

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, AM AND
SHRI RAHUL CHAUDHARY, JM

ITA No. 4096/Mum/2024
(Assessment Year: 2017-18)

3A Composites India Private Limited Unit No. 1112, 1 st Floor, Building No.11, Solitaire Corporate Park, Andheri (E), Mumbai-400 093	Vs.	ACIT, Circle-11(3)(1) Aayakar Bhavan, M. K. Road, Mumbai-400 020
PAN/GIR No. AACCA 9548 A		
(Assessee)	:	(Respondent)

Assessee by	:	Shri Mihir Naniwadekar & Ms. Rucha Vaidya
Respondent by	:	Shri Ram Krishn Kedia

Date of Hearing	:	29.10.2024
Date of Pronouncement	:	21.11.2024

ORDER

Per Om Prakash Kant, A M:

This appeal has been preferred by the assessee against the order dated 26.06.2024, passed by the learned Commissioner of Income Tax (Appeals) ('ld.CIT(A) for short), National Faceless Appeal Centre, Delhi ('NFAC' for short) for Assessment Year ('A.Y.' for short) 2017-18, raising following grounds:

- The ld. CIT(A) erred in upholding disallowance of depreciation of Rs.71,94,901/- made by the ld. A.O. by relying on the provisions of section 50C of the Income Tax Act, 1961, without appreciating that section 50C applies only for computation of capital gains and not for determining value of block of assets under section 43(6).*
- The ld. CIT(A) erred in upholding disallowance of depreciation of expenses of Rs.89,03,154 made by the ld. A.O. on adhoc basis, without appreciating that all the expenses claimed were wholly and exclusively for business purposes and further adhoc disallowance could not be made without any cogent material only on the basis of surmises.*

2. Briefly stated the facts of the case are that the assessee company filed its return of income for the year under consideration on 30.11.2017, declaring total income at Rs.36,17,54,200/- under the normal provisions of the Income Tax Act, 1961 ('the Act' for short) and book profit at Rs.37,41,48,330/- u/s. 115JB of the Act. The return of income filed by the assessee was selected for scrutiny and statutory notices issued under the Act were issued and complied by the assessee. The assessment u/s. 143(3) of the Act was completed on 19.12.2019 wherein disallowance of the excess depreciation claimed on building amounting to Rs.71,94,901/- and disallowance out of other expenses amounting to Rs.89,003,154/- was made by the ld. learned Assessing Officer ('ld. A.O.' for short).

3. On further appeal, the ld. CIT(A) sustained both the disallowance/additions made by the ld. A.O.

4. Aggrieved, the assessee is in appeal before us, by way of raising the grounds as reproduced above. The ld. Counsel for the assessee has filed a paper book containing pg. nos. 1 to 77.

5. Ground no.1 of the appeal of the assessee relates to disallowance of depreciation of Rs.71,99,901/- sustained by the ld. CIT(A). The facts in brief qua in dispute are that during the year under consideration, the assessee had sold a factory building for a sale consideration of Rs.2,45,00,000/-. The said property was appearing as part of block of assets in books of account and depreciation on said block of building was claimed by the assessee for income tax purposes. The stamp duty valuation of the said building was

adopted at Rs.9,76,75,509/- as against the actual sale consideration of Rs.2,45,00,000/-.

The assessee claimed depreciation on the remaining value of the written down value of the block of building after reducing the actual sale consideration of Rs.2,45,00,000/- and claimed depreciation of Rs.1,81,36,734/-. The working of the said deprecation is as under:

Opening WDV of block of building	Rate (%)	Additions	Deductions	Deprecation	Closing WDV
19,92,74,531	10	78,19,306	2,45,00,000	1,81,36,734	16,44,57,103

6. The Id. A.O. did not agree with the contention of the assessee and held that based on the provision of section 50C of the Act, the depreciation should be worked out on the remaining value of the block of the building after reducing the stamp duty value of the building of Rs.9,76,75,509/- and, accordingly, he worked out the deprecation at Rs.1,09,41,833/-. The working of the deprecation by the Id. A.O. is extracted as under:

Opening WDV of block of building	Rate (%)	Additions	Deductions	Deprecation	Closing WDV
19,92,74,531	10	78,19,306	9,76,75,509	1,09,41,833	9,84,76,495

7. Accordingly, the Id. A.O. disallowed excess depreciation of Rs.71,94,901/- (Rs.181,36,734 – Rs.109,41,833). Before the Id. CIT(A), the assessee relied on the decision of the co-ordinate bench of the Tribunal in the case of *DCIT vs. Futurz Next Services (Private) Limited* (in ITA No. 1383/Del/2017 & ITA No. 2396/Del/2017) and submitted that the legal fiction of substituting the sale consideration by the Stamp Duty value under section 50C of the Act is created only for the purpose of computing capital gain on the sale of capital assets and not for computing the written down value for claiming depreciation under the head ‘profits and gains of the business’. However, the Id.

CIT(A) did not accept the contention of the assessee. The Id. CIT(A) referred to the definition of the written down value provided in section 43(6) of the Act, wherein the definition of the 'moneys payable' is defined. According to the Id. CIT(A), the amount payable should be read as per the provision of section 50C of the Act, which is the amount deemed to be received on the sale of the immovable property in case the transfer value is less than the fair market value. The Id. CIT(A) also relied on the decision in the case of *ITO vs. United Marine Academy* [2011] 130 ITD 113 (Mum), wherein for computing the capital gain on transfer of depreciable asset, the sale consideration is directed to be substituted by the Stamp Duty Valuation of the said depreciable asset. The relevant finding of the Id. CIT(A) is reproduced as under:

6.5 *In view of the above, the moot point of adjudication here is that the amount to be reduced on account of sale of building shall be actual amount received or notional amount as per section 50C while computing allowable depreciation. In this regard, the provision 1 of section 50C are re-produced hereunder:*

Section 50C(1): Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer...

6.6 *On perusal of the above provision, it is to be noted that the section 50C shall be invoked if the underlined asset is capital asset. But in the underlined case, the building sold was pertaining to business assets and was part of block of assets. Further, provision of section 43(6), defines "Written Down Value" as under:*

(a)...

(b)...

(c) in the case of any block of assets,-

(i) in respect of any previous year relevant to the assessment year commencing on the 1st day of April, 1988, the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year and adjusted,-

(A) by the increase by the actual cost of any asset falling within that block, acquired during the previous year;

(B) by the reduction of the moneys payable in respect of any asset falling within that block, which is sold or discarded or demolished or destroyed during that

previous year together with the amount of the scrap value, if any, so, however, that the amount of such reduction does not exceed the written down value as so increased; and

6.7 *The above provision clearly mandates that WDV shall be reduced by amount payable and as per provisions of Section 50C the amount deemed to be received on sale of immovable property (in case transfer value is less than fair market value) shall be the stamp duty valuation. Harmonious reading of both the provisions together, it is clear that section 50C is applicable while selling of depreciable asset as well.*

6.8 *Further, the Mumbai ITAT special bench has also dealt with the same situation in case of ITO vs. United Marine Academy (2011) 130 ITD 113 (Mum). The extracts of said judgment are re-produced hereunder:*

In our opinion, the Assessing Officer thus was right in applying the provision of section 50C to the transfer of depreciable capital assets covered by section 50 and in computing the capital gain arising from the said transfer by adopting the stamp duty valuation. We, therefore, answer the question referred to this special bench in the affirmative i.e. in favour of the Revenue and against the assessee.

6.9 *In view of the above and having regard to special bench judgment, I am of the considerate view that the stand adopted by Ld. AO is appropriate and the addition carried out is justified. Therefore, the disallowance made by the Ld. AO are being upheld.*

8. Before us, the Id. Counsel for the assessee relied on the decision of the Hon'ble Supreme Court in the case of *Mancheri Puthusseri Ahmed vs. Kuthiravattam Estate Receiver* [1996] 6 Supreme Court Cases 185, wherein the Hon'ble Supreme Court held that legal fiction cannot be extended beyond the purpose for which it is created. Accordingly, he submitted that the legal fiction of section 50C of the Act cannot be extended while working out the written down value for claiming depreciation on the block of asset. The Id. Counsel for the assessee relied on the decision of the co-ordinate bench of the Tribunal in the case of *Futurz Next Services (Private) Limited* (supra).

9. On the contrary, the learned Departmental Representative ('Id. DR' for short) submitted that while computing the written down value of block of asset, the 'moneys payable' in respect of the property transferred has to be considered. He referred to *Explanation* below to section 41(4) of the Act, wherein the term 'money payable' has

been defined. He submitted that the definition of the 'money payable' is inclusive definition and, therefore, the word 'payable' should include the fair market value of the property determined by the Stamp Duty Valuation Authority. He further referred that the word 'money payable' included for the price which building is sold and the price has been determined by the Stamp Duty Valuation Authority and, therefore, the same should be substituted by the sale consideration while computing the written down value for the purpose of claiming depreciation.

10. We have heard the rival submissions of the parties and perused the relevant materials available on record, including the paper book filed by the assessee. The sole issue in dispute in the ground raised by the assessee is in respect of the computation of the 'written down value' (WDV) as per the provision of section 43(6)(c)(i)(B) of the Act. According to the assessee for computing 'written down value' of the block of the assets, consisting building, the actual sale consideration in respect of an asset sold from the block of the asset should be reduced from opening WDV, whereas according to the Revenue, the notional sale consideration of the asset sold as prescribed u/s. 50C should be reduced from opening WDV. In view of the above difference of opinion between the parties on the issue of interpretation of the terms 'written down value', we feel it appropriate to refer to the relevant provisions of the Act.

10.1 According to the **Section 32(1)(ii)** of the Act, depreciation on any block of asset is allowed at the rate of percentage prescribed under the Rule on the 'written down value' of block of asset. Before us, the dispute is not in respect of the 'rate of depreciation' but dispute is in respect of the term 'written down value'. In explanation 2 to section 32(1), it

is mentioned that for the purpose of sub section, the 'written down value' of the block of the asset shall have the same meaning as in sub section (c) of clause 6 of section 43 of the Act. The relevant section is reproduced as under:

43. Definitions of certain terms relevant to income from profits and gains of business or profession.

In sections 28 to 41 and in this section, unless the context otherwise requires –

- (1)
(2) ...
(6) "written down value" means-

(a) *in the case of assets acquired in the previous year, the actual cost to the assessee;*

(b) *in the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation actually allowed to him under this Act, or under the Indian Income-tax Act, 1922 (11 of 1922), or any Act repealed by that Act, or under any executive orders issued when the Indian Income-tax Act, 1886 (2 of 1886), was in force:*

[Provided that in determining the written down value in respect of buildings, machinery or plant for the purposes of clause (ii) of sub-section (1) of section 32, "depreciation actually allowed" shall not include depreciation allowed under sub-clauses (a), (b) and (c) of clause (vi) of sub-section (2) of section 10 of the Indian Income-tax Act, 1922 (11 of 1922), where such depreciation was not deductible in determining the written down value for the purposes of the said clause (vi);] [Inserted by Act 15 of 1965, Section 6 (w.r.e.f. 1.4.1962).]

(c) *[in the case of any block of assets,- [Inserted by Act 46 of 1986, Section 8 (w.e.f. 1.4.1988).]*

(i) *in respect of any previous year relevant to the assessment year commencing on the 1st day of April, 1988, the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year and adjusted,-*

(A) *by the increase by the actual cost of any asset falling within that block, acquired during the previous year;*

(B) *by the reduction of the moneys payable in respect of any asset falling within that block, which is sold or discarded or demolished or destroyed during that previous year together with the amount of the scrap value, if any, so, however, that the amount of such reduction does not exceed the written down value as so increased; and]*

(C) *[in the case of a slump sale, decrease by the actual cost of the asset falling within that block as reduced- [Inserted by Act 27 of 1999, Section 26 (w.e.f. 1.4.2000).]*

(a) *by the amount of depreciation actually allowed to him under this Act or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922) in respect of*

any previous year relevant to the assessment year commencing before the 1st day of April, 1988; and

(b) by the amount of depreciation that would have been allowable to the assessee for any assessment year commencing on or after the 1st day of April, 1988 as if the asset was the only asset in the relevant block of assets, so, however, that the amount of such decrease does not exceed the written down value;]

(ii)[in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1989, the written down value of that block of assets in the immediately preceding previous year as reduced by the depreciation actually allowed in respect of that block of assets in relation to the said preceding previous year and as further adjusted by the increase or the reduction referred to in item (i).] [Inserted by Act 46 of 1986, Section 8 (w.e.f. 1.4.1988).]

Explanation 1. -

[Explanation 2-A.-.....

Explanation 2-B.-.....

Explanation 3. -.....

[Explanation 4. -For the purposes of this clause, the expressions "moneys payable" and "sold" shall have the same meanings as in the Explanation below sub-section (4) of section 41.] [Inserted by Act 46 of 1986, Section 8 (w.e.f. 1.4.1988).]

[Explanation 5. -

[Explanation 6. -

[Explanation 7. -

11. The *Explanation 4* above has prescribed that the expression “moneys payable” and "sold" shall have the same meanings as in the *Explanation* below sub-section (4) of section 41. Therefore, it is relevant to reproduce the said explanation below sub-section (4) of section 41, for ready reference, as under:

41. Profits chargeable to tax.

(1)

(2)

(3)

(4) Where a deduction has been allowed in respect of a bad debt or part of debt under the provisions of clause (vii) of sub-section (1) of section 36, then, if the amount subsequently recovered on any such debt or part is greater than the difference between the debt or part of debt and the amount so allowed, the excess shall be deemed to be profits and gains of business or profession, and accordingly, chargeable to income-tax as the income of the previous year in which it is recovered, whether the business or profession in respect of which the deduction has been allowed is in existence in that year or not.

[Explanation. - For the purposes of sub-section (3),-

(1) "moneys payable" in respect of any building, machinery, plant or furniture includes-

(a) any insurance, salvage or compensation moneys payable in respect thereof;

(b) where the building, machinery, plant or furniture is sold, the price for which it is sold, so, however, that where the actual cost of a motor car is, in accordance with the proviso to clause (1) of section 43, taken to be twenty-five thousand rupees, the moneys payable in respect of such motor car shall be taken to be a sum which bears to the amount for which the motor car is sold or, as the case may be, the amount of any insurance, salvage or compensation moneys payable in respect thereof (including the amount of scrap value, if any) the same proportion as the amount of twenty-five thousand rupees bears to the actual cost of the motor car to the assessee as it would have been computed before applying the said proviso;

(2) "sold" includes a transfer by way of exchange or a compulsory acquisition under any law for the time being in force but does not include a transfer, in a scheme of amalgamation, of any asset by the amalgamating company to the amalgamated company where the amalgamated company is an Indian company.]

12. On perusal of the above provisions, it is clear that for the purpose of computing 'written down value', the value of the 'moneys payable' in respect of the property sold has to be reduced from opening written down value of block of asset. The inclusive definition provided for insurance, compensation, etc. received in respect of the said property and the price for which the property is sold. The Id. DR is of the view that the above definition of the money's payable is inclusive and, therefore, the fair market value determined by the Stamp Duty Valuation Authority for the purpose of section 50C of the Act would become the price for which the property is sold. The Id. DR relied on the decision of the co-ordinate bench of the Tribunal in the case of *United Marine Academy* (supra), but in the said case, the issue was in respect of the determination of the capital gain arising from the transfer of the depreciable assets, but in the instant case before us, the issue in dispute is limited to the computation of the depreciation under the head 'profits and gains of the business'. In the instant case, the sale consideration of the building sold is not more than the opening written down value (WDV) of the block

including new building acquired, therefore, the section 50 of the Act does not result to nay short term capital, hence, said is not applicable over present facts of the case until all the buildings under the block are sold and in that case section 50 would get attracted and applying the ration in the case of *United Marine Academy* (supra), the Assessing officer could have substituted the sale consideration received by stamp duty valuation of the property. Therefore, in our opinion, the said deeming fiction of section 50C cannot be extended while working out the written down value for the purpose of claiming depreciation on the block of the asset. The Hon'ble Supreme Court in the case of *Mancheri Puthusseri Ahmed vs. Kuthiravattam Estate Receiver* (supra) has held that while interpreting the provision involving a legal fiction, the court is to ascertain as for what purpose the fiction is created, and after ascertaining this, the court is to assume all those facts and consequences which are incidental or inevitable corollaries for giving effect to the fiction. We find that legislature has created the legal fiction u/s. 50C of the Act for the purpose of computing the capital gain on sale of capital assets. Similarly, while computing the profits and gains of the business, the legislature has introduced a legal fiction under section 43CA of the Act for substantiating the sale consideration by the Stamp Duty Value while transfer of an assets other than the capital asset, i.e., stock-in-trade, but no specific fiction has been created while computing depreciation on the block of the assets for substantiating the sale consideration by the Stamp Duty Valuation Authority. The present definition of the 'moneys payable' therefore, cannot be construed as including as the Stamp Duty Valuation of the property and, therefore, the legal fiction for substantiating the sale consideration by the Stamp Duty Value created under either section 50 or section 43CA of the Act cannot be extended to section 32 of the Act for

claiming depreciation on the block of the asset. In the instant case, the AO could have examined the applicability of section 41(2) for taxing the quantum of depreciation claimed on building in earlier years, which we don't know whether he had examined or not. For ready reference, the said section is reproduced as under:

41. Profits chargeable to tax.

(2) Where any building, machinery, plant or furniture,-

(a) which is owned by the assessee;

(b) in respect of which depreciation is claimed under clause (i) of sub-section (1) of section 32; and

(c) which was or has been used for the purposes of business, is sold, discarded, demolished or destroyed and the moneys payable in respect of such building machinery, plant or furniture, as the case may be, together with the amount of scrap value, if any, exceeds the written down value, so much of the excess as does not exceed the difference between the actual cost and the written down value shall be chargeable to income-tax as income of the business of the previous year in which the moneys payable for the building, machinery, plant or furniture became due.

Explanation. - Where the moneys payable in respect of the building, machinery, plant or furniture referred to in this sub-section become due in a previous year in which the business for the purpose of which the building, machinery, plant or furniture was being used is no longer in existence, the provision of this sub-section shall apply as if the business is in existence in that previous year.]

12.1 In view of above discussion, the fiction of section 50C can't be extended to the facts of the case, accordingly, we set aside the finding of the Id. CIT(A) on the issue in dispute and we delete the disallowance made by the lower authorities. Ground no. 1 raised by the assessee in appeal is accordingly allowed.

13. Ground no. 2 raised by the assessee in appeal is in relation of the disallowance of expenses of Rs.89,03,154/- made by the Id. A.O. The facts in brief *qua* in dispute are that during the course of assessment proceeding, the Id. A.O. asked the assessee to provide party-wise details of the expenses along with the supporting documents and vouchers. However, the assessee requested the Id. A.O. to specify the expenses for which details were required. The assessee submitted that it had already disallowed certain expenses appearing in the profit and loss account in computation of total income. But in absence of

any details or supporting documents, the Id. A.O. disallowed an amount of Rs.89,03,154/- , i.e., 5% of Rs.17,80,63,088/- on ad-hoc basis.

14. On further appeal, the Id. CIT(A) upheld the disallowance by observing as under:

6.12 During the appellate proceedings, the appellant filed break up of other expenses and filed copy of ledger extracts of said expenses. The appellant once again filed supporting documents such as copy of invoices, bank statements reflecting payment made, etc.

In absence of aforesaid documents, the genuineness of the expenses and correctness of expenses can not be verified.

Thus, the disallowance carried out by the Ld.. AO is found to be correct and being upheld.

15. We have heard the rival submissions of the parties and perused the materials available on record. Before us, the Id. Counsel for the assessee fairly agreed and submitted that details were not filed before the lower authorities, therefore, the matter should be restored back to the file of the Id. AO. We find that the assessee is willing to produce all the necessary evidence in support of the expenses claimed and the Id. DR did not object to the proposal of the Id. Counsel for the assessee. Accordingly, in view of the above, we feel it appropriate to restore this matter back to the file of the Id. A.O. with the direction to the assessee to produce all the necessary documentary evidence/voucher in support of the voucher claimed for verification by the Id. A.O. and, thereafter the Id. A.O. shall decide the issue in accordance with the law. Ground no. 2 raised by the assessee in appeal is accordingly allowed for statistical purpose.

16. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 21.11.2024.

Sd/-

Sd/-

(Rahul Chaudhary)
Accountant Member

(Om Prakash Kant)
Accountant Member

Mumbai; Dated : 21.11.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai