

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI BR BASKARAN (ACCOUNTANT MEMBER) AND
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 546/MUM/2024
Assessment Year: 2016-17**

Dy. CIT, Circle-1,
Room No. 22, B Wing, 6th floor,
Ashar I.T. Park, Road No. 16Z,
Wagle Indl. Estate,
Thane-400604.

Appellant

Aarav Fragrances and Flavors Pvt.
Ltd.,
Vs. Plot No. A-152/153 Wagle Industrial
Area, Road No. 25, MIDC,
Thane (W) – 400604.
PAN NO. AAGCA 2145 K
Respondent

Assessee by : Mr. Rajesh Athavale
Revenue by : Dr. K.R. Subhash, CIR-DR

Date of Hearing : 12/11/2024
Date of pronouncement : 27/11/2024

ORDER

PER BR BASKARAN, AM

The Revenue has filed this appeal challenging the order dated 05.12.2023 passed by the Ld. CIT(A), NFAC Delhi and it relates to the assessment year 2016-17.

2. The only issue in this appeal is whether the Ld. CIT(A) was justified in holding that the assessee is entitled to deduct



indexed cost of shares of foreign company while computing the long term capital gain.

3. The facts relating to the above issue are stated in brief. The assessee company is engaged in the business of Manufacture and sales of fragrance compounds and flavours. The assessee company has got two wholly-owned subsidiary units viz., Aarav ITES Pvt. Ltd., and Aarav Suisse SA. Of the two, M/s Aarav Suisse SA is a foreign company.

4. During the year under consideration, the shares of M/s Aarav Suisse SA were sold by the assessee under buy back scheme. Accordingly, the assessee computed long term capital gain by deducting the indexed cost of acquisition of assessee, which was computed by applying cost inflation index. The same resulted in long term capital loss of Rs.22.93 crores. The AO took the view that the cost of inflation index is determined on the basis of inflation taking place in India and hence, the assessee cannot avail benefit of cost of inflation index in respect of its foreign assets held and sold outside India. Accordingly, the AO denied the benefit of cost inflation index and accordingly, re-computed the long term capital gain, which worked to long term capital loss of Rs.11.53 crores. We noticed earlier that the assessee had computed long term capital loss at Rs.22.93 crores and it came to be reduced by the AO to Rs.11.53 crores.



5. In the appellate proceedings, the Ld. CIT(A) allowed the benefit of cost of inflation index to the assessee and accordingly, allowed the appeal of the assessee. Aggrieved the Revenue has filed this appeal.

6. We have heard the parties and perused the record. The mode of computation of long term capital gain is prescribed in section 48 of the Act and the benefit of cost of inflation index is given under the second proviso to section 48 of the Act. For the sake of convenience, we extract below the relevant provisions:-

“48. Mode of computation.

-The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely:-

(i) expenditure incurred wholly and exclusively in connection with such transfer;

(ii) the cost of acquisition of the asset and the cost of any improvement thereto:

(iii) in case of value of any money or capital asset received by a specified person from a specified entity referred to in subsection (4) of section 45, the amount chargeable to income-tax as income of such specified entity under that sub-section which is attributable to the capital asset being transferred by the specified entity, calculated in the prescribed manner:



Provided that in the case of an assessee, who is a non-resident, capital gains arising from the transfer of a capital asset being shares in, or debentures of, an Indian company shall be computed by converting the cost of acquisition, expenditure incurred wholly and exclusively in connection with such transfer and the full value of the consideration received or accruing as a result of the transfer of the capital asset into the same foreign currency as was initially utilised in the purchase of the shares or debentures, and the capital gains so computed in such foreign currency shall be reconverted into Indian currency, so, however, that the aforesaid manner of computation of capital gains shall be applicable in respect of capital gains accruing or arising from every reinvestment thereafter in, and sale of, shares in, or debentures of, an Indian company:

Provided further that where long-term capital gain arises from the transfer of a long-term capital asset, other than capital gain arising to a non-resident from the transfer of shares in, or debentures of, an Indian company referred to in the first proviso, the provisions of clause (ii) shall have effect as if for the words "cost of acquisition" and "cost of any improvement", the words "indexed cost of acquisition" and "indexed cost of any improvement" had respectively been substituted:

[Provided also that nothing contained in the first and second provisos shall apply to the capital gains arising from the transfer of a long-term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust referred to in section 112A:]



[Provided also that nothing contained in the second proviso shall apply to the long-term capital gain arising from the transfer of a long-term capital asset being bond or debenture other than

- (a) capital indexed bonds issued by the Government: or
- (b) Sovereign Gold Bond issued by the Reserve Bank of India under the Sovereign Gold Bond Scheme, 2015:

[Provided also that where shares, debentures or warrants referred to in the proviso to clause (iii) of section 47 are transferred under a gift or an irrevocable trust, the market value on the date of such transfer shall be deemed to be the full value of consideration received or accruing as a result of transfer for the purposes of this section:]

[Provided also that no deduction shall be allowed in computing the income chargeable under the head "Capital gains" in respect of any sum paid on account of securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004.]

[Explanation. - For the purposes of this section,-

(i)"foreign currency" and "Indian currency" shall have the meanings respectively assigned to them in section 2 of the Foreign Exchange Regulation Act, 1973 ([46 of 1973](#));

(ii)the conversion of Indian currency into foreign currency and the reconversion of foreign currency into Indian currency shall be at the rate of exchange prescribed in this behalf;

(iii)"indexed cost of acquisition" means an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index



for the year in which the asset is transferred bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on the 1st day of April, 1981, whichever is later;

(iv)"indexed cost of any improvement" means an amount which bears to the cost of improvement the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the year in which the improvement to the asset took place;]

(v)["Cost Inflation Index", in relation to a previous year, means such Index as the Central Government may, having regard to seventy-five per cent. of average rise in the Consumer Price Index for urban non-manual employees for the immediately preceding previous year to such previous year, by notification in the Official Gazette, specify, in this behalf.]

6.1 On a careful perusal of the above said provisions, it can be noticed that the first proviso is applicable only to the non-residents. Since the assessee herein is a resident, the first proviso will not apply to it. The second proviso gives the benefit of cost inflation index. A careful perusal of the same would show that the said proviso does not distinguish between the assets held in India and held outside India. Once the capital gain is required to be computed as per sec.48 of the Act, then, in our view, the full effect of the said section should be given. Since Income tax Act levies tax upon the assessee, the provisions of the said Act should be applied strictly. Further, under the Principles of interpretation, there is no



scope for referring to internal or external aids for interpretation, when the language of the section is clear. Only when there is ambiguity, one has to refer to internal aids and external aids for interpreting the provisions. In the instant case, we are of the view that there is no ambiguity in the provisions of second proviso to sec.48 of the Act. Further, there is no place for equity in taxation. Accordingly, we are of the view that the tax authorities are not justified in referring to the intention of the giving the benefit of indexation.

6.2 The Ld. DR placed relied on the decision rendered by the Coordinate Bench in the case of ICICI Bank Ltd. v. DCIT [2024] 159 taxmann.com 747 (Mumbai-Trib.) to support that the indexation benefit cannot be given to sale of foreign assets. The Ld. AR, on the contrary, submitted that there is some confusion in the facts prevailing in the above said case. He submitted that the assessee, i.e., ICICI Bank had claimed to have purchased shares in the foreign company by using foreign currency and this fact has been noted by the Tribunal in Paragraph 1.7(b) of the order, which reads as under:-

“b. Investment in shares was made by the Bank and its offshore subsidiaries in foreign currency...”

However, in paragraph 12(i) of the order, the Tribunal has proceeded to render its decision on the understanding that the



investments have been made in Indian Currency, which is discernible from the following observations made by the Tribunal:-

“..... Undisputedly, all these acquisitions have been made by the assessee in Indian Currency and sold and ultimately the consideration was received in India in Rupees.....”

Accordingly, he submitted that, in view of the lack of clarity on facts, the parity of facts between the present case and the above said decision cannot be established and in that case, the revenue could not place reliance on the above said case law. We agree with the above said contentions of Ld A.R. Accordingly, we are of the view that the decision rendered by the co-ordinate bench in the case of ICICI Bank (supra) cannot be taken support of by the revenue.

6.3. We noticed that the second proviso to section 48 of the Act, which grants indexation benefit, does not distinguish assets into assets held in India and in foreign countries. Accordingly, we are of the view that the assessee cannot be denied benefit of cost inflation index in respect of assets held in foreign countries. Accordingly, we are of the view that the AO was not justified in not granting indexation benefit to the assessee in respect of sale of shares of foreign company. Accordingly, we affirm the order passed by the Ld. CIT(A) on this issue.



7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 27/11/2024.

**Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER**

**Sd/-
(BR BASKARAN)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 27/11/2024
Rahul Sharma, Sr. P.S.

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,
(Assistant Registrar)
ITAT, Mumbai