

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2020

CORAM

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

TAX CASE (APPEAL) NO.42 OF 2018

M/s.Sanmar Speciality Chemicals Limited,
9, Cathedral Road,
Chennai - 600 086

...Appellant/Respondent

-vs-

The Assistant Commissioner of Income-tax/
Deputy Commissioner of Income Tax
Company Circle VI(1)
Chennai - 600 034.

...Respondent/Appellant

Tax Case (Appeal) filed under Section 260A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 18.08.2017, in ITA.No.738/Mds/10 for Assessment year 2007-08 against the order of the Commissioner of Income Tax(Appeals)-V, Chennai-34, dated 15.02.2010 made in ITA 284/09-10, against the order of the Additional Commissioner of Income Tax, Company Range VI, Chennai-34, dated 31/12/09 made in order PAN No.AAACS6707R for the Assessment year 2007-08.

For Appellant : Mr.R.Venkatanarayanan

For Respondent : Mr.J.Narayanaswami,
Senior Standing counsel

ORDER

(The Order of the Court was made by T.S.SIVAGNANAM, J.)

This appeal by the Assessee filed under Section 260A of the Income Tax Act, 1961 (the Act for brevity) is directed against the order passed by the Income Tax Appellate Tribunal Madras, 'C' Bench, in ITA.No.738/Mds/10, for the assessment year 2007-08.

2. The Tax Case Appeal was admitted on 07.06.2019 on the following substantial questions of law:-

"(i)Whether on the facts and circumstances of the case, the tribunal was right in holding that the transfer of the division is to be treated as a 'slump sale' and not sale of individual items?

(ii)whether on the facts and circumstances of the case, the Tribunal was right in holding that provisions of Section 50B are attracted in computing the capital gains arising from transfer of API division as a going concern?"

3. The facts leading to this appeal are briefly stated as hereunder. The assessee filed return of income on 29.10.2007 for the assessment year 2007-08, admitting an income of Rs.2,43,99,239/- and book profit under Section 115JB admitted is Rs.30,52,48,255/-. The scrutiny assessment was undertaken and an order was passed under Section 143(3) on 31.12.2009 disallowing/adding among others, treating the sale of API division as a "slump sale" as against individual sale. During the previous year, relevant to the assessment year 2007-08, the assessee sold one of its divisions namely API division for a total sale consideration of Rs.5,554.18 lakhs. According to the assessee the break-up of the consideration received is as hereunder:-

Nature of Assets	Rs. in Lakhs
Furniture & Fixtures	34.00
Plant & Machinery	4340.99
Land	300.00
Building	425.00
Patent	0.01
Net Current Assets	454.18
Total	5554.18

4. The Assessing Officer issued show cause notice calling upon the assessee as to why the sale should not be treated as "slump Sale" and the profits arising out of such sale should not be treated as 'Capital Gains' under Section 50B of the Act. The assessee was called upon to furnish in the case of depreciable assets, the written down value, (WDV) of the block of assets determined in accordance with the provisions of the Act. The assessee replied stating that the sale is not a 'slump sale' by referring to the various clauses in the agreement, enclosed a copy of the sale bill dated 08.02.2007, wherein the amounts were mentioned as referred above. The assessee also pointed out as

to the obligations on the seller as could be culled out from the agreement. Further, it was stated that the API division became part of the company in 1999 and no separate depreciation schedule is prepared for that unit, as the company has not opted for the benefit of Section 50B. The working for division wise Income Tax depreciation is only academic. Further, it was stated that the sale value was reduced from the respective blocks and whenever the resultant figures were negative, the same was offered as short-term Capital Gains under Section 50 and the sale of land was treated as long-term capital gains and as the tax payable under Section 115JB was higher than the tax payable under normal method, the tax was paid under Section 115JB. The Assessing Officer completed the assessment under Section 143(3) by order dated 31.12.2009, disallowing the same on the ground that as per the agreement, the sale is entered as a going concern and this will clearly fall within the definition of "slump sale". Further, the Assessing Officer held that there is no mention of the individual values in the agreement, which was entered into by the assessee. The various clauses in the agreement, which were referred to by the assessee were stated to be of no assistance to the assessee to get their case outside the purview of a "slump sale". Aggrieved by such order, the assessee preferred appeal before the Commissioner of Income-tax (Appeals-V), Chennai (CIT(A)), who by order dated 15.02.2010, allowed the appeal. Aggrieved by the same, the Department filed appeal before the Tribunal, which was allowed by the impugned order and this is how the assessee is before us by way of this appeal.

5. We have elaborately heard Mr.R.Vijayaraghavan, learned counsel for the appellant/assessee and Mr.J.Narayanaswami, learned Senior Standing Counsel for the respondent/revenue.

6. The short issue, which falls for consideration is whether the Tribunal was right in affirming the order passed by the Assessing Officer and holding that the transfer of the division is to be treated as a 'slump sale' and not sale of individual items and consequently, Section 50B of the Act was attracted. It is noteworthy to point out that when the assessee filed appeal before the CIT(A), the following grounds were raised:-

"(b) The transfer of the Undertaking was done on individualized method and not on the basis of lump sum consideration. In other words, the consideration of Rs.55.54 Crores was towards the following items as set out in the agreement.

Particulars	Amount (Rs. in Lacs)
Furniture & Fixtures	34.00
Plant & Machinery	4340.99
Land	300.00
Building	425.00
Patent	0.01
Net Current Assets	454.18
Total	5554.18

(c) In terms of Clause 5.2(h) of the Business Purchase Agreement dated February 07, 2007, the Seller (i.e. Appellant) needs to deliver the Sale Bill covering all the Assets other than the freehold property to the buyer (i.e. M/s. Actavis Pharma Manufacturing Private Limited). Accordingly, the Appellant issued Sale Bill dated 08.02.2007, under reference INV NO/MISC/001. (Copy of the Sale Bill enclosed as Annexure-I). In this bill, the Sale Value assigned to various assets are as under:

Net Current Assets	-	3,00,00,000*
Patent	-	1,000
Furniture and Fixtures	-	34,00,000
Plant and Machinery	-	43,40,99,000
Total	-	46,75,00,000

*Post Closing, the Appellant received an Additional amount of Rs.154.18 lacs as per Clause 3.1 of Business Transfer Agreement.

(d) As per Clause 5.2(c) of the Business Purchase Agreement dated February 07, 2007, the Seller (ie Appellant) need to execute in favour of the Buyer, Sale Deed for the Conveyance, Assignment or Transfer of Freehold Property. The Value at which the Land and Building were transferred were:-

		Rs.
Land	-	3,00,00,000
Building	-	4,25,00,000
Total	-	7,25,00,000

(e) As the Appellant had valued each category of asset as above, the Sale Value was reduced from the respective blocks, and wherever the resulting figures exceeded block value, the same was offered as Short Term Capital Gains under Section 50 of the Income Tax Act, 1961. Sale of Land was treated as Long Term Capital Gain.

(f) The Appellant during the course of assessment proceedings on 01.12.09 and 26.11.2009, submitted a detailed note substantiating the reason for treating the Sale as Individualized Sale.

(g) The learned Additional Commissioner of Income Tax brushed aside the submissions of the Appellant and treated the Individualized Sale as Slump Sale under Section 50B of the Income Tax Act, 1961.

7. The CIT(A) while considering the correctness of the submissions made by the assessee rendered the following factual finding:-

6.1.15. In terms of Clause 5.2(h) of the BTA dated February 07, 2007, the Seller (i.e. Appellant) needs to deliver the Sale Bill conveying all the Assets other than the freehold property to the buyer. Accordingly, the Appellant issued Sale Bill dated 08.02.2007, under reference INV NO/MISC/001. In this bill, the Sale Value assigned to various assets are as under:

	Rs.
Net Current Assets -	3,00,00,000*
Patents -	1,000
Furniture and Fixtures -	34,00,000
Plant and Machinery -	43,40,99,000
Total -	46,75,00,000

* Subject to the Adjustment to be made as per clause 3.1 of Business Transfer Agreement.

(The above document was provided to me as Annexure 5 to paper book presented during the course of hearing).

6.1.16. Further in terms of Clause 5.2(c) of the BTA dated February 07, 2007, the Seller (ie the Appellant) needs to execute the Sale Deed in the agreed form for assignment of patents. The form was provided as Annexure - 11, to the agreement and this contained value of patents also. (This document was provided to me as

Annexure 6 to paper book during the course of hearing).

6.1.17. Further as per Clause 5.2(c) of the BTA dated February 07, 2007, the Seller (ie Appellant) need to execute in favour of the Buyer, Sale Deed for the Conveyance, Assignment to Transfer of Freehold Property. The Value at which the Land and Building were transferred were:

		Rs.
Land	-	3,00,00,000
Building	-	4,25,00,000
Total	-	<u>7,25,00,000</u>

6.1.18. From the above document forming part of the BTA, it is clear that the Appellant has assigned separate values for immovables consisting of land and building and movables consisting of Furnitures and fixtures, Plant and Machinery, patents, Net current assets. Thus the consideration for transfer cannot be called as a lump sum consideration."

8. From the above finding, it is seen that the CIT(A) not only analysed the conditions contained in the agreement, but also referred to the sale bills, which were provided as an annexure to the paper book, which was presented before the CIT (A) during the course of hearing. After considering those documents, the CIT(A) rendered a factual finding that the assessee has assigned separate values for the immovables consisting of land and building and movables consisting of furnitures and fixtures, plant and machinery, patents, net current assets and therefore, concluded that the consideration for transfer cannot be called as a lump sum consideration. The CIT(A), thereafter, proceeded to refer to a few decisions of the Tribunal and held that the sale effected by the assessee does not constitute "slump sale" as per Section 2(42C) of the Act and hence the provisions of Section 50B will not be applicable. The Revenue preferred appeal before the Tribunal. On a perusal of the grounds of appeal, we find that all that the Revenue stated was that CIT(A) erred in holding that the sale effected by the assessee does not constitute "slump sale" as per Section 2(42C) of the Act and hence provisions of Section 50B will not be applicable. The same grounds have been repeated, but not in the same format, but by adopting a different style. What is relevant to note is that the factual findings recorded by CIT(A) was not disputed by the Revenue before the Tribunal. During the course of argument, the Department representative submitted that the assessee never assigned any value to the individual assets

in the agreement for sale. The argument has been referred to by the Tribunal in paragraph 11 of its order. However, the fact remains that though the individual value is not contained in the agreement, materials were placed by the assessee which has been clearly brought out by the CIT(A) in its order dated 15.02.2020, relevant portion of which we have extracted above. Therefore, the Revenue proceeded on a wrong footing, ignored the documents produced by the assessee both before the Assessing Officer as well as before the CIT(A) and continued to reiterate the stand that there is no separate value given for the individual assets in the agreement. The assessee pointed out that the CIT(A) has recorded a factual finding as to how the individual assets have been valued. Unfortunately, the Tribunal did not undertake any exercise to examine the correctness of the contentions raised by the assessee, in fact, the Tribunal ought to have noted that the Revenue never disputed the facts which were recorded by the CIT (A) showing that the individual assets were separately valued, though not specified in the agreement for sale.

9. It is the argument of Mr.J.Narayanaswami, the learned Senior Standing Counsel that if the Tribunal had failed to do so then, it is a fact finding exercise and at best, the matter needs to be remanded for a fresh exercise.

10. In our considered view, the substantial question of law framed for consideration in this appeal undoubtedly are mixed questions of fact and law. If there is a perversity in the approach of the authorities or the lower forum with regard to the factual aspect, if the authorities failed to take note of important evidence placed by the assessee or if there is misinterpretation of such important evidence, then, as an appellate court, such error can be corrected, as it is an error of law and not an error of fact. The question of remanding the matter to the Tribunal for fresh consideration would not arise for the simple reason that the fact that the individual assets were separately valued as recorded by the CIT(A) was never disputed by the Revenue before the Tribunal. Therefore, on such admitted facts, if we examine the finding of the Tribunal, more particularly, in paragraph 13 of the order, we find that the same calls for interference.

11. In Commissioner of Income Tax vs. Artex Manufacturing Company, reported in (1997) 272 ITR 0260, the substantial question of law, which was involved was whether the surplus as a result of difference between the written down value and the sale consideration from the plant, machinery and dead stock transferred by the assessee is taxable under Section 41(2) of the 1961 Act (pari materia to Section 50 of the Amended Act). While answering the question as to whether if the surplus is found to be taxable, whether it should be taxed under Section 41

(2) or under the head "capital gains", the assessee pointed out that the value of the plant, machinery and dead stock though not mentioned in the agreement, but information was furnished by the assessee before the Income Tax Officer from which it became evident that the plant, machinery and dead stock were separately valued and therefore, it was held that it is not a case in which it cannot be said that the price attributed to the items transferred is not indicated and hence Section 41(2) of the 1961 Act cannot be applied. This decision would clearly support the case of the assessee, who had succeeded before the CIT(A) by establishing that the individual assets were separately valued and documents to the said effect were produced. Added to that the Revenue did not dispute such a factual position before the Tribunal and consequently, the finding rendered by the Tribunal does not merit acceptance.

12. For all the above reasons, the Tax Case Appeal is allowed, the order passed by the Tribunal is set aside and the order passed by the CIT(A), dated 15.02.2010 is restored and the substantial questions of law are answered in favour of the assessee. No costs.

Sd/-

Assistant Registrar(CO)MDU

//True Copy//

Sub Assistant Registrar

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To

1.The Income Tax Appellate Tribunal Chennai Bench 'C', Chennai.

2. Commissioner of Income-tax (Appeals-V), Chennai

3.The Assistant Commissioner of Income-tax/
Deputy Commissioner of Income Tax
Company Circle VI(1)
Chennai - 600 034.

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