IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD

BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA.No.1674/Hyd/2012
Assessment Year 2009-2010

DCIT, Circle-2(1) Hyderabad.	vs.	M/s. Sudalagunta Hotels Ltd., Tirupati PAN AADCS1460N
(Appellant)		(Respondent)

For Revenue :	Mr. M. Sitaram
For Assessee :	Mr. KJD. Srinivas

Date of Hearing :	29.03.2016
Date of Pronouncement :	27.06.2016

ORDER

PER D. MANMOHAN, V.P.

This appeal by the assessee is directed against the order passed by the CIT(A), Guntur and it pertains to the A.Y. 2009-2010. The following grounds were urged before us.

1. *"The order of the learned Commissioner of Income-tax(Appeals) is erroneous both in law and facts of the case.*

2. *The Ld. CIT(A) erred in deleting the addition unilaterally relying upon the submissions furnished by AR of the assessee without appreciating the facts of the case.*

3. *The Ld. CIT(A) erred in appreciating the fact that the impugned transaction ie., sale of plant and*

machinery is a SOLITARY TRANSACTION and incidental activity to purchase of land, plant and machinery. This is not an organized activity and not having any sequency.

4. *The Ld. CIT(A) erred in appreciating the fact that the assessee is not in the business of purchase and sale of scrap or purchase and sale of plant and machinery.*

5. *The Ld. CIT(A) erred in appreciating the fact that the impugned plant and machinery is not a part of stock in trade.*

6. *The Ld. CIT(A) erred in understanding the law that any loss incurred on sale of stock in trade is only to be treated as revenue loss.*

7. *The Ld. CIT(A) erred in appreciating the fact that the impugned plant and machinery treated as scrap by the learned CIT(A) cannot be considered as that scrap which emerged from the hotel business.*

8. *Any other ground that may be urged at the time of hearing."*

2. The facts in brief are that the assessee company is engaged in the hotel business and for the year under consideration it declared total income of Rs.1.45 crores whereas the assessment was completed by determining the income at Rs.2,68,16,871. It may be noticed that though the return was processed originally under section 143(1) of the Act, it was later on taken-up for scrutiny in CASS on the ground that the A.O. should examine disallowance under section 14A of the Act. While examining the books of account etc., the A.O. noticed that the assessee debited a sum of Rs.1,22,78,611 towards

loss on sale of machinery. When called upon to explain the admissibility of such loss the assessee contended that it has purchased certain property and plant and machinery belonging to M/s. Shyam Vinyls Ltd., from the Official Liquidator, High Court of A.P; the property consists of land admeasuring 7.75 acres with building, civil works and plant and machinery. According to the A.O. the property has no nexus to the assessee's business whatsoever. The said company was in liquidation and the Official Liquidator issued a notice for sale quoting minimum upset price at Rs.273.50 lakhs for the land and building and Rs.290 lakhs for the plant and machinery, aggregating to Rs.527.50 lakhs. The assessee company made a consolidated offer of Rs.502 lakhs for the entire property which was accepted by the Official Liquidator and possession of the property was handed-over on 05.07.2007. Thereafter, the assessee company sold the entire machinery for a total consideration of Rs.1.72 crores and claimed loss of Rs.1.22 crores. It appears that, according to the assessee the value of plant and machinery is Rs.290 lakhs and a sum of Rs.4.78 lakhs was paid towards interest on belated payments of the said sum and thus, the total worked out to Rs.294.78 lakhs. Since the entire machinery was sold for a consideration of Rs.1.72 crores, the balance of Rs.1.22 crores was shown as loss against the income of its hotel business.

2.1. The A.O. noticed that the assessee is in hotel business whereas M/s. Shyam Vinyls Ltd., was altogether

in a different line of business and therefore, the purchase of machinery has no nexus with the assessee's business; in fact it has not even brought the machinery into its books of account though possession was taken on 05.07.2007 and sold after more than one year after taking possession and hence, the loss cannot be treated as business loss. He also observed that the sole purpose of purchasing the property is only to acquire vast piece of land admeasuring 7.75 acres which is nothing but acquiring of capital asset.

2.2. Thus, he concluded that any loss arising on sale of capital assets can be set off only against the capital gain. Since the assessee debited loss of Rs.1.22 crores the same was disallowed by the A.O. by specifically observing that it has no connection whatsoever with the business activity carried on by the assessee.

3. Aggrieved, assessee contended before the Ld. CIT(A) that the Official Liquidator has called for a tender quoting minimum upset price of Rs.290 lakhs for the plant and machinery and assessee having not paid the amount intime he had to pay interest also but when the plant and machinery was to be sold it credited the value and the differential amount was rightly claimed as trading loss. Before the CIT(A), the assessee contended that the plant and machinery is a depreciable asset and when such an asset is sold it has to be reduced from the block of assets and the differential amount has to be allowed as

deduction. Though the assessee company admits that there is no such block of asset in this case as this plant was a scrap one – not used and lying idle for the last several years – this asset can independently be treated as a separate block and the sale transaction resulting in profit or loss needs to be transferred to the P & L A/c. It was also contended that the A.O. was not justified in invoking the provisions of section 14A of the I.T. Act since there is no income which does not form part of total income under the Act, during the relevant assessment year. It was also submitted that the assessee company is part of the renowned group by name "Mayura", known for hotel industry since more than two decades. During the course of carrying on its main business it is quite natural for the company to sell scrap of various items such as iron and steel items, furniture, plastic bottles etc., and this sales represents major revenue which is ordinarily credited to the concerned purchase account and debited to the P & L A/c. Since sale of scrap is incidental and ancillary to the carrying on main objects of the company, the same was provided in the memorandum and articles of the association of the company and in the same process the assessee having sold the plant and machinery (in scrap condition), only to save the company from locking of huge funds in the said 'idle asset'. The amount realised on sale of scrap should be considered as revenue in nature and differential amount between the cost of plant and machinery (scrap) and the sale consideration realised was correctly taken into consideration in the P & L A/c.

4. Ld. CIT(A) observed that the assessee is in hotel business for the last more than two decades and as a prudent businessman he was justified in looking for good piece of land for expansion of its hotel business; Having noticed the advertisement for sale of the impugned property the assessee participated in the bid and came out successfully. It has to be remembered that in the hotel business scrap of various items emerge which has to be sold periodically. He also observed that though the Official Liquidator has quoted the minimum upset price for "plant and machinery" the fact remains that the plant and machinery is nothing but scrap on which the assessee had to pay Rs.294 lakhs. Since the assessee took a decision to sell the same on "as is where as basis", the differential amount has to be treated as loss incurred in the course of business which has to be treated as business loss. Ld. CIT(A) had also taken support of the clause in the memorandum and articles of association to highlight that the assessee company can indulge in any other activity other than hotel business and sale of scrap is one main source of income in any hotel industry and the assessee cannot be an exception to that. He therefore, concluded that the sale of scrap tantamounts to business activity. He also noticed that the A.O. selected the case for scrutiny under the impression that the provisions of section 14A are attracted but the fact remains that there was no such exempt income. He also highlighted that the A.O. was not correct in alleging that the asset was not brought into books of account since the assessee paid a

sum of Rs.1.02 crores for the year ending 31.03.2007 which was shown in the balance sheet under the head "Advances for Others" and another sum of Rs.4.08 crores for the year ending 31.03.2008, paid to the Court were shown in the schedule of fixed assets but at the same time in the balance sheet for the year ending 31.03.2009 the scrap (plant and machinery) was shown as sold by retaining, in the balance sheet, land and building. Therefore, the observations of the A.O. that the impugned asset was not brought into its books is ill-founded. With regard to the allegation of the A.O. that the registered valuer was not appointed for valuing the plant and machinery before sale, the conclusion of the Ld. CIT(A) was that such a step would impede the proposed sale of scrap in the light of the fact that with time the scrap deteriorates fast and may lessen the value of the scrap; with the passage of time no body may be interested in purchasing such scrap and hence, the assessee was justified in selling the same without obtaining any valuation report. He mainly highlighted that as per the memorandum and articles of association, assessee can indulge in any other activity other than hotel business, and sale of scrap is an ordinary fall-out of the hotel business and thus the same rule can be extended to the sale of plant and machinery in the scrap form and hence, the loss thereof, has to be allowed as set off against the income from hotel business.

5. Aggrieved, Revenue is in appeal before the Tribunal. Ld. D.R. submitted that the main object of the assessee company was only to carry on the hotel business and the scrap if any, is not either main line of business or even ancillary activity. Vessels, furniture, machinery etc., which were used in the hotel industry might have been occasionally sold but it precedes usage of the assets for the purpose of business and even as per the memorandum and articles of association the scrap arising out of the main activity i.e., hotel business can be sold whereas, in the instant case, the assessee purchased the land and building and plant and machinery of M/s. Shyam Vinyls Ltd., which was useful for manufacturing of cushion vinyl floor covering line and it has no nexus whatsoever with the line of activity carried on by the assessee. He further pointed out that though the minimum upset price fixed by the Official Liquidator, for sale of plant and machinery and for sale of land and building, the assessee offered a consolidated price for assets and thus it cannot be said that the value of the plant and machinery is worth Rs.290 lakhs. Though the Official Liquidator accepted the consolidated sale consideration quoted by the assessee a further clarification was sought for regarding adoption of proportionate value of Rs.212 lakhs in respect of buildings and civil works. During the course of proceedings in Company Application No.1888 of 2009 the assessee accepted that proportionate value of auctioned property can be taken at Rs.226 lakhs (see page 27 and

28 of paper book) and in fact, sale deed was also executed without referring to the specific price for plant and machinery and for land and building. Thus, it is only an afterthought by the assessee to increase the value of the plant and machinery, as if upset price was accepted during tender proceedings. He further submitted that the assessee having not been engaged in the business of purchase and sale of scrap, except selling the scrap emanating from the hotel business, the sale instance of purchase of land and building along with plant and machinery - that too of a company carrying on a different line of business - cannot be linked to the regular business carried on by the assessee so as to treat it as business loss or business expenditure. He thus strongly supported the order passed by the A.O. and objected to the conclusions reached by the CIT(A).

6. The Ld. D.R. also adverted our attention to para 3.2 of CIT(A) order (page 12) to submit that the assessee having shown the purchase cost in the balance sheet as part of schedule of "fixed assets" the same cannot be treated as stock-in-trade. In otherwords, the building and plant and machinery was shown in the schedule of fixed assets but while selling the plant and machinery, which is nowhere connected to the main line of the business of the assessee, it cannot be said that the company was selling the scrap as part of its business activity.

7. On the other hand, Ld. Counsel appearing on behalf of the assessee strongly relied upon the order passed by the CIT(A). He adverted our attention to pages 45 and 52 of paper book to submit that the assessee was mainly interested in expanding its business by acquiring land admeasuring 7.75 acres and the plant and machinery was purchased for scrap value. In order to lessen the burden of further loss it was sold on 'as is where as basis' in which event, it has to be treated as incidental to the main activity of business and sale thereof, ought to have been allowed as business loss.

8. We have considered the rival contentions and perused the record. As rightly pointed out by the assessee as well as by the Ld. CIT(A) the assessee has been wholly and exclusively engaged in the business of running hotels, boarding and lodging for the past two decades and the scrap, if any, generated out of the main line of activity was sold. The material presented before us nowhere indicate that the assessee was carrying on the activity of purchasing plant and machinery with a view to re-sale the same. The assessee participated in the tender for purchase of land and building and plant and machinery with the main purpose of acquiring the land which is a capital asset and in fact it was shown in the balance sheet as acquisition. Such being the case, plant and machinery cannot be said to have been purchased for the purpose of carrying on the business of purchase and sale of scrap since it is not even remotely connected to the main line of

activity. Assessee has nowhere specified as to what is the price quoted towards plant and machinery at the time of offering its tender. On the contrary, the facts indicate that the dominant object was to purchase the capital assets and in fact the assessee has merely quoted the lumpsum price which was accepted by the Official Liquidator. Thus the bifurcation of value between the plant and machinery and land and building is not backed/supported by any evidence on record. Even the petition filed before the Hon'ble High Court of Judicature of A.P. with regard to fixation of value for the plant and machinery and for land and building separately also indicate that at best the assessee seeks to adopt a proportionate value (see page 29 of the paper book) since the O/o. Official Liquidator accepted the quotation by merely stating that the assessee has given a consolidated offer of Rs.502 lakhs for purchase of land, building and plant and machinery. The land and machinery was kept idle for more than one year but the assessee did not choose to obtain any report from the registered valuer with regard to the value of such plant and machinery which also indicate that the price now sought to be fixed at Rs.294 lakhs is only an imaginary value so as to claim deduction from the business income overlooking the fact that it was purchased as an asset and reflected in the balance sheet as such. In our considered opinion, the Ld. CIT(A) has not given any reasons to accept the contention of the assessee despite the fact that not even an iota of evidence is placed to support such contention. On the other hand, the

circumstances, categorically indicate that there is no nexus between purchase of land, building and plant and machinery on one hand and the hotel business being carried on by the assessee for the past two decades. On a conspectus of the matter, we of the firm view that the order passed by the Ld. CIT(A) is contrary to law and facts of the present case and therefore, deserves to be set aside and we direct accordingly. In the result, we set aside the order passed by the Ld. CIT(A) and uphold the view taken by the A.O, since the loss claimed by the assessee cannot be treated as revenue loss or business loss.

9. In the result, appeal of the Revenue is allowed.

Order pronounced in the open Court on 27.06.2016.

Sd/-	**Sd/-**
(S. RIFAUR RAHMAN)	**(D. MANMOHAN)**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

Hyderabad Dated 27th June, 2016

VBP/-

Copy to

1.	Dy. Commissioner of Income Tax, Circle-2(1), 2nd Floor, Aayakar Bhavan, K.T. Road, Tirupati.
2.	M/s. Sudalagunta Hotels Ltd., No.209, Hotel Mayura, T.P. Area, Tirupati.
3.	CIT(A), Guntur.
4.	CIT, Tirupati.
5.	D.R. ITAT "A" Bench, Hyderabad.
6.	Guard File