IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH: MUMBAI

BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND SHRI RAJENDRA, ACCOUNTANT MEMBER

ITA No.2544/Mum/2010
(Assessment year: 2000-01)

Mahindra Engineering & Chemical Products Ltd., Gateway Products Ltd, Gate way Building, Apollo Bunder, Mumbai -400 001 PAN: AAACM 5764A	Vs.	Income-tax Officer 2(2)(2), Aayakar Bhavan, 5th Floor, M.K. Road, Mumbai -400 020
Appellant		Respondent

Appellant by:	Shri H.P. Mahajani
Respondent by:	Shri Pravin Varma
Date of Hearing:	27.03.2012
Date of Pronouncement:	18.04.2012

O R D E R

PER RAJENDRA, AM:

In this case the Appellant has challenged the impugned order of the Ld. CIT (A)-5, Mumbai dated 04.01.2010 for the A.Y. 2000-01. The grounds raised by the Appellant in its appeal are as under:

"On the facts and in the circumstances of the case and in law the Learned CIT (A) erred in upholding the order passed by the learned Assessing Officer applying the provisions of section 50B of the Income tax Act to sale of assets of the M Seal Division of the Appellant.

"On the facts and in the circumstances of the case and in law the Learned CIT (A) ought to have accepted the contention of the Appellant that the said sale was an itemized sale and not a slump sale and therefore provisions of section 50B were not applicable to the facts of the case.

"The learned AO be directed to compute capital gains on such itemized sale of assets of M. Seal Division without applying the provisions of section 50B of the Act."

2.Appellant had filed the ROI on 27.11.2008 and Assessing Officer (AO) passed an order u/s.143(3) of the I.T. Act, 1961 (Act) on 20.02. 2003. Commissioner of Income tax (CIT)

was of the opinion that the order of the AO was erroneous and prejudicial to the interest of the Revenue. So, after issuing a notice to the assesee he passed an order u/s.263 of the Act on 14th February,2005. Appellant preferred an appeal before the ITAT against the said order and the Tribunal upheld the revision-order passed by the CIT. Meanwhile the AO issued a fresh notice u/s.143(2) of the Act in pursuance of the order passed by the CIT u/s.263 of the Act.The Appellant was asked vide said notice dated 15.02.2004 as under:

"….This appears to be a case of slump sale. The Appellant has sold its one whole business, the sealant and adhesive business decision (M-seal division). All the assets of this business seem to have been transferred though individual considerations have been fixed, probably for tax purpose. Effective 1.4.2000, s.50B specifically provides for computation of capital gain in cases of slump sale…."

In response to the notice Appellant filed submissions vide letter dated 22.02.2006 as under:

"…..We would like to state that various transfers involving the Sealant activity did not amount to a 'slump sale' but in fact it was sale of individual tangible and intangible assets of that activity for which separate considerations were individually negotiated at arms length price.For this purpose we would like to reply on the elaborate submissions made both before the CIT (A) and the CIT copies of which are being filed herewith. It may be mentioned that the order of the CIT u/s.263 has been challenged before the Tribunal.

"Without prejudice to our above contention that various transfers involving the Sealant activity did not amount to a 'slump sale', as directed by you we furnish herewith a working of the net worth of the Sealant activity as on date of sale,

"The net worth has been computed in the manner provided for in section 50B of the Act. Principally, we have considered the written down value of depreciable assets computed under section 43(6)(c)(i)(c) and book value of other assets on that date. Since no liabilities were taken over, none have been deducted from the gross value of the above assets. Information regarding depreciable assets has been extracted from the working of IT depreciation for the whole company. We confirm that the enclosed information has been correctly complied in accordance with the requirements of section 50B……".

The AO after considering the replies filed by the Appellant held that it was a case of slum sale. Calculation of Capital gain u/s.50B of the Act is appearing on page 5 of the AO's reproduced here-

Calculation of net worth of sealant and adhesive business transferred

Fixed Asset (Depreciable) as on 1st March 2000	6,62,331
Current Asset (Stock of Raw material0	74,48,998
New worth	81,11,392
Less Consideration received	32,74,48,998
Long Term Capital Gain	31,93,37,669

3.Appeal preferred by the Appellant before the CIT (A) was decided by him on 04.01. 2010.CIT (A) Vide para 5.3 of his order page 7 held as under -

"5.3.In the light of above discussion, observations of the tribunal, case laws cited and facts of the case, it is held that the AO was justified in treating the same of M-Seal division as slump sale as per the provisions of section 50B of the Act.The appellant in the course of the appeal proceedings has not been able to point out any infirmity in the working of capital gains as done in the assessment order.Therefore, the addition mad is upheld."

Being aggrieved by the said order of CIT (A) the Appellant has filed the appeal under consideration.

4.After narrating the facts of the case Authorised Representative (AR) of the Appellant submitted that transaction in question was not a slump sale as held by the AO and the CIT (A),that individual items were given separate price in various agreements, that Pidilite Industries Limited (PIL) was not related to the Appellant in any manner,that transactions were at arm's length, that purpose of Appellant was to sell individual assets that only plant and machinery was sold and that land was not sold.Dealing with the order of the CIT (A) AR submitted that he had not dealt with Sec.2 (42C) of the Act, that the cases relied upon by the CIT(A)were not applicable to the case of the Appellant,that Appellant had specifically mentioned individual price of the assets transferred where as in the cases relied upon by the CIT (A)individual items were not given any price.He further submitted that AO, CIT (A) and the Tribunal have decided the matter without referring to Sec.2(42C).As per the AR the orders of all the three authorities bad in law because of non-consideration of the said section.

The AR in his support referred to following case-laws:

i) 227 ITR 260 (SC)

ii) 227 ITR 278 (SC)

iii) 32 SOT 427

About a dozen case laws were also relied upon by him to support his submissions that it was an itemised and sale and that provisions of section 50 B of the Act were not applicable with regard to the sale proceeds of Trademarks, know-how and copyright.

5.Departmental Representative(DR)submitted that the Appellant had sold entire business and not separate assets,that M-Seal division was a complete division and whole unit was transferred,that not offering all items transferred to PIL was not as per provisions of law, that CIT (u/s.263)and the Tribunal have already decided the issue in the first round of litigation, that basis for valuation of assets had never been revealed by the Appellant at any

stage, that there was tremendous goodwill of the brand M-Seal, that provisions of section 50B were applicable to the facts of the case. He relied upon following case laws-

i) 307 ITR 75

ii) 337 ITR 440

In his rejoinder AR submitted that the Tribunal had not given any finding that provisions of Sec.50B were applicable and that the Appellant had not sold everything to PIL.

6.We have heard both the parties and perused material produced and case laws cited before us.We would like to mention undisputed facts of the case for better understanding of the case.

i.) Appellant sold/transferred/assigned trademarks(notably M-Seal and Mr-Fixit),copyrights, know-how,assets and goodwill pertaining to the Sealants and Adhesives Business. [Director's report to the Shareholders Pg.20 of Paper Book (PB)] w.e.f. 22nd March, 2000.

ii.)PIL paid Rs.32 Crores to the Appellant.Sale consideration amounting to Rs.1.89 Crores , received on account of good will and non compete fee, was offered for tax by the Appellant.

iii.) Appellant and PIL signed nine agreements in this regard. Besides the main agreement of 22nd March,2000,(Agreement for assignment of Trademark together with Goodwill of the business and other matters)three more agreements/ deeds were signed on 22nd and balance five were entered in to on 27.03.2000.Deeds/Agreements, excluding the main agreement, entered in to by both the parties are as under-

a-Deed of assignment of Trademark

b- Deed of transfer of part interest in Trademark

c- Deed of assignment of Goodwill

d- Deed of assignment of Copy Right

e-Non-Compete Agreement

f-Contract Manufacturing Agreement

g-Assets Purchase Agreement

h- Agreement for purchase of Technical knowhow.

iv) Consideration received on sale of Trademarks, know-how, copyright, amounting to Rs. 28 Crores (app.) was not offered for taxation as the Appellant was of the view that same, being capital receipt, was not taxable.

v.) On the basis of the above referred agreements/deeds the Appellant argued that the said transaction cannot be considered a slum sale transaction, whereas as per the A.O. and the CIT (A) transaction in question was a slump sale liable to be taxed as per provisions of Sec.50B of the Act.

7.Section 50B was inserted in the Act by the Finance Act,1999 with effect from April 1, 2000.Prior to this, there were disputes as to (i) whether, transfer of business/an undertaking / division etc.,by way of slump sale constituted transfer of capital asset and (ii)whether, there was any cost of acquisition of such business/ undertaking/ division. After the insertion of section 50B, profits on transfer of such asset are chargeable to tax under the head Capital gains and the cost of acquisition for the purpose of section 48 would be the net worth as computed under the provisions of section 50B.Section reads as under –

Special provision for computation of capital gains in case of slump sale.--(1) Any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place :

Provided that any profits or gains arising from the transfer under the slump sale of any capital asset being one or more undertakings owned and held by an Appellant for not more than thirty-six months immediately preceding the date of its transfer shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

(2) In relation to capital assets being an undertaking or division transferred by way of such sale, the "net worth" of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48.

(3) Every Appellant, in the case of slump sale, shall furnish in the prescribed form along with the return of income, a report of an accountant as defined in the Explanation below sub-section (2) of section 288 indicating the computation of the net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at in accordance with the provisions of this section.

Explanation.--For the purposes of this section, "net worth" means the net worth as defined in clause (ga) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986).

A bare look at the section reveals that (i) it is a special provisions for computing capital gains chargeable to tax in the case of a slump sale and, therefore, would prevail over the general provision in case of any conflict, (ii) the provisions of sections 48 and 49 have been made applicable , subject to some modification, for computing capital gains in the case of a slump sale, (iii) the net worth of the undertaking transferred shall be deemed to be the cost of acquisition and cost of improvement for the purpose of sections 48 and 49 and (iv) the net

worth shall be computed in accordance with the provisions of Explanations 1 and 2.

8. Perusal of Section 2(42C) of the Act will be useful in this context that reads as under -

Slump sale means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.

Explanation 1.--For the purposes of this clause, "undertaking" shall have the meaning assigned to it in Explanation 1 to clause (19AA).

Explanation 2.--For the removal of doubts, it is hereby declared that the determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities.

The definition of slump sale u/s. 2(42C) read with Explanation 1 to section 2(19AA) of the Act, makes it clear that slump sale means transfer of one or more undertakings as a result of sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sale. For the purpose of this section, **undertaking as defined in Explanation 1 to section 2(19AA) includes any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole**, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

9.Combined reading of all the three sections reveal that the Section 50B of Act is the only provision which provides for computation of capital gains in the case of slump sale, though sale of business undertaking as a going concern involves sale of assets forming block of assets on which depreciation is allowed. There is difference in the mode of computation of capital gains for a slump sale under section 50B.As per provisions of section 50 assets have to be first classified as long-term and short-term capital assets and then for the purpose of sections 48 and 49 the net worth has to be computed in terms of Explanation 1 to section 50B.

10. Taking in to consideration the legal framework discussed in paragraph 7 to 9 question to be decided is that whether the sale proceeds of Trademarks, know-how, copyright were also taxable as the proceeds of goodwill and non compete fee and whether the transaction was slump sale or not ?

11. In commercial world transactions have to be seen and considered in totality. The controversy of form versus substance is as old as taxation laws and from the very beginning

substance, rather than form, has been held the deciding factor in such matters. Secondly, treatment given by an Appellant to a transaction in his books of accounts or an agreement entered into by him do not and cannot alter the real character of that transaction. In this background study of agreements/deeds signed by the Appellant and PIL is not only useful but essential.

11.1. Directors in their report to the shareholders stated that in accordance with the approval of the shareholders the company had transferred and assigned the Trademarks (notably M-seal and Mr fixit)Copyright, Know how, Assets and Goodwill pertaining to the Sealants and Adhesives Business being carried out by it to PIL (Pg.2 of the PB).

Schedule XIV of the Auditors' report talks of selling/transferring of business of Sealants and Adhesives products to PIL. It also speaks of a non-compete agreement with PIL with respect to the business. (Pg.13of the PB).

11.2'Agreement for sale and assignment of trademarks together with the goodwill of the business and other Matters' contains details of various things transferred by the appellant to PIL. Pg.35 of the PB states that trademark M Seal was used in respect of epoxy resins compositions. Material of M Seal was being used for cementing cracks, holes, leaks and similar defects in metal articles and for other technical purposes. Mr. Fixit, the other product sold to PIL, was being used for chemical preparations and products used in industry, Adhesives, glues and starch.

As per Pg.36 of the PB as a result of the negotiations between the Appellant on the one hand and PIL on the other business of Sealants and Adhesives was sold 'entirely and exclusively' to PIL.

11.2(i). Here,perusal of various definitions as discussed in the *definitions and interpretations* section of the agreement would be very useful-

-**Assets or plant and machinery** means machinery and equipment more particularly described in the draft asset purchase agreement annexed hereto as Annexure D. (Cl.1. 1(i), Pg.37of the PB).

-**Business of Sealants and Adhesives** means the manufacture, sale, distribution, marketing of Sealants and Adhesives products. (Cl.1.1(iv),Pg.37of the PB).

-**Cable Jointing business** means the business of Cable Jointing insulating compounds and hardeners and Cable Jointing kits, Cable Jointing terminations and components. (Cl.1.1(v), Pg.37of the PB).

-**Components** means all parts and components of Cable Jointing kits and Cable Jointing terminations ... It is expressly agreed between the parties that the term component shall exclude-**a)**Cable Jointing insulating compounds and hardeners,**b)**Sealants and Adhesives

products; and.... (Cl.1.1(v), Pg.37of the PB).

-**Sealants and Adhesives products** means (except for the purpose of clause 9of this agreement) products merchandised for one of the following applications

–**a)**fill voids and cracks while holding two or more surfaces together by adhesion,

b)bond to or more materials to provide a geometrical continuity and will include the products set out in Annexure A hereto; (Cl.1.1 (xii),Pg.37of the PB).

11.2(ii). As per the Agreement to Grant Appellant had agreed to sell/transfer and assign all rights,benefits,titles,interests of any nature in relation thereto business of Sealants and Adhesives . (Cl.2.1,Pg.40 of the PB.)

11.2(iia). As per clause 8.1 of the said agreement(Pg.43of the PB) Appellant agreed to use different trademark(other than M Seal) in respect of Cable Jointing insulating compounds within 30 days from the closing date.It also agreed that on closing date appellant shall apply for amendment of the registration certificate of the trademark M Seal so as to specifically exclude Sealants and Adhesives . The said agreement was about M Seal in class 17 of the fourth schedule to the Trade and Merchandise Marks Rules,1959.

11.2(iii). Clause 9.5 of the agreement (Pg.44-45 of the PB) is also important. As per that clause both the parties agreed that if at a future date Appellant wished to include any sealants and Adhesives products as as a component of the Cable Jointing kits terminations the following provisions would apply-**a)**Appellant would give prior intimation to PIL as when it intends to put Sealants and Adhesives products as a component of the Cable Jointing kits or terminations and shall provide adequate descriptions relating to the users of such product in the context of Cable Jointing business; **b)**and would in respect of such goods, use a trademark which would be distinctively different from and not similar to the mark M seal. Not only this, Appellant's successor in the Cable Jointing business was also barred from manufacture such products if it wished to include any Sealants and Adhesives products as a component of the table Jointing kits or terminations.

11.2(iv). As per clause 12 of the agreement(Pg.46 of the PB) PIL agreed that on a best efforts basis and at its sole discretion it would absorb personnel from Appellant's officers category.For absorbed personnel Appellant agreed to transfer funded Gratuity leave and other retirement benefits to the relevant funds/trusts of PIL.

11.2(v). As per clause 15 of the agreement(Pg.47 of the PB)the parties agreed that PIL would not engage or compete with and in the business of manufacture, sale, distribution, marketing of Cable Jointing kits, Cable Jointing terminations and components and Cable Jointing insulating compounds.On the other hand Appellant agreed that it would not engage or

compete with PIL in the business of Sealants and Adhesives .

11.3. As per the Annexure **A** to the Deed of Assignment of Trademarks (Pg.62of the PB) appellant transferred registered trademark of M Seal and unregistered trademark of Mr Fixit to PIL.Annexure **B** of the deed(Pg.63-64 of the PB)gives details of more than 35 products that were transferred by the appellant to PIL.In Annexure **C** of the deed(Pg.65 of the PB) is list of the items that are covered by the deed. List on that page includes paints,varnishes, preservatives against the rust and deterioration of wood (excluding thinners), book binding materials adhesive materials, artist materials, building materials, water proofing compounds, mortar and plaster.

11.4. Annexure B to non-compete agreement(Pg.114of the PB) gives details of Cable Jointing insulating compounds and hardeners,Cable Jointing kits and terminations and components business. It contains 16 items falling under class 9 of the 4th schedule to the Trade and merchandise Marks rules,1959. It also contains list of 9 items falling under class 7 of the same rules.

11.5. Vide assets purchase agreement Appellant agreed to sell fully and absolutely the assets to PIL on an 'as is where is' basis.Annexure B to the Asset purchase agreement (Pg. 139-40 of the PB)gives details of the machinery (more than 50 items) transferred by the Appellant to PIL.

11.6. As per Clause 2.1 of 'Agreement to purchase Technical know-how' appellant agreed to sell PIL technical know-how '*fully and absolutely'*.

12.A close analysis of the agreement and the deeds entered into by the appellant with PIL (Para11to11.6) leaves no doubt that the business as a whole was sold,-it was not an itemised sale of assets.Directors' report, Auditors' report and pg. 36 of the PB talk about 'sale of business'. Paragraph 11.2(i) defines the business of Sealants and Adhesives and it includes all the processes from manufacturing to marketing.As per the Agreement to Grant Appellant had agreed to sell/transfer and assign all rights, benefits, titles, interests of any nature in relation thereto'business of Sealants and Adhesives'[Para11.2(ii)].The non-compete agreement speaks of 'business of Sealants and Adhesives' and as per that agreement the appellant had agreed not to carry out that business.

12.1. One may say that agreements and deeds should be seen in substance and their form should be ignored to arrive at a definite conclusion. So, now we will consider the 'substance aspect' of the arrangement of the business of Sealants and Adhesives . The term business denotes an abstract thing that includes physical adjuncts like plant and machinery and stock as well as the intangible elements like goodwill,intellectual properties and licences etc.In the

case under consideration Trademarks,Copyrights, goodwill, manufacturing process,plant and machinery were transferred by the Appellant to PIL.As a result of the nine agreemtns/ deeds mentioned earlier(para 6)business of Sealants and Adhesives carried out by the Appellant had gone to PIL irrevocably. In other words not only the manufacturing apparatus of the Appellant but the business, as a whole, had also changed hands for ever.We are aware of the fact that the Appellant was the elite owner of the Trademark M Seal-it was registered on 16th August,1972.(Pg.115of the PB).Appellant had also applied for registration of Trademark 'Mr.Fixit' on June 30th,1998. Trademarks were undeniably assets of the Appellant's business duly registered with the trademark authorities. Trademarks, Plant and Machinery,Technical Knowhow,Copyright along with Goodwill and renunciation of right to compete are part and parcel of the same business.They were integral, indivisible components of a composite unit sold to PIL. In short when all the agreements are read together, it emerges that what was sold by the Appellant to PIL was 'the running business as a going concern' and not a few assets only.

12.2. Authorised representative of the appellant submitted that land was not transferred. We are of the opinion that transferring or non-transferring of a plot of land is not the deciding factor in such transactions. Business of the appellant consisted of plant, machinery, technical know-how, trademark and other intangible and tangible assets including the plot of land.By transferring all the tangible and intangible assets,except the plot of land, the appellant had sold the business as a whole.PIL could start the business of Sealants and Adhesives on the land owned by it and business of PIL was not crippled because of non transferring of land by the Appellant.Had the Trademarks, Copyrights and Technical know-how were not transferred to PIL, it could have been held that business was not transferred.

12.3. Agreements/deeds entered in to by both the parties prove that they are part of the one transaction only. Different colours of a rainbow may appear separate entities prima facie, but in reality rainbow is a single phenomenon. Same is the position of the transaction being considered by us. In these circumstance it is a case of sale of proverbial lock stock and barrels or a sale of going concern. Following facts are noteworthy in this regard -

1.Assets(more than 50 items of plant and machinery) of the appellant were sold to PIL on an 'as is where is' basis.(Para**11.5.**)

2.Technical know-how was sold 'fully and absolutely'.(Para**11.6.**)

3.More than 35 products of Sealants and Adhesives were transferred to PIL(PB Pg.63-64)

4.Registered trademark of M Seal and unregistered trademark of Mr Fixit, related with the business of Sealants and Adhesives were also transferred.(Para **11.3.**).

5.Appellant agreed to use different trademark (other than M Seal) in respect of Cable

joining insulating compounds.(Para **11.2(iia.**).

6.Business of Sealants and Adhesives was sold 'entirely and exclusively' to PIL.(PB Pg.36)

7.PIL agreed that it would not enter in to or compete with the Appellant in the Cable Jointing kits, Cable Jointing terminations and components and Cable Jointing insulating compounds business

Here,we would also like to mention that deciding the appeal filed by the assesee against the 263 order of the CIT the Tribunal vide its order dated 14.09.2006 (ITA No.2944 Mum/2005) held as under –

"The Appellant has sold the entire business to PIL even though the agreements were different. Therefore, in pith and substance, the result is that the Appellant company has sold the entire business M-seal to PIL....." We fully endorse the views expressed by the ITAT in this regard.

13. After selling tangible and intangible assets as well as manufacturing process Appellant was left with business of Cable Jointing kits, Cable Jointing terminations and components and Cable Jointing insulating compounds.Nobody can claim that business of Cable Jointing is same as the business of Sealant and Adhesives. Definition section of the main agreement gives details of both the businesses. As per that section *"Cable Jointing business means the business of Cable Jointing insulating compounds and hardeners and Cable Jointing kits, Cable Jointing terminations and components.*

Components means all parts and components of Cable Jointing kits and Cable Jointing terminations ...It is expressly agreed between the parties that the term component shall exclude-

a)*Cable Jointing insulating compounds and hardeners,*

b)*Sealants and Adhesives products;*

*-Sealants and Adhesives products means(except for the purpose of clause 9of this agreement) products merchandised for one of the following applications –**a)**fill voids and cracks while holding two or more surfaces together by adhesion, **b)**bond to or more materials to provide a geometrical continuity.*"

13.1. In the definition of component Sealants and Adhesives products have been especially excluded. Sealants and Adhesives products by their nature are for filling voids and cracks whereas Cable Jointing are insulating compounds. In the Schedules of Trademark Rules both the items have been included in different schedules and classes. In short, both the businesses are as different as chalk and cheese are.

14. We are of the opinion that from the peculiar facts of the case under consideration, it is clear that it was a slump sale, though the Appellant had treated it as itemised-sale of assets. The Appellant had sold business of Sealants and Adhesives as a whole to PIL.Therefore, the provisions of Sec.50B have been rightly invoked by both the lower authorities.

14.1. We would also like to deal with the other submission of the Appellant. AR submitted that the AO, the CIT(A) and ITAT had not considered provisions of Sec.2(42C) of the Act while deciding the issue.We have perused the Form No.35 and 36 filed by the Appellant before the CIT(A) and the Tribunal. We do not find any mention of Sec.2(42C) of the Act in the Ground of Appeals. Similarly, the Appellant has not discussed the said issue in the covering letter for the Return of Income filed before the AO (Pg. 18 -19 of the PB), in submission before the AO at the time of original assessment (Pg. 29 -31 of the PB),in submission made before the CIT(Pg.183-194 of the PB).As the submission made before the ITAT during earlier hearing have not been submitted, so we are not in a position to comment upon it. If the Appellant had not raised issue regarding Section 2(42C) before any of the authorities how can he expect an adjudication order about it ?We do not hold that orders of the lower authorities or the earlier order of the Tribunal were bad in law.

14.2. We have considered the provisions of Sec.2(42C).No doubt it speaks of slump sale and of assigning of values to the individual assets and liabilities, but explanation 2 to the section clearly mentions that value determined for registration purposes shall not be regarded value of to the assets or liabilities.Word **shall** has been used with a purpose. As per the principles of jurisprudence legislature always uses words keeping in mind a certain goal. We are of the opinion that by rejecting the stamp duty/ registration fee valuation it has indicated that valuation of assets should be done on scientific basis supported by sound principles of accounting. From the case records and the material produced before us we are unable to find any basis for valuation done by the Appellant. The AO had specifically inquired about the basis of valuation adopted by the Appellant, but till date no valuation report has been filed. If the AO and the CIT(A) has ignored the 'agreed valuation as determined by the Appellant and PIL'for purposes of Sec.50B r.w.s.2(42C) no fault can be found with them. We are of the opinion that if the appellant wanted to claim the transaction an itemised sale a proper valuation report, as required by the provisions of Sec.50B(3),should have been filed.

15. We think it will be useful to discuss the case laws relied upon by both the sides. First will like to deal with the cases referred to by the AR-

Herdillia Chemicals Ltd. 221 ITR 194 (Bom) is about Sec.263 r.w.s.80J.As it is cited for general proposition about revisionary powers of the CIT,we feel that it is not at all

applicable to the case under consideration. Order challenged before us is the order of the CIT (A) and not the order passed u/s.263 of the Act.

Artex Manufacturing Co. [(227 ITR 260) (SC)], Electrical Control Gear Mfg. Co.[(227 ITR 270)(SC)] Mugneeram Banglu & Co. [(57 ITR 299)(SC)] PNB Finance Ltd, [(307 ITR 75) (SC)]were also relied upon by the AR. We are of the opinion that the issues decided by the said cases were different from the facts of the present matter. Artex and Electric Control Gear Mfg. Co. matters deal with Sec. 41(2) and both the sections –Sec.41(2) and Sec.50B – operate in different fields.Sec.50B was introduced in the Act with a specific purpose.Had the slump-sale been covered by provisions of Sec.41(2) there was no need for legislature to introduce Sec.50B in the Act. Principles enumerated in them are applicable to Sec.41(2) only. In the case of Mungneeram Bangur question decided by the Hon'ble SC was cost and value of the land transferred by the firm to the company. Conclusion drawn by the Hon'ble SC is reproduced here –

"There is no evidence that any attempt was made to a very wait the land on the date of sale. As the vendors were transferring the concerned to a company, constituted by the offenders themselves, no effort would ordinarily have been made to evaluate the land is on the date of sale. What was put in schedule was the cost price as it stood in the books of the vendors. Even if the sum of Rs. 2,50,000 attributed to goodwill is added to the cost of land, it is nobody's case that this represented the market value of the land… ... In view the sale was the whole concern and no part of a slump price is attributable to the cost of the land."

In the matter of PNB issue to be decided was taxability u/s.45 of the Act.The Hon'ble SC stated that intangible assets like goodwill, value of banking licence could not be assigned value. In the matter under consideration the Appellant has offered a few items of assets for taxation and sale proceeds of others have been claimed as capital receipt. The basis of valuation is not known-as it is claimed to be a "agreed price"

Deciding the issue about slump sale / itemises sale in the matter of Mahindra Sintered Products Ltd. (95 ITD 380) 'J' Bench of ITAT, Mumbai has held as under:

"The approach of the assessee indicates that to settle the sale consideration help of professional was sought and thereafter a final figure was arrived at. Our fourth observation in the sequence is that one M/s. Mehta Padame, registered value was also appointed, though claimed to be the purchaser, who has valued the fair market value of plant and machinery including electric installation. As per the valuation given the fair market value of plant and machinery was determined at Rs.1,64,75,000/-. The assessing officer has adopted this figure for purpose of calculation of short-term capital gain on sale of plant and machinery, the computation already reproduced in above paras. So, undisputedly the appellant was aware

beforehand distinctly about the value of plant and machinery the value of land and building. Hence it is not a case of lump sum price for the business as a whole but the price was fixed in respect of identity feeble assets."

The above mentioned conclusion drawn by the J bench of ITAT Mumbai was arrived at on the basis of terms and conditions of the agreement entered into by the seller and purchaser of the agreement concerned. In the matter under consideration we have already concluded that various agreements and deeds signed by the appellant and PIL clearly prove that it was a slump sale. In the present case issue has to be decided with reference to section 50 B of the Act.

Next case relied upon by the AR is of Harrison Malyalam Ltd,a rubber estate. ITAT in that case found that case was of sale by lock, stock and barrel and that the Appellant company had made 'conscious exclusions' of assets to be transferred. Clearly facts of the case under consideration are not same as the facts of Harrision Malyalam Ltd. In the case under consideration there is no exclusion–everything related with the business, except the plot of land,was sold / transferred.

One more case relied upon by the AR was decided by the Special Bench of ITAT, Mumbai-ITA No.4977/Mum/2009.Issue decided by the Special Bench in case of M/s. Summit Securities Ltd. was whether the liabilities being reflected in the negative net worth of the Appellant has to be added to the sale consideration for determining the capital gains on account of slump sale or not. Special Bench has not decided the issue of slump sale / itemised sale.

16. After analysing the cases relied upon by the AR we are of the opinion that facts of the matter under consideration are different hence they are not applicable to it.

Considering the peculiar facts and circumstances of the present case we are of the view that provisions of Sec.50B r.w.s.2(42C)and Explanation 1 to section 2(19AA) of the Act are applicable to the transaction entered into between the Appellant and PIL. In short, it was a slump sale of a business as a whole. So, upholding the decision of the CIT (A), we dismiss the appeal filed by the Appellant.

Order pronounced in the open court on 18th April, 2012.

Sd/-	**Sd/-**
(D. MANMOHAN)	**(RAJENDRA)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Mumbai, Date: 18th April, 2012

Copy to:-

1) The Appellant.
2) The Respondent.
3) The CIT (A)-5, Mumbai.
4) The CIT-2, Mumbai.
5) The D.R. “B” Bench, Mumbai.

By Order

Asstt. Registrar
I.T.A.T., Mumbai