

IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH "H" NEW DELHI)  
BEFORE SHRI I.C. SUDHIR AND SHRI INTURI RAMA RAO

ITA No. 5335/Del/2012  
Assessment Year: 2009-10

Venus Financial Services Ltd., (Now merged with Avantha Realty Ltd.) Thapar House, 124 Janpath, New Delhi. (PAN: AAACV3258L) (Appellant)	vs.	Assistant CIT, Circle 17(1), New Delhi.  (Respondent)
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Appellant by: Shri P.C. Yadav, Adv.  
Respondent by: Shri J.P. Chandrekar, Sr. DR

Date of hearing : 01 .07.2015  
Date of pronouncement: 28 :09.2015

ORDER

PER I.C. SUDHIR: JUDICIAL MEMBER

The assessee has impugned First Appellate Order on the following grounds:

- 1) That the order of the Learned CIT(Appeals) is bad in law and on facts.
  
- 2) Under the facts and circumstances of the case and in law, the Learned CIT(Appeals), has erred in holding that loss computed by the assessee in respect of sale of share of M/s. Pioneer Ltd. is not allowable, ignoring that the valuation of shares arrived by Independent valuer for the purpose of amalgamation.

- 3) On the facts and in the circumstances of the case and in law and more particularly on the basis of documents available for the purpose of the appeal, the Learned CIT(Appeals) is wrong in concluding that the purchase consideration and sale consideration in respect of the impugned transaction are not frère from doubt and thereby disallowance as made by the A.O. in respect of loss Rs.4,47,55,491 under the head ‘capital gains’ is wrong in accordance with the law.
  - 4) The Learned CIT(Appeals) has erred in not appreciating that the value of shares has been computed by the valuer by applying one of permissible method of valuation under the Income-tax.”
2. We have heard and considered the arguments advanced by the parties in view of orders of the authorities below, material available on record and the decisions relied upon.
  3. The issue involved in the above grounds is as to whether the Learned CIT(Appeals) was justified in upholding the disallowance of Rs.4,47,55,491 claimed in respect of loss under the head “capital gain” treating the transaction doubtful.

4. The relevant facts are that during the year, the assessee company was engaged in the business of investments and purchase/sale of land and immovable property. Apart from business loss, the assessee had also disclosed loss from capital gain in the return of income. The assessee claimed capital loss of Rs.5,21,22,725. The Assessing Officer required the assessee to furnish complete details of shares sold during the year on which loss was claimed. The assessee showed long term capital losses on sale of shares of three unlisted companies, namely, the Pioneer Ltd., Ultima and Solaris Holding Ltd. These shares were sold by the assessee at par and the loss arisen was due to indexed cost. In case of sale of shares of the Pioneer Ltd., the assessee has shown sale of 10 lacs shares of the said company for a total consideration of Rs.1 lac i.e. at just Rs.1.10 per share, whereas the assessee showed the cost of such shares at Rs.4,00,00,000 i.e. Rs.40 per shares. The assessee was required to furnish copy of balance sheet of the said company as on 31.3.2008 and 31.3.2009. The assessee furnished copy of balance sheet of Pioneer Ltd. as on 31.3.2008. The Assessing Officer observed that the said balance sheet was incomplete and did not contain any schedule and details. He, however, observed that the said balance sheet showed that the book value of shares was Rs.3.50 per share. The Assessing Officer noted that the assessee had not attached any balance sheet of the

Pioneer Ltd. as on 31.3.2009 nor furnished copy of income-tax return or other document of the said company. The assessee had also not furnished any document to show that the actual consideration of such sale of shares was Rs.1 lac only. The Assessing Officer noted further that the assessee neither furnished copy of shares transferred deed nor any confirmation from the buyer stating the said consideration. The Assessing Officer accordingly held that the loss claimed by the assessee on sale of unlisted shares of Pioneer Ltd. remained unsubstantiated and unverified due to failure on the part of the assessee to place on record the relevant and necessary documents and added the claimed loss of Rs.4,47,55,491 by way of disallowance. The Learned CIT(Appeals) has upheld the same.

5. In support of the grounds on the issue of genuineness of the claimed loss out of the selling of shares, the Learned AR submitted that the assessee has claimed long term capital loss of Rs.4,47,55,491 on the sale of shares of Pioneer Ltd., which shares were allotted to the assessee in the assessment year 2007-08 for a consideration of Rs.4 crores. The assessee had also sold the shares of two other unlisted companies, namely, Solaris Holdings and Ultima Hygiene Ltd. The shares of these two companies were sold at par and the loss accrued due to indexation was allowed by the Assessing Officer. In

respect of shares of Pioneer Ltd., the Assessing Officer observed that the assessee had purchased these shares, having face value of Rs.10 at a premium of Rs.30 and the total cost of acquisition was Rs.40 per share. The Assessing Officer further observed that the assessee had sold these shares @ Re. 0.10 to the purchaser and has incurred loss.

6. Regarding the doubt expressed by the Assessing Officer on the genuineness of the transaction of shares of Pioneer Ltd., on the basis that the assessee could not produce the complete balance sheet of Pioneer Ltd. and the papers submitted were not signed by the Auditors or by the Directors of the Company, the Learned AR submitted that it is not correct as complete documents were filed by the assessee as it is evident from the submissions of the assessee before the Learned CIT(Appeals), a copy thereof has been made available at page No. 1 to 10 of the paper book.

7. Regarding the observation of the Assessing Officer that the book value of the shares as shown by Pioneer Ltd. is Rs.3.50 per share, the Learned AR submitted that the Assessing Officer has failed to compute the capital gain in accordance with sec. 45 read with sec. 48 of the Income-tax Act, 1961. The basis adopted by the Assessing Officer to value shares at the

rate of Rs.3.50 has not been at all mentioned in the assessment order nor any supporting evidence has been brought on record. Thus, the value of shares at the rate of Rs.3.50 adopted by the Assessing Officer in place of Rs.0.10 per share is not valid. The authorities below have overlooked that the shares were duly transferred in the name of other party and the consideration was received by cheque. In support, he referred page Nos. 67 and 68 of the paper book which are copies of shares certificate.

8. The Learned AR submitted further that long term capital gain or loss is to be computed in the manner laid down in section 48 of the Act as in the section the expression used is “full value of consideration received or accrued”, meaning thereby that there is no scope of any fair market value or estimation. The Learned AR submitted that there is no material on record on the basis of which it can be said that the assessee had received over and above agreed consideration. It is the settled position of law that in case of sale, the Assessing Officer has no power to replace the value of consideration agreed between the parties. In support, he placed reliance on the following decisions:

1. Nilofer Singh – 309 ITR 233 (Delhi);
2. George Handorson – 66 ITR 622 (S.C);
3. Gillanders Arbuthonot – 87 ITR 407 (S.C);

4. Morarji Textile Ltd. – ITA No. 1979/Bom/2009;
5. MGM Benefit Trust – ITA No. 316/Bum/2009 dt. 26.11.2009;

9. The Learned AR submitted further that the authorities below have overlooked the auditor's report of Pioneer Ltd. clearly showing the value of shares as on 31.3.2008 at Rs.0.17 per share. In this regard, he referred page No. 25 of the paper book i.e. auditor's report. He submitted further that auditors had also observed that the accumulated losses of the company are more than 50% of its net work. He referred page No. 30 of the paper book. The Learned AR submitted further that the authorities below have completely discarded the valuation report of the valuer in respect of the value of shares. The said report was prepared by the valuer applying NAV method. He submitted that a copy of the said report has been made available at page Nos. 44A to 56 of the paper book.

10. The Learned AR submitted that the Learned CIT(Appeals) has compared the working of the Assessing Officer and assessee vis-à-vis computation of long term capital loss and after analyzing the working of the assessee and the Assessing Officer, it was observed that difference in sale consideration as per Assessing Officer and assessee is only Rs.34 lacs. However, instead of making any separate addition of Rs.34 lacs on account

of alleged under valuation of shares, the Learned CIT(Appeals) has sustained the entire loss as computed by the Assessing Officer.

11. The Learned AR further submitted that the Assessing Officer has accepted the sales consideration received by the assessee as genuine as it is evident from the fact that while computing the income of the assessee, the Assessing Officer has adopted the net figure of loss as computed by the assessee in its computation and no separate addition of Rs.1 lac has ever been made. Thus the Assessing Officer and Learned CIT(Appeals) both have accepted the sales consideration figure.

12. The Learned AR submitted that report of valuer is an important piece of evidence and the same cannot be discarded without their being any cogent material on record showing that the report of valuer is not correct. In this regard, he placed reliance on the judgment of Hon'ble jurisdictional Delhi High Court in the case of S.K. Construction & Co. – 167 Taxman 171 (Delhi).

13. The Learned AR submitted further that the transaction among the group company is not prohibited under the law and an assessee can sell

shares at lesser price to its subsidiary. In this regard, he placed reliance on the judgment of Hon'ble Supreme Court in the case of CIT vs. Calcutta Discount – 91 ITR 8 (S.C) holding that a company can sold shares to its subsidiary at lower price and has wisdom to reduce its tax liability.

14. The Learned AR submitted further that there is no reason to doubt the genuineness of the claimed transaction. As per the provisions of sec. 70(2), a long term capital loss can only be set off with long term gain and not otherwise and in the year under consideration, there was no long term gain available with the assessee. Therefore, there was no ulterior motive of the assessee behind the transaction as has been alleged by the Learned CIT(Appeals). The assessee has lost the opportunity of carrying forward this loss in upcoming years by virtue of amalgamation. Therefore, it can be said that the transaction entered by the assessee was a bona fide and genuine transaction without any colorable device. The Learned AR also referred page Nos. 12 to 45; 43 and 44; 44A-56; 61 and 62, 73 to 90 of the paper book i.e. copies of auditor report along with balance sheet of Pioneer Ltd. for financial years 2007-08 and 2008-09, certificate of auditors regarding computation of share value, value analysis of shares done by P.W.C. of shares of Pioneer Ltd., shares certificate issued in favour of M/s. A.S.A.

Agencies, shares certificate in favour of Epic Advisor; balance sheet of M/s. A.S.A. for assessment year 2009-10; balance sheet of M/s. Solaris Holdings for assessment year 2009-10; balance sheet of Solaris Chemicals for assessment year 2009-10 and balance sheet of Janpath Investments for assessment year 2009-10.

15. The learned Senior DR on the other hand placed reliance on the orders of the authorities below, which we have already discussed hereinabove.

16. Considering the above submission, we find that during the year, the assessee has furnished following computation of capital gains/loss:

Name of Co.	Date of Purchase	No. of shares	Amount	Indexed cost	Date of sale	Sale consideration	Profit/(loss)
The Pioneer Ltd.	30.03.2007	10,00,000	4,00,00,000	4,48,55,491	07.02.09	1,00,000	(4,47,55,491)
Ultima	01.12.2005	7,50,000	75,00,000	87,82,696	07.02.09	75,00,000	(12,82,696)
Solaris Holding Ltd.	16.01.2007	5,00,000	5,00,000	5,62,09,538	72.02.09	5,01,25,000	(60,84,538)

17. The Assessing Officer accepted the claimed loss regarding the shares transaction of Ultima and Solaris Holdings Ltd. but did not accept the claimed loss on sale of shares of the Pioneer Ltd. The Assessing Officer

doubted the genuineness of the claim on the basis that the assessee could not produce the complete balance sheet of Pioneer Ltd., the papers submitted were not signed by the auditors or by the directors of the company, the book value of the shares as shown by Pioneer Ltd. is Rs.3.50 per share and hence the price claimed to have been received by the assessee is not acceptable. In its submissions before the Learned CIT(Appeals) and the ITAT, the assessee has tried to meet out these objections of the Assessing Officer by the submissions that the Assessing Officer had disallowed the loss ignoring the documents filed by the assessee during the course of assessment proceedings and the valuation report of independent valuer who had determined the value of shares by applying NAV Method, which is well accepted method under the provisions of Income-tax Act, 1961. It has been contended that the authorities below have overlooked that the shares were duly transferred in the name of other party and the consideration was received by cheque. Besides the contention of the assessee also remained that the long term capital gain or loss is to be computed in the manner laid down in section 48 of the Act wherein expression used is “full value of consideration received or accrued”. The main thrust behind this contention of the assessee was that there is no scope of any fair market value or estimation and in case of sale of shares, the Assessing Officer has no power to replace the value of the

consideration agreed between the parties. The further contention of the assessee remained that the authorities below have completely discarded the valuation report of the valuer in respect of the value of shares, which report was prepared by the valuer applying NAV method.

18. We find substance in the above contention of the assessee that it is settled position of law that in the case of sale, the Assessing Officer has no power to replace the value of the consideration agreed between the parties. In this regard, we find strength from the above cited decision of Hon'ble Delhi High Court in the case of Nilofar Singh (supra) holding that the expression "full value of consideration" used in section 48 of the Act does not have any reference to market value. Similar view has been expressed in other decision, cited hereinabove, by the Learned AR. We also agree with the contention of the learned that a report of a valuer is an important piece of evidence and the same cannot be discarded without there being any cogent material on record showing that the report of the valuer is not correct. It is well supported by the decisions cited of Hon'ble Delhi High Court in the case of S.K. Construction & Co. (supra). In the present case, the assessee had shown sale of 10 lacs shares of Pioneer Ltd. for a total consideration of Rs.1 lac only i.e. @ Rs.0.10 per share. The cost of such shares had been

shown at Rs.4 crores i.e. Rs.40 per share. The summarized position of value per share computed by the assessee, auditors and valuer is as under:

Value per share as computed by appellant company	Value per share as per auditor certificate	Value per share as per independent valuer
(0.17)	(0.21)	0.10

19. The shares were sold to A.S.A. Agencies Pvt. Ltd. @ Rs.0.10 per share on 31.3.2009. The loss incurred on the sale of shares was Rs.4,47,75,491.

20. In view of the above cited decisions that the expression “full value of consideration” used in section 48 of the Income-tax Act, 1961 does not have any reference to market value, we are of the view that the Assessing Officer was having no power to replace the value of the consideration agreed between the parties with any fair market value or estimation. Only because the Pioneer Ltd. had shown the book value of shares at the rate of Rs.3.50 per share, the Assessing Officer was not justified to ignore the price agreed between the parties and to doubt the genuineness of the claimed loss, even ignoring the valuation report. We thus while setting aside orders of the authorities below direct the Assessing Officer to delete the disallowance of Rs.4,47,55,491 incurred on the sale of shares of the Pioneer Ltd. The issue is

thus decided in favour of the assessee. The related grounds are accordingly allowed.

21. In result, the appeal is allowed.

Order pronounced in the open court on 28 .09.2015

Sd/-  
( INTURI RAMA RAO )  
ACCOUNTANT MEMBER

Sd/-  
( I.C. SUDHIR )  
JUDICIAL MEMBER

Dated: 28 /09/2015  
Mohan Lal

Copy forwarded to:

- 1) Appellant
- 2) Respondent
- 3) CIT
- 4) CIT(Appeals)
- 5) DR:ITAT

ASSISTANT REGISTRAR

	Date
Draft dictated on computer	24.09.2015
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Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	