IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

INCOME TAX APPEAL NO.123 OF 2013
(M/s. Vighnaharta Investment & Finance Company Pvt. Ltd. vs. The Assistant Commissioner of Income Tax)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
	Shri N.S. Bhattad, Advocate for appellant. Shri A. Parchure, Advocate and Shri B. Mohata, Advocate for respondent.

CORAM : B.P. DHARMADHIKARI AND
P.N. DESHMUKH, JJ.

DATED : AUGUST 28, 2015

After hearing respective Counsel on 13/3/2015, we have noted the stand of appellant that business liabilities can be taken care of by proper mutual arrangement and hence, the finding that business liabilities are not transferred was not correct. That finding by itself does not derogate from the case of assessee that it was slump sale of the business. It was contended that the Income Tax Appellate Tribunal, however, has come up with totally different finding i.e. not selling the building to transferee. Said building is a personal property and it was not essential or integral part of business and hence, its retention by the assessee did not mean that it was not a slump sale. Thereafter, we gave time to Mr. Anand Parchure, learned Counsel for the respondent of two weeks to further assist the Court in the matter.

Today, Adv. Bhattad for appellant has submitted that tangible or intangible assets, which are essential for running of business only need to be looked into to find out whether sale is slump or not. According to him, here entire clientele with necessary infrastructure and furniture was sold and, therefore, business was sold as on-going concern. The business can be transacted from any other premises including rented one and hence, sale of premises as such is not essential. It is further pointed out that though liabilities were not transferred, liabilities have been adjusted while working out sale consideration and hence, the conclusion that as liabilities have not been transferred, it cannot be a slump sale is not proper. Lastly it is contended that judgment of Commissioner of Income Tax is in favour of assessee and it was assailed before Income Tax Appellate Tribunal by revenue only on the ground that the Commissioner of Income Tax erred in not upholding that assessment order wherein the entire amount of Rs.98 lakhs had been treated as revenue receipt chargeable under the Head `Profit and Gains of business' under Section 28(va) of the Income Tax Act. The other ground raised was about the inapplicability of Section 50-B of the Income Tax Act.

Adv. Bhattad contends that the fact that the premises/building was not transferred or the liabilities have not been transferred, has not been specifically raised as a ground in that appeal. As such, that was not the bone of contention before Income Tax Appellate Tribunal. According to him, therefore, reasons given by the Income Tax Appellate Tribunal that as the liabilities were not transferred or as premises were not transferred, it was not a slump sale is without proper notice to present appellant. He has relied upon the judgment of the Division Bench of this Court in

Commissioner of Income Tax vs. Narkeshari Prakashan Ltd. (196 ITR 438) to urge that value of liabilities can be adjusted against value of assets. He has also relied upon the other judgment of the Division Bench of this Court in **Premier Automobiles Ltd. vs. Income Tax Officer and another** (264 ITR 193) to urge that transfer of liabilities as such is not essential ingredient to constitute the sale as slump sale.

Here the assessment order specifically mentions the premises in which business was being run as business asset. The fact that it has been so reflected in accounts and balance sheet is not in dispute. The learned Counsel, however, has attempted to urge that sale of that asset is not essential. The sale has to be of the business as an on-going business. To find out whether it has been sold as an on-going business, the Income Tax Appellate Tribunal has correctly applied the test and noted that an essential business asset, namely, premises in which business was being run, has not been transferred. The other corroborative material is about not transferring the liabilities. In the appeal memo filed by revenue before Income Tax Appellate Tribunal, in ground no.2, specific contention in this respect has been raised. This ground no.2 needs to be construed in the background of remand report dated 10/8/2011 sent by Assessing Officer. This remand report has been reproduced by Commissioner of Income Tax in paragraph 3.2 of his order. Its perusal shows consideration of this aspect. We, therefore, find that the revenue had raised necessary contention before Income Tax Appellate Tribunal and it has appreciated the same.

No substantial question of law, therefore, arises. Hence, the appeal is dismissed.

JUDGE JUDGE

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