

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI JOGINDER SINGH (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 3623/MUM/2012  
Assessment Year: 2006-07**

M/s. Standard Industries Ltd.  
Vijayalakshmi Mafatlal Centre  
57A, Dr. G. Deshmukh Marg  
Mumbai - 400026

Vs. DCIT 3(3)  
Aayakar Bhavan  
M.K. Marg  
Mumbai - 400020

**PAN No. AABCS8888C**

**(Appellant)**

**(Respondent)**

Assessee by: Shri K.K. Ved, AR  
Revenue by: Shri B.S. Bist, DR

Date of Hearing : 13/02/2017  
Date of pronouncement: 28/04/2017

**ORDER**

**PER N.K. PRADHAN, AM**

This is an appeal filed by the assessee. The relevant assessment year is 2008-09. The appeal is directed against the order of the Commissioner (Appeals) -7, Mumbai and arises out of order u/s 143(3) of the Income Tax Act, 1961 ( the 'Act').

2. The grounds of appeal filed by the assessee read as under:-

Ground No. 1 – Disallowance under section 14A read with rule 8D

- i. The learned CIT(A) erred in disallowing an amount of Rs. 3,08,904/- out of total expenses under section 14A of the Act read with Rule 8D as attributable towards earning of tax exempt income; namely, dividend and interest on UTI tax free bonds. He erred in not appreciating the fact that the appellant company has not incurred any expenditure directly relating to income which does not form part of total income.

- ii. The learned CIT(A) further erred in considering interest paid on cash credit in calculating disallowance under section 14A read with Rule 8D(ii) without appreciating the fact that the same is not attributable to earning of exempt income.

Ground No. 2 – Computation of short term capital gains under section 50(1) of the Act

- i. The learned CIT(A) erred in computing short term capital gains on sale of depreciable assets (forming part of the 'Plant and Machinery' block) under section 50(1) of the Act at Rs. 14,93,20,516/- instead of Rs. 13,48,49,886/- offered for tax in the return of income.
- ii. While computing capital gains under section 50(1) of the Act, the learned CIT(A) erred in not appreciating the concept of 'block of assets' and treating plant and machinery and motor cars and vehicles as separate blocks even though same percentage of depreciation; namely 15% is prescribed for the aforesaid assets.

3. The Ld. Counsel of the assessee submits before the Tribunal that the assessee would not press ground No. 1 of this appeal. Hence ground No. 1 is dismissed as not pressed.

4. We now come to ground No. 2 of this appeal. Briefly stated, the facts are that during the year under consideration, the assessee sold certain assets. Its effect has been reflected in the depreciation (as per I.T. Rules) in the following manner:-

Block of assets	Rate of Dep.	WDV as on 01.04.2007	Initial Depreciation.	WDV after reduction of initial depreciation.	Addition During the year	Total block value	Deduction / sale during the year	Block after deduction
Plant & machinery	60%	1759669		1759669	140346	1900015	32022500	(30122485)
Plant & machinery	15%	296301912	3774886	292527026		292527026	425650765	(133123739)
Motor Car & Vehicles	15%	9785894		9785894	5014384	14800278	333035	14467243

4.1. The Assessing Officer (A.O.) observed that there are assets physically available in the block of motor vehicles @ 15%. Therefore, assessee's claim of short term capital loss is erroneous. The old motor

vehicles were sold during the year. The new motor vehicles worth Rs.50,14,384/- were purchased during the year. The motor vehicles purchased during the year were not sold or disposed off. The assessee continues to have these assets in its possession. Some of the old motor vehicles were sold during the year for a consideration of Rs.3,33,035/-. As the block value remains there, there cannot be any short term capital loss. The A.O. disallowed the claim of set off of short term capital gain on sale of plant and machinery against the WDV of motor car block of asset on the following reasons:-

(i) It is only since A.Y. 2006-07 that the rate of depreciation on motor car and plant & machinery are the same i.e. 15%. Prior to that, the rate of depreciation on the motor car block and plant & machinery block were different (20% & 25% respectively).

(ii) In the tax audit report the assessee has itself treated motor car and plant and machinery as different blocks of assets.

(iii) Once the block of assets is created, the same cannot be merged subsequently.

(iv) Motor car and plant & machinery are separate group of assets. Therefore, capital gains is to be calculated on both the groups separately.

(v) The reliance placed by the assessee on the provisions of section 2(11) is incorrect because this section basically is operative when the assets are first acquired and business starts. The provisions are applicable at the time of creating block of assets. Once, blocks are created, the same cannot be merged subsequently. In this case, assessee has not merged the blocks but has actually claimed set off of short term capital gain of one block against the book value of the other block (i.e. motor car).

4.2. Thus the A.O. calculated short term capital gain on sale of plant and machinery @ 60% at Rs.3,01,22,485/- and on sale of plant and machinery @ 15% at Rs.13,31,23,739/-. He deducted the short term

capital loss on Plant & Machinery (Research & Development @ 15%) amounting to Rs.1,39,25,708/- from Rs.16,32,46,224/- because the same is added in computation of income under the head Profits u/s 41(1). Thus, the AO calculated short term capital gain on sale of assets at Rs.14,93,20,516/-.

5. Aggrieved by the order of the A.O., the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) agreed with the reasons given by the A.O. and dismissed the appeal filed by the assessee.

6. Before us, the Ld. Counsel of the assessee relied on the decision in the case of *CIT vs. Ansal Properties & Infrastructure Ltd.* (2012) 20 taxmann.com 770 (Delhi) and the order of the ITAT 'F' Bench Mumbai in the case of *M/s Filmkraft Productions (I) Ltd. vs. Additional CIT* (ITA No. 7358/Mum/2012).

7. On the other hand, the Ld. D.R. relied on the order passed by the Ld. CIT(A).

8. We have heard the rival submissions and perused the relevant material of record. We begin with the decisions cited before us.

In *Ansal Properties & Infrastructure Ltd.* (supra), during the period relevant to the Assessment Year 1989-90, the respondent-assessee had sold the entire plant and machinery of their paper division and had stopped and ceased to carry on business in their paper division with effect from 2<sup>nd</sup> June, 1987. The Assessing Officer after examining the factual matrix came to the conclusion that the manufacturing activity in the paper division had stopped even before 30<sup>th</sup> April, 1987. The Assessing Officer noticed that furniture and fixture having written down value of Rs.2,39,459/- had been sold for

a sum of Rs.1,50,000/- resulting in a shortfall/loss of Rs.89,459/-. Plant and machinery, including affluent tank, laboratory equipment, tube well etc. had been sold for Rs.2,31,94,888/- resulting in short term capital gain of Rs.1,33,22,068/- as the written down value of the said plant and equipment was Rs.98,72,820/-.

After setting off short term capital loss of Rs.89,459/- on the sale of furniture and fixtures, the short term capital gains was shown as Rs.1,32,32,609/- chargeable u/s 50 of the Act. The Assessing Officer held that Section 50 of the Act is not applicable as the entire division, i.e., plant and machinery belonging to the paper division had been sold. He came to the conclusion that Section 50 including sub-section (2) of the Act was not applicable. Accordingly, the gain was taxable as short term capital gain and the new assets purchased by the assessee would not form part of the block of assets relating to the paper division. In other words, he differentiated between the block of assets belonging to the paper division and the block of assets relating to other division of the assessee.

The Hon'ble High Court held that block of assets for purpose of section 50 would mean assets of all units of assessee having same rate of depreciation and not assets of one division or unit having same rate of depreciation.

In the case of *M/s Filmkart Productions (I) Ltd.* (Supra) the assessee is a film producer, distributor and exhibitor. The assessee is also having income from property, income from other sources and capital gains. While scrutinizing the return of income, the AO noticed that the assessee has sold machinery and has realized positive income of Rs.30,75,231/-. The A.O. noticed that the assessee has adjusted the same against WDV of motor car claiming that both the

block of assets have same rate of depreciation, hence profit on one can be adjusted against the pending WDV of the other. The A.O. held that the block of asset pertaining to plant and machinery cannot be set off against the WDV of motor cars. Since both are different blocks and profits earned in selling an asset in one block can be set off against the WDV in the same block but not against another block. The A.O. disallowed Rs.33,75,231/-. The Tribunal allowed the appeal filed by the assessee on the ground that 'when section 2(11) is read with the appendix of rate of depreciation in the Income Tax Rule, it is found that plant and machinery and motor car have the same rate of depreciation i.e 15%. Thus, in the light of the aforementioned provision, read with the Rules, plant and machinery and motor car fall within the same block of assets.' The Tribunal followed the judgment of the Hon'ble Delhi High Court in *Ansal Properties and Infrastructure* (supra) and allowed the appeal filed by the assessee.

8.1 In the instant case the basic contention of the assessee is that 'as the rate of depreciation on plant and machinery and motor cars are same (i.e. 15%) and both the assets fall under the same class of assets (i.e. plant and machinery) therefore, while calculating the capital gains, the clubbing of the two block of assets is correct.' On the other hand, it is the contention of the A.O. and the Ld CIT(A) that motor car and plant and machinery are separate group of assets and therefore, capital gains is to be calculated on both the groups separately.

Be it stated that a "block of assets" includes assets of all units of the assessee having the same rate of depreciation and not assets of only one unit. Block 5 is depicted below:

Number	Nature of asset	Rate of depreciation
Block 5	Plant machinery - Any plant or machinery (not covered by Block 6, 7, 8, 9, 10, 11 & 12) and motor cars (other than those used in a business of running them on hire) acquired or put to use on or after April 1, 1990	15%

We find that the issue in the instant case is covered by the judgment by the Hon'ble Delhi High Court in *Ansal Properties and Infrastructure Ltd.* (supra) and the order of the Co-ordinate Bench in *M/s Filmkarft Productions (I) Ltd.* (supra). We follow the above decisions and allow the appeal filed by the assessee.

9. In the result, the appeal is allowed.

**Order pronounced in the open Court on 28/04/2017**

Sd/-

(JOGINDER SINGH)  
JUDICIAL MEMBER

Sd/-

(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai:

Dated: 28/04/2017

*Biswajit, Sr. P.S.*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**