

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: B: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.5512/Del/2019
Assessment Year: 2015-16

M/s. Sir Shadilal Enterprises Limited, 4-A, Hansalaya Building, 15, Barakhamba Road, New Delhi 110001. PAN AAECs 3636 D	vs.	The DCIT Circle 23(2), New Delhi
(Appellant)		(Respondent)

For Assessee :	Shri I.P. Bansal, Adv. Shri Vivek Bansal, Adv.
For Revenue :	Shri T. James Singson, CIT(DR)

Date of Hearing :	19.07.2023
Date of Pronouncement :	12.09.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(A)-8 New Delhi dated 22.04.2019 for AY 2015-16.

2. The grounds raised by the assessee are as under:-

1. The learned CIT (A) erred in law and on facts in dismissing the appeal against the order of assessing officer as adequate opportunity of being heard was not provided to the appellant. The Order passed by the learned CIT(A) is arbitrary, bad in law and in violation of rudimentary principles of contemporary jurisprudence. Thus, order of the learned CIT (A), passed merely on surmises and conjecture should be reversed.

2. The learned CIT (A) erred in law and on facts in dismissing the appeal against the order of assessing officer and confirming the addition of Rs. 27,09,95,865/- in long term capital gain of slump sale of unit of Sugar Mill on highly presumption basis. From the ledger account of the other party filed on record by the appellant, the authorities below could not appreciate the transactions mentioned in ledger account and simply on the basis of credit entries appeared therein, addition of long term capital gain on slump sale was made. Even authorities below could not appreciate that the short term capital gain of Rs. 12,73,798/- on mutual funds, were not belongs to unit under consideration for

slump sale purpose and included in above additions. Thus, order of the learned CIT (A), passed merely on surmises and conjecture should be reversed.

3. The Id. counsel of assessee submitted that The learned CIT (A) erred in law and on facts in dismissing the appeal against the order of assessing officer as adequate opportunity of being heard was not provided to the appellant. The Order passed by the learned CIT(A) is arbitrary, bad in law and in violation of rudimentary principles of contemporary jurisprudence. Thus, order of the learned CIT (A), passed merely on surmises and conjecture should be reversed. He vehemently submitted that The learned CIT (A) erred in law and on facts in dismissing the appeal against the order of assessing officer and confirming the addition of Rs. 27,09,95,865/- in long term capital gain of slump sale of unit of Sugar Mill on highly presumption basis. From the ledger account of the other party filed on record by the appellant, the authorities below could not appreciate the transactions mentioned in ledger account and simply on the basis of credit entries appeared therein, addition of long term capital gain on slump sale was made. Even authorities below could not appreciate that the short term capital gain of Rs. 12,73,798/- on mutual funds, were not belongs to unit under consideration for slump sale purpose and included in above additions. Thus, order of the learned CIT (A), passed merely on surmises and conjecture should be reversed. The Id. counsel submitted that since the Assessing Officer himself noted that the assessee has already declared capital gain of Rs. 22,09,26,536/- in its return of income and no further addition as made by the Assessing Officer was required hence the impugned addition may kindly be deleted.

4. Replying to the above, the Id. CIT(DR) drew our attention towards relevant paras at pages 7 to 19 of assessment order and submitted that the Assessing Officer issued notice u/s. 133(6) of the Act to the purchaser company namely M/s. Superior Fouts Pvt. Ltd. but the said notice never complied by the purchaser company. The Id. CIT(DR) further contended that the assessee responded the notices issued by the Assessing Officer and the Assessing Officer found that in the conveyance deed executed by the assessee in favour of assessee company, as reproduced by the Assessing Officer in the assessment order clearly reveals that the assessee itself has shown sale consideration of Rs. 75.50 crores and not Rs. 70 crores has claimed by the assessee. The Id. CIT(DR)

also drawing out attention towards pages 80 to 170 of assessee paper book submitted that the sale consideration of Rs. 70.50 crores was the value of net current assets on the transfer date as was determined in accordance with clause 6.3 of the said agreement dated 14.01.2014 which is also gets support with the amount mentioned in clause 4 at page 14 as purchase price and payment terms. The Id. CIT(DR) vehemently pointed out that the Assessing Officer also found that page 66 & 67 of submission dated 11.09.2017. ledger entry dated 30.09.20214 with number 90243 of Rs. 49,19,22,400.94 reads as ' By amount of profit on sale of UNN Sugar Unit.' Therefore the Assessing Officer was right in making addition to the capital gain declared by the assessee and Id. CIT(A) was also correct in upholding that same.

5. On careful consideration of above submissions, first of all, from the relevant part of assessment order we note that the Assessing Officer made impugned addition in the hands of assessee with following observations and findings:-

Page No. 7 of annual report published by the assessee scanned above clearly reinforces the fact that the sale consideration received by the assessee was Rs. 75.5 Crore. Various documents like sale deed, ledger of party, conveyance deed etc., submitted by the assessee and scanned above clearly point together at an irrefutable conclusion that the sale consideration received was 75.5 Crore and not Rs. 70.0 Crore as claimed by the assessee. The facts emerging out of study of all the documents 41-23 submitted by the assessed during assessment proceedings can be summarised as under:

<i>SI No.</i>	<i>Name of the Document</i>	<i>Sale consideration (Rs.)</i>	<i>Remarks</i>
<i>1.</i>	<i>FORM 3CEA</i>	<i>70,00,00,000</i>	
<i>2.</i>	<i>DEFINITIVE AGREEMENT dated 14.01.2014</i>	<i>75.5 Cr. and Value of Net Current Assets on the transfer date as determined in accordance with clause 6.3 of the same.</i>	<i>Mentioned at page 14 Clause 4. 'PURCHASE PRICE & PAYMEMNT TERMS'</i>
<i>3.</i>	<i>DETAILS OF PARTIES MORE THAN Rs 5 LAKH FOR F.Y. 2014-15</i>	<i>1553055105.94</i>	<i>Nature of transaction mentioned as 'Sale of UNN Sugar Unit</i>
<i>4.</i>	<i>SUB LEDGER SUPPLIER CONTROL G.L : 5201 SUNDRY CREDIOTRS</i>	<i>155.055105.94</i>	<i>Page 66 & 67 of Submission dated 11.09.2017.</i>

			ledger entry dated 30.09.2014 13/with number 90243 for Rs. 491922400.94 reads as 'By Amount of profit on sale of UNN Sugar Unit'.
5.	CONVEYANCE DEED	75.5 Cr	PAGE 2,10 & 23 SCANNED ABOVE

2.3.1 Following points needs to be considered while arriving at sale consideration price of UNN Sugar Complex:

a. As per Definitive Agreement for sale of M/s Unn Sugar Complex the consideration for the Transfer is (a) Rs.75,50,00,000/- (Rupees Seventy Five Crores Fifty lacs Only) and (b) the value of Net Current Assets on the transfer date as determined with Clause 6.3 of the agreement.

b. As per sub-ledger of Control CJ5201 mentioned above, the consideration received for slump sale of M/s Unn Sugar Complex, is Rs. 155,30,55,105.94 which includes value of net current assets.

c. Page 2, 10 & e-stamp purchased for conveyance deed, all show the consideration price for UNN Sugar Complex at Rs. 75,50,00,000/-. Moreover, page-23 of conveyance deed (scanned at Page-16 of this order) clearly mentions modalities of payments of the purchase consideration, wherein it is mentioned that payments have been made by way of D.D./ RIGS on various dates for aggregate lump sum consideration of Rs. 75.50Cr.

d. Sub-ledger Control GL: 5201 Sundry Creditors for 01.04.2014 to 31.03.2015, shows all the transactions undertaken by the assessee with M/s Superior Food Grains P. Ltd., the purchaser of sugar complex, during F.Y. 2014-15 relevant to A.Y. 2015-16. Ledger entry dated 30.09.2014 bearing no. 90243 is reproduced hereunder for ready reference:

"30/09/14 13/ 90243 BY AMT OF PROFIT ON SALE OF UNN SUGAR UNIT 491922400.94

The above entry shows that the assessee has itself computed the profit on sale of UNN Sugar Unit at Rs. 49,19,22,401/- but the same has not been factored in by it while computing capital gain from sale of sugar unit.

2.4 In view of the above discussion above, the Capital Gain of Rs. 22,09,26,536/- calculated by the assessee from Slump Sale of UNN Sugar Complex is found to be erroneous. Therefore, the capital gain is held to be Rs. 49,19,22,401/-, i.e., equal to the profit on sale of Sugar Unit computed by the assessee and recorded in the books of accounts as established from ledger entry dated 30.09.2014 of Sub-ledger Control GL: 5201 Sundry Creditors.

Since the assessee has already computed capital gain of Rs. 22,09,26,536 / - in its books of accounts, balance of Rs.27,09,95,865/-(Rs.49,14,22,401 - Rs.22,09,26,536/-) is added to the total income of the assessee. Penalty proceedings u/s 271(1)(c) have

been initiated separately for furnishing inaccurate particular of its income by the assessee.

6. We further note that the Id. CIT(A) uphold the said addition with following observations and findings:-

During course of appellate proceedings, appellant has filed written submissions; which were sent for the remand of the AO. The AQ:has sent his remand report dtd 19.02.2019. Thereafter, the appellant has filed his submissions dtd 25.03.2019. During the course of appellate proceedings, the AR of the appellant was asked to submit the soft copies of the submissions. However, despite specific request made vide order sheet entry dtd. 09.04.2019, the AR of the appellant has not supplied the soft copies of the submissions. However, the submissions made by the appellant and the remand report of the AO have been considered.

4. DECISION: The contention of the Appellant has been considered and the order of AO has also been perused. During the course of appellate proceedings, the appellant has raised following issues:

(i) The capital gain on the said unit was amounting to Rs. 21,96,52,738/-. However, the A.O. has wrongly presumed the Capital gain of Rs. 49,12,22,401/- on slump sale unit which was the value of net fixed assets of the sold unit as per Companies Act.

(ii) The Appellant had received/declared interest on income tax refund of AY. amounting to Rs. 6,03,580/- whereas it was assessed to Rs. 15,63,307/-

iii). The Ld. A.O. had passed order u/s 143 (3) on 30.12.2017 one day before the due date of completion of Assessment. The Order passed by the Ld. A.O. is in haste manner and also without providing adequate opportunity to the appellant and without taking into consideration material available on record with A.O.

4.1 The first issue is of capital gains on the slump sale of one of the sugar units owned by the assessee. During the year under consideration, the assessee company had sold UNN sugar unit located at District Shamli; UP to M/s Superior Foodgrains Pt Ltd for a consideration of Rs. 75.5 crores (value as per the Definitive Agreement), while the amount of consideration shown was at Rs. 70 crores. However, as per the details of sundry creditors submitted by the assessee, it was seen that M/s Superior Foodgrains had paid Rs. 155.30 crore for the sugar unit. The A has made detailed discussions in his order from page 2 to 19 of his order and has taken the capital gain at a figure of Rs. 49,19,22,401/- instead of Rs. 22,09,26,536/- as shown by the assessee and therefore, made an addition of Rs. 27,09,95,865/- to the capital gain shown by the assessee.

During the appellate proceedings, the appellant has contended that the appellant had entered into the agreement to sale of "UNN sugar unit" to M/s Superior Food Grains Pvt limited vide Definitive Agreement (D.A.) dated 13.01.2014 to be executed on or before March 2014 and received advance of Rs. 10 cr on the signing of agreement. Due to recession in the Sugar Sector the buyer could not arrange the finance for the balance payment of the sales consideration and also the Govt did not give the necessary permission for the transfer of Land. By the reason the ATRI transaction was delayed and finally completed on 07.09.2014. The Consideration for all fixed assets including by-products and Store worth Rs. 9 cr. was Rs.75.50 Cr. The method of valuation has been

given in the D.A. Due to uncertainty of completion of agreement, the company had sold by-product worth of Rs. 5.5 cr being of perishable nature in open market so as to save the company from losses, which was the part of the contract value. All Sales transaction carried out during the period 1st April to 07 Sep 2014 were incorporated in the financial statement of the company. Accordingly the appellant had refunded sum of Rs. 5.50 Cr (Rs. 2 cr on 06.09.2014 Plus Rs. 3.5 Cr on 25.09.2014). All the transaction were through banking channel. Thus, the remaining. RSe 70 crore was treated as Net sale consideration. In addition to that the value of Net Current Assets shall be determined on the transfer date as the same could not be ascertained in advance being a running unit. The value of Net Current Assets was settled for Rs. 31,76,09,042.6/- vide claim bill dated 07.09.2014. The appellant had received/adjusted sum of Rs. 30,59,91,520/- against the net current assets. However, Rs. (1,16,17,522/- is still due from buyer till date. Further the appellant had calculated capital gain of Rs. 21,96,52,738/- (Rs 70 Cr- 48,03,47,262/-) as per Income Tax Act 1961 on sale of UNN Sugar Unit which has been declared in the income tax return. The said gain was calculated after deducting the Net Worth of the said Unit amounting to Rs. 48,03,47,262/-calculated as per the provision of income tax act 1961. However, as per companies act the appellant had calculated the profit from UNN Sugar Unit amounting to Rs.17,30,77,599.06/-.

In his remand report dtd 19.02.2019, the AO has submitted that the confirmation from the purchaser was neither filed during the assessment proceedings nor during the appellate proceedings. The conveyance deed dated 08.09.2014, copy of which was submitted during the assessment proceedings makes it very clear that transfer of property under discussion was made against consideration of Rs. 75,50,00,000/- (Rupees Seventy Five Crores and Fifty Lakhs) and stamp duty of Rs. 3,77,50,000/- was paid by the purchaser. No where in the conveyance deed, it has been mentioned that this cost includes sale of by product also. The same fact is also established by the details of payment as under: -

S.No	Amount (in Rs.)	Date	Instrument No.
1.	10,00,00,000/-	13.01.2014	DD No. 361895
2.	3,00,00,000/-	22.04.2014	UTR No. UBIAH4112097365
3.	35,00,00,000/-	08.09.2014	DD No. 533807
4.	27,50,00,000/-	08.09.2014	DD No. 533806
Total	75,50,00,000/-		

In view of the above facts, the AO has reiterated that as far as transfer amount is concerned, the same may be taken as Rs. 75.5 Crore as adopted by the then A.O. The contentions of the AR have been considered and the order and report of the AO have also been perused. It is a fact that the appellant has failed to furnish the confirmation from the purchaser. From the documents made available, it is clear that the consideration amount was Rs. 75.5 Cr, which has been rightly taken by the AQ in computing the Capital Gains. Therefore, I do not find any reason to interfere with the findings of the AO, which have been discussed in detail in the order of the AO from page 2 to 19 and it will not be fruitful to repeat the same here again. Therefore, considering the facts and circumstances of the case, the addition of Rs. 27,09,95,865/- made by the AO to the capital gain shown by the assessee is hereby confirmed.

7. On careful consideration of above noted rival submissions, findings of the Assessing Officer and conclusion drawn by the Id. CIT(A) in upholding the addition, first

of all, we note that the main issue for our adjudication is the issue of capital gain accrue to the assessee on slum sale of one of the sugar unit owned by the assessee. We further note that in the value of the sugar unit as per definitive agreement was shown as Rs. 75.50 crores whereas the assessee declared sale consideration as Rs. 70 crores. It was the contention of assessee that sale agreement was executed on 13.01.2014 and assessee received Rs. 10 crores in advance. The definitive agreement was to be executed on or before 31.03.2014 but the buyer could not arrange the final for balance payment due to recession in the sugar sector and also the Government did not issued necessary permission for transfer of land and due to said reasons the transaction of delayed and finally completed on 07.09.2014.

8. It has also been contended by the Id. counsel of assessee that the consideration for all fix assets including by products and stores worth Rs. 9 crores was settled at Rs. 75.50 crores but due to uncertainty in the completion of sale agreement the company had sold by products worth Rs. 5.5 crore being of perishable nature in the open market so as to save the company from loses, which was part of contract value and hence the assessee declared sale consideration as Rs. 70 crore after deducting the amount of Rs. 5.5 crore received against sale of byproducts perishable in nature. On the other hand the Id. CIT(A) called factual remand report from the Assessing Officer which was submitted on 19.02.2019 wherein the Assessing Officer categorically submitted that no confirmation was filed from the purchaser neither during assessment proceedings nor during remand or appellate proceedings. The Assessing Officer in the remand report clearly reported to the Id. CIT(A) that the conveyance deed dated 08.09.2014 clearly reveals payment sale consideration of Rs. 75.50 crores through banking channels in the four installments as noted in the payment details table reproduced by the Id. CIT(A) in his order.

9. In the said facts and circumstances the Id. CIT(A) was correct in upholding the addition by observing that the appellate has failed to furnish confirmation from the purchaser company and the documentary evidence particularly conveyance deed dated 08.09.2014 clearly revealed that the assessee received sale consideration of Rs. 75.50 crores in four installments through banking channels from the purchaser company and

therefore there was no reason to interfere with the findings of Assessing Officer making impugned addition of Rs. 27,09,95,865/- to the capital gain income of assessee. In view of above, we are inclined to hold that the Assessing Officer was right in making addition in the hands of assessee and the Id. CIT(A) was also quite correct and justified in upholding the same. Therefore grounds of assessee being devoid of merits are dismissed.

10. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 12.09.2023.

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER
Dated: 12th September, 2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi