आयर अपीलीय न्यायाधिकरण में, हैदराबाद 'बी' बेंच, हैदराबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

श्री मंजूनाथ जी**,** माननीय लेखा सदस्य एवं श्री रवीश सूद**,** माननीय न्यायिक सदस्य
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER
AND
SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER

आयकरअपीलसं**./I.T.A.No.1094/Hyd/2024**
(निर्धारण वर्ष**/ Assessment Year: 2018-19)**

Fusion Lastek Technologies Private Limited, Sanath Nagar, Hyderabad. PAN: AAACF7009D	*Vs.*	Deputy Commissioner of Income tax, Circle-8(1), Hyderabad.
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Sri Pawan Kumar Chakrapani, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Sri D. Praveen, Sr. AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	06.05.2025
घोषणा की तारीख/ Date of Pronouncement	:	22.05.2025

O R D E R

प्रति रवीश सूद**,** जे.एम**./PER RAVISH SOOD, J.M.**

The present appeal filed by the assessee company is directed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (in short "CIT(A)"), dated

23/08/2024, which in turn arises from the order passed by the A.O U/s. 143(3) r.w.s 144B of the Income-tax Act, 1961 (in short 'the Act') dated 27/04/2021 for the assessment year 2018-19.

2. The assessee company has assailed the impugned order on the following grounds of appeal before us:

1. The impugned order of the learned Authorities below insofar as it is against the appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the appellant's case.
2. The appellant denies himself liable to be assessed over and above the total income returned an amount being Rs. 10,78,66,870/- under the facts and circumstances of the case.
3. The learned Authorities below are not justified in disallowing the expenses of an amount being Rs. 74,19,097/-, claimed by the appellant, under the facts and circumstances of the case.
4. The learned Authorities below are not justified in disallowing the amount of Rs. 74,19,097/-, as expenditure wholly and exclusively not in connection with transfer U/s. 48 of the Act, under the facts and circumstances of the case.
5. the appellant denied himself liable to be charged to interest under section 234C of the Income Tax Act, 1961 under the facts and circumstance of the case.
6. The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.
7. In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity.

3. Succinctly stated, the assessee company had filed its return of income for A.Y 2018-19 on 15/10/2018, declaring an income of Rs. 10,78,66,870/-. Subsequently, the case of the assessee company was selected for scrutiny assessment U/s. 143(2) of the Act.

4. During the course of the assessment proceedings, it was, inter alia, observed by the A.O. that the assessee company while computing its income under the head “Long Term Capital Gain” (in short “LTCG") arising from the transaction of transfer of shares, had raised a claim for deduction u/s 48 of the Act of “compensation expenditure” of Rs. 74,19,097/- stated to have been incurred wholly and exclusively in connection with the said transfer transaction. The A.O. called upon the assessee company to furnish details of compensation expenses, viz., nature and description of the commission expenses, the purpose for which commission was paid a/w supporting documents, share subscription agreement, details of shares, and the details regarding the transfer of the subject shares. In reply, it was submitted by the assessee company that it was a Joint Venture (JV) partner with Harsco Corporation (USA) in the formation and running of Harsco India Private Limited (HIPL). Elaborating further, it was stated that as per the shareholder agreement dated 31/08/2009, while Harsco Corporation (USA) was to subscribe to 74% of the equity, the assessee company viz., Fusion Lastek Technologies Private Limited (FLPL) and its group entity i.e., Ganapathy Finance and Investment Company (GFIC) were permitted to hold 26% of the shareholding in HIPL. The assessee company submitted that as the activities of HIPL kept expanding, therefore, to meet the growing financial requirements the assessee company had decided to obtain funds by getting equity

investments from M/s. Oxygen Equipment and Engineering Company Limited (OXEECO) by selling the shares of HIPL. The assessee submitted that an amount of Rs. 9.83 Crores was received by the assessee company as an advance from OXEECO in two installments, viz., (i) on 27/11/2014: Rs. 4.90 Crores; and (ii) 17/01/2015: Rs. 4.93 Crores, for purchase of HIPL shares as per the share purchase agreement dated 21/11/2014 entered into between them.

5. Elaborating on the terms of the share purchase agreement (SPA) dated 21/11/2014 entered into between the assessee company and OXEECO, it was stated that the same, inter alia, provided that in case Harsco Corporation (USA) did not permit the transfer of shares of HIPL by the assessee company to OXEECO due to any reason whatsoever; or OXEECO decided not to purchase the shares from the assessee company for any reason whatsoever, then the assessee company would be obligated to return the amount that was advanced by OXEECO for purchase of shares on or before 31/03/2016 along with compensation that would be mutually agreed upon. The assessee company submitted that as there was a considerable delay in completing the necessary formalities for the sale of HIPL shares by the assessee company to OXEECO, therefore OXEECO had decided not to go ahead with the purchase of HIPL shares. It was submitted by the assessee company that the subject HIPL shares (28,62,866 shares) were transferred by the assessee company to Harsco Corporation

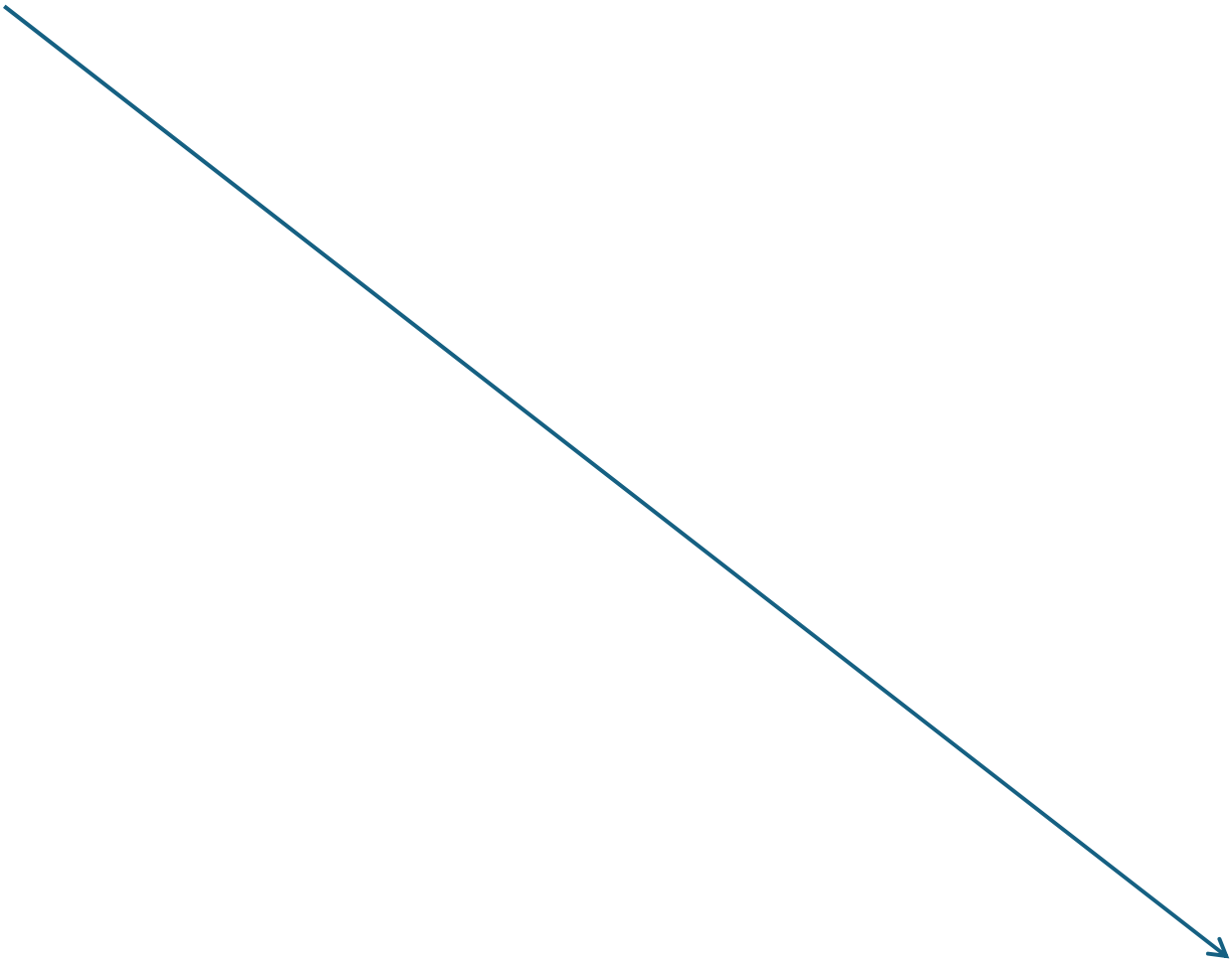
(USA). It was further submitted that as per the "addendum", dated 03/06/2016 to the "Share Purchase Agreement", OXEECO had requested the assessee company to refund the advance that it had paid for the purchase of HIPL shares along with compensation. It was further stated that as per the terms of the "addendum", the assessee company had agreed to pay a compensation of Rs. 175 lacs over and above the amount of Rs.9.83 Crores to OXEECO. Although, the agreed compensation as per the "addendum", dated 03/06/2016 was Rs. 175 lacs, but, the assessee company had during the subject year claimed only Rs. 74,19,097/- as compensation expenditure. Elaborating on the aforesaid aspect, it was submitted by the assessee company that as the amount of Rs. 9.83 Crores (supra) was received by the assessee company from OXEECO for purchase of 67,52,864 shares but it had during the subject year only transferred 28,62,866 shares to Harsco Investments Europe BV (HIEBV), therefore, it had proportionately raised a claim for deduction of compensation expenses of Rs. 74.19 lacs (approx) as an expenditure incurred in connection with subject transfer U/s. 48 of the Act.

6. The A.O. after necessary deliberations did not find favour with the claim of the assessee company for deduction of Rs. 74.19 lacs (supra) as an expenditure incurred in connection with the transfer of shares of HIPL. The A.O. was of the view that to be an allowable expenditure U/s. 48 of the Act, expenditure should have been

incurred towards the cost of acquisition of the asset or the cost of any improvement incurred wholly and exclusively in connection with such transfer. The A.O. referred to the “Share purchase agreement”, dated 21/11/202014 and “addendum” dated 03/06/2016, and held a firm conviction that the same was something which was enforced upon by the parties themselves and was not a legal obligation mandated by any authority. The A.O. was of the view that it was not obligatory on the part of the assessee company to have raised a loan from OXEECO. Elaborating further, the A.O. observed that as raising of advance by the assessee company from OXEECO and selling the shares to Harsco Investments Europe BV were two independent transactions having no connection, therefore, the claim for deduction of compensation expenses of Rs. 74.19 lacs (supra) not being an expenditure incurred wholly and exclusively in connection with the transaction of transfer of shares of HIPL, therefore, the claim of the assessee company for deduction of the same did not merit acceptance. Accordingly, the A.O. based on his aforesaid deliberations declined the claim raised by the assessee company for deduction u/s 48 of the Act of compensation expenses of Rs. 74.19 lacs (supra) and added the same to the LTCG declared in its return of income.

7. Aggrieved, the assessee company carried the matter in appeal before the CIT(A) with but without success.

8. Ostensibly, the CIT(A) was of the view that as the transfer of shares of HIPL by the assessee company to Harsco Investments Europe BV had no connection with the compensation that was paid to OXEECO, therefore, both transactions were exclusive of each other. Accordingly, CIT(A) holding a conviction that the assessee company had failed to establish any connection of the amount of compensation paid to OXEECO and the transfer of shares of HIPL to Harsco Investments Europe BV, therefore, the same was rightly disallowed by the A.O. while computing the income of the assessee company under the head LTCG on the transfer of the subject shares. For the sake of clarity, the observations of the CIT(A) are culled out as under:



8.2. The submission of the appellant and case laws relied upon are perused. The appellant has contended that it is eligible to claim Rs. 74,19,097/- as expense incurred for selling of shares to HIEBV. The appellant has stated that the amount was paid to M/s. Oxygen Equipment and Engineering Company Limited (hereinafter referred to as OXEECO) as a compensation for non-transfer of shares before 31/03/2016 as per the clause in purchase agreement dated 21/11/2024 and addendum dated 03/06/2016.

"For better clarity, Rule 48 (1) (i) of the Act, on which reliance is placed for claiming the disallowance, is quoted herein below :—

'Mode of computation.

48. 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."

On a careful reading of the above provision, it is evident that Section 48 provides that income chargeable under 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 such amounts, viz., expenses, incurred wholly and exclusively in connection with such transfer. The object behind such a provision is mainly for excluding those expenses incurred wholly or exclusively in connection with the transfer of the property. Further on perusal of the submissions, the facts in the present case reveal that the appellant had entered into a purchase agreement with OXEECO and received amount to the tune of Rs. 9,83,00,000/- from OXEECO for purchase of shares of HIPL. However, the appellant has failed to transfer the shares of HIPL to OXEECO and paid Rs. 1,75,00,000/- as compensation, as per the clause mentioned in the purchase agreement. The Assessing Officer had held that since the compensation expense paid to OXEECO for failure to transfer of shares of HIPL by 31.03.2016, is not in connection with the sale of shares to HIEBV, the same would not stand covered under Section 48 (1) of the Act. That being the case, it does not appeal that the explanation relating to deduction claimed u/s. 48(i), as submitted by the appellant, can be termed as expenditure, as the shares has not been transferred to OXEECO as per the agreement.

8.3. Further, **Cost of Transfer** may include brokerage paid for arranging the deal, legal expenses incurred for preparing conveyance and other documents, cost of inserting advertisements in newspapers for sale of the asset and commission paid to auctioneer, etc. **However, it is necessary that the expenditure should have been incurred wholly and exclusively in connection with the transfer. An expenditure incurred primarily for some other purpose but which has helped in effecting the transfer does not qualify for deduction. In the instant case, it is clear that transfer of shares to** HIEBV does not have any connection with the compensation amount paid to OXEECO, as the agreement does not bar the appellant for sale of shares to them. It is apparent that both the transactions are mutually exclusive of each other and the appellant failed to establish no connection between the amount paid to OXECCO and the transfer of shares of HIPL to HIEBV.

8.3.1. The expression "expenditure" used in clause (i) in section 48 should be given the same meaning as used in section 37 of the Act, except that expenditure may be also capital in nature. Expenditure would primarily connote and has the meaning of spending or paying out. In a given case, it may also cover the amount of loss, which has gone out of the appellant's pocket. Settlement of a claim and payment made can amount to expenditure. Again, the words "wholly and exclusively" used in section 48

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are also to be found in section 37 of the Act and relate to the nature and character of the expenditure, which in the case of section 48 must have connection i.e., proximate and perceptible nexus and link with the transfer resulting in income by way of capital gain. In the instant case, even if no compensation is paid to the OXECCO, the transaction would have been carried since the agreement does not specify anything which prevents the appellant from selling of shares of HIPL to any other party. As such, the appellant's claim that the expense incurred is in connection with transfer is not accepted.

8.4. In this regard reliance is placed on the decision of Hon'ble HIGH COURT OF MADRAS in the case of Sri Kanniah Photo Studio Vs. ITO in [2015] 62 taxmann.com 357 (Madras) dated 15/06/2015, wherein it was held that as

> *"On a careful reading of section 48, it is evident that section 48 provides that income chargeable under 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 such amounts, viz., expenses, incurred wholly and exclusively in connection with such transfer. The object behind such a provision is mainly for excluding those expenses incurred wholly or exclusively in connection with the transfer of the property.*
>
> *The facts in the instant case reveal that for further development of the property, loan had been obtained by the appellant/assessee from the bank and for the purpose of clearing the mortgage loan, the appellant/assessee had sold the property and effect the one-time settlement with the bank. The Assessing Officer had held that since the mortgage loan had been long-time after the acquisition of the property, the same would not stand covered under section 48(1). That being the case, it does not appeal that the explanation relating to discharge of the mortgage to the bank, as submitted by the assessee, can be termed as expenditure, as the property had been acquired long-time before taking the mortgage loan from the bank. [Para 11]*
>
> *No reason was found to depart from the finding of this Court in N. Vajrapani Naidu's case (supra). In the instant case, mortgage has been created by the present appellant/assessee and consequent to the sale, the assessee has discharged the mortgage to bank. As the burden had been created for his own benefit by offering the property as security to bank, the amount spent for discharging that burden whether prior to sale, or at the time of sale, by way of one-time settlement to the bank, cannot be regarded as expenditure wholly and exclusively in connection with the transfer. In the instant case, the discharge was in the course of sale. It is found that the payment of the outstanding amount in discharge of mortgage by the vendor, viz., appellant herein, cannot partake the character of an expenditure. It is not a case where the assessee had*

discharged the mortgage created at the time of acquisition of the property by the instant appellant/assessee, to make a distinction otherwise. [Para 13]

The observation made in the case of Gopee Nath Paul & Sons (supra) supports the view of this Court that where the discharge of mortgage created by the assessee for acquiring the property, the same would not be deductible. The abovesaid decision is clearly distinguishable on facts and the observation in said decision further strengthens the view of this Court in regard to the amounts which are to be deductible as expenditure. [Para 14]

In the light of the decisions as quoted above, this Court is persuaded to follow the reasoning of this Court in N. Vajrapani Naidu's case (supra), which is squarely applicable to the facts of the instant case and, therefore, there is no hesitation to accept the view of this Court in the case of N. Vajrapani Naidu's case (supra). [Para 15]"

In the present case to, discharging his liability toward OXECCO does not impact the sale transfer.

8.4.1. Further, the reliance is placed on the decision of Hon'ble HIGH COURT OF DELHI in the case of Smt. Sita Nanda Vs. ITO in **[2001] 119 Taxman 227 (Delhi)** dated 09/07/2001, wherein it was held that as "*The crucial words in section 48(i) are 'in connection with such transfer'. The expression means intrinsically linked with the transfer. Such expenditure has to be wholly and exclusively in connection with the transfer. Even if such expenditure has some nexus with the transfer, it does not qualify for deduction unless it is wholly and exclusively in connection with the transfer. The Tribunal was, therefore, right in its conclusion that the payment of interest was in the shape of damages for late payment of unearned increase. That being so, the interest paid could not be treated as expenditure incurred wholly and exclusively in connection with the transfer.*" In the present case, though the appellant claims that expenditure has some nexus with the transfer, it is evident that the appellant has failed to prove the expense is wholly and exclusively in connection with the transfer of shares to HIEBV. The reliance also placed on the decision of HIGH COURT OF KARNATAKA in the case of Srinivasan Chandira Kumar vs. Addl. CIT in [2020] 121 taxmann.com 306 (Karnataka) dated 01/10/2020, where similar facts have been dealt with.

8.4.2. Further, the case laws relied upon by the appellant are perused and seen that facts of the present case are distinguishable from the facts of the case laws since the appellant has failed to prove the nexus of sale transfer to HIEBV and compensation

paid to OXECCO. It is also not proved that the shares transferred to HIEBV are same shares as the appellant failed to transfer to OXECCO. Moreover, there is no legal obligation on the appellant as per the agreement to not to sell the shares of HIPL to any other party.

8.5. Further, as per the AO's observation the payment made to OXECCO is something which is enforced upon themselves and not a legal obligation by mandated by any authority, it is seen from the purchase agreement that, if the shares of HIPL were not transferred to the OXECCO by 31/03/2016, compensation of Rs. 1,75,00,000/- is to be paid by the appellant. In this regard, the appellant has not provided any valid reasons that prevented him from transfer of HIPL shares to OXECCO. It is clear that the non-transfer of shares to OXECCO is failure of the appellant and the same cannot be attributed to sale of shares to HIEBV. The appellant has stated that the contract is enforced by the law and as such contended that the expense is to be treated as expense incurred wholly and exclusively in connection with the transfer. Further, the appellant has contended that there is no restriction under any law in borrowing money from banks or other person, nor the appellant has violated any law by borrowing the money from OXEECO. The appellant has stated that the amount of Rs. 74,19,097/-, was incurred by the Appellant for the acquisition of the shares (i.e.) capital asset. Further, it was stated that expense incurred by the Appellant for keeping the capital asset in possession and the same is in the nature of any other expenditure that the Appellant might have incurred to maintain the capital asset. As such, the same is included in computing the actual cost of the Appellant of the capital asset. In this regard, attention is drawn to the purchase agreement dated 21/11/2014, which implies that no compensation amount needed to be paid by the appellant if the shares are transferred to OXECCO before 31/03/2016. As such, no expenditure was to be incurred if the appellant obliges the contract. However, in the present case, the appellant had not transferred such shares to OXECCO as mentioned in the purchase agreement, inspite of buying the shares of HIPL. In the absence of any cogent reason for such non-transfer of shares to OXECCO, the amount paid is to be treated as penal in nature for failure to transfer of shares. The appellant was liable to pay compensation if the transfer of shares was made to OXECCO beyond the due date ie., 31/03/2016 but does not stipulate any payment if the shares were sold to other parties. The failure of the appellant cannot be attributed to the expense incurred towards acquisition of capital asset. The information provided by the appellant regarding the treatment of compensation shows in the hands of OXECCO, show that the amount received was shown as capital gain on compensation received for non-allotment of shares and is not shown as interest income/other income. Moreover, it is held that expenses incurred in discharging

contractual obligation to indemnify OXECCO is penal in nature. The appellant also vide para 7.14 of its submission, has stated that the expense incurred is in nature of penalty or compensation for not honouring the clause of the contract. As such, the claim of the same cannot be claimed as eligible deduction as per the Act. The reliance is placed on the decision of Hon'ble Supreme Court of India in [2020] 113 taxmann.com 391 (SC) dated 23/08/2019, wherein it was held that expense which are penal in nature cannot be claimed as eligible deduction.

8.6. In view of the above discussion, and bearing in mind the entirety of the case accompanied by the fact that the appellant has not proved the claims made in the grounds of appeal during the appellate proceedings. Under the circumstances, it is opined that the order of the Assessing Officer does not suffer from any infirmity to warrant interference. Therefore, the additions made therein are sustained. Hence, the **Ground Nos. 5, 6 & 7** of the appeal raised by the appellant are hereby **dismissed.**

9. The assessee company being aggrieved with the order of the CIT(A), has carried the matter in appeal before us.

10. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

11. Controversy involved in the present appeal lies in a narrow compass i.e., allowability of the assessee's claim for deduction of compensation expenses of Rs. 74.19 lacs (supra) that was paid to OXEECO, while computing the LTCG arising on the transfer of the said shares to Harsco Investments Europe BV.

12. As is discernible from the record the assessee company had received an amount of Rs. 9.83 Crores (supra) from OXEECO for the purchase of HIPL shares. On a perusal of the Share Purchase Agreement, dated

21/11/2014, we find that as per Para-5 of the agreement, if in case Harsco Corporation (USA) would not permit the transfer of shares of HIPL as were held by the assessee company to OXEECO due to any reason whatsoever; or OXEECO decided not to purchase the shares of HIPL from the assessee company for any reason whatsoever, then, in either case the assessee company will return the amount advanced by OXEECO for purchase of shares on or before 31/03/2016 along with compensation as would be mutually agreed upon. For the sake of clarity the Para-5 of the aforesaid "agreement" is culled out, as under:

> "5. In the event the "HARSCO Share-holders" not permitting the transfer of FLPL shares to OXEECO due to any reason whatsoever or OXEECO deciding not to purchase the shares from FLPL for any reason whatsoever, FLPL will return the amount advanced by OXEECO to FLPL for share purchase on or before 31st March, 2016 along with compensation to be agreed mutually."

13. Apart from that, we find that as per the "addendum" (to Share Purchase Agreement, dated 21/11/2014), dated 03/06/2016, it transpires that as there was a considerable delay in completing the necessary formalities for sale of HIPL shares by the assessee company to OXEECO, therefore, the latter had decided not to go ahead with purchasing the shares and had requested the assessee company to refund the advance that it had paid alongwith compensation. As can be gathered from the "addendum" (supra), the assessee company and OXEECO had mutually agreed for the compensation of Rs. 175 lakhs i.e., over and above the amount of Rs. 9.83 Crores (supra) that was received by the assessee company. As observed by us herein above, as the assessee company had received the amount of Rs.

9.83 Crores (supra) from OXEECO for the purchase of 67,52,864 shares and had during the subject year transferred 28,62,866 shares only to Harsco Investments Europe BV, therefore, for the said reason it had while computing the LTCG arising on the transfer of shares of HIPL raised a claim for deduction of compensation expenses of Rs. 74.19 lakhs ie., on a proportionate basis.

14. Be that as it may, we shall now advert to issue in hand for which our indulgence has been sought, i.e., as to whether or not the authorities below are justified in declining the claim of the assessee company for deduction u/s 48 of the Act of the compensation expenses of Rs. 74.19 lacs (supra) that it had paid for not transferring the shares of HIPL to OXEECO i.e while computing the LTCG on transfer of the subject shares of HIPL to Harsco Investments Europe BV?

15. Before proceeding any further, we deem it fit to cull out the provisions of section 48 of the Act, which reads as under:

> "Section. 48. 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:"
>
> **(emphasis supplied by us)**

16. Ostensibly, it is only the expenditure incurred wholly and exclusively in connection with the transfer of a capital asset that is allowable as a deduction U/s. 48(i) of the Act. Although the assessee company had claimed to have paid "compensation expenses" of Rs. 74.19 lakhs (supra) for not transferring the shares of HIPL to OXEECO, but, we are unable to comprehend that as to how the said expenditure/ payment could be held to have been incurred wholly and exclusively in connection with the transfer of 28,62,866 shares by the assessee company to Harsco Investments Europe BV. As observed by the A.O, and rightly so, as the advance of Rs. 9.83 Crores (supra) received by the assessee company from OXEECO and the transaction of sale of shares of HIPL to Harsco Investments Europe BV are two independent transactions that are in no way connected, therefore, the compensation paid by the assessee company to OXEECO cannot be brought within the meaning of an *expenditure incurred wholly and exclusively in connection with the transfer of shares of HIPL*. We say so, for the reason that the "Share Purchase Agreement", dated 21/11/2014 did not bar the assessee company from selling its shares of HIPL to any party. Also, we concur with the A.O., that both the "Share Purchase Agreement", dated 21/11/2014 and the "addendum" executed between the assessee company and OXEECO was something that was enforced upon by themselves and not a legal obligation mandated by any authority.

17. We shall now deal with the judicial pronouncements that have been relied upon by the ld. A.R in his attempt to impress upon us that the claim of the assessee company for deduction u/s 48 of the Act of the "compensation expenses" was allowable as a deduction while computing the LTCG on transfer of the HIPL shares, as under:

A. Challapalli Sugars Ltd vs. CIT [1975] 098 ITR 0167 (SC)

18. The issue before the Hon'ble Apex Court was as to whether or not the interest paid on the loan before the commencement of the business for the purchase of machinery, plant etc., represented the element of the actual cost on which depreciation and development rebate was admissible. The Hon'ble Apex Court, after referring to the divergent views of various High Courts, had observed, that the said interest expenditure can be capitalized and included in the actual cost of the machinery and plant.

19. As the issue before us in the present appeal is as to whether or not the compensation expenditure incurred by the assessee company can be allowed as a deduction U/s. 48 while computing the capital gains arising from the transfer of shares i.e., a transaction that was totally independent of the aforesaid raising of loan and the consequent payment of interest, therefore, the same being distinguishable on facts would not carry the case of the assessee company any further.

B. CIT vs. Mithlesh Kumari [1973] 92 ITR 9 (Del.)

20. As in the aforementioned case, the issue was as to whether or not the interest paid by the assessee company on the loan borrowed for the purchase of land would constitute the actual cost of the land to the assessee, which we afraid is not the issue in the present case before us, therefore, the said judicial pronouncement would also not come to the rescue of the assessee company.

C. Addl. Commissioner of Income Tax, A.P vs. K.S. Gupta [1979] 119 ITR 372 (AP):

21. As in the case of CIT vs. Mithilesh Kumari (supra), the issue involved in the captioned appeal was whether or not the interest paid by the assessee on the funds borrowed for the purchase of land would constitute part of the actual cost of land to the assessee for determining the capital gains arising on the transfer of the same, we are afraid that as the same is not the issue which we are seized of in the present appeal, therefore, the said judicial pronouncement being distinguishable on facts would not carry the case of the assessee company any further.

D. CIT vs. K. Raja Gopala Rao [2001] 252 ITR 459 (Madras):

22. The issue before the Hon'ble High Court was that as to whether or not the mortgage expenses incurred by the assessee in connection with the acquisition of the property and the interest payable on the mortgage amount which was utilized as a part of the purchase

consideration would form part of the cost of acquisition of the property for computing the capital gains on transfer of the same. Answering the aforesaid question, the High Court had observed that the cost of acquisition to the assessee was not only the amount that he had paid to the vendors but also the cost of the borrowing made by him for paying the amount to the vendor and executing the sale deed.

(ii) Once again, we find that the aforesaid judicial pronouncement pressed into service by the assessee company is distinguishable on facts. As the compensation expenses paid by the assessee company to OXEECO in the case before us is not connected with the transfer of the shares of HIPL to Harsco Investments Europe BV, therefore, the issue involved in the aforesaid judicial pronouncement relied upon by the assessee company being distinguishable on facts will also not carry its case any further.

E. <u>Naozar Chenoy vs. CIT [1998] 234 ITR 95 (AP):</u>

23. The issue that was, inter alia, for which the indulgence of the Hon'ble High Court was sought was as to whether or not the expenditure incurred by the assessee by making payment to the tenants for vacating the premises, which was the subject matter of the sale transaction was allowable as a deduction while computing the capital gains arising on the sale of the said building. It was held that as the expenditure incurred by the assessee company towards

payment of the amount to the tenants for vacating the premises, which was the subject matter of the sale transaction had a clear nexus with the sale transactions, as without the tenants vacating the premises the building could not have been sold, therefore, the amount so paid to the tenants was held as an allowable expenditure. As observed by the A.O in the present case before us, as the "Share Purchase Agreement" dated 21/11/2014 did not bar the assessee company from selling its shares of HIPL to any third party, therefore, unlike the facts involved in the aforesaid case, wherein the payment to the tenants was indispensably required as otherwise, the property could not have been sold, therefore, the said case law being factually distinguishable would not carry the case of the assessee company any further.

24. We, thus, in terms of our aforesaid deliberations find no infirmity in the view taken by the authorities below, wherein they had rightly concluded that the compensation of Rs. 74.19 lacs (supra) paid by the assessee company to OXEECO had no connection with the transfer of shares of HIPL to Harsco Investments Europe BV, as both the transactions were independent and had no connection and, therefore, uphold the same. The **Grounds of Appeal Nos. 3 & 4** being devoid and bereft of any substance are dismissed.

25. As the ld. AR has not placed any contention qua the **Ground of appeal No.5**, therefore, the same is dismissed as not pressed.

26. The **Grounds of Appeal Nos. 1, 2, 6 and 7** being general are dismissed as not pressed.

27. Resultantly the appeal filed by the assessee company being devoid and bereft of any substance is dismissed.

Order pronounced in the Open Court on 22nd May, 2025.

Sd/- (मंजूनाथ जी) **(MANJUNATHA G.)** **लेखा सदस्य/ACCOUNTANT MEMBER**	Sd/- (श्री रवीश सूद) **(RAVISH SOOD)** **न्यायिक सदस्य/JUDICIAL MEMBER**

Hyderabad, dated 22.05.2025.
*****OKK/SPS***

आदेशकी प्रतिलिपि अग्रेषित/ **Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	Fusion Lastek Technologies Private Limited, C-37 and 38, Industrial Estate, Sanath Nagar, Hyderabad, Telangana-500001.
2.	राजस्व/ The Revenue	:	Deputy Commissioner of Income Tax, Circle-8(1), Signature Towers, Kothaguda, Botanical Gardens, Serilingampally, Hyderabad, Telangana-500084.
3.	The Principal Commissioner of Income Tax, Hyderabad.		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
5.	The Commissioner of Income Tax		
6.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Hyderabad

By Order