

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.485 & 3066/Mds/2014
निर्धारण वर्ष /Assessment Year: 2010-11

The Income Tax Officer,
Ward I(1), 121, Adams Building,
60ty Feet Road, Tirupur.

Vs. M/s.Palladam Cetrangani
Reality Pvt. Ltd.,
No.21, Pollachi Road,
Palladam-641 664.

[PAN: AAACP 4818 Q]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.A.V.Sreekanth, JCIT

प्रत्यर्थी की ओर से /Respondent by

: Mr.T.N.Seetharaman, Adv.

सुनवाई की तारीख/Date of Hearing

: 14.03.2017

घोषणा की तारीख /Date of Pronouncement

: 26.05.2017

आदेश / ORDER

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:

This is an appeal filed by the Revenue against the Order dated 18.11.2013 of Commissioner of Income Tax (Appeals)-II, Chennai, in ITA No.92/13-14 for the AY 2010-11.

2.0 All the grounds of the appeal are related to the addition of Rs.6.00 Crores relating to the relinquishment of advance received by the assessee for sale of the property. During the course of assessment proceedings, the Assessing Officer (in short 'AO') found that there were outstanding amount of sundry creditors in the name of Shri S.P. Velayutham for an amount of Rs.6 Crores. The facts relating to the outstanding amount of ` 6.00 crores in the name of Shri S.P. Velayutham is as under:

"The "Property" measuring 16.13 acres originally belonged to the company Madura Coats Private Limited. One Sri.R. Krishnamurthy of Tirupur entered into agreements dated 08.04.2004 and 20.12.2004 with Madura Coats Pvt Ltd for purchase of the property; the said agreement provided for nominations. After sale by Sri.R. Krishnamurthy of 22 cents to a third party on 06.01.2006, the remaining 15.91 acres of land and buildings were conveyed by Madura Coats Pvt Ltd to the appellant company by sale deed dated 19.05.2008 registered as Document No.2336 of 2008 with the Sub-Registrar, Tullakulam (pursuant to an agreement dated 22.05.2006 between Sri.R.Krishnamurthy and Sri.P.K.Ganeshwar, Promoter of the appellant company, nominating Sri.P.K.Ganeshwar as the person entitled to obtain the Sale Deed). The appellant company obtained possession of the Property and thereby became the owner of the property.

In the meantime, Sri.P.K.Ganeshwar, on behalf and as Promoter of the appellant company, entered into a Agreement for Sale dated 18.02.2008 with one Sri.S.P.Velayutham agreeing to sell the Property for a sale consideration of Rs.86,00,00,000/- receiving as advance Rs.20,00,00,000/-, the balance to be paid on production of the original Patta and at the time of completion of the sale by way of execution and registration of the Sale Deed by the appellant company in favour of the said Sri. S. P.Velayutham.

Thereafter, due to the failure of Sri.S.P.Velayutham to perform the obligations under the agreement dated 18.02.2008 and to pay the balance consideration and other acts of omission and commission. Sri.P.K.Ganeshwar as a Director of the appellant company and Sri.S.P.Velayutham entered into a Memorandum of Understanding dated 28.10.2009 whereby a sum of Rs.13,00,00,000/- was paid by Sri.P.K.Ganeshwar to Sri.S.P.Velayutham as refund of the advance of Rs.20,00,00,000/- adjusting Rs.1 00,00,000/- borrowed by Sri.S.P.Velayutham from Sri.P.K.Ganeshwar, the Agreement dated 18.02.2008 also stood cancelled.

3.0 As on the date of previous year ending 31.03.2010 there was an outstanding amount of Rs.6.00 Cr., received from Shri SP. Velayutham which was received against the sale agreement dated 18.02.2008. From the above facts, it is clear that Shri SP. Velayutham paid a sum of Rs.20.00 Crores for purchase of property and could not finalize the deal and entered into Memorandum of Understanding (in short 'MoU') with Shri P.K.Gnaneswar, Director of the assessee company on behalf of the company for settlement at Rs.14.00 Cr. and to forego the balance amount of Rs.6.00 Cr. As a result the amount of Rs.6.00 Cr., was outstanding in the books of company. The AO examined Shri SP. Velayutham who has replied that he has entered into final settlement deed with the company and settled for Rs.14 Cr. against the net advance of Rs.20.00 Crores and has relinquished the balance amount. The A.O. assessed the amount of Rs.6.00 Crores outstanding in the name of Shri S.P. Velayutham as business income.

4.0 Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) allowed the assessee's appeal holding that the isolated transaction cannot be taken as adventure in the nature of trade and the advance money received and retained by the assessee in respect of company asset falls under the provisions of Sec.51 of Income Tax Act and goes to reduce the cost of the asset.

5.0 Appearing for the Revenue, the Ld.AR argued that the assessee company has received Rs.6.00 Cr., on account of relinquishment of the

liability of Shri S.P. Velayutham, which should be taxed as business income. On the other hand, the Ld.AR relied on the orders of the CIT(A).

6.0 We heard the rival submissions and perused the material placed on record.

There was an outstanding liability in the name of Shri SP. Velayutham for an amount of Rs.6.00 Cr. The liability has arisen due to the final settlement and cancellation of purchase agreement entered into by Shri SP. Velayutham with the assessee company in relation to the property belonging to M/s. Madhura Coats Pvt. Ltd. measuring 15.91 acres. Shri R. Krishna Murthy who was a nominee on behalf of M/s. Madhura Coats Pvt. Ltd., nominated Shri P.K.Ganeswar Promoter for the assessee company as the person entitled to obtain the Sale Deed. The assessee company obtained possession property thereby became the owner of the property. In the mean time company entered into an agreement for sale of property with Shri SP Velayutham for a sale consideration of Rs.86.00 Cr., and received a sum of Rs.20.00 Crores as advance. The property was shown as fixed assets in the books of the assessee company. On final settlement, the balance amount amount foregone by the buyer Shri SP Velayutham was shown as sundry creditors in the balance sheet of the company. Shri SP Velayutham could not meet the financial commitments and ultimately settled his account for a consideration of Rs.14.00 Crores against the advance of Rs.20.00 Crores. The entire transaction is relating to transfer of capital asset but not the business asset. The land in question was not shown as stock in

trade and shown as fixed assets in the balance sheet and the books of accounts. Therefore, the amount of advance relinquished by the creditor in respect of capital asset would be capital receipt squarely covered by Sec.51 of I.T.Act which goes to reduce the cost of the asset and cannot be assessed as business income. This view is supported by ITAT (Mumbai) 'F' Bench in ITO 3(1)(4), Mumbai Vs. Fiesta Properties (P) Ltd. reported in (2016) 73 Taxmann.com 121 relied upon by the assessee. Accordingly, we uphold the order of the Ld.CIT(A) and the appeal of the Revenue is dismissed.

ITA No.3066/Mds/2014 AY 2010-11:

7.0 While computing the income u/s.115JB, the AO has brought to tax the amount of Rs.6.00 crores, outstanding liability in the name of Shri SP Velayutham. The profits u/s.115JB required to be brought to tax as per the profit & loss account prepared by the assessee company as per the companies Act. For the year under consideration, there was no profit admitted by the assessee company as per the Assessment Order. The transaction in question amounting to Rs.6.00 crores was not resulted on account of any business transaction as discussed earlier in orders. We have held that the transaction was covered by Sec.51 of the Act and goes to reduce the cost of capital asset. The assessing officer is not permitted to make any adjustments for computing the profits under Sec.115JB of Income Tax Act unless it is specifically provided for. The amount of Rs.6.00 is not a business transaction relating to Profit and loss account.

For ready reference, we extract the relevant provisions u/s.115JB as under:

[Special provisions for payment of tax by certain companies.

8a 115JB. (1) *Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, [2012], is less than ¹⁰[eighteen and one-half per cent] of its book profit, ¹¹ [such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of [eighteen and one-half per cent]].*

.....

Explanation 16[1]¹.—For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by—

- (a) the amount of income-tax paid or payable, and the provision therefor; or*
- (b) the amounts carried to any reserves, by whatever name called ¹⁷[, other than a reserve specified under section 33AC]; or*
- (c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or*
- (d) the amount by way of provision for losses of subsidiary companies; or*
- (e) the amount or amounts of dividends paid or proposed; or*
- (f) the amount or amounts of expenditure relatable to any income to which ¹⁸[section 10 (other than the provisions contained in clause (38) therefor) or [***] section 11 or section 12 apply; or]*

.....

- [(g) the amount of depreciation,]*
- [(h) the amount of deferred tax and the provision therefor,*
- [(j) the amount or amounts set aside as provision for diminution in the value of any asset,*
- [(j) the amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset,*

.....

if any amount referred to in clauses (a) to (i) is debited to the profit and loss account or if any amount referred to in clause (j) is not credited to the profit and loss account, and as reduced by,—]]]

- [(i) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise than by way of a debit to*

the profit and loss account), if any such amount is credited to the profit and loss account:

Provided that where this section is applicable to an assessee in any previous year, the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation or Explanation below the second proviso to section 11 5JA, as the case may be; or]

[(ii) the amount of income to which any of the provisions of [section 10 (other than the provisions contained in clause (38) thereof)] or ^{26***} section II or section 12 apply, if any such amount is credited to the profit and loss account; or

[(iia) the amount of depreciation debited to the profit and loss account (excluding the depreciation on account of revaluation of assets); or

(iib) the amount withdrawn from revaluation reserve and credited to the profit and loss account, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred to in clause (iia);or]

.....
.....

²⁸[(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation.—For the purposes of this clause,—

(a) the loss shall not include depreciation;

(b) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is nil; or]”

8.0 It is settled law that the AO cannot make any adjustment other than the adjustment specified in the Explanation-1 of Sec.115JB. The adjustment made by the AO is not covered by the Explanation-1 for the purpose of computing the book profits. Therefore, we do not find any infirmity in the order of the Ld.CIT(A) and the grounds raised by the Revenue on this issue is dismissed.

9.0 In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the Open Court on 26th May, 2017, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S.SUNDER SINGH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 26th May, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF