

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1121/Mum/2024  
(Assessment Year : 2018-19)**

M/s. Base Realty Private Limited 1607, 16 <sup>th</sup> Floor Lodha Supremus Senapati Bapat Marg Opp. Kamala Mills Compound Lower Parel Mumbai-400 013	Vs.	DCIT, Circle-3(1)(1) Aayakar Bhawan Mumbai
<b>PAN/GIR No.AACCB6455M</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Siddharth Kothari
Revenue by	Shri Ashok Kumar Ambastha
<b>Date of Hearing</b>	<b>05/06/2024</b>
<b>Date of Pronouncement</b>	<b>09/08/2024</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee against order dated 30/01/2024 passed by NFAC, Delhi for the quantum of assessment passed u/s. 143(3) for the A.Y.2018-19.

2. The effective ground which has been argued before us reads as under:-

*2. On the facts and in the circumstances of the appellant's case and in law, the Ld. Commissioner of Income Tax (Appeals) erred in upholding the addition of Rs 55,89,129/- on disallowance of the deduction claimed in connection with sale of equity shares u/s 48 of the Income Tax Act, 1961, without appreciating the facts of the case*

*3. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeal) erred in denying the deduction permissible u/s 48 of the Income Tax Act, 1961 on income chargeable as capital gains on sale of shares of Rs. 55,89,129/-, especially when the appellant's proportionate share of liability was determined through a mutually agreed-upon method between the parties, crystallized by the execution of an addendum to the share purchase agreement dated 25.05.2017*

*4. Without prejudice, the Ld. Commissioner of Income Tax (Appeal), erred in not directing the Assessing Officer to allow the said claim in the year of sale of shares i.e AY 2016-17, if he had chosen not to allow the said claim in the impugned year of actual crystallization of liability, as the both the liability per se and its connection with the sale of shares is not disputed by the Ld. Commissioner of Income Tax (Appeal) as well as the Ld. Assessing Officer.*

3. The facts in brief qua the issue are that, assessee is a private limited company engaged in the business of development and maintenance of industrial park. For the year under consideration assessee has filed its return of income declaring total loss of Rs.3,64,81,430/- filed on 28/09/2018. In the said return assessee had also claimed short term capital loss of Rs.55,89,129/-. The background for claiming such short term capital loss are that, assessee had acquired Rs.6,22,000/- equity shares of India Land and Properties Pvt. Ltd. (ILPPL) in the

A.Y.2016-17 and the said shares were transferred to Indiabulls Distribution Services Ltd. (IDSL) in the same assessment year on 23/12/2016. Upon sale of shares the resultant capital gains amounting to Rs.1,09,90,247/- was duly offered to tax in the A.Y. 2016-17. As per the Share Purchase Agreement executed amongst the respective Parties on 29/10/2014, the Purchaser IDSL became shareholder of the Company which owns property Tower C, of Ambattur, Chennai. It was mutually agreed among the Parties to the Share Purchase Agreement that any liability up to the execution of Share Purchase Agreement will be paid /reimbursed by Seller to Purchaser. An 'Addendum' was entered which was continuation of the sale purchase agreement that if there is any liability in respect of any kind of electricity bill, municipal tax, water tax etc. up to date of execution of sale purchase agreement the liability was to be borne by the seller and it was agreed that seller should pay the same as agreed upon to the company the said addendum was executed on 25/10/2017. As reflected in the Addendum (Point No. C and Point No.D, the purchaser i.e., Indiabulls Distribution Services Limited received a demand towards property tax amounting to Rs 13,75,21,780/- from Chennai Corporation and of water tax amounting to Rs 1,19,87,622/- from Chennai Metropolitan Water Supply and Sewerage Board for the period 1/10/2014 to 30/09/2017 Since, the shares were transferred by the sellers to the purchaser on 23/12/2015, the liability for the period 1/10/2014 to 23/12/2015 was to be paid by the sellers as mentioned in the agreement. Accordingly, the share of the

liability of the sellers was calculated at Rs 7,05,40,572/- out of which the sellers agreed to pay Rs 6,87,60,890/- on the date of signing the said addendum i.e 25/05/2017 (Point No. 6 and Point No. 7). The assessee company was liable to pay Rs 55,89,129/- on the day of execution of the addendum i.e., 25/05/2017. Thus, assessee's case was that the short term capital loss of Rs.55,89,129/- is pertaining to the proportionate share of liability of property tax / water tax though incurred after the transfer as it pertained to the period before the transfer of shares to IDSL and thus it had validly claimed as short term capital loss in A.Y.2018-19.

4. Ld. AO rejected the assessee's contention holding as under:-

*"9. Section 48 of the Income Tax Act, 1961 deals with mode of computation of income chargeable under the head "Capital Gains" by allowing such deductions as already reproduced in the explanation as elucidated in paragraph 7 supra. The computation of Capital Gains relating to the sale of shares had materialised and crystallised in the financial year 2015-16 relevant to the assessment year 2016-17 itself and resulting capital gains were already computed. In terms with provisions of the Income Tax Act, no Capital Gain was computed by the assessee company in the financial year 2017-18 and, therefore, not eligible to claim any deduction as per section 48 of the Act. Accordingly, the claim of deduction under section 48 is disallowed and the resultant loss of Rs 55,89,129/- shown in the return of income remains void. It has been claimed by the assessee company that it was legally bound to discharge the liability of such expenditure incurred after the date of transfer, obviously in a different financial year. On the other hand, the assessee company cannot keep aside the fact that any such claim of expenditure or deduction also fall within the legal spectrum of Income Tax Act, placing the company under such lawful obligations and legal bondage."*

5. Ld. CIT(A) has also confirmed the action of the ld. AO in a summary manner reading as under:-

*“5. After due consideration of the material on record, appeal order is passed as hereinunder.*

*6. The appeal involves only one issue, le claim of deduction u/s.48 for expenditure towards property tax and water tax of a property which stood transferred through sale of shares of a company India Land & Properties Pvt. Ltd. to Indiabulls Distribution Services Ltd. The sale of shares had taken place in FY. 2015-16 and all eligible claims allowable u/s 48 were allowed to the assessee for that year A convenient agreement or amendment to an agreement between two interested parties in no way prevails over clear-cut provisions of the Act. I therefore, do not find any merit in the contention of the assessee. Hence, AO's order is upheld. As a result, Ground No. 1 and 2, which are on the same issue, are dismissed.*

*7. In the result, appeal is dismissed.”*

6. We have heard both the parties at length and also perused the relevant material placed on record and the finding given in the impugned orders. The short question before us is, whether short term capital loss of Rs.55,89,129/- claimed in this year can be allowed on the facts and circumstances of the present case in the A.Y.2018-19. It is undisputed fact that assessee had acquired Rs.6,22,000/- equity share of ILPPL in A.Y. 2016-17 and same was transferred in the same year to IDSL. The resultant capital gain of Rs.1.10 Crore was duly offered to tax in A.Y.2016-17. The underlying asset of the shares was the property mentioned at Chennai and it was mutually agreed in the share purchase agreement that any liability up to the execution of the sale purchase agreement shall be paid / reimbursed by seller to the purchaser. Later on addendum to the

sale purchase agreement was executed on 25/05/2017 wherein it was mutually agreed amongst the parties that any liability for the period upto the execution of the said agreement will be paid by the seller to the purchaser and also quantified the demands towards property tax and water tax in the manner in which liability was to be paid. During the course of hearing WE HAD asked from the Ld. Counsel for the Assessee, whether in the original purchase and shareholder agreement dated 29/10/2014 was there any such clause with regard to tax indemnity and liability to pay the taxes by the seller. The reason being, what was agreed between the parties at the time of transfer, regarding the liability or cost on transfer. The share purchase agreement dated 29/10/2014 was filed and our attention was drawn to clause 5.3(a) and 5.4(c) which is appearing at page 40 of the agreement which reads as under:-

*“5.3. Tax Indemnity*

*The Indemnifying Party agrees to indemnify the Indemnified Persons against any Tax, interest, penalty that becomes payable.*

*(a) by the Company to the extent that the Tax Liability arises as a result of income, profits, gains or accruals of the Company which was earned, derived or accrued and deemed for any Tax purposes to be earned or derived or accrued on or on account of any Claims, deductions. Tax positions adopted, computations made/or disclosures made/or omitted, non-compliances, any act of omission or commission, etc. on or before the Closing Date:*

*5.4 Other Indemnities.*

*The Indemnifying Party agrees to indemnify the Indemnified Persons against any Claim that becomes payable by the Company and/or the Purchaser to the extent that a Liability arises as a result of any*

*(c) Liability of the Company relating to the period prior to the Closing Date; or*

*For the avoidance of doubt, it is clarified that the indemnity shall cover all Liabilities arising at any time prior to the Closing Date or otherwise in relation to circumstances existing prior to the Closing Date, including without limitation, Liability for breach of any contract or agreement, negligence, breach of duty or any other circumstance giving rise to such Liability whatsoever."*

7. Thus, it was mutually agreed between the parties in the original agreement whether any liability upto the execution of the sale purchase and shareholder agreement will be paid by the seller to the purchaser. It was thus in continuation of this agreement that Addendum was entered to quantify the said tax liabilities imposed by the local authorities up to the date of agreement, i.e., 29/10/2014 and thereafter. It is also undisputed fact that these tax liabilities were raised pertaining to early period in the year 2017 only; and the assessee as per agreement was contractually bound to pay the liability in form of tax levied on the property. Ergo, it is undisputed that the liability pertains to the same transfer of shares on the underlying asset which assessee had to discharge as condition for transfer. There can be no dispute that any liability / deduction is allowable u/s.48(i) and has to be allowed while computing the capital gain because it falls in the nature of expenditure incurred wholly and exclusively in connection with such transfer of capital asset. In this context it is relevant to refer to the judgment of the **Hon'ble Bombay High Court in the case of CIT vs. Shakuntala Kantilal reported in 190 ITR 56** wherein the Hon'ble Court held that originally expenditure incurred in connection with the

transfer of capital asset / securities should be allowed after observing and holding as under:-

*“4. The assessee claimed that this amount of Rs. 35,504 should be allowed as deduction for the purpose of computing her income under the head "Capital gains" either as expenditure incurred in connection with the transfer or as cost of improvement or under section 48 itself. The departmental authorities rejected the claim. On further appeal, the Tribunal accepted the assessee's contention that the transfer of the property to Messrs. Comos Co-operative Housing Society Ltd., could not have taken place unless the compensation of Rs. 35,504 was paid to Messrs. Raida and Sons (Pvt.) Ltd. It was held that the expenditure was thus incurred wholly and exclusively in connection with the transfer as contemplated under section 48(i) of the Act, the tribunal also held that the expenditure in question could be said to have been incurred with a view to remove the obstruction and obtain a clear title to the property before sale and, in that view of the matter, such expenditure would also form part of the cost of acquisition of the capital asset or the cost of improvement thereto as contemplated under section 48(ii) of the Act. For this and other reasons stated in the order, the Tribunal allowed the assessee's claim.”*

8. Now here in this case the liability had crystalised once the Municipal / local authorities demanded for the tax for the period prior to date of agreement and consequently the taxes paid has to be allowed while computing the capital gain u/s 48. Even though assessee had offered the long term capital gain in A.Y.2016-17 because the transfer of asset had taken place in the A.Y.2016-17, however, the expenditure / liability relating to such transfer was partly crystallized in A.Y. 2018-19 for which there is no dispute.

9. Once the expenditure is otherwise allowable under the Act, then, assessee can make the claim in the year in which liability is discharged, because assessee at the time of transfer did not receive any tax demand on account of municipal tax / water tax and therefore, could not claim while computing the capital gain in A.Y.2016-17. The ld. AO cannot disallow the claim of loss or deduction which otherwise has been incurred by the assessee on the ground that assessee had offered the capital gain in A.Y.2016-17. Thus, we hold that the short term capital loss claimed by the assessee during the year has to be allowed. Consequently, ground raised by the assessee is allowed.

**10. In the result, appeal raised by the assessee is allowed.**

Order pronounced on 9<sup>th</sup> August, 2024.

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**  
Mumbai; Dated 09/08/2024  
KARUNA, sr.ps

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)

