आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ,चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री एबी टी वर्की, न्यायिक सदस्य एवं श्री एस. आर.रघुनाथा, लेखा सदस्यके समक्ष
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI S. R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./**ITA No.: 133/Chny/2021**
निर्धारणवर्ष / **Assessment Year: 2005-06**

PLR Textiles Ltd., 8K, Century Plaza, 560-562, Mount Road, Chennai – 600 018. **[PAN: AAACP-6536-D]**	v.	The ACIT, Corporate Circle -5(2), Chennai – 641 034.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by	:	Mr. R. Vijayaraghavan, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Ms. Anitha, Addl. CIT
सुनवाई की तारीख/Date of Hearing	:	06.02.2025
घोषणा की तारीख/Date of Pronouncement	:	27.03.2025

आदेश /**O R D E R**

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal by the assessee is filed against the order of the Commissioner of Income Tax (Appeals)-3, Chennai, vide ITA No.153/CIT(A)-3/2018-19for the assessment year 2005-06, dated 13.03.2020.

2. At the outset, we find that there is a delay of 346 days in appeal filed by the assessee, for which petition for condonation of delay along with reasons for delay has been filed. After considering the petition filed by the assessee, reason for delay in filing the appeal was due to Covid-19 Pandemic and also hearing both the

parties, we find that there is a reasonable cause for the assessee in not filing appeal on or before the due date prescribed under the law and thus, in the interests of justice, we condone delay in filing of appeal and admit appeal filed by the assessee for adjudication.

3. The assessee has raised the following grounds of appeal:

> *(1) The learned CIT(A)-3, Chennai, grossly erred in holding that the AO could have only reinstated the original assessment order, in the facts and circumstances of the case and in law.*
>
> *(2) The learned CIT(A) has grossly erred in not considering that the AO did not carry out the computation of income, as specifically directed by the Hon'ble ITAT, in its order in ITA No.584/Mds/2017, dated 26.02.2018, rendering his order unsustainable.*
>
> *(3) The learned CIT(A) ought to have quashed the order of the AO, reinstating he income, as per the original order, as being not in conformity with the findings recorded by the Hon'ble ITAT, in its order, in ITA No.584/Mds/2017, dated 26.02.2018, in the facts and circumstances of the case and in law.*
>
> *(4) The learned CIT(A), ought to have held that the order of the AO, giving effect to the order of the Hon'ble ITAT, in ITA No.584/Mds/2017, dated 26.02.2018, was also clearly barred by limitation of time, in the facts and circumstances of the case and in law.*
>
> *(5) The learned CIT(A) is wrong in confirming the order of assessment, impugned before him as correct, in the facts and circumstances of the case and in law.*
>
> *(6) For these and other additional grounds of appeal that may be adduced at the time of hearing, the order of the CIT(A)-3, Chennai, is opposed to law and unsustainable in the facts and the circumstances of the case.*

4. The assessee a limited company, filed its return of income for the A.Y. 2005-06 on 29.10.2005 admitting a NIL income. The return was processed u/s.143(1) of the Act and issued the intimation

accepting the return of income. Later the case was reopened for the reason that the brought forward business loss for the A.Y.1999-2000 was set off erroneously and waiver of loan was inadvertently deducted from prior income. The AO passed an order u/s.143(3) r.w.s.147 of the Act on 30.12.2010 by adding the waiver of loan and treated as cessation of liability u/s.41(1) to the tune of Rs.2,39,57,911/- and also restricted the deduction of cost of acquisition of the sale of land and building to Rs.23,872/- instead of Rs.6.07 Crores as claimed by the assessee.

5. The same was challenged by the assessee, the Ld.CIT(A)-3, Chennai upheld the action of the AO by passing an order dated 30.11.2016. Aggrieved by the order of the ld.CIT(A), the assessee preferred an appeal before this Tribunal and the case was decided and remitted back to the AO for reconsideration with the direction in its order in ITA No.584/Mds/2017 dated 26.02.2018.

6. Consequent to the order of the ITAT, the AO passed an order dated 31.12.2018 u/s.143(3) r.w.s. 254 of the Act by sustaining the additions made in the earlier order dated 30.12.2010 by holding as under:

> *4. Against the above order of the CIT Appeal, the assessee went on appeal before the Hon'ble ITAT, Chennai. The Hon'ble ITAT vide order in ITA No. 584/Mds/2017 dated 28.02.2018 passed the order with findings remitted to the file of the respect of be following issues:*

Addition made u/s 41(1) as cessation of trading liability
Assessing of LTCG at Rs. 9,98,85,414/-

ITAT decisions and observations are products below

1) *Whether holding company has dissolved or not after transfer.*
2) *Whether excess of assets over liabilities is entirely attributable to goodwill.*
3) *To Enquire about transfer of its share holding in the assessee company by the holding company immediately after the transfer.*
4) *Check whether Rs.1,28,02,155 loan waiver of Bank of Ceylon has already been included as income by the assessee in previous year. Also check how much is the interest component in this. This interest has to be an allowable business expense.*

5. Details relating to the above issues were called for from the assessee vide letter dated 20.07.2018, there was no response from the assessee till the date of passing of this order. Therefore, it is amply clear that the assessee has no substantiating evidence for its claimed.

6. Hence the additions made vide order u/s 143(3) r.w.s. 147 dated 30.12.2010 is sustained and the total income is computed as under:

	Income assessed as per Assessment Order dt. 30.12.2010	*9,81,88,359*
	Income assessed as per this order	***9,81,88,359***

7. Credit to prepaid taxes and self assessment tax are given as available in ITD. Interest under section 234A, 234B and 234C are charged as per law. Demand notice u/s 156 is enclosed.

7. Aggrieved by the order of the AO, the assessee preferred an appeal before the ld. CIT(A) – 3, Chennai. Before the ld.CIT(A), the assessee filed a detailed written submission in respect of delay in passing the order giving effect by the AO and hence the order passed is unsustainable in law and facts of the case. The ld.CIT(A), on perusal of the submission and the order of the ITAT, found that the ITAT had given direction to verify and consider both the issues and hence the action of the AO cannot be faulted with since the

assessee had not furnished any evidence in response to the notice issued by the AO and passed an order dated 13.03.2020 confirming the additions. Aggrieved by the order (2nd round) of the ld.CIT(A)-3, Chennai, the assessee preferred an appeal before us.

8. The ld.AR for the assessee provided the complete details of the immovable property transactions as below:

- The land originally belonged to Kothari Industrial Corporation Ltd (KICL) as a part of a textile undertaking. KICL was the holding company holding 100% share of the subsidiary Kothari Orient Industries (Exports) Limited (KOIL). KOIL was established in the year 1988, as can be seen from the certificate of incorporation on change of its name at page **28 of the Book No.1.**

- KICL transferred the entire textile undertaking (including impugned land) a going concern as a slump sale (sec 50B) for a consideration of Rs.9.70 cores. The sale consideration was settled by taking over the liabilities of the undertaking at Rs.8.69 crores and balance being settled by allotment of share with a face value of Rs.100.00 lakhs. (application for allotment is at page 22 and 25 of the paper book 1).

- The undertaking was transferred under a deed dated 05.12.1996 **(at page 18 of the Paper book-2)** to KOIL, the wholly owned subsidiary, subject to approval of the Appropriate authority. The appropriate authority gave its approval on 24.01.1997 **(at page 21)** with the apparent sale consideration of Rs.1.00 crore. Post approval by the appropriate authority, KICL executed a registered transfer deed of undertaking dated 03.02.1997 (as a document NO.1473 of 1997 at Page 5 of the paper book).

- As a part of the registered deed the land and building was also valued by the Stamp Authorities, at a total of Rs.6.07 crores of which the building was valued at Rs.1.50 crores and the land at Rs.4.57 crores **(at page 19 of the paper book No 1).**

- As the transfer on 05.12.1996/03.02.1997 was to a wholly owned subsidiary, in the hands of KICL the transferor, the capital gains on the sale value of assets at Rs.9.70 Crores as reduced by their cost of acquisition, was exempt under section 47(iv) and consequently, immediately after transfer the cost of acquisition of assets in the hands of the Subsidiary KOIL will be the cost of acquisition in the hands of the Holding Company by section 49(1)(iii)(e) of the Act.

- Subsequent to transfer of the undertaking, KICL transferred its shareholding in KOIL to the promoters of the assessee Company on 06.05.1997. With the transfer of these shares KOIL ceased to be 100% subsidiary of KICL. KOIL changed its name to PLR Industries (PLI) with effect from 12.05.1997 **(Page 28 of the paper books).**

- Once KOIL/PLI ceased to be subsidiary of KICL within 7 years of transfer of undertaking, the capital gains on the original transfer **ceases** to be exempt in view of provisions of section 47A and the capital gains originally exempt requires to be charged in the hands of KICL for AY 1997-98.Consequently, as per section 49(3) of the Act, the cost of acquisition of the assets in the hands of KOIL/PLI will be the actual cost of acquisition i.e. cost at which KOIL/PLI acquired the asset at the value as determined by Stamp Authorities and disclosed in the Books.

- Thus, after 06.05.1997 on transfer of shares by KICL, cost of acquisition of Land and building in the hands of KOIL/PLI is Rs.6.07 Crores as valued by the stamp authorities and reflected in the Books of KOIL/PLI **(Page 50 -Fixed Assets Schedule in Paper Book-I).**

- The assessee company PLR Textiles ltd was incorporated on 01.07.1996 and KOIL /PLI amalgamated with PLR Textiles ltd with effect from 01.07.1997. The Order of the High Court confirming the amalgamation on 29.04.1998 with effect from 01.07.1997 is **at page 29 of the paper book.**

- Under section 49(1)(iii)(e) read with section 47(vi) of the Act, the cost of acquisition of assets on amalgamation in the hands of the assessee, is the cost of acquisition of the Transferor Company(KOIL/PLI), which as explained above is Rs.6.07 Crores applying provisions of section 49(3) read with section 47A.

- Thus, the assessee claimed the cost of acquisition of land and building at Rs.6.07 Crores indexed from 1997 to 2005 being the year of sale. It is the contention of the assessee that all details were available the Assessing Officer during the first round of litigation and in fact, the ITAT in its order ITA No.584/chny/2017 dated 26.02.2018 accepted the claim of the assessee.

- Evidence for transfer of shares of KOIL by KICL so that the Former ceased to be a subsidiary and provisions of section 47A applied:

- In the Notes to Balance sheet of PLI for31.03.1997, it has been mentioned that PLI ceased to be a subsidiary of KICL **(Page 8 of Paper Book - 1**).

- In the scheme of amalgamation approved by the High Court it has been mentioned that the promoters of the Transferee company (assessee) purchased the shares of the Transferor company (KOIL / PLI) and took over the said company on 06.12.1996 ***(Page 33* of *the paper book-2).***

- The AO in the first round of litigation, has observed that shares of PLI were held by two Individuals(Page **51 of Paper Book 1)** confirming that KICL ceased to be 100% shareholder of KOIL/PLI. But the AO was confused thinking that KOIL was incorporated in 1998 instead of 1988 **(28 of the Book No.1)** and hence doubted the transfer of the undertaking on 15.12.1996/03.02.1997.

- The CIT(A), in the first round of litigation, in the first round has held that "holding company has transferred all the shareholding in its subsidiary on 12.05.1997 and ceased to be a holding company of KOIL (**Page 67 of PB - 1).**

- The ITAT, in the first round of litigation, at Para 7.2 has held that finding upon verification about the transfer be necessarily required for verification, ignoring that both the AO and the ld.CIT(A) has categorically confirmed transfer of shares by KICL. However, in the next sentence, the ITAT has gone ahead accepting assessee's contention and has not directed any verification.

- Therefore, the transfer of shares of KOIL/PLI by KICL on 06.05.1997 has been accepted by the AO, the CIT(A) and the ITAT in the first round in ITA No.584/Mds/2017 dt.26.02.2018 and requires no further verification. Hence the cost of acquisition of the land in the hands of the assessee can never be the cost of acquisition of the land in the hands of KICL but it will be cost of acquisition of the land in the hands of KOIL/PLI as per the Transfer deed and valued by the Stamp Authorities.

Cost of acquisition of land in the hands of KOIL/PLI

- The value of land and building at the time of transfer on 03.02.1997 has been determined at Rs.6.07 Crores by Stamp Authorities (Page 19 of PB 1) and the same was reflected in the

books of KOIL/PLI as on 31.03.1998 as part of its Fixed Asset schedule (Page 50 of the Paper Book - 1).

- The ld.AR further stated that the ITAT in the first round has held that cost of assets acquired, including land, shall be the same as considered as proper therefor and adopted by the Assessee, finding due reflection in its books.

- This is a clear finding and direction by the ITAT that value as reflected in the books should be taken as cost of acquisition (Page 75 of Paper Book 1). This requires no further investigations.

- Finally, the ITAT has held that transfer by KICL on 03.02.1997 is assessable as capital gains. (Page 78 end of para 3.2). This finding clearly directs the AO to adopt the cost of acquisition of KOIL as per their Books, as exemption u/s.47(iv) is not available.

- The ITAT has also held that tax should be levied on the right person and omission to tax in the hands of one person cannot lead to taxation in another person's hands (End of Para 3.2 at Page 78 of Paper Book 1)

9. The ld.AR further stated that the ITAT has held that value of building which was demolished before sale, cannot be taken as cost of acquisition for sale of land (Page 76-9 lines from the top). Hence loss on demolition of building should be separately computed u/s.50 (if depreciation had been claimed) or under section 45 as demolishment being extinguishment amounts to transfer. Thus, the ITAT had given its decision in the first round in ITA No.584/Mds/2017 that cost of acquisition should be the value shown in the Books of KOIL/PLI. There was no direction for any other investigation.

10. The ld.AR submitted that in the 'giving effect to order' of ITAT, the AO and the CIT(A) has adopted the same cost of acquisition of the holding company and repeated the capital gains as in the original order on the ground that Assessee did not file further clarification. There was no further clarification required as per the order of the ITAT. The ld.AR prayed that the AO may be directed to recompute the capital gains on sale of land adopting the value determined by the Stamp authorities/ reflected in the Books of KOIL/PLI with suitable indexation.

11. The ld.AR in respect of other issue of additions u/s.41(1), the loan was taken from 'Bank of Ceylon' which was waived **as held by**

the Apex Court in the case of Mahindra and Mahindra (404 ITR 1) waiver of a loan is not taxable as income and the same cannot be taxed u/s.41(1). As regards applicability of section 41(1) to interest, the department has not proved whether this amount has been allowed as deduction earlier particularly as in case of interest outstanding amount would not have been allowed earlier in view of the disallowance under the provisions of section 43B regarding non-payment. Hence disallowance u/s.41(1) should be deleted.

12. Per contra the ld. DR relied on the orders of lower authorities.

13. We have heard the rival contentions perused the material available on record and gone through the orders along with paper books submitted.

14. The first issue to be decided is in respect of considering the cost of acquisition against sale of immovable property by the assessee during the A.Y.2005-16. The undisputed fact is that the assessee is the owner of the land and building has sold the same for a sale consideration of Rs.10.00 Crores. Let us understand the flow of transactions to decide the value to be adopted for cost of acquisition for arriving the long-term capital gain in the hands of the assessee for the impugned assessment year:

- KICL transferred textile mill undertaking to its wholly owned subsidiary KOIL on 03.02.1997 for a consideration of Rs.1.00 Crore. (Value of land Rs.4.57 Crores, Building Rs.1.50 Crores and took over other liabilities of Rs.8.69 crores and allotted the Rs.1.00 Crore shares)

- Initially the transfer was exempt from capital gains by virtue of Section 47(iv) of the Act in the hands of KICL.

- Entire shares of KOIL were purchased on 06.05.1997 by promoters of PLR Textiles ltd from KICL. (Subsidiary KOIL changed its name to PLR Industries ltd w.e.f.12.05.1997.)

- Consequently KOIL/PLRI ceased to be wholly owned subsidiary of KICL and hence the transfer on 03.02.1997 is subject to capital gains in the hands of KICL by virtue of Section 47A of the Act.

- By virtue of Section 49(3) of the Act cost of acquisition of land and building in the hands of KOIL/PLRI will be actual cost at which the assets were transferred from KICL i.e. cost of land and building is Rs.6.07 crores.

- KOIL/PLRI amalgamated with PLR Textiles ltd (Assessee) w.e.f. 01.07.1997

- The assessee (PLR Textiles ltd) sold the immovable property in the A.Y.2005-06 for a consideration of Rs.10.00 crores.

- The Cost of acquisition of the asset considered as per the value recorded in the books of accounts of the assessee in accordance with the amalgamation held on 01.07.1997.

15. On perusal of the documents along with the flow of events(supra) we find that the assessee (PLR Textiles ltd) has become the owner of the impugned property by means of amalgamation of PLR Industries limited(formerly KOIL) in consonance with the order of the Hon'ble Madras High court w.e.f. 01.07.1997. These assets were acquired by PLR Industries

ltd.(formerly KOIL) on account of slump sale of business of Textile unit by KICL vide 'transfer deed' dated 03.02.1997. According to the transfer deed, the cost of acquisition of the immovable property of land (13.23 Acres) & buildings shown in the transfer deed (paper book page No.16) was Rs.6,07,55,752/- (Land Rs.4,57,50,700/- and Building Rs.1,50,05,052/-) and the same has been recorded in the books of accounts of the PLR industries limited(KOIL). On amalgamation, the values of assets & liabilities recorded in the books of the transferor company have been incorporated bythe transferee company(assessee) in the books of accounts duly audited as on 31.03.1998.

16. The present dispute is whether the revenue is right in passing the order i.e. the AO and the ld.CIT(A) who have adopted the value of Rs.23,872/- as the cost of acquisition of the impugned asset which has been recorded by the Company KICL (before the transfer of business of textile unit) for the purpose of computing the long term capital gain on the sale of immovable property in the hands of assessee for a consideration of Rs.10.00 Crores. The company KICL had not discharged the taxes on the amounts realized / accepted on account of sale of textile business unit to its subsidiary for Rs.9.70 Crores, during the financial year 1996-97 (i.e. 05.12.1996), after

obtaining approval from the appropriate authority of Income Tax department (24.01.1997), since the slump sale was between the holding and subsidiary company, which was exempt from capital gain tax as per section 47(iv) of the Act. Therefore, in the present factual matrix in our considered opinion the revenue has erred in considering the book value of the transferor company, after the transaction of slump sale with a separate consideration based on the transfer deed took place and accordingly the values of the asset recorded in the transferee company (assessee) as per the section 49(1)(iii)(e) of the Act. However, we note that the transaction of slump sale and consequential gain/income in the hands of transferor (KICL) became taxable by virtue of transferor selling his shareholding in the subsidiary company (transferee) to the promoters of the assessee company on 06.05.1997 (A.Y.1998-99) by ceasing to be the subsidiary as per the provisions of section 47A(1)(ii) of the Act.

17. In light of the withdrawal of exemption under section 47A(1)(ii) of the Act for the transactions of the earlier years of the transferor (KICL) claimed exemption u/s.47(iv) of the Act, and the revenue has failed to tax the transferor in the asst. year 1998-99. The failure of the revenue to tax the income in the hands of the

transferor of the asset, cannot be a reason for denial of cost of acquisition as recorded in the books of the assessee as per the transfer deed and hence the action of the AO and that of the ld.CIT(A) is devoid of merits and unsustainable in law. Therefore, in the facts and circumstances of the case, we are of the considered view that the cost of acquisition of land and building recorded in the books of accounts of the assessee is to be considered for deduction from the sale consideration for computing the capital gain – Long term capital on land and short term capital gain on building as the depreciation has been claimed on building and accordingly we direct the AO to re-compute long term capital gain. Thus, the assessee succeeds in all the grounds raised on this issue.

18. The next issue raised by the assessee is that the waiver of loan from bank of Ceylon is wrongly brought to tax u/s.41(1) of the Act to the tune of Rs.2,39,57,911/-. We note that the AO has not given any finding in his order either on loan outstanding or interest on loan claimed and the same has been confirmed by the ld.CIT(A) in his order. Firstly the waiver of loan outstanding shown in the balance sheet of the assessee cannot be brought to tax u/s.41(1) of the Act as held by the Hon'ble Apex court in CIT Vs. Mahindra and Mahindra Ltd. 404 ITR 1 (SC). Further, the unpaid interest on loan

waived, if any, cannot be termed as expenditure claimed under the Act, since section 43B of the Act prohibits the deduction of such interest unless it is actually paid in the respective assessment year. Hence, in the present facts and circumstances of the case the waiver of amount by the Bank of Ceylon to the tune of Rs.2,39,57,911/- whether it is principal, or interest component cannot be brought to tax u/s.41(1) of the Act. Thus, we direct the AO to delete the same by allowing the related grounds of appeal filed by the assessee.

19. In the result the appeal of the assessee is partly allowed.

Order pronounced in the open court on 27th March, 2025 at Chennai.

Sd/-	Sd/-
(एबी टी वर्की)	(एस.आर.रघुनाथा)
(ABY T VARKEY)	(S.R.RAGHUNATHA)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

चेन्नई/Chennai,
दिनांक/Dated, the 27th March, 2025
JPV
आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT – Coimbatore
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF