

आयकर अपीलीय अधिकरण "ई" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

श्री राजेन्द्र सिंह लेखा सदस्य एवं श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAJENDRA SINGH ACCOUNTANT MEMBER AND SHRI AMIT SHUKLA
JUDICIAL MEMBER

आयकर अपील संख्या/ITA NO. 4004/Mum/2011
(निर्धारण वर्ष / Assessment year: - 2006-07

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| M/s Smita Conductors Ltd C/O. Karnavat & Co. 2A Kitab Mahal, 1 st Floor 192 Dr D.N. Road Mumbai;- 400 001. | बनाम / Vs. | The Dy. Commissioner of Income Tax Range -3(3), Mumbai. |
| PAN:- AAACS5379K | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

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| अपीलार्थी की ओर से / Appellant by | Shri Vijay Mehta & Shri Sunil Hirawat |
| प्रत्यर्थी की ओर से / Respondent by | Shri Ashutosh Rajhans |

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| सुनवाई की तारीख / Date of hearing | 17.09.2013 |
| घोषणा की तारीख / Date of pronouncement | 17.09.2013 |

आदेश / ORDER

PER RAJENDRA SINGH, AM

This appeal by the assessee is directed against the order dated 25.3.2011 of CIT(A) for the assessment year 2006-07. The assessee in this appeal has raised disputes on two different grounds which relate to addition to capital gain u/s 50C of the IT Act and addition on account of bad debt written off.

1.1 The assessee subsequently vide letter dated 17.3.2012 also filed an additional ground regarding tax rate to be applied in case of capital gain computed u/s 50 r.w.s 50C of the Income Tax Act. The additional ground being a legal ground which does arise on the basis of facts on record was admitted by the Tribunal for adjudication.

2. We first take up the dispute relating to computation of capital gain u/s 50 r.w.s 50C of the Income Tax Act and the application of tax rate as raised in the additional ground. The assessee during the relevant year had sold a flat at Khar for Rs. 35,00,000/-. Since the flat was a business asset and had been shown as part of the block of assets, the assessee computed the capital gain u/s 50 of the IT Act at Rs. 12,52,111/- after deducting the WDV of block of assets of Rs. 22,47,889/- from the sale price. AO further noted that stamp value of the flats sold was Rs. 5927784/-. AO, therefore, asked the assessee to explain as to why the stamp duty value should not be substituted for the sale consideration while computing the capital gain u/s 50C of the IT Act. The assessee submitted that the provision of section 50C was not applicable. AO however did not accept the contentions raised and observed that provisions of section 50C were also applicable in case of depreciable assets. He, therefore, adopted the stamp duty value of Rs. 5927794/- as the sale consideration and computed the capital gain at Rs. 2427784/- which was treated as short term capital gain u/s 50 of the Income Tax Act.

2.1 The assessee disputed the decision of AO and submitted before CIT(A) that provisions of section 50C were not applicable in case of depreciable assets. CIT(A) however rejected the arguments advanced and confirmed the order of AO treating the stamp duty value as the sale value u/s 50C of the IT Act. Aggrieved by the decision of CIT(A) the assessee is in appeal before

Tribunal in which the additional ground as mentioned earlier has also been raised regarding rate of tax to be applied in case of capital gain computed u/s 50 of the IT Act.

2.2 Before us the learned AR for the assessee fairly conceded that issue whether the provisions of section 50C would apply in case of capital gain computed u/s 50 of the IT Act has been decided by the Special bench of Tribunal in case of United Marine Academy (130 ITD 113) in which it has been held that provisions of section 50C would also apply in case of computation of capita gain from depreciable assets u/s 50 of the IT Act. The learned AR further submitted that the flat sold by the assessee had been held for a long time exceeding more than three years and, therefore, the capital gain though it was required to be computed u/s 50 of the IT Act, it has to be treated as long term capital gain in view of the judgment of Hon'ble High Court of Bombay in case of Ace Builders Ltd. (281 ITR 410) in which it has been held that the factum of deemed short term capital gain u/s 50 of the IT Act was applicable only to computation of capital gain and for the purpose of other provisions of the Act such as 54EC the capital gain had to be treated as long term capital gain if the asset was held for more than three years. The learned AR pointed out that section 50(1) made it quite clear that the capital gain in respect of depreciable asset was deemed as short term capital gain for the purposes of section 48 and 49 of the IT Act which related to computation of capital gain. Therefore, the deeming provision was only limited to the provisions for computation of capital gain. He also referred to the decision of the Mumbai bench of Tribunal in case of Mahindra Freight Carriers Vs. DCIT (139 TTJ 422) in which it has been held that prescriptions of section 50 are to be extended only to stage of computation of capital gain and, therefore, capital gain resulting from transfer of depreciable asset which

was held from more than period of three years would retain the character of long term capital gain for all other provisions of the Act and consequently qualify for set off against brought forward loss of long term capital gain. Reference was also made to another decision of Mumbai bench of Tribunal in case of Prabodh Investment & Trading Company Vs. ITO in (ITA No. 6557/Mum/2008) in which following the judgment of Hon'ble High Court of Bombay in case of Ace Builders P. Ltd, (Supra) the Tribunal held that section 50 created a legal fiction only for a limited purpose i.e. for the purpose of section 48 and 49 and for the purposes of section 54E, the capital has to be treated as long term capital gain. The Tribunal also accepted the arguments of the assessee that in case capital gain is assessed as long term capital gain the rate of tax would apply as provided in section 112 of the IT Act. It was, therefore, argued that in case of assessee, rate of tax applicable to long term capital gain had to be applied as per the provisions of section 112 of the IT Act.

2.3 The learned DR on the other hand placed reliance on the orders of authorities below.

2.4. We have perused the records and considered the matter carefully. The dispute is regarding applicability of provisions of section 50C to the computation of capital gain in case of depreciable asset u/s 50 of the IT Act. As per the provisions of section 50C in case of computation of capital gain from sale of building and land appurtment thereof, the value of the property assessed for stamp duty purpose has to be adopted as the sale consideration. The authorities below have taken the view that provisions of section 50C would also apply in case of computation of capital gain from depreciable assets. The view taken by the authorities below is supported by

the special bench of Tribunal in case of United Marine Academy (130 ITD 113). Therefore, we confirm the order of CIT (A) holding that the stamp duty value assessed by the stamp duty authorities is required to be adopted as sale consideration in case of sale of the flat under reference in this case.

2.5 The assessee has also raised an additional ground that for the purpose of application of tax rate, the capital gain in case of the assessee has to be assessed as long term capital gain as the flat had been held by the assessee for more than three years. It has been argued that provisions of section 50 deeming the capital gain as short term capital gain is only for the purposes of section 48 and 49 which relate to computation of capital gain. The deeming provisions has, therefore, to be restricted only to computation of capital gain and for the purpose of other provisions of the Act, the capital gain has to be treated as long term capital gain. The view canvassed by the learned AR is supported by the judgment of Hon'ble High Court of Bombay in case of Ace Builders P. Ltd. (Supra) in which it has been held that for the purpose of other provisions of the Act such as section 54EC the capital gain has to be treated as long term capital gain, if the asset is held for more than three years. The same view has been taken by the Mumbai bench of Tribunal in case of Manali Investments Vs. Assistant Commissioner of Income Tax (139 TTJ 411) in which it has been held that the prescriptions of section 50 are to be extended only to the stage of computation of capital gain and, therefore, capital gain resulting from transfer of depreciable asset which was held for more than three years would retain the character of long term capital gain for the purpose of all other provisions of the Act. In this case the Ld. AR for the assessee submitted that flat had been held for 15 to 20 years which is supported by the fact that cost of the flat as shown in the balance sheet was only Rs. 1,30,000/-. Therefore, if the flat is held for more than three years the

tax rate has to be applied as provided in section 112 of the IT Act applicable in respect of capital gain arising from transfer of long term capital asset.

2.6 We, therefore, held that, for the purpose of computation of capital gain, the flat has to be treated as short term capital gain u/s 50 of the IT Act, but for the purpose of applicability of tax rate it has to be treated as long term capital gain if held for more than three years. We accordingly direct the AO to compute the capital gain from the sale of flat and apply the appropriate tax rate after necessary verification in the light of observations made in this order.

3. The second dispute is regarding addition of Rs. 59,373/- confirmed by the CIT(A) on account of bad debt. AO in the assessment order observed that the assessee had claimed deduction of Rs.11,08,930/- on account of bad debt. AO also observed that any claim of bad debt cannot be allowed and the assessee has to establish that the debt has actually become bad. Further it was also required to be shown that the debt had been taken in to account in computation of the income of earlier years. The AO, therefore, disallowed the claim to the tune of Rs. 5,94,454/-

3.1 In appeal, CIT(A) observed that in view of the judgment of Hon'ble Supreme Court in case of T.R.F Ltd. (323 ITR 397), the assessee was no longer required to prove that the bad has actually become irrecoverable. The claim had to be allowed if the debt is actually written off and had been taken into account in the computation of income of the earlier years. CIT(A), therefore, allowed the claim of the assessee except to the tune of Rs. 59,373/- as per details given below which according to him had not been taken into account in the computation of income of earlier years.

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| (i) | Deposit with Indian Standard Institute:- | Rs. 26,200/- |
| (ii) | Deposit with Ulhasnagar Municipal Corp:- | Rs. 10,500/- |
| (iii) | Deposit with Central Excise:- | Rs. 2,000/- |
| (iv) | Deposit for Gas Cylinder:- | Rs. 6,00/- |
| (v) | Kamlesh Enterprises Ltd;- | Rs. 20,000/- |
| (vi) | Kalinga Cables & Conduit Co. Ltd;- | Rs. 70/- |
| (vii) | Maharashtra Metal Distributors Ltd:- | <u>Rs. 3/-</u> |
| | | Total Rs. 59,373/- |

Aggrieved by the decision of CIT(A) the assessee is in appeal before Tribunal.

4.2 Before us the learned AR for the assessee submitted that the sum of Rs. 59,373/- which has been disallowed by CIT(A) as bad debt has to be considered as business loss as various amounts had been deposited/advanced to parties in connection with business. These amounts have not been recovered even till now and it was not cost effective to file legal cases for recovery of the amounts. The amounts have been written off in the books of accounts and, therefore, the same had to be allowed as business loss. The learned DR placed reliance on the orders of authorities below.

3.3 We have perused the records and considered the matter carefully. The AO had made addition of Rs. 5,94,454/- on account of bad debt. In appeal CIT(A) has confirmed the addition to the extent of Rs. 59,373/- which consisted of several items of deposits/advances given in connection with business. These amounts though could not be allowed as bad debt have to be considered as business loss. It has been submitted that the deposits/

advances given in connection with business are very old and have not been recovered till now. The assessee had, therefore, written off the amounts in the books of accounts. It is not cost effective to enforce recovery by filing suits. In our view, considering the smallness of amounts and the facts and circumstances of the case, claim has to be allowed as business loss. We, therefore, set aside the order of CIT(A) and allow the claim of the assessee.

4. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 17-9-2013

Sd/-

(Amit Shukla)
Judicial Member

Sd/-

(Rajendra Singh)
Accountant Member

SKS Sr. P.S, Mumbai dated 17.9.2013

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The concerned CIT(A)*
4. *The concerned CIT*
5. *The DR, "E" Bench, ITAT, Mumbai*

By Order

Assistant Registrar
Income Tax Appellate Tribunal,
Mumbai Benches, MUMBAI