

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 2144/Mum/2023
(Assessment Year: 2015-16)**

Rolta India Ltd. , Rolta Tower-A, Rolta Technology Park, 22 nd Street, NIDC, Marol, Andheri (East), Mumbai-400093. PAN: AAACR2711G	Vs.	DCIT, CC-1(1), Room No. 903, 9 th Floor, Pratishtha Bhavan, Old CGO Annexe, M.K. Road, Mumbai-400020.
Appellant)	:	Respondent)

Appellant /Assessee by : Shri Shekhar Gupta, AR
Revenue / Respondent by : Smt. Sanyogita Nagpal, CIT-DR
Date of Hearing : 24.02.2025
Date of Pronouncement : 11.03.2025

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of The Commissioner of Income Tax (Appeals) - 47, Mumbai (In short "the CIT (A)) dated 31/01/2022 for Assessment year (AY) 2015-16. The assessee raised the following grounds of appeal:

“1. The learned CIT (Appeals) has erred in law and on the facts of the case in sustaining the disallowance of unexplained purchases to the tune of Rs. 16,91,56,949/-.

2. The learned CIT (Appeals) has erred in law and on the facts of the case in deduction of disallowing Rs. 121.98 crores u/s. 35(2AB) of the Income Tax Act.

3. The learned CIT (Appeals) has erred in law and on the facts of the case in not allowing long term capital loss on redemption of equity shares in subsidiary companies.

4. The learned CIT (Appeals) has erred in law and on the facts of the case in not reducing the profit on sale of shares from the book profit u/s. 115JB in relation to the shares of 2 subsidiary companies namely Rolta UK and Rolta Middle East FZLLC since the shares were not transferred during the year.”

2. The assessee is a company engaged in the business of software engineering and development. The assessee filed the return of income for AY 2015-16 on 28/11/2015 declaring the total loss of Rs.88,25,83,242. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The Assessing Officer (AO) completed the assessment by making various disallowances to arrive at the assessed income of Rs.29,00,61,903. The AO set off the brought forward losses from earlier years to the extent of assessed income to arrive at the total income of nil. The AO also recomputed the book profits under section 115JB at Rs.418,61,51,508. Aggrieved, the assessee filed further appeal before the CIT appeals who gave partial relief to the assessee. The assessee is in appeal before the tribunal against the order of the CIT appeals.

3. There was a considerable delay in filing the appeal before the tribunal. The ld.AR in this regard submitted that the assessee was undergoing insolvency proceedings before the Hon'ble NCLT and that the tribunal vide its order dated 24/04/2023 has dismissed the appeal for the said reason with a liberty given to the

assessee/ resolution professional as the case may be to restore the appeal as and when required. The Id.AR further submitted that the NCLT has passed the final order appointing Shri. Mamta Binani as the interim resolution professional. Accordingly, the Id.AR submitted that Form 36 restoring the appeal before the Tribunal is filed by the interim resolution professional on 25/05/2024. Therefore the Id AR prayed for condonation of delay. The Id. DR did not raise any objection for condoning the delay. Having heard both the parties and considering the facts and circumstances of the case, we are condoning the delay by placing the reliance on decision of the Hon'ble Supreme Court in the case of Mst. Katiji and Ors. (167 ITR 471) and admit the appeal for adjudication.

Ground No.1 – Addition towards unexplained purchase

4. During the course of assessment proceedings the AO issued notice under section 133(6) to various parties from whom the assessee has made purchases. Such notices were issued to 33 parties. Out of the total parties to whom notices were served 20 parties responded, 9 parties did not respond and notice could not be served on 4 parties. Out of the total parties who responded to the notice, the AO noticed certain discrepancies in the amount reflected as purchases by the assessee and the amount confirmed by the suppliers. The AO called on the assessee to reconcile the difference and further asked the assessee to explain why addition could not be made towards purchases made from the parties who have not responded and on whom notice could not be served. The assessee submitted before the AO that all the purchases are genuine and that the payments were made through A/c payee cheque. The AO was not convinced with the reply filed by the assessee and therefore the AO made an addition of Rs. 13,97,06,241/- as per below table:

Sr. No.	Particulars	Amount in submissions (Rs.)	Amount in reply (Rs.)	Difference if any (Rs.)
A.	Purchases where notices were served and replies were received.	19,53,92,632	12,23,26,475	7,04,83,897
B.	Purchases where notices were served but no reply was received.	5,07,79,828	-	5,07,79,828
C.	Purchases where notice has not served	1,84,42,516	-	1,84,42,516
	Total	26,46,14,976	12,23,26,475	13,97,06,241

5. The CIT(A) confirmed the disallowance on the ground that the assessee failed to prove the genuineness of the purchases and assessee failed to reconcile the difference in the purchases deducted during remand proceeding. During the appellate proceedings the CIT(A) noticed that the AO has made the addition on the net difference between the assessee's purchases and the amount confirmed by the suppliers which included cases where the purchases as per assessee's books were more. Accordingly, the CIT(A) proposed an enhancement of Rs. 2,95,50,708/- towards the excess purchases which have been reduced from the shortage in purchases declared by the assessee. The assessee agreed to the disallowance and accordingly the CIT(A) enhanced the disallowance made by the AO.

6. The Id. AR submitted that the assessee being in the business of software development has to constantly upgrade its hardware required for the development of software. The Id. AR further submitted that the assessee has discharged the onus of proving the genuineness of the purchases by providing the details pertaining to the suppliers including their PAN. The Id. AR also submitted that non-reconciliation of the difference in the balance between the assessee and the vendor

cannot be the sole reason for questioning the genuineness of the purchase and making the addition accordingly. The ld. AR argued that all the payments towards the purchases were made through banking channel and therefore the purchases cannot be held as bogus. The ld. AR further argued that the AO did not reject the books of accounts and also did not find any error in the ledger accounts and therefore the AO could not have made the addition merely based on 3rd party confirmation. Regarding the enhancement made by the CIT(A), the ld. AR submitted that the assessee has inadvertently agreed to the enhancement and that the AO was correct in considering the excess purchases as per the books of assessee while making the addition.

7. The ld. DR relied on the order of the lower authorities.

8. We heard the parties and perused the material on record. The AO during the course of assessment issued notice under section 133(6) and made addition towards unexplained purchases on three counts i.e. the difference in the amount declared by the assessee as purchases and the amount confirmed by the suppliers. Secondly purchases from parties from whom no reply was received and thirdly the purchases from parties on whom the notice could not be served. With regard to the 20 parties from whom the AO has received response, we notice that the addition is made towards the difference in the amount for the reason that the assessee could not reconcile the difference in the purchase amount. We further notice that the AO while making the addition did not question the genuineness of the transaction or did not hold that the purchases are bogus. We also notice that the addition is made for the reason that the purchase amount is not matching between the assessee and the suppliers. During the course of hearing our attention was drawn to the details submitted by the assessee before the lower authorities explaining the reasons for

the difference (page no. 30 to 34 of Paper Book). In this regard we notice that the lower authorities have not recorded any finding on the statement of reconciliation submitted by the assessee. It is also relevant to notice here that the purchases pertain to the hardware which is claimed to be used for the purpose of the business of the assessee namely development of software and that the AO has not disturbed the P&L A/c of the assessee and has merely made addition towards the un-reconcile balance. In our considered view the AO is not correct in making the addition merely based on 3rd party confirmation without taking into consideration the reasons given by the assessee for the difference and without making further enquiries based on the details submitted by the assessee with regard to the 3rd parties. Therefore, we hold that the addition made towards un-reconciled balances including the enhancement made by the CIT(A) is not sustainable and accordingly deleted.

9. With regard to addition made towards purchases where the vendors have not responded we notice that the AO in the remand report has stated that confirmations from few of the parties are received post completion of assessment. We are also of the view that addition cannot be made merely for the reason that the parties have not responded to the notice, without considering the other details furnished by the assessee such as the PAN etc., of the suppliers. Therefore we direct the AO to consider the confirmations received subsequently and also to take necessary steps to examine the genuineness of the parties based on the details furnished. The AO is accordingly give relief to the assessee after examining the facts in accordance with law after giving reasonable opportunity of being heard.

10. With regard to addition made towards purchases from suppliers on whom the notice under section 133(6) could not be served, the ld. AR fairly conceded that

the assessee could not substantiate the purchase with any other documentary evidence other than submitting the fact that payments were made through banking channel. Therefore, in our considered view the assessee did not discharge the onus of having made the purchases with proper documentary evidences. Accordingly, to this extent we confirm the addition made by the AO. The ground raised by the assessee is partly allowed

Ground No.2 – Addition made under section 35(2AB)

11. The assessee is engaged in Research and Development activities and is granted recognition by the Department of Scientific and Industrial Research (DSIR) valid upto 31.03.2020. For the year under consideration DSIR has certified a Capital Expenditure to the tune of Rs. 121,98,14,803/- and Revenue Expenditure to the tune of Rs. 85,44,37,057/-. The assessee as per the provisions of section 35(2AB) relevant to the year under consideration is eligible for claiming 200% of the expenditure including Capital Expenditure incurred towards Scientific Research. In the Profit and Loss account for the year under consideration, the assessee has debited 100% of the revenue expenditure and therefore while filing the return of income has made additional claim of 100% towards Revenue Expenditure. The assessee in the return of income while claiming deduction towards Capital Expenditure has inadvertently has claimed only 100% instead of 200%. The assessee before the CIT(A) made submissions with regard to the inadvertent error committed while filing the return of income and accordingly prayed for additional deduction of 100% towards Capital Expenditure under section 35(2AB). The CIT(A) did not allow the claim of the assessee stating that the additional claim can be made only by filing revised return of income and the

CIT(A) placed reliance in this regard on the decision of the Hon'ble Supreme Court in the case of Goetz (India) Ltd. vs CIT (2006) 284 ITR 323 (SC)

12. We heard the parties and perused the material on record. During the course of hearing the Id. AR took the bench through the relevant documents with regard to the inadvertent error committed by the assessee by not claiming 200% of the Capital Expenditure incurred towards Scientific Research. The Id. AR also submitted that the amount which the assessee is eligible for claiming deduction under section 35(2AB) is as per the certificate in Form-3CL issued by DSIR. From the perusal of the evidences, we see merit in the submission that the assessee has made an error by claiming 100% of the capital expenditure instead of 200% while filing the return of income. It is relevant to mention here that the claim for the additional 100% is not a fresh claim, and therefore we are of the view that the CIT(A) is not correct in rejecting the claim of the assessee. Accordingly, we direct the AO to allow the differential amount towards Capital Expenditure as deduction which the assessee is eligible to claim as per the provisions of section 35(2AB) after verifying the relevant documents in this regard. The assessee is directed to submit the evidences as may be called for by the AO. It is ordered accordingly.

Ground No.3 & 4 – Computation of Book Profit under section 115JB

13. During the year under consideration, the assessee sold shares of its subsidiaries in US, UK and Middle East and declared Long Term Capital Loss (LTCL) Rs. 88.25 crores under normal provisions and declared profit of Rs. 134.10 crores which was taken into consideration while arriving at the book profits under section 115JB of the Act. Due to regulatory issues the shares could not be transferred and therefore the assessee filed additional ground before the CIT(A) to reduce the books profits to the extent of Rs. 134.10 crores which the assessee has

declared as profit from the sale of shares. The assessee also submitted that the claim could not be made before the AO since the issue had not fructified and the transfer was getting delayed due to regulatory issues. The assessee placed reliance on the decision of the Hon'ble Supreme Court in the case of Jute Corporation of India vs. CIT (187 ITR 688). The assessee also submitted the financial statements of the subsidiaries to substantiate the fact that the transfer of shares did not happen. The CIT(A) did not allow the additional claim of the assessee by holding that

“7.11 It is observed from the remand report that the appellant has furnished financial statements of the subsidiary companies which are pertaining to F.Y 2019-20 in the case of Rolta US and FY 2020-21 in the case of Rolta UK. It would be pertinent to mention that the evidences furnished by the appellant are not pertaining to the year under ie A Y 2015-16 when the shares were sold and capital gain were claimed in the return of income. The appellant should had furnished had furnished breakup of the investment in shares in subsidiary companies which were shown in the schedule of Foreign Assets.

7.12 Further, the contention of the appellant, that the transaction was cancelled due to the non approval of the regulatory authority is also not acceptable. Book Profit is defined in the explanation 1 to section 115JB, as book profit means the net profit as shown in Profit and loss for the relevant previous year and is increased and decreased by some prescribed items, and provision mentioned therein only. It is seen from the Act that there are no provision for post facto transaction such as cancellation that too after four years from the completion of the assessment, since such income is already shown in the book Profit of the concern year and prepared as per AS & companies Act and duly audited and the Book Profit cannot be changed unless rectified by the following proper legal recourse under companies Act.

7.13 The appellant has not explained in his submission as to why approval was not sought or any reason for delay from the regulatory authority before the transfer of the shares of the subsidiary which were booked in account as profit in P&L account and claimed as capital loss in normal account.

7.14 It is important to note that the Appellant has given a quid pro quo offer that if the same is reduced from Book Profit, then it will reverse the claim of Capital loss in normal computation, this stand of the appellant clarifies the non-genuinity of transaction & claim.

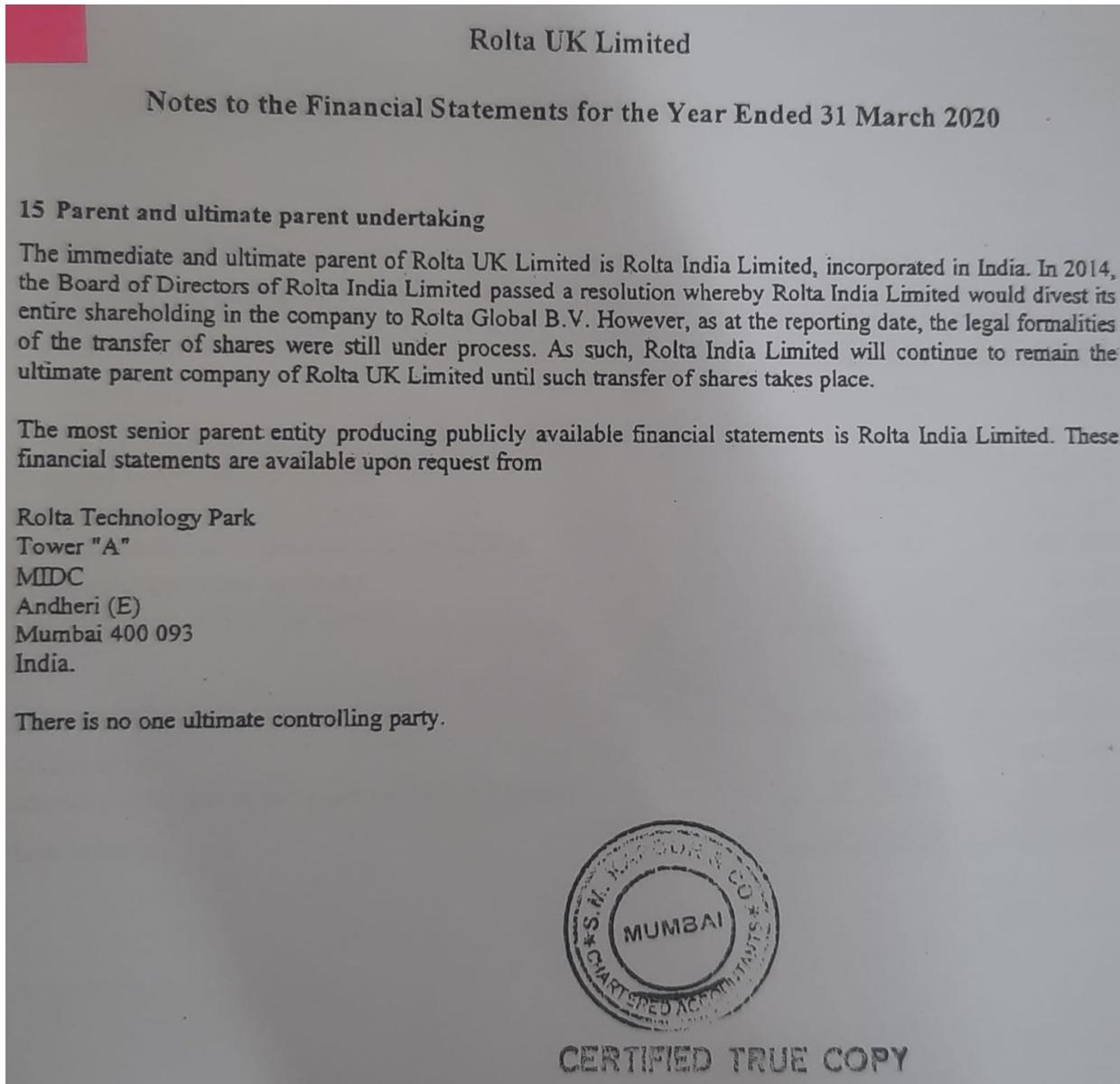
7.15 The appellant being listed company have booked such a high Profit on sale of Shares and whether Dividend is declared from such profit booking, while for taxation claiming that the said is cancelled and even though if it was cancelled the said reversal entry will be effected in the year of cancellation and Book Profit of that subsequent year will be reduced, as there is no provision to reduce current year Book Profit for event occurring after four years.

7.16 Further, there is no clarification given by the appellant as to how the reversal entry has been passed in the year the deal was cancelled and in the subsequent year. It has also not been explained by the appellant as to whether there was any MAT credit utilization in the subsequent year. Further, the appellant has not furnished any evidences of statutory compliances subsequent to the cancellation of said transaction. The onus of the states, status of transaction was on the appellant, and the appellant should have proved the same with supporting documentary evidences. The appellant should had proved and explain the statues, status of the payment or refunds before and after the cancellation was of transaction of the sale of shares was concluded. Such transaction should had been highlighted in the bank statement of the respective year of credit and debited and should had been produced by the appellant.

7.17 None of the case laws submitted by Appellant are even remotely applicable to the facts and merit of the case.

7.18 Looking to the totality of the facts and circumstances, in my considered view the claim of the appellant is untenable and deserved to be rejected. Hence, the grounds of appeal no. 6 and 7 are dismissed.”

14. We heard the parties and perused the material on record. The contention of the assessee is that the impugned transactions of sale of shares of subsidiaries did not go through due to regulatory restrictions and that the gain reflected in the financial statements did not actually materialize. In this regard we notice that in the notes to accounts of Rolta UK Limited for the financial year ended 31.03.2020 the fact that the impugned transactions did not go through have been mentioned (page 80 of PB). The relevant extract of the notes to accounts is as given below:



15. During the course of hearing the Id. AR took us through the financial statements of the subsidiaries (page 59 to 118 of PB) to substantiate that the assessee continue to be the share holder of the subsidiaries and that the transfer has not happened even under the year ended 31.03.2020. Considering the facts pertaining the impugned issue and the evidences, we see merit in the submission of the Id. AR that the profit on sale of shares declared by the assessee in the P&L A/c has not fructified. However we notice that the CIT(A) has upheld the decision of

the AO also for the reason that the assessee has not submitted any details pertaining to how the impugned transactions are reversed in the books, whether MAT credit has been utilised etc. Further the assessee has also not submitted details before the lower authorities as to whether the effect for the cancellation of the share transfer is given in the current year or subsequent year etc. Accordingly, we remit the issue back to the AO to examine the evidences submitted by the assessee and give relief in computing the book profit under section 115JB in accordance with law. Needless to say that the assessee be given a reasonable opportunity of being heard. It is ordered accordingly.

16. In result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 11-03-2025.

Sd/-
(AMIT SHUKLA)
Judicial Member

**SK, Sr. PS*

Copy of the Order forwarded to :

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

Sd/-
(PADMAVATHY S)
Accountant Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai