IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, MUMBAI

BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER

SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER

ITA No.3369/M/2023
Assessment Year: 2009-10

Deputy Commissioner of Income Tax, Central Circle- 5(4) Room No. 1927, 19th Floor, Air India Building, Nariman Point, Mumbai- 400021.	Vs.	**Larsen and Toubro Ltd.** 1 L and T House, Narottam Morarji Marg, Ballard Estate, Mumbai- 400001. **PAN: AAACL0140P**
Appellant	:	**Respondent**

C.O. No. 23/M/2024
Assessment Year: 2009-10
(Arising out of ITA No. 3369/M/2023)

Larsen and Toubro Ltd. L and T House, Narottam Morarji Marg, Ballard Estate, Mumbai- 400001. **PAN: AAACL0140P**	Vs.	**Deputy Commissioner of Income Tax, Central Circle- 5(4)** Room No. 1927, 19th Floor, Air India Building, Nariman Point, Mumbai- 400021.
Appellant	:	**Respondent**

Present for:
Assessee by : Shri Nitesh Joshi
Revenue by : Dr. K. R. Subhash (CIT-DR)

Date of Hearing : 26.09.2024
Date of Pronouncement : 20.12.2024

O R D E R

Per Bench:

Present cross appeals filed by the assessee and revenue against order dated 14/07/2023 passed by Ld. CIT(A)-53, Mumbai for assessment A 2009-10 on following grounds of appeal:

Grounds of Revenue appeal:

1. *"Whether on the facts and circumstances of the case and in law, the ld. CIT(A) has erred in holding that transfer expenses of Rs.27,07,99,999/- for the purpose of computing capital gains on slump sale is an allowable deduction ignoring the fact that Section 50B of the Act is a special provision and a code in itself for computation of capital gain arising on slump sale and therefore, no other provision of the Act, other than the provision contained in section 50B of the Act shall be applicable?"*
2. *Whether on the facts and circumstances of the case and in law, the ld. CIT(A) has erred in holding that transfer expenses of Rs.27,07,99,999/- for the purpose of computing capital gains on slump sale is an allowable deduction ignoring the fact that sub- section 2 of Section 50B of the I.T. Act, 1961 clearly states that the net worth of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48?*
3. *Whether on the facts and circumstances of the case and in Law, Ld. CIT(A) has erred in deleting disallowance of additional depreciation of Rs.3,38,66,060/- on computers ignoring the fact that assessee has failed to establish that these 'computer', on which additional depreciation was claimed is wholly and exclusively used for manufacturing activity by the company.?*
4. *The Applicant craves to leave, to add, to amend and/or to alter any of the ground of appeal, if need be"*

Grounds of Assessee's Cross objection:

1. *"Reopening of Assessment under section 148 of the Act*

a. The learned Commissioner of Income Tax (Appeals) erred in upholding the validity of the reassessment proceeding failing to appreciate that

the jurisdictional pre- conditions in section 147 to 151 of the Act had not been fullfiled.

b. The learned Commissioner of Income Tax (Appeals) ought to have held that the reassessment order was illegal and bad in law as the objections raised by the Appellant before the Assessing Officer had not been disposed of in accordance with the judgement of Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. v. CIT [259 ITR 19] (SC).

c. The learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in resorting to reassessment proceedings on account of a mere change in opinion on the same set of facts, which tantamounts to the Assessing Officer reviewing the action of his predecessor. Having regards to the facts and circumstances of the case and in law, this action is not permissible, and the reassessment proceedings require to be quashed.

d. The learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in invoking the provisions of section 147 of the Act in view of the fact that the proceedings were initiated after four years from the end of the Assessment Year under consideration, and there was no failure on the part of the Appellant to disclose truly and fully all material facts necessary for the assessment.

e. The learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in invoking the provisions of Section 147 of the Act, as he could never have had "reason to believe" that income chargeable to tax had escaped assessment.

f. The learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in invoking the provisions of Section 147 of the Act, as there was no new tangible material on the basis of which the Assessing Officer could have reason to believe that income has escaped assessment.

g. The learned Commissioner of Income Tax (Appeals) erred in ignoring the fact that the AO had already initiated rectification proceedings on the same issue which were pending. The Appellant submits that two proceedings on the same issue cannot be initiated therefore the reassessment proceedings are invalid.

2. The Cross Objector craves leave to add to, alter or amend the above Grounds of Cross Objections as and when advised."

Brief facts of the case are as under:

2. The assessee is engaged in the business of manufacture and selling of heavy engineering, electrical and electronic goods and alive products, construction and earth moving machinery, welding electrodes, valves and related products.

2.1. The assessee filed its return of income originally on 29/09/2009 for the year under consideration which was subsequently revised twice on 29/03/2011 and 31/03/2011, the details of which are captured in the impugned order passed by the First appellate authority. The case was selected for scrutiny and assessment order u/s.143(3) r.w.s. 144C(13) of the act, was completed, making addition in the hands of the assessee at Rs.423,09,64,418/-.

2.2. Subsequently, the case was reopened under section 147 of the act, and notice under section 148 was issued on 28/03/2016. The reason for reopening was that:

- The total amount revealed as per Form 3CEA filed by the assessee revealed that it had received certain amount and account of sale of RMC business was to be treated as a long-term capital gain instead of slum sale by the assessee, and therefore to that extent income escaped assessment.
- Another reason for reopening was that, the assessee claimed additional depreciation in respect of certain additions to computers during the year, which is not admissible and therefore, to the extent the additional depreciation was

claimed, required to be added back to the computation of income.

- The Ld.AO further noted that, the assessee deducted tax on the payment made to M/s. Yongnam Engineering & constructions Pvt. Ltd., u/s.194C, instead of section 195/197. The Ld.AO thus noted that the assessee deducted tax at lower rate than the prescribed rate. The Ld. AO was thus of the opinion that, income has escaped assessment for the year under consideration as per explanation 3 to section 147 of the act.

2.3. Accordingly, notice under section 143(2) of the act was issued by the Ld.AO. The statutory notice under section 142 (1) were also issued to the assessee calling upon to furnish various details. The Ld.AO after considering the submissions of the assessee completed the reassessment proceedings on 26/12/2016 assessing Rs.50,11,16,43,759/- in the hands of the assessee by making additions on account of calculation of capital gains on slum sale under section 50 B of the act, and disallowed claim of additional depreciation on computers of Rs.3,38,66,060/-.

Aggrieved by the order of the Ld. AO, assessee preferred appeal before the Ld. CIT(A).

3. The assessee filed additional evidence under rule 46A of the act, that was forwarded to the assessing officer, calling for remand report. In the additional evidence the assessee submitted that, the objections filed by the assessee for reopening of assessment were

not disposed of by the assessing officer by passing a speaking order as per the guidelines laid down by *Hon'ble Supreme Court* in case of *GKN Driveshaft (India) Ltd vs CIT reported in 259 ITR 90*.

3.1. The Ld. AO while considering the submissions forwarded by the First appellate authority, passed remand report on 14/05/2090 by observing as under:

> "*The case was re-opened with prior approval of the Pr. CIT-2, Mumbai and notice u/s 148 of the I. T Act, 1961 dated 28.03.2016 was issued and duly served on the assesse company on same day ie 28.03.2016. Thereafter notice u/s 142(1) of the 1. T Act, 1961 dated 18.07.2016 was issued with annexures asking for P & L Account, Balance Sheet, audit repart and copy of the return filed in response to the notice u/s. 148 of the 1. T Act, 1961 and other relevant documents. In response to the above notices the assesse company filed his submission on 27 july 2016 in the tapal of the office of the undersigned. The assesse asked for reasons for reopening vide letter dated 25.04.2016. The same was provided vide letter dated 20 09.2016 and notice u/s. 143(2) of the 1. T Act. 1961 was issued vide letter dated 20.09.2019 and duly served on the assesse on 27.09.2016. The scrutiny assessment completed on 26.12.2016. The assesse made submissions in response to the said notices on 27.07.2016, 30.09.2016, 16.11.2016, 21.12.2016 and 26.12.2016. The responses filed by the assesse have each been separately examined. The covering page of each of the submissions is enclosed to the present report it is evident form the same that the assesse company through any of the submissions had failed to raise any objection to reopening. The assesse only made requisite submissions called for from it, on merit of each of the issues. There is no evidence of formal objections being placed on record by the assesse."*

Based on the remand report the Ld. CIT(A) dismissed the legal issue raised by the assessee.

3.2. On merits the Ld. CIT(A) deleted the addition by observing as under:

> *7. Ground No.2 As per the proviso of section 50B of the Income Tax act, any profits or gains arising from the slump sale effected in the previous year is chargeable to income-tax as 'capital gains', arising from the transfer of 'long-term capital assets'.*

7.1 Further, subsection (2) of the above section specifies that in relation to 'capital assets', being an undertaking or division transferred by way of such sale, the "net worth of the undertaking or the division shall be deemed to be the 'cost of acquisition', for the purposes of section 48 and 49.
7.2 Explanation 1 below section 50B elaborates that "net worth" shall be the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account.
7.3 The details of Computation of Income submitted by the assessee shows an amount of Rs. 1,232,87,69,344/-as Long Term Capital Gains on account of slump sale of the assessee's Ready Mix Concrete (RMC) business u/s 50B. On perusal of the accountant's report - Form 3CEA, it is observed that the consideration received for slump sale of RMC business was Rs. 1544,50,88,096/ against the Net Worth of the Undertaking /division of Rs 284,55,18,753/-, the amount of Long Term Capital Gain should have been of Rs 1259,95,69,343/-. Hence, there is improper calculation of assessee's income on LTCG totals to Rs.27,07,99,999/-
7.4 During the course of re-assessment proceedings the appellant was asked to explain and substantiate the claim on this issue.
7.5 According to the assessee, the differential amount of Rs.27.08 cr., constitute financial advisory fees of Rs.8.31 Cr, and expense for other works of Rs.18.77 cores. It is the contention of the assessee that this expenditure is an allowable expenditure against the sales consideration received on transfer of RMC business under slump sale. However, this claim of the appellant did not find favour with the AO.
7.6 Section 50B of the LT. Act, 1961 is a special provision and a Code in itself for computation of capital gain arising on slump sale. Therefore, no other provision of the Act, other than the provision contained in section 50B of the Act shall be applicable since the capital gain arising under slump sale cannot be equated with capital gains arising on sale of any individual assets. The contention of the assessee that the said expenditure is allowable deduction u/s 48 (i) of the 1.T. Act, 1961 is not correct. As can be seen from the sub-section 2 of Section 50B of the I.T. Act, 1961, the net worth of the undertaking transferred shall be deemed to be the cost of acquisition of the undertaking transferred which takes case of the provisions contained in section 48 and 49 of the IT Act, 1961. Even otherwise provision contained in Section 50B of the IT Act, 1961 is a deeming provision.
7.7 Hence, the AO disallowed the transfer expenses of Rs. 27,07,99,999/- and added back the same to the total income.
7.8 The appellant has made various submissions in support of its claim. According to the appellant, section 50(B) (2) r.w.s. 48, makes it crystal clear that for the purpose of computation of capital gains from slump sale,

it is intended to deny indexation benefits in respect of cost of acquisition and improvement. In section 50B, there is no reference to clause (i) of section 48 which deals with expenses wholly and exclusively in connection with the transfer. Hence, expenses incurred in connection with the transfer expenses is allowable.

7.9 The appellant contended that the transfer expenses incurred include advisory fees and contractual obligations mandated as per the Business transfer agreement. It was submitted that transfer expenses are incurred wholly and exclusively in connection with the transfer of the RMC undertaking.

7.10 An alternative claim was also made that the transfer expenses should be considered as a part of the net worth of the undertaking and adjustment to consideration be made by reducing the amount incurred.

7.11 The appellant also relied on the following case laws:

> *i. Principal Commissioner of Income-tax-06 vs. Nitrex Chemicals India Ltd HC) reported in 243 Taxmann 371 (Delhi-*
>
> *ii. Wockhardt Hospital Ltd vs Addl.CIT-10(1) (Mum-Trib) (ITA No. 7454/Mum/2013).*

7.12 I have considered the facts of the case. The issue is whether the expenses incurred in relation to transfer can be allowed as a deduction while computing the capital gains on slump sale. According to the AO, the same is not allowable as section 50B is a deeming provision and only the net worth of undertaking transferred shall be allowed by way of cost of acquisition.

7.13. In the case of (2016) 75 taxmann.com 282 (Delhi) High Court of Delhi Principal Commissioner of Income Tax-06 v. Nitrex Chemicals India Ltd. The Hon'ble Delhi Court decided the following issue by way of Ground No. 3: "Whether the computation of capital gains in respect of slump sale of trading businesses on account of purchase of shares by ESOP Trust, could be deducted capital gain under Section 48 of the Income Tax Act." 7.14 The Hon'ble High Court therefore held as under.

"8. Re Question No. 3. The revenue's contention here is that sum of Rs. 1,39,76,352/ spent by the assessee at the time of transfer of its business undertaking to fund the ESOP Trust, cannot be characterized as permissible expenditure but rather has to be added back for the purposes of income calculations. The assessee's contention, on the other hand, is that this expenditure was essential and integral part of the sale transactions itself.

9. The necessary facts for appreciation of the question are that the assessee sold a part of its unit as a going concern. In the process the transferee took over undertaking with the management and employees. The assessee had created subsequently modified at two different stages, an ESOP (Employees Stock the and Option Plan) Trust Fund. Apparently, the transferee expressed its inclination to continue the fund and insisted

that as a pre-condition for the transfer, the of the value of the shares that were to be assessee ought to fund it to the extent allotted to the employees. According to the revenue, this expenditure was not integrally connected with the transfer and therefore not adjustable from the capital loss as reported in that regard.

The findings of the ITAT on this aspect are as follows:..........

10. Section 48 of the Act to the extent it is relevant reads as follows:

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 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:

12. In these circumstances, the court is of the opinion that the mode of computation of capital gains had to necessarily take into consideration the ESOP funding through the trust fund by the Assessee at the stage of transfer.

13. Therefore, the court holds that there is no infirmity in the findings of the ITAT. No question of law arises."

7.15 In view of the above, I am of the view that the transfer expense for the purpose of computing capital gains on slump sale is an allowable deduction. Respectfully following the decision of Hon'ble Delhi High Court, this ground is treated as allowed. The alternate claim at the appellant is not required to be looked into. It is clarified that such benefit of transfer expenses can be availed by the appellant only once and no double deduction is allowable.

8. Ground No.3 From the depreciation statement attached to the 3CD Report as well as Computation of Income, an additional depreciation of Rs. 3,38,66,060/-has been claimed in respect to addition of computers during the year. Assessee has classified computer under the head "computers" (distinct from "Plant and Machinery" eligible for additional depreciation) on which no additional depreciation is admissible. Further, the block of asset under the head "computers" cannot be having impact on enhancing the installed capacity of the assessee, hence, additional depreciation of Rs. 3,38,66,060/- was required to be added back in computation of income.

8.1 The AO considered the reply of the appellant. However, the AO did not accept the claim of the appellant on the ground that it was not established by the assessee whether these 'computer', on which additional depreciation was claimed is wholly and exclusively used for manufacturing activity by the company. The Therefore, the additional depreciation claim of Rs. 3,38,66,060/- was disallowed by the AO.

8.2 During the appellant proceedings appellant has made various submission. The crux of the submission of the appellant is as under.

a. In sub Clause III of Part A of Appendix 1 of Income Tax Rules, 1962, computers are classified as part of plant and Machinery (Refer Appendix 1)

b. The Computers were installed in Plants and were used in manufacturing/ production of articles or things.

c. Since both the conditions for claiming additional depreciation has been the Appellant is eligible for additional depreciation u/s 32(1)(iia) of the Act.

8.3 The appellant has also relied on the following case laws:

(i) TRF Ltd v/s CIT (Jharkhand HC) 164 taxman 536)

(ii) CIT v/s Radha Machinery Export (Allahabad HC (283 ITR 185).

(iii) ACIT v/s Investment Trust of India Limited (ITAT Madras) 62 (TTJ 763)

8.4 I have considered the facts of the case. As per the provisions of section 32(1)(ila) additional depreciation is allowable in case of new machinery or plant (other than ships and aircraft) subject to fulfillment of certain conditions. As per the New Appendix-1, of the Income Tax Rules, machinery and plant forms part of item no. III of block assets in Part A. Computers including computer software fall within entry at Sr. No. (5). 8.5 The provisions of section 32 make it clear that ships and aircraft shall not be eligible for additional depreciation, even if they happened to be new machinery or plant. Considering the sequence of items in machinery and plant at new Appendix-1, I am of the view that the appellant is eligible for additional depreciation on computers, if they are used in the businesses specified therein. The perusal of the depreciation chart filed by the appellant shows that the appellant has acquired computers (including software) of Rs. 45.84 crores (greater than 180 days) and Rs. 98.89 crores (less than 180 days). Out of this additional depreciation has been claimed in respect of small part of such computers which according to the appellant have been used in manufacturing. Additional depreciation has been claimed to the sum of Rs. 3.38 crores only. In my view, the claim of the appellant has force. Accordingly, this claim of the appellant is allowed. It is however ever clarified that the appellant shall not be entitled to double benefit of depreciation in any other year."

Aggrieved by the order of the Ld. CIT(A), the assessee as well as revenue are in appeal before the *Tribunal.*

4. It is submitted that, the revenue filed appeal on the additions deleted by the Ld. CIT(A), whereas the assessee filed across appeal on the legal issue that was dismissed.

It is agreed by the parties that, the appeal filed by the revenue may be considered first before going into the validity of reassessment proceedings.

5. Ground number 1-2 of the revenues appeal is regarding the entitlement to claim deduction in respect of expenditure incurred in connection with the slum sale giving rise to capital gains as per section 48 (i) of the act, despite application of section 50 B of the act.

5.1. The Ld.AR submitted that during the year under consideration assessee entered into a business transfer agreement dated 14/05/2008 for transfer by way of slum sale its ready mix concrete business undertaking as a going concern. It is submitted that insofar as capital gains arising in respect of the said undertaking is concerned, full value of consideration was taken to be Rs.1544,50,88,096/- from which the assessee reduced Rs.2,84,55,18,753/- (being the net worth of the said undertaking as per section 50 B (2) deemed to be the cost of acquisition and cost of improvement for the purposes of section 48 and 49 of the act) and Rs.27,07,99,999/- (being expenditure incurred in connection with such transfer).

5.2. The Ld.AR submitted that, the long-term capital gains from the said transfer was offered at Rs.1232,87,69,344/-. The Ld.AR referred to page 101 of the paper book where the computation of capital gains has been placed. The details of expenditure incurred

in connection with the slum sale is placed at page 102 of the paper book.

5.3. The Ld.AR submitted that, the only reason given by the Ld.AO to disallow the deduction claimed by the assessee while computing the Capital gains in the slump sale is that, this section 50B is a special provision in itself for computing capital gains arising out of slum sale and therefore, deductions claimed by the assessee under section 48 (i) of the act is not permissible.

5.4. The Ld.AR submitted that, as per the provisions of section 50 B as it stood for the relevant period, supposed to provides that the network of the undertaking shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of section 48 and section 49, and that, no regard shall be given to the provisions contained in the 2nd proviso to section 48 of the act.

5.5. He submitted that, the 1st part of the sub section 2 deals with net worth of the undertaking to be the cost of acquisition and the cost of improvement for the purposes of section 48 and 49.

5.5. He further submitted that, the computation of capital gains arising on slum sale has to be in the alley as per section 48 of the act, where the net worth of the undertaking will be treated as cost of acquisition and cost of improvement which is allowable as a deduction as per section 48 (ii) of the act.

5.6. Pre contra, relying on 2nd proviso to section 48 that deals with indexitation of the cost of acquisition and cost of improvement, the

Ld.AR submitted that, this was only not permissible while computing capital gains of slum sale.

5.7. The Ld.AR submitted that, going by the interpretation of section 50B as per Ld.AO, section 48 and 49 will not apply when assessee's case falls under section 50B. The Ld.AR submitted that, the intention of Legislature is categorically clear, as the 2nd proviso of sub clause 2 to section 50B, clearly carves out the exception dealing with indexation of cost of acquisition and cost of improvement, that is not be available to the assessee while computing capital gains of slum sale. In this regard he placed reliance on decision of *Hon'ble Delhi High Court* in case of free *CIT vs Nitrex Chemicals India Ltd* reported *(2016) 75 taxman.com 282 and decision of coordinate bench of this Tribunal* in case of *M/s. Wockhardt Hospitals Ltd vs ACIT* in *ITA Nos.7454/MUM/2013 and 7021/MU's/2013* for assessment year *2010-11 vide order dated 06/01/2017,* wherein in the context of computation of capital gains arising on slum sale of an undertaking, deduction was allowed in respect of expenditure incurred in connection with such transfer by reference to section 48(i) of the act.

5.8. The Ld.AR submitted that, the Legislature while using the expression "full value of consideration" contemplated both addition as well as deduction from the apparent value. He submitted that, what it means is a real and effective consideration. Further submitted that, insofar as section 48 (i) is concerned, the expression used by the Legislature in its wisdom is wider than the

expression "for the transfer". It is submitted that the expression used therein is "the expenditure incurred wholly and exclusively in connection with such transfer" and that the expression "connection with such transfer" is wider than the expression "for the transfer". In support the Ld.AR relied on the decision of *Hon'ble Bombay High Court* in case of *CIT vs Smt.Shantilal Kantilal* reported in *(1991) 58 taxman 106.* The Ld.AR thus placed reliance on the observations of the Ld. CIT(A).

5.9. On the contrary, the Ld.DR submitted that, the decisions relied by the Ld.AR are distinguishable as in the aforestated judgements the deduction claimed was in respect of expenditure incurred in connection with transfer. Whereas, in the present case, the deduction is claimed in respect of the expenditure incurred on the assets. He thus placed reliance on the observations of Ld. AO.

We have perused the submissions advanced by both sides in the light of records placed before us.

6. In the year under consideration the assessee entered into a business transfer agreement on 14/05/2008 with Lafarge Aggregates and Concrete Ltd, for transfer by way of slum sale of its Ready Mix Concrete Business undertaking as a going concern. There is no doubt with the revenue that the transaction entered into by the assessee for transfer of Ready mix concrete business is a slump sale.

The dispute between the assessee and the revenue is in respect of grant of deduction of the expenditure incurred in connection with

the transfer amounting to ₹ 27, 07, 99, 999/-. It is the contention of the revenue that, provisions of section 48 for computation of capital gains and deductions permitted therein including expenditure incurred in connection with such transfer, cannot be resorted to for computing capital gains under section 50B, as section 50B is a complete coding itself.

6.1. It is therefore necessary to refer to sections 48 and 50B of the act to the extent it is relevant for deciding the issue under consideration. For the sake of convenience the same are reproduced as under:

Section 48 and 50B to the extent is relevant reads as follows:

48. The income chargeable under the head "Capital Gains" shall be computed by deducted for value consideration received on a crew in 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 there:
….

50B. *(1) Any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place :*

Provided *that any profits or gains arising from the transfer under the slump sale of any capital asset being one or more undertakings owned and held by an assessee for not more than thirty-six months immediately preceding the date of its transfer shall be deemed to be the capital gains arising from the transfer of short-term capital assets.*

(2) In relation to capital assets being an undertaking or division transferred by way of such sale, the "net worth" of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48.

………

Explanation 1.—For the purposes of this section, "net worth" shall be the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account :

***Provided** that any change in the value of assets on account of revaluation of assets shall be ignored for the purposes of computing the net worth.*

Explanation 2.—For computing the net worth, the aggregate value of total assets shall be,—

*(a) in the case of depreciable assets, the written down value of the block of assets determined in accordance with the provisions contained in sub-item (C) of item (i) of sub-clause (c) of clause (6) of section 43; **[and]***

(b) in the case of other assets, the book value of such assets.

The following clauses (b) and (c) shall be substituted for the existing clause (b) of Explanation 2 to section 50B by the Finance (No. 2) Act, 2009, w.e.f. 1-4-2010 :

(b) in the case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD , nil; and

(c) in the case of other assets, the book value of such assets.

6.2. Further, as per section 2(42C) of the Act, 'slump sale' means transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.

6.3. A reading of Sec.50B (1) & (2) of the Act read with Sec.2(42C) of the Act, it is clear that taxability of capital gains arising on slump sale are calculated as the difference between sale consideration and the net worth of the undertaking. Net worth is defined in *Explanation 1* to section 50B as the difference between 'the aggregate value of total assets of the undertaking or division' and 'the value of its liabilities as appearing in books of account'. The 'aggregate value of total assets of the undertaking or division' is the sum total of WDV as determined u/s.43(6)(*c*)(*i*)(C) in case of

depreciable assets, the book value in case of other assets, as per sub clause (2), net worth is deemed to be the cost of acquisition and cost of improvement for section 48 and section 49 of the Act (clause (2) under section 50B). Thus there is no scope for any deviation from the aforesaid statutory provision regarding computation of capital gains of slump sale is concerned.

6.4. It is noteworthy that, section 48 has two limbs:

(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

The networth replace the value as per section 48(ii). However, the first limb, which is, "the expenditure incurred in connection with the transfer", cannot be excluded from being claimed as deduction for the purposes of computation under section 50B. The Legislature in its wisdom, clearly excludes indexation of such cost of acquisition and cost of improvement, for the purposes of slump sale in Section 50B itself. In support reliance is placed on the decision of *Hon'ble Delhi High Court* in case of *PCIT vs. Nitrix Chemicals India Pvt.Ltd* reported in *(2016) 75 taxmann.com 282*Thus, computing capital gains of the slump sale in accordance with the provisions of section 50B that includes only the networth of the undertaking treating it as a cost of acquisition and cost of improvement without considering the provision of section 48(i), will be in contradiction to the intention of the Legislature when the

6.5. Ld.AR referred to page 101 and 102 of the paper book wherein the expenditure incurred in connection with the slump sale and the competition of the slump sale has been placed. For the sake of convenience the same is reproduced as under:

Details of the expenditure incurred in connection with the slump sale are:-

Larsen & Toubro Limited	
AY 2009-10	
Transfer Expenses on slump sale of RMC business	
Expenses for work on substitute Plants and other expenses	Amt (In crores)
Professional Fees Paid To Citigroup For Financial Consultancy Services Rendered To Rmc	8.32
Total (a)	8.32
Expenses on Employee benefits	0.81
Expenses for FBT on above	0.13
Professional Fees	0.22
Total (b)	1.16
Amount paid to labour at RMC Powai Plant	2.32
Compression Testing charges	0.02
Construction expenses	6.60
Civil and other work costs for the replaced RMC Vizag - I	1.50
LD and other expenses for sub. Plants	7.16
Total (c)	17.61
TOTAL (a+b+c)	27.08

:

Computation of capital gains of Slump sale by the assessee is as under:

Larsen & Toubro Limited		Rs. Crore
Calculation of Longterm Capital Gain (AY 2009-10)	Amount (Rs.)	Amount (Rs.)
Sale Consideration (A)		1,544.51
Less: Net Worth of the Undertaking		
Net Current Asset Transferred	142.29	
IT WDV of Depreciable asset	116.53	
WDV of Non Depreciable asset	7.06	
Capital Work in Progress	18.68	
(B)		284.56
Amount as per Form 3CEA		1,259.95
Less: Expenses necessary for transfer (as per Section 48):		
Financial consutancy services paid to CITI group	8.31	
Expenses for work on substitute plants and other expenses	18.77	
(C)		27.08
Long term capital gain (A - B - C)		1,232.87

6.6. There is no dispute that the expenditures listed herein above are incurred in connection with the transfer of the business as a going concern. Then, not computing the capital gains of the slump sale in accordance with the provisions of section 50B that require to treat cost of acquisition and cost of improvement and is allowable as a deduction as per section 48 (ii) of the act as net worth of the undertaking, and not to consider the expenditure incurred for the purpose of transfer as per section 48(i) will be in contradiction to the intention of the Legislature. In our view, section 50B cannot be read and understood as argued by the Ld.DR, because the computation provision section 48 to the extent applicable to section 50B as mentioned in clause (2) of section 50B and then would become ineffective and in applicable to a slump sale.

6.7. We thus do not agree with the arguments advanced by the Ld.DR and the observations of the Ld.AO which is not founded on the basic principles of interpretation. We therefore do not find any infirmity in the view taken by the Ld. CIT(A) and the same is upheld.

Accordingly ground number 1-2 raised by the revenue stands dismissed.

7. Ground No.3 raised by the revenue is on allowing additional depreciation of Rs.3,38,66,060/- for a claimed by the assessee on the computers installed and used by its manufacturing facilities.

7.1. It is submitted that, apart from claiming depreciation under section 32(1)(iia) of the Act, the assessee claimed additional

depreciation in respect of computers installed by it at its manufacturing facility. On the total actual cost of computers acquired during the year, of Rs.45,84,94,386, the additional depreciation claimed was in respect of assets worth Rs.23,15,12,460/- related to computers installed at the manufacturing facilities.

7.2. The details of the same were provided to the Ld.AO by assessee vide letter dated Placed 14.11.2016, placed at page 249 details the features of the computers and the location where they have been installed are placed at pages 251 to 255 of the Paper book.

The Ld.AO disallowed the depreciation by noting that it is not known if these were installed and exclusively used for manufacturing activity.

7.3. Aggrieved by the disallowance, the assessee preferred appeal before Ld.CIT(A). The Ld.CIT(A) allowed the claim of the assessee by observing that the computers on which additional depreciation has been claimed forms a small part of the total addition to computers and that such computers have been installed & used at the manufacturing facility.

Aggrieved by the order of the Ld.CIT(A), the revenue is in appeal before this *Tribunal.*

8. Before us, the Ld.DR relied on the order passed by Ld.AO and Ld.AR relied on the observation of Ld.CIT(A). He also referred to the chart placed at page 249 and 251-255 of the paper book that

further clarifies that the computers were used for manufacturing activities.

8.1. On perusal of the documents relied by the Ld.AR from the paperbook, it is noted that these formed part of the submissions before the Ld.AO. The Ld.AO summarily rejected the contention without undertaking any verification. In fact we do not find any basis for rejecting the claim of the assessee based on the depreciation chart relied by the Ld.AR at page 249 & 251-254, that categorically mentions that these machines were used for manufacturing activities. There is no evidence placed on record by the Ld.AO/Ld.DR contrary to the information on pages 249 and 250-254.

8.2. We therefore do not find any infirmity in the view taken by the Ld.CIT(A) and the same is upheld.

Accordingly, Grond No. 3 raised by the revenue stands dismissed.

9. As we have dismissed revenue's appeal, the cross objection filed by the assessee also stands dismissed.

In the result the cross appeal filed by the revenue as well as assessee stands dismissed.

Order pronounced in the open court on 20.12.2024.

Sd/- **OMKARESHWAR CHIDARA** **ACCOUNTANT MEMBER**	**Sd/-** **BEENA PILLAI** **JUDICIAL MEMBER**

Place: Mumbai,
Dated: 20.12.2024
Snehal C. Ayare, Stenographer/ Dragon

Copy of the order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai