

आयकर अपीलीय अधिकरण, "एफ" न्यायपीठ, मुंबई  
IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI  
श्री आर. सी. शर्मा, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष  
BEFORE SHRI R.C.SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1061/M/14  
(निर्धारण वर्ष / Assessment Year: 2010-11)

Four Esquire Electronics Pvt. Ltd. 115 EssaA212, Estate EE Heights, S.V.Road, Opp. Mina International Hotel, Jogeshwari (West) Jogeshwari - 400010	<b>बनाम/</b> Vs.	The Assistant Commissioner of Income Tax, CPC, Banglore
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAKPP6645A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Nishit Gandhi
Department by:	Shri Vikram Batra

सुनवाई की तारीख / Date of Hearing: 13.05.2016  
घोषणा की तारीख /Date of Pronouncement:25.05.2016

आदेश / ORDER

**PER AMARJIT SINGH, JM:**

This is an appeal filed by the assessee against the order dated 27.11.2013 passed by the learned Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the learned "CIT(A)"] relevant to the A.Y.2010-11.

2. The assessment order u/s. 143(1) of the Income Tax Act, 1961 ( in short “the Act”) was passed by the ACIT, CPC, Bangalore. The income tax non statutory form 51 dated 05.06.2012 was issued to the Assessing Officer presently holding the jurisdiction viz. ITO 8(1)(4), Mumbai, for furnishing particulars and report on the points raised therein including desire of the Assessing Officer to be present at the hearing of the appeal. The Assessing Officer did not give any response. In view of this position, it is clear that the Assessing Officer has nothing to report and does not desire to be heard in person. The ACIT(CPC), Bangalore determined the total income of the appellant at loss of Rs.1,49,819/- for the current year, which was to be carried forward and book profit u/s. 115JB of the Act at Rs.19,31,177/- as deemed total income. Thereafter the assessee filed an appeal before learned CIT(A) and the learned CIT(A) dismissed the appeal of the assessee. Feeling aggrieved the assessee has filed the present appeal before us.

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

*"1. The CIT(A) erred in upholding validity of intimation prepared by the Asst. CIT CPC is bad in law. The intimation is contrary to the provisions of law and the facts of your appellant's case. The intimation be quashed.*

*2. The intimation prepared on 16<sup>th</sup> February, 2012 and received by the appellant on 5<sup>th</sup> April, 2012 is bad in law, inter alia on*

*the ground of it being time barred. The intimation therefore be quashed.*

*3. The CIT(A) erred in upholding that the Asst. CIT was right in computing income under section 115JB at Rs.19,31,177/- making the adjustment of Rs.20,57,890/-. The appellant submits that the adjustments made by the Asst. CIT is not permissible under section 143(1). The adjustment be quashed.*

*3.1 The CIT(A) ought to have accepted loss of Rs.1,49,819/- declared by the appellant and the Asst. CIT ought not to have made any adjustment and ought not to have computed income under section 115JB. The appellant submits that capital gain of Rs.20,57,890/- was capital receipt which ought to have excluded by assessing officer. The appellant submits that in view of Schedule VI to the Companies Act, 1956 Rs.20,57,890/- ought to have been excluded while preparing the Profit & Loss account and accordingly loss to Rs.1,49,819/- ought to have been computed. The appellant submits that it be so held now.*

*4.0 The CIT(A) erred in upholding computation of tax at Rs.2,98,367/-. The appellant submits that the assessing officer be directed to compute correct tax under the provisions of the Income Tax Act, 1961.*

*4.1 The CIT(A) erred in upholding levy of interest under provisions of sections 234A, 234B and 234C and charging interest of Rs.95,605/-. The appellant submits that interest has been erroneously charged by the assessing officer. The appellant submits that interest be quashed.*

*4.2 The appellant without prejudice to above submits that interest charged by the Assessing Officer in any event in excessive and interest be reduced substantially. It is submitted that it be so held now.*

**ISSUE NO.1 & 2:-**

4. The assessee has challenged the intimation u/s.143(1) of the Act being time barred because the assessment of the assessee is in connection with the A.Y.2010-11, therefore, Assessing Officer can issue the notice u/s.143(1) within one year but the assessee received the information on 5<sup>th</sup> April 2012 therefore the intimation is time barred in view of the proviso to the section 143(1) of the Act, therefore, the assessment u/s. 143(1) is bad in law. The plea of the revenue is that the date of intimation u/s.143(1) of the Act is 16.02.2012. The copy of order dated 16.02.2012 is on the file which speaks about the finalization of the assessment. There is no iota evidence on the file to which it can be assumed that the assessee received the intimation after the expiry of one year in view of the proviso u/s.143(1) of the Act. Therefore, in the said circumstances the contention raised by the assessee which is not supported by any documents on record, is not liable to be tenable in accordance with law. Hence these grounds are decided in favour of the revenue and against the assessee.

**ISSUE NO:-3:-**

5. Issue no. 3 is in connection with non acceptance of loss to the tune of Rs.1,49,819/- declared by the appellant and in connection with the acceptance to the tune of Rs.20,57,890/- as capital gain which is infact the capital receipt. The assessee filed the return of income declaring total loss of Rs.1,49,819/-. The assessee derived Long Term Capital Gain of Rs.20,57,890/- in respect of transfer of fixed assets held by the appellant for several years. Therefore, the said receipt was in nature of capital and was reflected under the head Reserve and Surplus. The capital was not credited to the Profit & Loss Account. Since the Profit & Loss A/c. is required to be prepared under schedule VI of Company's Act, 1956 and shall contain only income of revenue nature derived from business operations or expenses of revenue nature incurred from the business. The contention of the assessee is that the Profit & Loss Account reflected the loss to the tune of Rs.1,26,713/- therefore, the Assessing Officer ought to have the said loss for computing book profit u/s.115JB of the Act. It is also asserted that the Assessing Officer committed an error of making an adjustment of Rs.20,57,890/- which has been credited to the reserves and surplus, which adjustment in computation of book profit is beyond the scope of provisions of Section 115JB of the Act and also placed reliance upon the order passed by the Income Tax Appellate Tribunal, Mumbai

bench in case [2005] 4 SOT 376 titled as Income Tax Officer Ward 3(1) Vs. Frigsales (India) Ltd. No doubt the representative of the department supported the version of the order passed by the learned CIT(A). In view of the above facts and circumstances it is apparent on record that this issue has no doubt being covered by the order passed in case [2005] 4 SOT 376 titled as Income Tax Officer Ward 3(1) Vs. Frigsales (India) Ltd. It is specifically held that the receipt which is not in nature of income is not required to be taxed u/s.115JA of the Act and income which is also exempted u/s. 50 of the Act would also remain exempted as per provision of subsection 4 of section 115 JA of the Act. The capital gain arising to an assessee u/s.50 of the Act on a depreciable asset is liable to be excluded from calculation on deemed profit u/s. 115JA of the Act. In view of the said circumstances it is apparent that the capital receipt to the tune of Rs.20,57,890/- is not liable to be included while determining the profit and loss account and accordingly the income of the assessee is liable to be assessed in accordance with law. Since there is no other ground challenging the figure of amount in the said assessment therefore, we are of the view that the learned CIT(A) has wrongly upheld the finding of the Assessing Officer on this ground, hence the finding of the learned CIT(A) on the point is hereby ordered to be set aside. Concluding this facts that the capital gain exempted under the provision of the law is not liable to be added to the income of the

assessee. Accordingly this issue is decided in favour of the Assessee and against the Revenue.

**ISSUE NO.4:-**

6. So far as issue no.4 is concerned, the tax of the assessee was computed to the tune of Rs.2,98,367/- and also challenged the levy of interest under provision of sections 234A, 234B and 234C. All these issues are the outcome of the decision on issue no. 3 &4. Therefore, in the said circumstances the finding of the learned CIT(A) on this issue is hereby set aside and the Assessing Officer is directed to decide these issues afresh in the light of the finding made specifically on the issue no.3. Accordingly this issue is decided in favour of the assessee and against the revenue.

7. Accordingly the appeal filed by the **assessee is hereby partly allowed.**

Order pronounced in the open court on 25<sup>th</sup> May, 2016.

Sd/-  
(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-  
(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 25<sup>th</sup> May, 2016

*MP*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**