

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "B" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

M.A.No.39/Del/2024

[In ITA No.5512/Del/2019]

[Assessment Year : 2015-16]

Sir Shadi Lal Enterprises Ltd., 4-A, Hansalaya, 15, Barakhamba Road, New Delhi-110001. PAN-AAECS3636D	vs	DCIT, Circle-23(2), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri I.P.Banasal, Adv., Shri Vivek Bansal, Adv. & Shri Vishal Chechi, Adv.	
Respondent by	Shri Om Prakash, Sr.DR	
Date of Hearing	07.06.2024	
Date of Pronouncement	30.08.2024	

ORDER

PER KUL BHARAT, JM :

By this Miscellaneous application, the assessee is seeking to rectify the order dated 12.09.2023 passed by the Tribunal in ITA No.5512/Del/2019 pertaining to the Assessment Year 2015-16.

2. The grievance of the applicant is that the Tribunal inadvertently did not adjudicate the issue and did not consider the submissions made by the assessee related to value of assets declared as per the Companies Act..

3. Ld. Counsel for the assessee reiterated the submissions as made in the application. Ld. Counsel for the assessee took us through the contents of the order sought to be rectified and the grounds raised by the assessee in the appeal. For the sake of clarity, grounds raised by the assessee in the appeal are reproduced as under:-

1. *“The learned CIT (A) erred in law and on facts in dismissing the appeal against the order of assessing officer as adequate opportunity of being heard was not provided to the appellant. The Order passed by the learned CIT(A) is arbitrary, bad in law and in violation of rudimentary principles of contemporary jurisprudence. Thus, order of the learned CIT (A), passed merely on surmises and conjecture should be reversed.*
2. *The learned CIT (A) erred in law and on facts in dismissing the appeal against the order of assessing officer and confirming the addition of Rs. 27.09.95,865/- in long term capital gain of slump sale of unit of Sugar Mill on highly presumption basis. From the ledger account of the other party filed on record by the appellant, the authorities below could not appreciate the transactions mentioned in ledger account and simply on the basis of credit entries appeared therein, addition of long term capital gain on slump sale was made. Even authorities below could not appreciate that the short term capital gain of Rs. 12,73,798/- on mutual funds, were not belongs to unit under consideration for slump sale purpose and included in above additions. Thus, order of the learned CIT (A), passed merely on surmises and conjecture should be reversed.*
3. *The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.”*
4. The Tribunal vide order dated 12.09.2023, dismissed the appeal of the assessee upholding the finding of Ld.CIT(A). The assessee during the course of hearing, filed written synopsis dated 17.04.2023. For the sake of clarity, the relevant contents of the written synopsis are reproduced as under:-

1. *“The assessee in this appeal is contesting an addition of Rs. 27,09,95,865/- which is made in computing capital gain in respect*

of slump sale of UNN Sugar Complex (Unit) as per provision of section 50B of the Act. The assessee computed capital gain of Rs. 21,96,52,738/- (as per page 38 of the paper- book). To meet statutory requirement the particulars were submitted in Form No. 3CEA (copy of which is filed at page 61 to 64 of the paper-book) in which sale consideration was stated at Rs. 70,00,00,000/- and after reducing net worth of the sold undertaking at Rs. 48,03,47,262/- net assessable gain was computed at Rs. 21,96,52,738/-.

- 2. During the course of assessment proceedings. the AO issued several notices and time to time replies were filed which are part of the paper-book. During the course of hearing before AO a ledger account of the vendee was submitted the copy of which is filed at page 285 and the said ledger account is also reproduced in the assessment order at page 4 and 5 of the assessment order Noting an entry of Rs. 49,19,22,400.94 as on 30-09-2014 having the narration "BY AMT OF PROFIT ON SALE OF UNN SUGAR UNIT" the AO drawn an inference that the profit accrued to the assessee is a sum of Rs. 49,19,22,400.94 and, therefore the AO did not accept the calculation shown in form no. 3CEA computing the gain of Rs. 21,96,52,738/- and in this manner the capital gain arising out of slump sale is computed at Rs. 49,19,22,400.94 and after reducing the offered capital gain an addition of Rs. 27,09,95,865/- has been made as per para 2.4 of the assessment order.*
- 3. It is submitted that the amount of Rs. 49,19,22,400.94 does not represent profit arising out of sale of UNN Sugar Unit but the same is WDV of the fixed assets of the sold unit and this fact is evident even from reply dated 13-12- 2017 filed during the course of assessment proceedings (copy placed at pages 67-69 of the paper-book) where at page 68 in the table, against the entry of Rs. 49,19,22,400.94 it is clearly written "WDV of Fixed Assets" and it was brought to the notice of the AO that it is a reversal entry.*

4. *Apart from this another point raised by the AO is that according to definitive agreement dated 14-01-2014 (copy at pages 80-170 of the paper-book) the sale consideration is stated to be Rs. 75,50,00,000/- (copy at page 87 of the paper-book clause 36) as against a sum of Rs. 70,00,00,000/- taken by the assessee in form no. 3CEA and thus, the sale consideration is stated less by a sum of Rs. 5,50,00,000/-. It is pertinent to note that in the above mentioned reply dated 13-12-2017 it was pointed out that "on closing date the value of sale consideration of unit was reduced by giving effect to movable by- products sold by the assessee company which was the part of the sale agreement "(pg 69 of the paper book) which means that the value of by- products which were in perishable nature and sold due to on going delay in transfer of unit was refunded to the vendee.*
5. *In the appeal filed before CIT(A) the assessee submitted the written submission vide letter dated 23-07-2018 (copy at pages 190-194 of the paper- book). In the said submission it was explained that the total sale consideration for all fixed assets including by-products and store worth Rs. 9 crore was a sum of Rs. 75.50 crore and as there was uncertainty of completion of agreement by-products worth Rs. 5.5 crores were sold on account of being perceivable nature and the same were refunded to the vendee (Rs. 2 crores on 06-09-2014 and Rs. 3.5 crore on 25-09-2014) and the remaining amount of Rs. 70 crore was stated as sale consideration which is reflected as net sale consideration in the audit report.*
6. *It was also brought to the notice of Ld. CIT(A) that the figures of Rs. 49,19,22,401/- as taken by the AO is presumptory on the basis of copy of account of vendee and the said amount of wrongly debited by the assessee on 30-09-2014 and entry was reversed on the same date the said amount represents WDV of fixed assets chart as on 07-09-2014 and the same can never be taken as profit/gain of the assessee by any stretch of imagination and this submission at page*

192 reference in this regard can be made to depreciation chart and other documents placed at pages 204-207 of the paper- book.

7. On these submission made before CIT(A) Ld. AO has submitted remand report dated 19-02-2019 copy of which has filed at pages 195-198 of the paper-book. From the remand report it can be seen that AO did not submit any adverse comment against the submission made by the assessee that the sum of Rs. 49,19,22,401/- represents value of net fixed assets of the sold unit as per the Companies Act. However, the AO stated that sale consideration as per conveyance deed is a sum of Rs. 75.50 crore which was even received by the assessee and the amount of Rs. 75.50 crore should be taken as adopted by the AO.
8. Upon consideration of the said remand report Ld. CIT(A) has upheld the addition made by the AO.
9. The submission of the assessee is that in a case of slump sale the calculation has to be made as per section 50B of the Act which describes a clear formula of computing the profit as described in Explanation 1 and 2. The same may be referred. The profit has been computed as per section 50B in the audit report and the only difference as pointed by the AO is in stating the sale consideration which is stated in the audit report as Rs. 70 crores as against the consideration of Rs. 75.50 crores in clause 36 of the Definitive Agreement as per clause 36 which states that the purchase price shall mean the aggregate value of Rs. 75.50 crores and clause 4.1 described the purchase price and purchase term and payment term. Clause 4.1 which consists of Rs. 75.50 crores and the value of net current assets on the transfer date as determined in accordance with clause 6.3 of the definitive agreement.
10. Reference is also made to the conveyance deed dated 08-09-2014 copy of which has been filed pages 118-189 wherein at page 141 in the clause 6.1 it has been described that the amount of Rs. 75.50

crores are paid for transfer of the undertaking byway of slump sale on as is where is basis as per definitive agreement as value mentioned is donated in the deed solely for the purpose of complying with requirement of Registration Act, 1908 and this value is not intended to and does not in any way affect or alter the nature of sale of undertaking together with the sale property comprise therein byway of slump sale.

- 11. Reference can also be made to the statutory audited account wherein in note no. 2.29 at page 275 the profit described on sale of UNN Sugar complex is shown at Rs. 14,83,88,764/- and for this computation reference is made to page 288 in which it is stated that how the profit of Rs. 14,83,88,764/- has been arrived at and it can be seen that the net current asset value was taken at Rs. 31,76,09,042.60 (details at page 282 of the paper-book) and sale value was taken at Rs. 75.50 crore out of which an aggregate amount of Rs. 5.5 crores were returned back by way of two cheques and thus, what was remaining with the assessee apart from net current asset value was only a sum of Rs. 70 crore which was taken for computing the profit and this position was explained in the written submission filed before CIT(A) in para 2 (ii) at page 191 of the paper-book.*
- 12. So far as it relates to amount of Rs. 49,19,22,401/- the explanation was filed before CIT(A) in para 2(v) and it was stated that was a reversal entry wrongly made and that amount represented WDV of fixed assets. The chart of fixed assets is submitted at page 204 whereby it can be seen that WDV of fixed assets has been arrived at a sum of Rs. 49,19,22,400.94 which is in accordance with depreciation as per Companies Act.*
- 13. In the aforementioned facts, it is the case of the assessee that amount of Rs. 49,19,22,401/- has wrongly been taken by the AO as profit on sale of UNN Sugar Unit which position was cleared even*

during the assessment proceedings and thereafter before CIT(A) and books of accounts of the assessee also show the said figure being WDV of fixed assets of UNN Sugar Unit as on 07-09-2014, therefore, there is no reason to take the said amount of Rs. 49,19,22,401/- as profit on sale of unit only on the basis of a wrong entry made in the books of accounts for which reverse entry was made on the same day. In this regard law is well established that making the entries or nomenclature chosen are not conclusive but the heart of the matter is nature and substance in which the accounts of the company are prepared and this proposition is support by following decisions mentioned in the written submission filed in the paper-book from pages 26-31 and relevant portion has been reproduced, the same may kindly be considered:

- i. *Indian Tube Co. (P) Ltd v. CIT [1992] 194 ITR 102 (SC)*
 - ii. *CIT V. Shoorji Vallabhdas & Co. [1962] 46 ITR 144 (SC)*
 - iii. *CIT V. Kalooram Govindram [1965] 57 ITR 630 (SC).*
 - iv. *CIT V U.P State Industrial Development Corpn. [1997] 225 ITR 703 (SC)*
 - v. *Kedarnath Jute Mfg. Co. Ltd. V. CIT [1971] 82 ITR 363 (SC).*
14. *The profit is required to be computed in accordance with method described in section 50B of the Act. Even if the sale consideration is taken at a sum of Rs. 75.50 crore, the assessee would be required to be given benefit of amount of Rs. 5.50 crore refunded back and as explained in the submissions filed before AO and CIT(A) and for which the substantiation has been made by showing the entries made. Therefore, the appeal of the assessee is prayed to be allowed. These synopses have been prepared only to maintain brevity and for assistance of this Hon'ble Court and it is prayed that for details the reference may be made to the written submissions filed in the paper-book as well as documents submitted in the paper-book and assessee may be provided with the necessary relief as may be*

deemed just and proper in the facts and circumstances of the case and as per law.

15. *For this act of kindness, the appellant shall remain obliged.”*

5. Before us, Ld. Counsel for the assessee submitted that mistake is apparent from the record that the Tribunal did not consider the issue at an amount of INR 49,19,22,400.94 mentioned in the ledger wrongly as profit on sale of UNN Sugar Unit was actually WDV of assets as per the Companies Act, 2013 as on 07.09.2014 of the sold unit and this entry was reversed in the same ledger could not be taken as a profit assessable u/s 50B of the Act only on the basis of a wrong entry and the profit was required to be computed as per section 50B of the Act. It is contended that the grounds of appeal, the fact regarding the non-appreciation of transaction mentioned in the ledger account was mentioned and detailed submissions were made in this respect referring to all the documentary evidences in the written submissions. Therefore, he submitted that order may be rectified to that extent.

6. On the other hand, Ld. Sr. DR for the Revenue supported the finding of Tribunal and submitted that there is no mistake apparent from the records. He submitted that the assessee ought to have taken a specific ground about the reversal of entry qua the amount of INR 49,19,22,400.94.

7. We have heard the rival contentions of Ld. Representatives of the parties. The issue was raised through grounds of appeal, is related to taxability of slump sale. The contention of the assessee is that any gain arising of such transaction would be taxed in terms of section 50B of the Act. It is also pointed out that the amount of INR 49,19,22,400.94 did not represent the

profit in fact, it was WDV of assets as per the Companies Act. This aspect in our view, has escaped attention of the Tribunal. Therefore, the order is recalled to the extent for adjudicating the issue whether the amount of INR 49,19,22,400.94 is the WDV of assets as per the Companies Act and the assessee has wrongly treated it as profit, such entry was later on reversed by the assessee. For this limited purposes, only the order is hereby, recalled. The Registry is hereby, directed to fix the appeal for hearing in due course and notify the parties accordingly. The Miscellaneous Application filed by the assessee is accordingly, allowed.

8. In the result, the Miscellaneous Application of the assessee is allowed.

Order pronounced in the open Court on 30th August, 2024.

Sd/-

Sd/-

**(M.BALAGANESH)
ACCOUNTANT MEMBER**

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI