

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.384/Coch/2017 : Asst.Year 2013-2014

The Asst.Commissioner of Income-tax, Circle - 1 Non-Corporate Kochi.	Vs.	M/s.Ooty Gate Hotel C/o.Davis Kuriakose Pathadan House Nayathode, Angamaly. PAN : AABFO6868R.
(Appellant)		(Respondent)

Appellant by : Smt.Bindhu A.S.
Respondent by : Sri.K.P.Paulson

Date of Hearing : 01.08.2018	Date of Pronouncement : 14.08.2018
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ORDER

Per Chandra Poojari, AM

This appeal at the instance of the Revenue is directed against the CIT(A)'s order dated 25.05.2017. The relevant assessment year is 2013-2014.

2. The grounds raised read as follows:-

"1. The order of the Commissioner of Income tax (Appeals-II), Kochi, in ITA No.1014NC/Cir-1(1)/CIT(A)-II/15-16 dated 25.05.2017, is opposed to law, facts and circumstances of the case.

2. Whether the learned Commissioner of Income Tax (Appeals) was right in allowing the assessee's appeal holding that the assessee only sold the land and building of the hotel. Separate considerations were assigned and received for the same. Other assets and liabilities were not sold at all.

3. *CIT(A) ought to have upheld the fact that the plant & machinery, good will etc have not been valued and the entire business is transferred as a going concern.*

4. *For these and other grounds that may be urged at the time of hearing, it is requested that the order of the Commissioner of Income Tax (Appeals) may be set aside and that of the Assessing Officer restored."*

3. Briefly stated the facts of the case are as follows:

3.1 The assessee is a firm, engaged in the business of running a hotel at Ooty. During the relevant assessment year, it had sold its hotel premises at Ooty of land and building together as a whole to one M/s.BKR Hotels & Resorts Private Limited for a total consideration of Rs.20 crore, vide sale deed executed on 18.01.2013. The Assessing Officer vide order dated 19.02.2016 passed u/s 143(3) of the I.T.Act, considered the sale as a 'slump sale' and invoked the provisions of section 50B of the I.T.Act. The relevant observation of the Assessing Officer in doing so, reads as follows:-

"Slump Sale – Capital Gain

2.1 *The assessee was engaged in hotel business under the name and style of M/s.Ooty Gate Hotel at Udhagamandalam (popularly known as Ooty), Tamil Nadu. The Assessee firm comprised of three partners namely (1) Shri Sheo Paul (2) Shri Davis Kuriakose and (3) Shri Thankachan. It is seen from records that the assessee had sold its only hotel premises at Ooty of both land & building together as a whole to one M/s.BKR Hotels & Resorts Pvt. Ltd. (PAN No.AADCB0450B] 9 Venkatesan Street, T.Nagar, Chennai 600 017 for a consideration of Rs.20,00,00,000/- vide sale executed on 18.01.2013*

before the Sub-Registrar, Udhagamandalam Joint-1, Nilgiris, Tamil Nadu. On perusal of the sale deed, consideration paid for land found valued at Rs.13,86,52,000/- and Building valued for Rs.6,13,48,000/-. However, on perusal of statement of total income of the Assessee for the year under consideration, it is noticed that the Assessee admitted capital gain on of the hotel premises in the following manner:

Particulars	Amount in Rs.	Amount in Rs.
Sale consideration dated 18.01.2013		
For land	138652000	
For building	50348000	
For business	11000000*	20,00,00,000
Long term capital gain on land portion		
Sale consideration		13,86,52,000
Acquisition details F.Y.2007-2008	17004000	
Purchase cost 17004000x852/551		2,62,92,936
Capital gain LTCC		11,23,59,064
Short term capital gain on Building portion		
Sale consideration		5,03,48,000
Cost of acquisition	31538299	3,15,38,299
Capital gain LTCC		1,88,09,701

2.2 The Assessee valued a sum of Rs.1.10* crore as value for business, out of total consideration of Rs.20 crores and offered the same under the business head. The balance consideration of Rs.19.90 crores was apportioned towards land and building and offered under the head capital gain as Long term capital gain and short term capital gain respectively after claiming indexation for land portion. Later computing the income under the head business and capital gain separately, the Assessee adjusted brought forward loss of Rs.2.66 crores. As a result of the above computation, the assessee's total income found reported at Rs.11,49,71,882/- though the

Assessee had received a hopping sum of Rs.20,00,00,000/- for sale of only income generating assets in hotel business premises. For sale of clarity the Assessee's calculation of total income of Rs.11,49,71,882/- is given as under:-

S. No.	Particulars	Amount (Rs.)	Amount (Rs.)
1.	Net profit before tax as per profit and loss account including LTCG & STCG	15,08,10,187	
2.	Add : In admissible as reported by the Assessee	74,500	
		15,08,84,687	
3.	Less : Income considered separately (relating to LTCG + STCG)	14,04,57,701	
4.	Income chargeable under the head business	1,04,26,986	1,04,26,986
5.	Income from Capital Gain		
5.1	LTCG on land (Refer Table No.1)	11,23,59,064	
5.2	STCG on building (Refer Table No.1)	1,88,09,701	
	Income chargeable under the head "Capital Gain"		13,11,68,765
6	Less : Brought forward losses adjusted		2,66,23,869
7.	Total income as per Assessee's computation		11,49,71,881

2.3 During the course of scrutiny proceedings, the Assessee was asked to justify the valuation of business at a value fo Rs.1,10,00,000/-. In reply, the Assessee's AR stated that the sum of Rs.1.10 crores

is considered as business value because the total business was sold to buyers. As the total business was sold, the AR was asked to clarify the basis for valuation of the business at Rs.1.10 crores. The A R. replied that after considering the running loss and carry towards losses, the value of business was computed at Rs. 1.10 crores to set off the losses. Since, the Assessee sold its only income generating asset as a whole, the Assessee's AR was asked to explain as to why the above transaction should not be treated as slump sale with reference to section 2(42C) read with section 50B of Income Tax Act, 1961. Section 2(42C) which says that unless the context otherwise requires, the term, "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. In reply, the AR. stated that no liabilities have taken over by the buyers and no liability was in existence at the time of sale of the Hotel and hence the formula prescribed under 50B is not applicable in this case.

2.3. The Assessee's A R's explanation is not acceptable. It is fact that the Assessee's only income generating asset has been sold in its entirety, it amounts to slump sale only. It may be noted here that "Slump" means dropping or falling heavily of something. It can be related to an undertaking that has suddenly declined or deteriorated or sunked heavily being operational or financial loss. The intention of the law maker was to introduce the concept of slump sale for those undertakings whose assets & liabilities has lost its value in the market. In these cases, assignment is not done for each asset or liability but as a whole. In the Assessee's case the entire business was sold at a consideration of Rs. 20.00 crores for land, building which includes furniture (s), equipment(s),kitchen equipment(s), telephone-instruments, television, lift, printer, software and computers. Though the land was valued

for stamp duty purposes, the building and other amenities are valued as a whole and without assessing value to each one of the items. As a result of sale of the hotel premises of the Assessee, the business of the Assessee has fallen apart and entire business virtually attained its natural death. Besides, on perusal of balance sheet of the Assessee, there was some liability shown under the current liabilities. Therefore the assessee's argument that there was no liability in existence at the time of sale is not acceptable.

2.4 Keeping the facts in view, it is exposed that the Assessee deliberately reported the sale proceeds under the head business and capital gain in order to avail adjustment of carry forward loss of Rs.2,66,23,869/- only to avoid capital gain on slump sale. Therefore, the assessee's computation is not acceptable and the same is rejected. Accordingly, the capital gain on slump sale i.e. Capital Gain = (Net Consideration) - (Net worth) as per section 2(42C) read with section 50B is computed in the following manner:-

Computation of Net Worth

No Cost of acquisition or Cost of improvement

No actual cost of acquisition or cost of improvement shall be taken for the computation of Net worth.

Net worth shall be taken on the basis of:

- Book values of assets & liabilities
- As on the date of transfer

No Indexation:

No indexation is required since even cost of acquisition or improvement shall not be considered for the computation of Net worth.

Unabsorbed losses and depreciation:

The unabsorbed losses and depreciation with respect to transferred undertaking shall be allowed to carry forward in future years to the transferor.

Taxability :

The net amount of profit out of transfer with respect to slump sale shall be taxable under the head 'Capital Gains'. No income shall be taxable under income from business if the transfer has duly complied with the conditions being a slump sale. Even 'stock in trade' of such undertaking shall not be taxable under income from business.

Taxable Year :

The taxable year shall be the 'effective year', where effective year is the year in which transfer of undertaking has been legally made effective. The taxability shall not be dependent upon the date of actual possession of assets or actual transfer. Effective date shall be taken as the date of agreement or effective date, if any specified therein.

Computation of Capital Gains:

Net Profit shall be, Slump Sale consideration less 'Net Worth' of the undertaking or division.

2.5 Accordingly, the capital gain on slump Sale as per Section 50B of the I.T.Act in the assessee's case is computed as under for the Asst. Year 2013-14 and the same is brought to tax in the hands of the Assessee."

3.2 Aggrieved by the assessment order, the assessee preferred an appeal before the first appellate authority. As regards the issue whether the sale of land and building of hotel is to be treated as 'slump sale' or not? The CIT(A) decided the matter in favour of the assessee. The relevant finding of the CIT(A) in this regards, reads as follows:-

"4.4. I have gone through the assessment order and submission of the appellant. I have also perused the judicial pronouncements relied upon by the assessee. In this case, the appellant firm was running a hotel

at Ooty, Tamil Nadu by the name of Ooty Gate Hotel. During the year under consideration, the firm sold the land and building of the hotel along with its business of hotel for a total consideration of Rs. 20,00,00,000/-. Out of the above, Rs. 13,86,52,000/- pertains to land, Rs. 5,03,48,000/- to building and balance Rs.1,10,00,000/- to the business. The assessee disclosed Long Term Capital Gain on land and Short Term Capital Gain on building while the assessee firm these incomes for taxation, it also set off brought forward losses of Rs. 2.66 crores. Total income was declared at Rs. 11,49,71,882/-.

The Assessing Officer held that selling land and building separately was an The Assessing officer held that selling land and building separately was an instrument or a colourable device to set off carry forward losses. The Assessing officer held it to be a slump sale and re-computed the capital gains and as a result total income was assessed at Rs.15,14,82,700/- and set off of brought forward losses were denied.

The appellant contends that the facts of its case does not qualify it as a slump sale, as "slump sale" is an exclusive definition (using the word "means" instead of "includes"), it can be considered as a slump sale only when both assets and liabilities of undertaking are transferred for a lump sum consideration. In this case, only the land and building have been sold for separate amounts of sale consideration and the assets and liabilities, available in the balance-sheet, have not been sold at all. And therefore this transaction cannot be held to be a slump sale.

To support its contention, the appellant placed reliance on the decision of Hon'ble ITAT, Kolkata, 'B' Bench in ITA No. 1233/Ko1/2008 in DCIT Vs. Tongani Tea Company Ltd, wherein Hon'ble ITAT decided this issue in favour of the assessee and referred to the decision of Hon'ble Jurisdictional IT

AT, Cochin Bench in the case of Accelerated Freeze Drying Co. Ltd. Vs DCIT in ITA No. 611/Coch/08 order dated 15.12.2008. Apart from the above Hon'ble Kolkata ITAT considered many other decisions and finally concluded as under:

"In the instant case, the items sold did not include liabilities. The sale agreement did not include investments and deposits. Accordingly, all the investments, deposits, receivables, stock and such other current assets in the form of financial and other assets remained with the assessee-company along with the liabilities. Only those assets which were enumerated in the Schedules and Annexures were sold to the vendee. Therefore, the instant case was one of the split sale and not a case of slump sale. Accordingly, we are of the view that in the instant case, the assessee had sold tea estate, excluding cash in hand, stock in hand, receivables, finance assets and liabilities. It was not a case of sale by lock, stock and barrel. The assessee had made conscious exclusions. The assets sold by the assessee had been listed out in different schedules and Annexures. The consideration had been specifically assigned to the sale of immovable property by way of Tea Estate. Separate consideration had been assigned to the sale of movable properties including vehicles and properties. Therefore it was not a case of slump sale for a lump sum amount of consideration. Further, as all the assets and liabilities had not been sold as per the agreement, this was not a slump sale as construed in Section 50B of the Act. Accordingly, in view of the above facts of this case and position of law discussed in various case laws of different Hon'ble Courts, we are of the view that the sale of Nagriju Tea Estate was not a slump sale within the meaning of section 2(42C) of the Act read with Section 50B of the Act, and therefore, not even assessable to capital gains. Accordingly, we uphold the order of CIT(A) and the issue of Revenues' appeal

is dismissed.”

I find the facts of the instant case, quite similar to the case discussed above. Only the land and building of the hotel was sold. Separate considerations were assigned and received for the same. Other assets and liabilities were not sold at all. Therefore, this sale can not be termed as a slump sale in terms of provisions of section 50B of the Act. Conclusions drawn by the assessing officer cannot be sustained. This ground of appeal of the appellant is allowed, and addition made on this account is deleted.

5. Ground of appeal No.2 and 3 are consequential in nature as they relate to denial of set-off of brought forward losses as well as current years business loss. This happened because the assessing officer treated the transaction as slump sale. Since, I have allowed the 1st ground of appeal, the assessing officer is directed to allow the brought forward losses and current years business loss, as per the provisions of the Act. For statistical purposes, these grounds of appeal of the appellant are treated as allowed.”

3.3 Aggrieved by the order of the CIT(A), the Revenue has filed the present appeal before us. The learned Departmental Representative, apart from relying on the grounds raised, strongly supported the assessment order. The learned AR, on the other hand, reiterated the submissions made before the Assessing Officer and has also filed a paper book comprising of 88 pages, inter alia, enclosing the case laws relied on, copy of the ledger account of the term loan the assessee had taken from South Indian Bank, Bank statement, copy of sale deed executed on 18.01.2013, etc. The learned AR has also

submitted a brief written submission and the same reads as follows:-

The learned CIT (A) is right in holding in Assessee's favor, that the learned AO erred in law and facts, in considering the sale of land and building of a Hotel as a "slump sale" and in invoking the special provision of Section.50B for computation of its' capital gain, instead of the regular provisions of Section 48 and Section 50 on the following reasons:-

A. The sale of land and hotel building of the appellant will not come within the meaning of "slump sale" defined u/s.2 (42C) since "assets and liabilities" are not transferred, but only "assets" are transferred. In other words, what is transferred is "assets" only and' not "assets and liabilities" as contemplated in the definition of "slump sales". Vide Page 9 Para 3 and Page 15 of the Copy of the Sale Deed executed on 18.01.2013 enclosed. (Page 30 to 46)

a) As per Section 2(42C), "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".(emphasis supplied)

b) As the definition of "slump sale" is an exclusive definition (using the word "means" instead of "includes"), it will be considered as a "slump sale" only when both assets and liabilities of undertaking are transferred for a lump sum consideration.

c) In case of the assessee, huge liabilities existed at the time of sale. These liabilities were not taken over by the purchaser and we have settled all these liabilities out of the sale proceeds of land and building. So, our sale transaction of land and building is not a slump sale within the inclusive definition of section 2(42C) read with section 50B.

d) As per the assessment order, land and building sold for Rs.20,00,00,000/- (land 13,86,52,000 and building 6,13,48,000) is treated as slump sale on the wrong presumption that no liabilities have been taken over by the buyers as no liability was in existence at the time of sale of land and building.

Kindly refer to Page 4, First Para of the Assessment Order where the wrong presumption is made, which reads ".....In reply, the A.R. stated that no liabilities have been taken over by the buyers and no liability was in existence at the time of sale of Hotel.....". In this part, an obvious mistake in the Assessment Order is that the assertion that "as the AR stated that no liability was in existence at the time of sale" is wrong in as much as AR has not stated during the course of hearing that "no liability was in existence at the time of sale".

However, the Assessing Officer has corrected this wrong presumption by recording his finding that there was some liability shown under the current liabilities in the Balance Sheet of the Assessee vide Page 4 Para 2.3 last lines which reads as under "..... Besides, on perusal of balance sheet of the Assessee, there was some liability shown under the current liabilities, Therefore, the Assessee's argument that there was no liability in existence at the time of sale is not acceptable"

In fact, so many liabilities such as South Indian Bank term loan liability for Rs.4,77,63,766/- and overdraft facility for Rs.51,01,347/- and other statutory liabilities were in existence as on the date of sale and that liabilities were closed by the Assessee himself out of the sale proceeds.

Copies of the relevant pages of General ledger, showing SIB Term loan account and SIB OD Account (Copy enclosed – Page 47 to 49) and copies of bank statement showing SIB Term loan account and SIB

OD Account (Copy enclosed – Page 50 to 62) are available to prove the contentions of the assessee.

Details of the said secured bank loan liabilities were submitted in the course of assessment as annexure to the reply letter to notice of the Assessing Officer dated 05.01.2016, as per para 4, which reads as follows:

"

4. Details of Secured and Unsecured Loan :

Loan	Balance as on 31.03.2012	Balance as on 31.03.2013	Net increase / decrease Remarks
A.Secured Loans			
a) SIB Term Loan	4,45,25,704.00	Nil	Loan closed out of sale proceeds
b) SIB OD a/c	50,71,943.00	Nil	
B. Unsecured Loans	Nil	Nil	

"

e) As per the sale deed, the above liabilities are neither sold by the assessee nor purchased by the buyers. The assessee being a partnership firm (with unlimited liability for partners) the liability remain with the partners. Hence in the absence of any evidence, in the sale deed, the contention of the AO that what is sold in Assets and liabilities together, constituting a "slump sale" is against the facts.

B. Further, sale of land and building of the assessee will not come within the meaning of "slump sale" defined u/s.2 (42C) since what is transferred is not an "undertaking" as contemplated in the definition of "slump sale" but only a combination of assets being land and the building therein.

a) As per Section 2(42C), "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"(emphasis supplied).

b) As per the exclusive definition of "slump sale" referred above, it will be considered as a "slump sale" only when one or more "undertakings" are transferred; and as per Explanation 1 to Sec.2(42C) "undertaking" shall have the meaning assigned to it in' Explanation 1 to clause (19AA) of Sec.2.

Explanation 1 to clause (19AA) of Sec.2 reads as follows:

"For the purpose of this clause, "undertaking" shall include 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 "(emphasis supplied).

Hence the word "undertaking" does not include combination of assets (land and building in this case), not constituting a business activity. What we have sold is land and building of a hotel, and as it does not constitute a business activity, it is not an undertaking as defined in Section 2(19AA) Explanation 1. As land and building is not an "undertaking", transfer thereof will not constitute "a slump sale" within the meaning of Section 2(42C). Hence sale of the land and building will not attract Section 50B, the special provision for computation of capital' gain in the case of "slump sale".

C. Further, explanation 1 to Section 50B, the special provision for computation of capital gain in the case of "slump sale" reads as follows:

Explanation 1 - For the purposes of this section, "net worth" shall be the aggregate value of total assets of the undertaking or division as reduced by, the value of liabilities of such undertaking or division as appearing in its books of account (emphasis supplied) ..

a) What is clear from the above is that Section 50B, the provision that provides for computation of capital gain in the case of slump sale, is applicable only when the net worth (Total Assets minus Total Liabilities) of the business undertaking is transferred as a going concern for a lump sum consideration.

b) In other words, 50B deals with the transfer of an undertaking having "net worth" (Assets minus Liabilities) and it does not deal with the transfer of individual assets or group of assets having only value (as against "net worth") as there are no liabilities.

As the transfer of land and building of the assessee does not involve the element of "net worth", section 50B is not applicable the case of the assessee.

D. For erroneously concluding that the transaction is a "slump sale", the Ld. AO ought not have been carried away by the mistake committed by the Assessee in treating a part of the consideration of sale of building as business profit, since it is an error 'ipso facto', an error revealed by verifiable facts itself.

The Ld. AO erred in violating the directions of CBDT as per circular No.14 XL - 35/1955' dated 11.04.1955 (Copy enclosed. Page 63 to 64)

Reliance is placed on San chit Software and Solutions (P) Ltd. Vs. CIT - 8 Writ petition No.7833 of 2012 order dated 7th September, 2012, of the Hon'ble High Court of Bombay. Copy enclosed (Page 65 to 73).

E. Reliance is placed on Deputy Commissioner of Income Tax Vs. Tongani Tea Co. Ltd. (2016) 177 TT J 0334(Kol): (2016) 156 ITD 0188 (Kolkata) (Copy enclosed. Page 74 to 88), where the decision of the Hon'ble Tribunal of Cochin in the case of Harrison Malayalam Ltd. v, Asstt.CIT[2009] 32 SOT 497 (Cochin) is relied. Vide Page 11 Para 16 of Deputy Commissioner of Income Tax Vs. Tongani Tea Co. Ltd.(Supra).

PRAYER

For the above grounds and such other grounds that may be urged at the time of hearing, it is prayed that the appeal of the Department may kindly be dismissed."

4. We have heard the rival submissions and perused the material on record. The solitary issue for our consideration is whether the sale deed executed on 18.01.2013 as regards the land and building of hotel was a `slump sale' governed by the provisions of section 50B of the I.T.Act or not? `Slump sale' is a sale of an undertaking as a going concern. The concept of slump sale is not new for purposes of income-tax law, though a special procedure has been prescribed for computation of income from slump sale under section 50B, with effect from 1.4.2000 i.e. A.Y. 2000-2001. In the case of *Doughty v. Taxes Commissioner [(1927) AC 327 (PC)]*, the English Court had

held that in the case of a slump sale, tax incidence cannot be with reference to any specific items of asset covered by such sale as for example, in respect of stock comprised in such business. The above principle was approved by the Hon'ble Supreme Court in *CIT v. West Coast Chemicals and Industries Ltd.*[(1962) 46 ITR 135 (SC)]. The test for determination of what constitutes a slump sale are laid down in *Artex Manufacturing Co.* [(1997) 227 ITR 260 (SC)] in a case where severality in sale was inferred and in *CIT v. Electric Control Gear Manufacturing Co.*[(1997) 227 ITR 278 (SC)], where the inference was that it was a slump sale. The advantage of slump sale is not only that business profit attributable to stocks cannot be treated as business profits taxable at normal rate, but also, that the profit on sale of depreciable assets covered under section 41(2) liable to tax at normal rate to the extent of depreciation already allowed would avoid tax at normal rate. After section 41(2) was substituted by section 50, incidence of tax as short term capital gains is avoided. All that is necessary is that the surplus on sale of business has to suffer tax as long term capital gains. But after section 50B, the benefit of indexation is not available, so that taxpayer may find severable sale more welcome in certain cases depending on the business exigencies.

4.1 The assessee had sold land and building for a total consideration of Rs.20 crore vide sale deed dated 18.01.2013. Copy of the sale deed is enclosed at page 30 to 42 of the paper book filed by the assessee. In the schedule to the sale deed,

the land and building value was shown at Rs.13,86,52,000 and Rs.6,13,48,000, respectively. However, in the statement of income filed along with return of income the sale consideration of Rs.20 crore was bifurcated in the following manner :-

Land	Rs.13,86,52,000
Building	Rs. 5,03,48,000
Business	Rs. 1,10,00,000

Total	Rs.20,00,00,000
	=====

4.2 It was submitted by the learned Counsel for the assessee that the business income shown at Rs.1.10 crore was a mistake. We are in total agreement with the learned AR that the mistake committed in the return of income cannot be the basis of assessment of non-taxable receipt as income. We also agree with the learned Counsel for the assessee that the Assessing Officer shall not take advantage of the mistakes / ignorance of the assessee while framing the assessment. In this context, the reliance placed by the learned AR on the Board Circular No.014(XL-35) dated 11th April, 1955, is correct.

4.3 In order to understand whether the sale was a slump sale or sale of independent items of assets, necessary we have to examine the intention of the parties to the sale agreement. If the business of the vendor is sold as such as a going concern, it will tantamount to a slump sale. If the sale is a

slump sale, then provisions of section 50B of the I.T.Act will have application. The impugned sale deed executed on 18.01.2013, mentions only the sale of land and building for a total consideration of Rs.20 crore. However, we notice from page 9 of the sale deed, what was sold by vendor includes also license for boarding, lodging, bar etc. The assessee was running a hotel business in Ooty. On sale of the property, the business of the assessee was closed down and the assets of the assessee as whole was transferred to the purchaser, viz., M/s.BKR Hotels and Resorts Private Limited. It is an admitted fact that the purchaser is in hotel business. It is also admitted fact that purchaser, after substantial investment on the property carried on the hotel business in the said premises. It is clear from reading of the entire clause of the sale deed that the assets of the assessee, including the license for boarding, lodging, bar etc. were also transferred to the purchaser along with land and building as a going concern. The entire business was sold for a total consideration of Rs.20 crore consisting of land and building which includes furniture, equipments, kitchen equipments, telephone instruments, television, computer, etc. The building and other amenities are valued as a whole, without assigning value to any item of the assets. As mentioned earlier, consequent to the sale of the hotel premises, the business of assessee was closed down. Therefore, it is clear from the sale deed executed, the intention of the parties was to sell the hotel business as a going concern and the same is nothing but a slump sale.

4.4 The learned AR had contended that it is not a slump sale going by the definition of section 2(42C) of the I.T.Act for the reason that there is no liability transferred to the purchaser as on the date of sale. Admittedly, the assessee was having huge liability prior to the date of sale with M/s. South Indian Bank, Banerji Road. The impugned property was mortgaged to South Indian Bank. The liability incurred by the assessee's firm in normal circumstance had to be cleared by the assessee itself prior to sale as banks are reluctant to transfer the mortgage to the purchaser. Therefore, utilizing advance received from the purchaser, the assessee closed the loan and thereafter the property was sold. As on the date of sale of property, it is evident from the balance sheet that there was liability of only Rs.25,000. The liability of Rs.25,000 was current account liability. In the instant case, as mentioned earlier, it is not merely the land and building alone that was sold, but also the license for lodging, boarding, bar etc. and the entire price of Rs.20 crore was subsumed by mentioning only land and building. On the facts of the given case, it is clear the business of the assessee of running of the hotel has been sold as such by selling the hotel premises to a private limited company, who is also in the business of running of hotel. Therefore, we have no hesitation to hold that the provisions of section 50B of the I.T.Act has application to the facts of the case.

4.5 The Kolkata Bench of the Tribunal in the case of *DCIT v. Tongani Tea Co. Ltd.* [(2016) 156 ITD 0188 (Kol.)] relied on by the learned AR is distinguishable on facts. In that case, it is clear from the facts enumerated that there was no intangible assets like licenses, quotas, brand name etc. associated with the business that was transferred. It is also clear in that case that there was a valuation report, wherein the value for fixed assets of the Tea Estate was apportioned by assigning the value of each of the assets such as furniture and fixture, vehicles, plant and machinery etc. Moreover, the order of the Cochin Bench of the Tribunal relied on by the Kolkata Bench of the Tribunal (*Accelerated Freeze Drying Co. Ltd. DCIT [ITA No.611/Coch/2008* order dated 15th December, 2008) was reversed by the Hon'ble High Court in its judgment reported in 337 ITR 440.

4.6 For the aforesaid reasons, we are of the view that the sale of hotel premises by the assessee was a slump sale, liable to the taxed u/s 50B of the I.T.Act. It is ordered accordingly.

5. In the result, the appeal filed by the Revenue is allowed.

Order pronounced on this 14th day of August, 2018.

Sd/-
(George George K)
JUDICIAL MEMBER

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Cochin ; Dated : 14th August, 2018.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT (Appeals)-II, Kochi.
4. The CIT, Kochi.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin