

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

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 4519/Mum/2023
Assessment Year 2021-22

Dy. Commissioner of Income Tax, Mumbai.	vs.	Jaspalsingh Prehaladsingh Chandok, 361, Balu India, V. P. Road, Mumbai. PAN : AAAPC6905C
(Appellant)		(Respondent)

For Assessee :	Shri Mani Jain
For Revenue :	Shri Ankush Kapoor

Date of Hearing :	13-06-2024
Date of Pronouncement :	03-09-2024

ORDER

PER B.R. BASKARAN, A.M :

The Revenue has filed this appeal challenging the order dated 13-10-2023 passed by the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi and it relates to the Assessment Year (AY.) 2021-22. The Revenue is aggrieved by the decision of Ld CIT(A) in deleting the addition of LongTerm Capital Gains of Rs. 325 crores assessed by the AO.

2. We notice that the issue urged before us revolves around interpretation of section 47(xiv) of the Income Tax Act, 1961 ('the Act'). The case of the assessee is that the gains arising on transfer of assets and liabilities of his proprietary concern to a succeeding company is covered by the provisions of sec. 47(xiv) of the Act and accordingly, it

should not to be considered as a case of “transfer of capital asset” within the meaning of sec. 45 of the Act. However, the case of the AO is that the assessee has violated the conditions prescribed in the above said section and hence it cannot avail exemption u/s 47(xiv) of the Act. Accordingly, the AO has held that the capital gains has to be computed treating the transfer of assets of proprietary concern as a case of slump sale.

3. The facts relating to the case are stated in brief. The assessee is the proprietor of a business concern, named M/s. Balu India. The above said proprietary concern was succeeded by M/s. Balu Forge Industries Limited. The above said company was earlier known as Bell Agro Machina Pvt. Ltd. Later it was re-named as Bell Agro Machina Ltd. It was again renamed as M/s. Amaze Entertech Limited. The above said proprietary concern of the assessee was transferred on succession when the name of the company was M/s. Amaze Entertech Limited. The transfer has taken place through a Business Succession Agreement dated 03-08-2020 with retrospective effect from 01-04-2020. In consideration of transfer of all assets and liabilities of M/s. Balu India to the above said company, the assessee was allotted 4,78,40,000 shares having face value of Rs. 10/- each at par of shares of above said company. Accordingly, the value of shares issued by the assessee worked out to Rs. 47,84,00,000/-. The above said shares constituted 62.72% of the total share holding of the above cited succeeding company.

4. The assessee claimed that the capital gains arising on transfer of his proprietary concern to M/s. Balu Forge Industries Limited (earlier known as M/s. Amaze Entertech Limited) is exempt u/s. 47(xiv) of the Act. It is pertinent to note that the valuation of M/s Balu India was carried out by a valuer named M/s. Payal Gada & Co., Chartered Accountants. The valuer had arrived at the value of of Rs. 47.84 crores as per the details given below:-

Value of Balu India using various methods :				
Valuation Method	Valuation approach	Value INR	Weight	Value x weight
Net asset Value Method	Cost/Asset	289,74,08,285	2.00%	5,79,48,166
DCF method	Income	58,40,12,022	49.00%	28,61,65,891
Earnings/Yield Method (Comparable Companies Multiples method)	Market	27,40,53,187	49.00%	13,42,86,062
Total INR			100%	47,84,00,118
Weighed Average (INR)				47,84,00,118
Fair Value (INR)				47,84,00,118
Fair Value (Rounded off)				47,84,00,118

5. The AO noticed that the provisions of sec.47(xiv) prescribe certain conditions to be complied with. He took the view that the assessee has not complied with any of the conditions prescribed u/s. 47(xiv) of the Act. Accordingly, he took the view that the above said transaction of transfer of assets is liable to be taxed u/s.50B of the Act treating the same as a case of 'slump sale'. He noticed that the prevailing market value of shares of M/s Balu Forge Industries Ltd was Rs.128.50 per share. Accordingly, the AO computed the value of 4,78,40,000 shares received by the assessee at Rs.614.74 crores. He noticed that the valuer had arrived at the cost of assets at Rs.289.74 crores in the valuation report. The AO deducted the same from Rs.614.74 crores and accordingly computed the capital gain as Rs.325 crores and assessed the same in the hands of the assessee.

6. In the appellate proceedings, the Id CIT(A) held that the assessee has complied with all the conditions prescribed in sec. 47(xiv) of the Act and accordingly reversed the order of the AO on this issue. The revenue is aggrieved.

7. We heard the parties and perused the record. The dispute before us boils down to the question as to whether the assessee has complied

with all the conditions prescribed in sec.47(xiv) of the Act. Under the provisions of sec.45 of the Act, any profits or gains arising from the “**transfer** of a Capital asset” shall be chargeable to income tax under the head “Capital gains”. However, it is subject to deductions prescribed in various sections viz., sec.54, 54B etc., in the Act. Hence, in order to attract the Capital gains tax, there should be

- (a) a “Capital asset” and
- (b) a “transfer” of capital asset.

The expression “transfer” is defined in sec.2(47) of the Act. However, sec.47 of the Act lists out certain transactions, which are not regarded as “transfer”, meaning thereby, those transactions are not liable to be taxed under the head “Capital gains”. Section 47(xiv) is applicable in this case and the same reads as under:-

“47. Nothing contained in section 45 shall apply to the following transfers:-

.....

(xiv) where a sole proprietary concern is succeeded by a company in the business carried on by it as a result of which the sole proprietary concern sells or otherwise transfers any capital asset or intangible asset to the company :

Provided that—

(a) all the assets and liabilities of the sole proprietary concern relating to the business immediately before the succession become the assets and liabilities of the company;

(b) the shareholding of the sole proprietor in the company is not less than fifty per cent of the total voting power in the company and his shareholding continues to remain as such for a period of five years from the date of the succession; and

(c) the sole proprietor does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company; “

There is no dispute between the parties with regard to the fact that the sole proprietary concern belonging to the assessee has been succeeded by M/s Balu Forge Industries Ltd (earlier known as Amaze Entertech Ltd). The case of the AO is that the three conditions prescribed in the proviso to sec.47(xiv) has not been complied with and accordingly, he held that the assessee cannot avail the exemption provided in sec.47(xiv) of the Act. We shall examine the same.

8. The first condition prescribed in clause (a) of proviso to sec.47(xiv) is that “all assets and liabilities of the sole proprietary concern relating to the business immediately before the succession shall become the assets and liabilities of the company. The case of the AO was that the “Net asset Value” of the sole proprietary concern as on 31.3.2020 was Rs.289.74 crores as per the Valuation report and further, the said amount did not include good will amount of Rs.32.54 crores found in the books of M/s Balu Forge Industries Ltd. Total assets of M/s Balu Forge Industries Ltd before succession were Rs.0.41 crores as on 31.3.2020. After the succession, the value of assets should have been Rs.290.15 crores (Rs.289.74 crores (+) Rs.0.41 crores). However, the total assets shown in the balance sheet of the succeeding company was Rs.228.54 crores including good will amount of Rs.32.54 crores as on 31.3.2020. Since good will amount was not part of the proprietary concern, the total assets as on 31.3.2020 shall stand at Rs.196.04 crores. However, according to the AO, the value of total assets should stand at Rs.290.15 crores. Hence the AO inferred that entire assets of the proprietary concern have not been transferred to the succeeding company. Accordingly, the AO held that the first condition prescribed in clause (a) of the proviso to sec.47(xiv) has not been complied with.

8.1 We notice that there is complete fallacy in the approach of the AO in determining the above said values. We notice that the assessing officer has placed reliance on the report given by the valuer to determine the Net asset value of Rs.289.74 crores. We notice that the Valuer has arrived at the above said value by considering the Fair value of Land, Buildings and Plant & Machinery by substituting the book value of those assets. The workings given by the valuer in his report are extracted below:-

Computation of fair value of Balu India using Net Asset Value Method under Cost Approach		
Particulars		Amounts in INR
Total Assets as on 31 st March, 2020	A	1,10,29,23,932
Total Liabilities as on 31 st March, 2020	B	1,01,94,86,118
Net Worth as 31 st March, 2020	C=A-B	8,34,37,814
Less : Book value of Property, Plant and equipment (PPE) including land	D	7,79,18,529
Add : Fair value of Land (Pages nos 26-29 of ##)	E	8,57,52,000
Add : Fair value of Buildings (Pages nos. 26-29 of ##)	F	3,81,87,000
Add : Fair value of Plant and Machinery (Pages nos. 29-45 of ##)	G	2,76,79,50,000
Adjusted Net Worth	H=C-D+E+F+G	2,89,74,08,285
## Source : Fixed Asset Valuation Report of Mott Macdonald dated 20th November, 2018		

Before Id CIT(A), the assessee submitted that the assets of the proprietary concern was transferred at their respective book value only, which stood at Rs.110.29 crores. It was further submitted that the above said book value formed part of the total assets value of Rs.228.58 crores held by M/s Balu Forge Industries Ltd as on 31.3.2021. The above said explanation was accepted by the Ld CIT(A).

8.2 From the discussions made supra, it can be noticed that the assessing officer has misguided himself in adopting the fair market value of assets while examining the compliance of condition (a) prescribed in the proviso to sec.47(xiv) of the Act. Hence the reasoning given by the AO in this regard is contrary to the facts available on record and accordingly, the same would fail. The Ld CIT(A) has also observed that the AO has not brought on record any other material to show the contrary.

9. The second condition prescribed in clause (b) of proviso to sec.47(xiv) is that the shareholding of the sole proprietor in the company is not less than fifty per cent of the total voting power in the company and his shareholding continues to remain as such for a period of five years from the date of the succession.

9.1 The AO has noticed that the assessee was allotted 4,78,40,000 shares in M/s Balu Forge Industries Ltd and the same constituted 69.72% of the total shares. The AO noticed that the above said company has allotted further shares subsequently to other people on preferential basis. As a result of the same, the shareholding/voting right of the assessee fell down to 64.50%. According to the AO, the same has resulted in violation of condition prescribed in clause (b) of proviso to sec.47(xiv) of the Act.

9.2 In our considered view, the AO has misinterpreted the provisions of clause (b) of proviso to sec.47(xiv) of the Act. Clause (b) requires the proprietor shall

(a) hold not less than 50% of the total voting power in the company and

(b) his shareholding continues to remain as such for a period of five years from the date of succession.

In our considered view, the above said condition prescribes that the assessee should continue to hold voting power of “not less than 50%” for a period of five years from the date of succession. The AO’s case is that the shareholding of the assessee has reduced from 69.72% to 64.50% due to subsequent issuing of shares by the succeeding company before completion of five years.

9.3 However, we notice that the shareholding of the assessee (voting right) has continued to remain not less than 50% as prescribed in clause (b) of proviso to sec.47(xiv) of the Act, even after issuing of new

shares by the above said company. So long as the voting right of the assessee remains not less than 50% within the prescribed period of five years, it cannot be said that the condition prescribed in clause (b) of the proviso to sec.47(xiv) is violated. Accordingly, we hold that this condition has also not been violated by the assessee.

10. The third condition prescribed in clause (c) of proviso to sec.47(xiv) is that the sole proprietor does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company.

10.1 According to the AO, the assessee has got indirect benefit in three forms. M/s Balu Forge Industries Ltd has issued 6,82,65,000 shares at par value of Rs.10/- each, out of which 4,78,40,000 equity shares were issued to the assessee for consideration otherwise than for cash. The remaining 2,04,25,000 equity shares were issued at par value of Rs.10/- each on preferential basis. According to the AO, the assessee's sons, viz., Shri Trimaan Jaspalsingh Chandock and Shri Jaikaran Jaspalsingh Chandock have been allotted 75,900 and 10,150 shares respectively in the above said preferential issue. Since the prevailing market price of shares at the relevant point of time was ranging between Rs.132.50 to Rs.136.95 per share, the AO took the view that the assessee has received indirect benefit by getting allotment of shares in the name of his sons at par value.

10.2 The submission of the assessee is that his sons have not been allotted any shares in the preferential issue of shares, referred to by the AO. The assessee also furnished the details of name of allottees of shares in the preferential issue to substantiate above contention. It was submitted that the fact would remain that the two sons of the assessee have purchased shares of M/s Balu Forge Industries Ltd in the off market transactions from the existing shareholders, viz., Shri Shivputra G Bellad and Shri Prashant Shivpurtra Bellad, who had offered those

shares in an open offer. Accordingly, it was submitted that the purchase of shares by the sons of the assessee was from open offer made by the existing share holders. The Ld CIT(A) has examined the list of allottees of preferential issue and has given a categorical finding that the names of two sons of the assessee was not appearing in the list. The Ld CIT(A) also observed that the Board resolution dated 08-10-2020 passed by the Board of directors of the company specifically states that the sons of the assessee have acquired the shares from an existing share holder, who was earlier promoter. Hence, the observations made by the AO in this regard are based upon improper appreciation of facts and accordingly liable to be rejected.

10.3 The AO has also observed that the assessee has been allotted 66,00,000 convertible warrants, which would enable the assessee to acquire shares at par value of Rs.10/- each. According to the assessing officer, it results in giving indirect benefit to the assessee.

10.4 The submissions made by the assessee before Ld CIT(A) are that:-

(a) The warrants were issued not only to the assessee but also to the other share holders. In total 92,00,000 share warrants were issued, out of which the assessee subscribed to 66,00,000 warrants and other promoters subscribed to 26,00,000 share warrants. Thus, no special benefit was given to the assessee.

(b) The warrants were issued at par value of Rs.10/- each as per the valuation report given by a valuer and further, the said value has also been accepted by the SEBI. It was submitted that the shares of M/s Balu Forge Industries Ltd were not traded regularly in the stock exchange and even if it is traded, it was for insignificant quantity of shares. Accordingly, it was submitted that the market price approach could not be adopted as per SEBI rules. The assessee also submitted the details of trading

undertaken in the shares of above said company in the Stock exchange to substantiate his contentions.

The Ld CIT(A) was convinced with the above said submissions and has held that no indirect benefit has been passed to the assessee on this count. Before us, the revenue could not controvert the above said facts. Accordingly, the observation of the AO on this point also would fail.

10.4 The next observation of the AO is that the assessee has been given interest free loan of Rs.1.50 crores and it has resulted in receiving indirect benefit by the assessee. It was submitted that the AO has made above said observation on the basis of resolution passed by the Board. However, it was submitted that the assessee did not avail any loan as per the above said resolution. We notice that the Ld CIT(A) has given a categorical finding, after examination of financial statements of the above said company, that no such loan was given by the company to the assessee. Hence, the above said observations of the AO, being contrary to the facts, would fail.

11. In view of the foregoing discussions, we are of the view that the Ld CIT(A) was justified in holding that the assessee is entitled to get the benefit of sec.47(xiv) of the Act.

12. The AO has computed capital gains u/s 50B of the Act only for the reason that the assessee has failed to comply with the conditions prescribed in sec.47(xiv) of the Act. Since we have upheld the view of the Ld CIT(A) that there is no violation of any of the conditions prescribed in sec.47(xiv) of the Act, the transfer of proprietary concern of the assessee to M/s Bharat Forge Industries Ltd by way of succession shall not be regarded as "transfer". The question of invoking the provisions of sec.50B shall arise, only if the transaction falls under the definition of "transfer" given in sec.2(47) r.w.s 47 of the Act. In view of the foregoing discussions, we affirm the order passed by Ld CIT(A) on this issue.

13. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 3rd September, 2024

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 03/09/2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT (Judicial)
- 4) PCIT
- 5) DR, ITAT, Mumbai
- 6) Guard File.

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai