai Bahadur Jairam Valji reported in 35 ITR 148 it was held by this Court that if a contract is entered into in the ordinary course of business, any compensation received for its termination (loss of agency) would be a revenue receipt. In the present case, both CIT (A) as well as the Tribunal, came to the conclusion that the agreement entered into by the assessee with Ranbaxy led to loss of source of business; that payment was received under the negative covenant and therefore the receipt of `50 lakhs by the assessee from Ranbaxy was in the nature of capital receipt. In fact, in order to put an end to the litigation, Parliament stepped in to specifically tax such receipts under non-competition agreement with effect from 1.4.2003.

> 8. For the above reasons, we set aside the impugned judgment of the Karnataka High Court dated 29.10.2009 and restore the order of the Tribunal. Consequently, the civil appeal filed by the assessee is allowed with no order as to the costs."

15. Thus, from the above, it can be safely concluded that whereas compensation received for loss of agency is taxable as revenue receipt, however, receipts attributable to the negative covenants for not to carry on a business are capital receipts not liable to tax.

16. There is no dispute that there is no allegation levelled by the Assessing Officer/ld. CIT(A) that the receipts for non compete are attributable to any other source. On the contrary, the Assessing Officer says that it is for future profit. It would be pertinent to mention here that transfer of compressor business was done pursuant to scheme of arrangement sanctioned by the Hon'ble Delhi High Court.

17. The Hon'ble Delhi High Court had an occasion to consider a case of similar agreements, namely, Smt. Tara Sinha 85 Taxmann.com 9 wherein the Hon'ble High Court followed the decision of the Hon'ble Supreme Court in the case of Guffic Chem Pvt Ltd [supra] and also the

decision in the case of Rohitasava Chand 306 ITR 242 wherein the Hon'ble High Court held as under:

> "There is no doubt that the non-compete agreement incorporates a restrictive covenant on the right of the Assessee to carry on his activity of development of software. It may not alter the structure of his activity, in the sense that he could carry on the same activity in an organization in which he had a small stake, but it certainly impairs the carrying on of his activity. To that extent it is a loss of a source of income for him and it is of an enduring nature, as contrasted with a transitory or ephemeral loss. "

18. Considering the facts of the case in totality, in light of the judicial decisions discussed hereinabove, we are of the considered view that the amount received as non-compete fee is not taxable and the Assessing Officer is directed to delete the same. Ground No. 1 is allowed.

19. Since we have deleted the entire addition, the alternative plea taken in the additional grounds become otiose.

20. Second grievance relates to the addition Rs. 1,73,91,898/- on cancellation of own debentures.

21. While scrutinizing the return of income, the Assessing Officer noticed that the assessee has claimed a sum of Rs. 1,73,91,890 as a deduction being profit on cancellation of debentures.

22. The assessee was asked to justify its claim and in its reply, the assessee explained that an offer of 9432237 – 13% Non Convertible Debentures [NCD] of Rs. 100/- each aggregating to Rs. 9432.24 lakhs for cash at par were made to the equity shareholders on right basis and 150000 NCD of Rs. 100/- each aggregating to Rs. 150 lakhs to employees were offered. 9577020 NCD of Rs. 100/- each were allotted in November 1994 and March 1995.

23. It was further explained that the assessee repurchased 1011323 NCDs and held them as an investment at a cost of Rs. 837.41 lakhs. The liability in respect of these NCDs continued to be shown as secured loans as a part of the 9577020 NCDs of Rs. 100/- each.

24. The board of Directors decided to cancel the 1011323 NCDs held as investment. The amount credited to the profit and loss account is the difference between the cost of investment as per the books and their face value. Consequently, loss liability also stood reduced by

face value of these NCDs. It was contended that as the transaction of cancellation of NCDs has only resulted in an extinguishment of loan liability, profit on cancellation is capital in nature and hence not taxable.

25. The Assessing Officer dismissed the contention of the assessee on the ground that it is not supported by any principle of accounting.

26. We find that these debentures were issued for obtaining funds for capital outflow involving capital expenditure. A perusal of the offer letter for issue of debentures show the object of issue, project and repurchase of debentures.

27. The Hon'ble High Court of Bombay in the case of Scindia Steam Navigation 125 ITR 118 had an occasion to consider a similar issue and held that surplus on cancellation of debentures is not equivalent to profits earned out of the business. Relevant findings with facts read as under:

> "The assessee-company had issued debentures of the face value of rupees five crores during the accounting year ended on 30-6-1949. The purpose of the issue was to purchase ships and shares in the proposed shipping corporation and to construct ships and to make

other outlays at shipyard. There was an express stipulation in the debenture trust deed to appropriate a sum of rupees ten lakhs every year towards the sinking fund. The debenture- trustees under the authority conferred upon them by the trust deed invested the amount of sinking fund together with the interest accumulations in the company's own debentures. In the accounting year ended on 30-6-1953, the debenture trust deed was amended so as to permit the existing sinking fund investments in the company's debentures being cancelled, simultaneously extinguishing the corresponding liability on account of debentures. It was further provided that the debenture liability could be reduced out of further purchase and cancellation of debentures from certain stipulated appropriations to the sinking fund. Accordingly the company cancelled the debentures against the sinking fund investments. The surpluses accrued to the company since the debentures were quoted at a discount in the open market. The ITO took the view that since the assessee-company was purchasing and cancelling debentures year after year, the surplus amounts for the assessment years 1957-58 and 1958-59 could be regarded as business profits.

In appeal, the AAC agreed with the ITO. In further appeal, the Tribunal upheld the assessee's contention, observing that what had been done had nothing whatsoever to do with the regular business of shipping. According to the Tribunal, what had been done was to materially alter its permanent framework or its capital structure and in the process the assessee had taken advantage of the favourable capital market. Such operation, according to the Tribunal, was essentially relatable to its capital and the benefit reaped by the

company was essentially a capital benefit. The mere frequency of operations did not change the capital aspect.

On reference:

HELD-IV

The Tribunal had found that what was being done by the assessee-company could be regarded as operations in connection with its capital and that from the mere frequency of the transactions or the fact that it was repeated from year to year (as it had to be) it could not be held that it was part of the business profits of the assessee. The conclusion reached by Tribunal was to be accepted. The accrual of surplus could not be regarded as equivalent to profits earned out of the business activity. Therefore, surpluses were not includible in company's business income. "

28. On a reverse transaction, the Hon'ble Delhi High Court in the case of Dalmia Dadri Cement 126 ITR 851 has held that loss on cancellation of debentures is a capital loss. The relevant facts and findings read as under:

"During the accounting period pertaining to the assessment year in question, the assessee purchased its own 900 debentures, interest on which was payable half-yearly on 30th June and 31st December, of the face value of Rs. 9,00,000 for a price of Rs. 9,21,110. Originally, the assessee credited various parties from whom the. debentures were purchased with Rs. 9,21,110 and debited the investment account with a corresponding amount. Subsequently, the investment account

was credited with this amount, the contra entries being to the debentures account to the extent of Rs. 9,00,000 and loss on investment account to the extent of Rs. 21,110. Subsequently, at the time of finalizing its accounts, it realized that the debentures purchased were the debentures of the assessee itself on which it was liable to pay interest to . the debenture holders up to the date of purchase aggregating Rs. 23,418.25. On that basis, it treated the said amount as interest and Rs. 21,110 as loss on debentures and accounted for the difference of Rs. <9308.35 as sundry receipts. It claimed that the additional sum of Rs. 21,110 paid over and above the face value of the debentures was deductible as interest on borrowed capital in the form of debentures. The ITO disallowed this amount as it was a capital loss. On appeal, the AAC deleted this addition holding that the loss which had been suffered was equivalent to the interest already earned by 'the other party and should have been set off against income receivable by the assessee. On appeal by the revenue, the Tribunal restored the disallowance.

On reference:

Held

In the case of an assessee, who is not a dealer in debentures, the entire sum paid by him as the price of debentures would be treated as capital outlay. Although the entire price was paid because of debentures were pregnant with some accrued interest, no interest actually became payable until the due dates arrived. Thus, in between the two payment dates, the, extra price would only be paid of the

purchase price. When eventually such an assessee was assessed on the interest received by him on the debentures, he could not seek to set off against such income the extra amount paid by him at the time of purchasing the debentures by treating it as accrued interest. Similarly, a seller of securities-cum-interest was not assessable in respect of the amounts he received towards interest from the purchaser. However, where a company itself purchased debentures issued by it, the company could not become its own debenture holder or creditor and that such a transaction would amount to redemption of the debentures and extinguishments of the company's liability to the debenture-holders, so that the excess payment over and \'e the face value of the debentures could be attributable only to interest. However, this position no longer prevailed in view of section 121 of the Companies Act, under which a company's own debentures purchased by it were saved from extinguishments on merely being purchased by the company' They were declared to be alive for reissue, Unless there was a specific provision to the contrary in the articles or the conditions of issue of the debentures or a contract or a positive act or resolution of the company cancelling such debentures or putting an end to them on redemption. Since the records did not show that the debentures in the instant case were so cancelled or extinguished, they retained their existence or individuality and remained alive for reissue. The company was, therefore, in the same position as any outside purchaser. Further, there was nothing on record to indicate that the purchase was ex-interest or cum-interest. All that was known that it purchased debentures of Rs. 9 lakhs for Rs. 9,21,110. Thus, the first set of entries made by it were the correct entries to make. There was also

nothing to indicate that it was intended to be a purchase of the securities-cum-interest by paying the face value as price and Rs. 21,110 towards interest as against Rs. 23,418 accrued till then. But, even otherwise, whatever may be the justification from the point of view of accountancy principles in making notional entries towards interest calculated as having accrued up to the point of sale, in law the entire payment made by the assessee was t&"pital in nature, being the price paid for the debentures. Thus, the Tribunal was justified in disallowing the impugned amount of Rs. 21,110"

29. Considering the facts of the case in totality, in light of the judicial decisions discussed hereinabove, we direct the Assessing Officer to delete the impugned addition. Ground No. 2 is allowed.

30. Ground No. 3 relates to the disallowance of Rs. 6,43,000/- being provision for premium on redemption of debenture.

31. While scrutinizing the return of income, the Assessing Officer found that the assessee has not debited Rs. 6,43,000/- in its profit and loss account but claimed the same in the computation of income.

32. It was contended that as per the Accounting Policy followed by the assessee, provision for premium on redemption of debentures of Rs. 6,43,000/- has been adjusted against the share premium account.

However, for Income tax purposes, this amount has been claimed as a deductible expenditure. Strong reliance was placed on the decision of the Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation 225 ITR 802.

33. Contentions of the assessee were dismissed and addition of Rs. 6,43,000/- was made.

34. We find that the decision in the case of Madras Industrial Investment Corporation [supra] apply on the facts of the case in as much as in that case, it was held that the discount was expenditure allowable u/s 37 of the Act and it should be allowed as deduction proportionately for each year. The only difference is that, in the case in hand debentures having been issued at discount at the time of redemption, premium @ 5% of the face value has been paid. Respectfully following the decision of the Hon'ble Supreme Court [supra], we direct the Assessing Officer to delete the impugned addition. Ground No. 3 is allowed.

35. Ground No. 4 relates to the disallowance of claim of deduction of Rs. 1.95 crores being payment made to another bidder for loss of business/investment opportunity.

36. On perusal of the computation of income, the Assessing Officer noticed that the assessee has claimed a sum of Rs. 1.95 crores as revenue expenditure on account of payments made to persons for ward off competition in respect of acquisition of equity stake in Kanpur Sugar Works Ltd.

37. The claim of the assessee was not accepted.

38. We have given thoughtful consideration to the claim of the assessee. As is apparent from the contention of the assessee, payment of Rs. 1.95 crores is a consideration for acquisition of Kanpur Sugar Works. This is cost of acquisition towards capital assets of a going concern and cannot be taken to be on revenue account as it is not the business of the assessee to take over and sell an undertaking as a going concern. Since the assessee itself is in the sugar business, cost of acquisition of a going concern for acquiring extra capacity is a capital expenditure and cannot be allowed as revenue expenditure. We do not find any error in the findings of the ld. CIT(A). Ground No. 4 is dismissed.

39. Ground No. 5 relates to capital gain/loss on transfer of compressor business and hard metal business.

40. The underlying facts in this issue are that compressor business being an old business was carried out by the assessee company since 1965. Compressor business was transferred SIEL Compressors Ltd on 01.04.1996 and the value was done by A.F. Ferguson & Co. on a going concern basis. As per the valuation report, the fair market value as on 01.04.1981 was 79.05 lakhs and cost of improvement from 01.04.1981 till the date of transfer i.e. 31.03.1996 was valued at Rs. 903.51 lakhs. Compressor business was transferred to subsidiary at book value of Rs. 3266.57 lakhs on indexation of cost of acquisition. The long term capital loss on transfer of compressor business was worked out to Rs. 403.24 lakhs.

41. The dispute is in respect of cost of improvement taken at Rs. 903.51 lakhs. The Assessing Officer was of the opinion that the cost of improvement cannot be more than the total assets value of the business. According to the Assessing Officer, net asset value as on 31.03.1996 is Rs. 975.42 lakhs only and, therefore, cost of improvement which can be allowed will be Rs. 975.42 minus 790.05

lakhs i.e. 185.37 lakhs only and recomputed the long term capital gain from compressor business at Rs. 698.7 lakhs.

42. We have seen the valuation report. The cost of improvement of compressor business, as valued by the M/s A.F. Ferguson & Co., is as under:

SIEL LIMITED — Annexure I

Cost Of Improvements Of Compressor Business

Rs Lacs

AS ON MARCH 31	Net Asset Value	Variation Over Previous Year	Net cost of Improve-ment
1981	71.91		
1982	96.54	24.63	
1983	98.00	1.46	
1984	99.18	1.18	
1985	124.60	25.42	
1986	110.70	(13.90)	
1987	188.76	78.06	
1988	248.94	60.18	
1989	202.58	(46.36)	
1990	110.22	(92.36)	
1991	(189.67)	(299.89)	
1992	782.08	971.75	
1993	658.98	(123.10)	
1994	624.43	(34.55)	
1995	1,113.62	489.19	
1996	975.42	(138.20)	
Total			903.51

43. In the notes, the valuer have mentioned that since the accounts of the assessee close on 30th September, therefore, the audited figures are not available as on 31st March till the accounting year is changed.

44. In our considered opinion, the cost of improvement means the actual capital expenditure incurred by the assessee on the assets. We do not find basis in the aforementioned valuation being actual capital expenditure incurred by the assessee on improvement of the capital asset. Since the assessee has not been able to give any specific additions carried out to this unit of compressor division, we do not find much merit on cost of improvement adopted by the assessee.

45. Considering the net asset value as on 31.03.1996, we are of the considered view that the cost of improvement at Rs. 185.37 lakhs taken by the Assessing Officer is correct. However, the Assessing Officer ought to have given benefit of indexation on this cost of improvement. Therefore, to this extent, we direct the Assessing Officer to recompute the capital gain after giving benefit of indexation on cost of improvement of Rs. 185.37 lakhs.

46. Coming to the hard metal business, we find that the hard metal business was acquired by the assessee in pursuance to a scheme of amalgamation approved by BIFR. Therefore, cost to the previous owner shall become cost of the assessee on acquisition as per relevant provisions of the Act being section 49 r.w.s 47 of the Act as the

transfer was under a scheme of amalgamation. Therefore, cost of acquisition to the assessee shall be cost to the previous owner.

47. Since no opportunity was given to the assessee to furnish the cost of acquisition to the previous owner, therefore, we direct the Assessing Officer to give reasonable opportunity to the assessee to furnish details of cost to the previous owner. The assessee is also directed to furnish the said cost for determination of capital gain/loss afresh. In light of the above, Ground No. 5 is allowed for statistical purposes.

48. Ground Nos. 6 and 7 are general in nature and need no adjudication.

49. Ground No. 8 as raised in the additional ground of appeal relates to disallowance of capital loss on account of surrender of land to Delhi Development Authority [DDA].

50. The underlying facts show that pursuant to the Scheme of Arrangement approved by the Hon'ble High Court of Delhi vide order dated 16.04.1990, DCM Limited was recognized whereby different units

of DCM, together with assets and liabilities, were allocated to separate companies. In accordance with the said scheme, a unit named SIEL Foods and Fertilizers Industrial Delhi vested with the assessee. The total land area occupied by this unit was 71.466 acres. Writ petition was filed wherein it was sought that hazardous/noxious/heavy and large industries should shift out of Delhi.

51. The petition was heard by the Hon'ble Supreme Court who ordered that after leaving the part of the land with the owner for developing the same in accordance with the permissible land use under the Master Plan, the remaining land should be surrendered to the DDA for developing the same to meet the community needs.

52. Accordingly, as per the order, 68% of the land was surrendered to the DDA and 32% was left with the owner. The assessee has claimed capital loss on such surrender in A.Y 1997-98 and also claimed in A.Ys 2001-02 and 2004-05. Since no such claim was made either in the return of income or during the assessment proceedings, this claim by way of additional ground cannot be entertained as it requires verification of factual matrix and no question of law is involved.

Therefore, we decline to entertain this ground in light of the ratio laid down by the Hon'ble Supreme Court in the case of NTPC 229 ITR 383.

53. In the result, the appeal of the assessee in ITA No. 2659/DEL/2004 is partly allowed.

The order is pronounced in the open court on 31.01.2024.

Sd/-	**Sd/-**
[SAKTIJIT DEY**]**	**[N.K. BILLAIYA]**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Dated: 31st JANUARY, 2024.

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	