IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI C. N. PRASAD, JM

ITA Nos.6181 & 5569/Mum/2018
(Assessment Years: 2014-15 & 2010-11)

Asst. CIT, Range - 9(1)(1) Room No. 260A, 2nd Floor, Aaykar Bhavan, M. K. Road, Mumbai – 400 020	Vs.	M/s. Amartara Pvt. Ltd. 190/191, Indian Cork Mills Compound, Saki Vihar Road, Powai, Mumbai
PAN/GIR No. AADCA 9217 F		
(**Appellant**)	:	(**Respondent**)

Appellant by	:	Shri Michael Jerald
Respondent by	:	None

Date of Hearing	:	22.01.2019
Date of Pronouncement	:	02.03.2020

O R D E R

Per Shamim Yahya, A. M.:

These are appeals by the Revenue against the order of the learned Commissioner of Income Tax (Appeals)-16, Mumbai ('ld.CIT(A) for short) dated 31.08.2018 and pertains to the assessment years (A.Y.) 2010-11 and 2014-15 respectively.

2. Since the issues are common and connected and the appeals were heard together, these have been consolidated and disposed off together for the sake of convenience.

3. The first common issue raised in these appeals is the addition made by the Assessing Officer (A.O. for short) in respect of long term capital gain of Rs.9,63,17,800/- u/s. 50C of the Income Tax Act, 1961 ('the Act' for short) for A.Y. 2014-15 and Rs.(4,77,32,000)/- for A.Y. 2010-11.

4. Since the facts are common, we are referring to facts and figures from A.Y. 2010-11.

5. Brief facts of the case are that the A.O. noted that the assessee company had shown to have transferred its land (Powai, Mumbai) to a partnership firm, M/s. Shreem Properties in which the assessee company was one of the partners. The plot was transferred as capital contribution on part of the assessee company. The consideration for the same was stated to be Rs.5,00,00,000/-. The assessee company had claimed index cost of acquisition at Rs.9,49,22,008/- thus showing long term capital loss of Rs.(4,49,22,008/-) on transfer of its land to the firm. The A.O. observed that the value of the said land for the proposes of Stamp Duty as apparent from the relevant agreement submitted by the assessee was Rs.9,77,32,000/-. In view of these facts, the A.O. issued a show cause asking the assessee to explain why the provisions of sec. 50C of the Act should not be invoked and the LTCG arising thereon be recomputed accordingly.

6. After considering the submissions made by the assessee, the A.O. worked out the LTCG amounting to Rs.28,09,992/- as against LTC loss computed by the assessee at Rs.(4,49,22,008)/-.

7. On similar reasoning, by substituting the value as per the provision of section 50C, the A.O. made the addition of Rs.96,31,700/- as against the long term capital gain computed by the assessee at Rs.5,94,57,338/- for A.Y. 2014-15.

8. Upon the assessee's appeal, in indicial year, the ld. CIT(A) referred to the order of the ITAT in assessee's own case and decided the issue in favour of the assessee by holding as under:

6.1.3 I have considered the submissions made by Appellant and the material available on record. The Hon'ble Mumbai Bench of the ITAT in Appellant's own case in ITA No.6050/M/2016 for assessment year 2012-13 vide Order dated 29.12.2017 has held as follow:-

> "Having heard both the sides, we find merit in the argument of the assessee for the reason that the provisions of section 45(3) deals with special cases of transfer of capital asset where the profits or gains arising from the transfer of capital asset by way of capital contribution or otherwise shall be chargeable to tax in the previous year in which such transfer takes place and for the purpose of section 48, the amount recorded in the books of account of the firm shall be deemed to be the full value of consideration received or accruing as a result of transfer. A plain reading of provisions of section 45(3) makes it dear that it conies into operation only in special cases of transfer between partnership firm and partners and in such Circumstances, a deemed full value of consideration shall be considered for the purpose of computation of capital gain as per which the amount recorded in the books of account of the firm shall be taken as full value of consideration. Though the provisions of section 45(3) is not a specific provision overrides the other provisions of the Act, importing a deeming fiction provided in section 50C of the Act cannot be extended to another deeming fiction created b\j the statue by way section 45(3) to deal with special cases of transfer. Vie purpose of insertion of section 45(3) is to deal with cases of transfer between partnership firm and partners and in such cases, the Act provides for computation mechanism of capital gain and also provides for consideration to be adopted for the purpose of determination of full value of consideration. Since the Act itself is provided for deeming consideration to be adopted for the purpose of section 48 of the Act, another deeming fiction provided by way of section 50C cannot be extended to compute deemed full value of consideration as a result of transfer of capital asset. This legal proposition is further supported by the decision of Hon'ble Supreme Court in the case of CIT vs Moon Mills Ltd (supra) wherein it was observed that one deeming fiction cannot be extended by importing another deeming fiction. Therefore, we are of the considered view that the profits or gains arising from the transfer of a capital asset by a partner to a 'firm in which lie is or becomes a partner by way of capital contribution, then for the purpose of section 48, the amount recorded in the books of account affirm shall be deemed to befall value of consideration received or accruing as a result of transfer of a capital asset. The AO cannot import another deeming fiction created far the purpose of determination of full value of consideration as a result of transfer of a capital asset by importing the provisions of section 50C of the Act, The CIT(A), without appreciating the facts, simply upheld addition made by the AO by following the decision of ITAT, Lucknow Bench in the case of ACIT vs. Carlton Hotel Pvt. Ltd (supra) where the ITAT has simply observed that the provisions of section overrides the provisions of section

45(3) but not given a categorical finding. The ITAT has given its findings under different facts considering the fact that when a document is registered under the Provisions of Registration Act 1903, the value determined by the stamp duty authority shall be replaced to determine full value of consideration, Therefore, we reverse the finding of the CIT(A) mid delete the addition made towards computation of long terms capital gain on account of transfer of capital asset into partnership firm.
In the result, appeal filed by the assessee's is allowed"

6.1.4. The Hon'ble Tribunal has accordingly held that the deeming section provided in Section 50C cannot be extended to another deeming section created by the statue by Section 45(3). The Tribunal has noted that since the Act itself has provided for deeming consideration to be adopted for the purpose of Section 48 of the Act, another deeming section provided by Section 50C cannot be extended to compute deemed full value of consideration accruing as a result of transfer of capital assets by partner in a firm as capital contribution. The Hon'ble Tribunal has relied upon the decision of the Supreme Court in CIT v. Moonmill Ltd (59 ITR 574) for the proposition that one deeming section cannot be extended by importing another deeming section. Accordingly, the Hon'ble Tribunal has held that the profits and gains arising from transfer of a capital asset by a partner to a firm by way of capital contribution recorded in the books of account of the firm (i.e. Rs.7,50,00,000 in this case) shall be deemed to be the full value of consideration for the purpose of computing capital gain.

6.1.5. It is observed that the AO, in para 5.4 of his order has relied on a decision of the Lucknow Bench of the Tribunal in the case of Carlton Hotel Pvt. Ltd. (122 TTJ 515). It is observed that the Hon'ble Bombay Tribunal while deciding the case of the Appellant has duly considered the said Lucknow Bench decision and has distinguished the same.

6.1.6. Respectfully following the decision of the Bombay Bench of the Tribunal in the Appellant's own case, the addition made by the AO amounting to Rs.3,68,60,462/- while computing long term capital gain is hereby deleted and the appeal of the assessee of this ground is allowed.

9. Against the above order, the Revenue is in appeal before us.

10. None appeared for and on behalf of the assessee despite notice sent. We have heard the ld. Departmental Representative (ld. DR for short) and perused the records. The assessee has submitted written submissions.

11. Upon careful consideration, we find that the issue is covered in favour of the assessee by the ITAT decision for the A.Y. 2012-13 as referred by the ld. CIT(A) in his

order as above. The ld. DR did not disputed the above proposition and no contrary facts for the current assessment year has been brought to our notice. Hence, respectfully, following the precedent as above, we uphold the order of the ld. CIT(A) and delete the disallowance.

12. Another issue raised for the A.Y. 2014-15 is whether the ld. CIT(A) erred in allowing the depreciation of block of assets, building as claimed by the assessee prevailing over the provisions of section 45K over the provision of section 50C of the Act.

13. Brief facts of the case on this issue is that the A.O. on this issue has held that the financial statements that deprecation of Rs.59,15,637/- has been claimed @ 10% against the block of assets "Building" after reducing Rs.78,07,500/- from the block on account of sale of the aforesaid factory building. As discussed in para 5.6 above, the deemed value of the building has been increased by Rs.42,83,038/-. Therefore, the A.O. opined that the deprecation claimed by the assessee on "Building" will be restricted by 10% of the same, i.e., Rs.4,28,304/- and depreciation of Rs.54,87,333/- will be allowed (59,15,637 – 4,28,304). He further held that the book profit will also be increased by the sum of Rs.4,28,304/-.

14. We note that the ld. CIT(A) has dealt with the issue as under:

> 6.2.2 In para 6 of the assessment order, the ld. A.O. has mentioned that depreciation of Rs.59,15,637/- has been claimed after reducing Rs.78,07,500/- from the block of asset. But as the deemed value of building has been increased by Rs.42,83,038/- the depreciation is restricted to Rs.54,87,333/-.

> 6.2.3 The Appellant submits that reduction in depreciation is made by the A.O. taking Stamp Duty valuation applying provisions of 50C of the Act for computing Block of Asset and the same ought to be deleted as the same is unjustified.
>
> 6.2.4 As ground 1 is decided in favour of the assessee consequentially provisions of 45(3) would prevail over the provisions of section 50C. Hence, ground 5 becomes infructurous and the value as deducted from the block of asset by the appellant holds true along with the depreciation claimed thereon.

15. Since the above issue has been decided by the ld. CIT(A) in favour of the assessee on the same basis on which the earlier issue was decided in favour of the assessee, we do not find any infirmity in the order of the ld. CIT(A). Accordingly, we uphold the same.

16. One issue raised for A.Y. 2010-11 is that the ld. CIT(A) erred in restricting the disallowance u/s.14A r/w Rule 8D amounting to Rs.7,07,992/- holding that when the investments have not generated any income, the deduction on account of interest component on borrowed funds which were utilized for making the investments cannot be made. The Revenue in its grievance has also raised the issue that the ITAT has failed to appreciate the CBDT Circular No. 5 of 2014 dated 01.02.2014 on this issue.

17. We find that upon A.O.'s computation of disallowance u/s.14A, the ld. CIT(A) has held that the disallowance u/s. 14A should be limited to the exempt income earned. For this proposition, the assessee has relied on the decision of the Hon'ble Bombay High Court in the case of *CIT vs. Delite Enterprises* (in ITA No. 110 of 2009), the Hon'ble Delhi High Court decision in the case of *Cheminvest Ltd.* in 281 CTR 447 (Del). and the Special Bench decision of the Tribunal in the case of *ACIT vs. Vireet Investments (P) Ltd.* (82 taxmann.com 4155). Following the above case laws, the ld. CIT(A) upheld that the disallowance only to the extent of exempt income earned.

18. Against this order, the Revenue has filed the appeal before us.

19. Upon hearing the ld. DR and perusing the records, we find that the issue is covered in favour of the assessee by the afore-said decisions referred by the ld. CIT(A). Moreover, as referred in the submissions of the assessee, this ITAT in assessee's own case for A.Y. 2012-13 vide order dated 29.12.2017 following the same case laws has upheld the similar order by the ld. CIT(A). Respectfully following the precedent as above, we uphold the order of the ld. CIT(A).

20. In the result, these appeals by the Revenue stands dismissed.

Order pronounced in the open court on 02.03.2020

Sd/-	Sd/-
(C. N. Prasad) Judicial Member	(Shamim Yahya) Accountant Member

Mumbai; Dated : 02.03.2020

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai