

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.2350/M/2023  
Assessment Year: 2016-17**

Dy. Commissioner of Income Tax, Central Circle-5(4), Room No.1927, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai - 400021	Vs.	M/s. Larsen & Toubro Limited (Formerly known as L & T Shipbuilding Limited), L&T House, N.M. Marg, Ballard Estate, Mumbai – 400 001 <b>PAN: AAACL0140P</b>
(Appellant)		(Respondent)

**CO No.104/M/2023  
(Arising out of ITA No.2350/M/2023)  
Assessment Year: 2016-17**

M/s. Larsen & Toubro Limited (Successor to L & T Shipbuilding Limited), L&T House, N.M. Marg, Ballard Estate, Narottam Morarjee Marg, Mumbai – 400 001 <b>PAN: AAACL0140P</b>	Vs.	Asst. Commissioner of Income Tax, Central Circle-5(4), Room No.1927, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Nitesh Joshi, A.R. &  
Shri Nayan Thakkar, A.R.

Revenue by : Shri Ajay Chandra, D.R.

Date of Hearing : 08 . 03 . 2024

Date of Pronouncement : 20 . 03 . 2024

## ORDER

### Per Bench:

The appellant, M/s. Larsen & Toubro Limited (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 06.04.2023 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2016-17 on the grounds inter-alia that :-

*"1. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that the additional expenditure of Rs. 82,59,94,515/- incurred by the assessee is related to FY 2018-19, 2019-20 & 2020-21, which was not a necessary pre-condition for the transfer of undertaking /division as slump sale?*

*2. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has erred in granting the amount of Rs. 82,59,94,515/- as a deduction u/s 48(1) in computing the capital gain on slump sale of port division in FY 2015-16 relevant to AY 2016-17?*

*3. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is empowered under the Act to reduce the returned income of assessee by way of recomputation of deduction under section 50B whereas 'Goetze (India) Ltd. ' is with regard to only a new claim made in the assessment and not concerning modification of claim?*

*4. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) erred in law in holding that the expenses of Rs. 82,59,94,515/- as an allowable expense in the instant assessment year which is patently wrong in as much as the assessee is following mercantile systems of accounting and as such expenses crystallized in AY. 2019-20 cannot be allowed during the assessment year in question?*

*5. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is right in not appreciating the decision of the High Court of Delhi in Commissioner of Income Tax Versus Exxon Mobil Lubricants Private Limited [2010] 8 taxmann.com 249 (Delhi) wherein it was held that where Liability of the assessee arose and was crystallized in the current year, the assessee was entitled to allowance of that expenditure only in the current assessment year. Similarly in the assessee's case, the liability of Rs. 82,59,94,515/- arose and was crystallized in A. Y. 2019-20, the assessee was entitled to allowance of that expenditure only in the A. Y. 2019-20 and not in A.Y. 2016-17?*

*6. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has erred in not considering the fact that the amount of liability also rises by Rs. 82,59,94,515/- on account of differential lease rental premium payable/paid to TIDCO, in computing the net worth of undertaking or division within the meaning of explanation 2 to section 50B of the Act for calculating the amount of capital gain arises on transfer of such undertaking or division?*

*7. The Applicant craves to leave, to add, to amend and/ or to alter any of the ground of appeal, if need be.*

*The appellant prays that the order of Commissioner of Income-tax (Appeal) on the above ground be set aside and that of the Assessing Officer be restored. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee company M/s. Larsen & Toubro Shipbuilding Ltd. filed its return of income claiming loss of (-)Rs.834,19,92,805/- which was subsequently revised admitting nil income. The assessee M/s. Larsen & Toubro Shipbuilding Ltd. has set off the entire business loss of Rs.671,92,92,951/- against the Long Term Capital Gains (LTCG) of Rs.692,96,32,554/- and income from other sources of Rs.6,78,351/- and remaining taxable LTCG to the extent of Rs.21,10,17,954/- was set off against brought forward unabsorbed depreciation loss of Rs.1,20,35,171/- & Rs.4,17,09,985/- for A.Y. 2011-12 & 2012-13 respectively. The assessee M/s. Larsen & Toubro Shipbuilding Ltd. also set off brought forward unabsorbed depreciation to the extent of Rs.1,57,27,298/- out of Rs.4,56,16,57,266/- for A.Y. 2013-14. It is also a fact on record that the assessee company M/s. Larsen & Toubro Shipbuilding Ltd. has got merged with M/s. Larsen & Toubro Ltd. w.e.f. 01.04.2019 by virtue of the order dated 10.03.2020 and 24.04.2020 respectively. The Assessing Officer (AO) after declining the contentions raised by the assessee M/s. Larsen & Toubro

Shipbuilding Ltd. framed the assessment at a taxable income of Rs.Nil and the current year loss was assessed at Rs.3,28,99,74,519/- instead of nil.

3. The assessee M/s. Larsen & Toubro Shipbuilding Ltd. carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) both the Revenue as well as the assessee M/s. Larsen & Toubro Shipbuilding Ltd. have come up before the Tribunal by way of filing present appeal and cross objection respectively.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly the assessee company M/s. Larsen & Toubro Shipbuilding Ltd., engaged in the shipbuilding and port business filed its return of income at loss of Rs.8,34,19,92,805/-, which was subsequently revised admitting nil income. It is also not in dispute that the assessee company M/s. Larsen & Toubro Shipbuilding Ltd. got merged with M/s. Larsen & Toubro Ltd. w.e.f. 01.2019 and by virtue of the scheme of order dated 16.03.2020 and 24.04.2020 respectively passed by the National Company Law Tribunal (NCLT). It is also not in dispute that revised return filed by the assessee M/s. Larsen & Toubro Shipbuilding Ltd. on 28.03.2018 to include the capital gain/loss on slump sale in accordance with the scheme of arrangement. It is also not in dispute that the AO while

framing the assessment under section 143(3) of the Income Tax Act, 1961 (for short 'the Act') has not considered the revised return filed by the assessee M/s. Larsen & Toubro Shipbuilding Ltd. on 28.03.2018. It is also not in dispute that the AO has not considered the additional expenditure of Rs.82,59,94,515/- claimed by the assessee M/s. Larsen & Toubro Shipbuilding Ltd. as per precondition for transfer of the business. M/s. Larsen & Toubro Shipbuilding Ltd. was required to reassign 371.80 acres of leasehold land, which had been obtained on lease from Tamil Nadu Industrial Development Corporation Limited (TIDCO). It is also not in dispute that TIDCO permitted the transfer of said leasehold land subject to the payment of differential upfront lease rental which are as under:

S No	Date of payment	Acres	Nature of Payments	Amount
1	06/04/2018	321.8	Differential Upfront lease rental paid in Tranche 1	70,08,80,400
2	20/04/2018		Stamp duty and registration charges relating to Tranche 1	1,40,26,065
3	16/05/2019	50	Differential payment made to TIDCO for Tranche 2	11,10,78,000
<b>Amount allowed by CIT(A)</b>				82,59,94,515
4	19/10/2020		Stamp duty and registration charges relating to Tranche 2	43,99,651
<b>Total</b>				<b>83,03,84,116</b>

6. In the backdrop of the aforesaid undisputed facts the sole question arises for determination in this case is:

*“as to whether the assessee is entitled for deduction of differential amount paid towards upfront lease rental, stamp duty and registration*

*charges being expenses incurred in relation to the transfer of slump sale business, while computing the capital gain under section 48(i) of the Act disallowed by the AO?"*

7. The Ld. CIT(A) by thrashing the facts decided the issue in question in favour of the assessee by returning following findings:

*"6.4 It is a fact that the appellant has not made the claim in the Return of Income. However, the claim was made before the completion of assessment proceedings. In the case of Sesa Goa Ltd. vs. Addl.CIT 430 ITR 114, the Hon'ble Bombay High Court held that the assessee could make additional claim for deduction before the appellate authorities which ought to be considered. The Hon'ble High Court also held that while the AO was right in rejecting the claim for such a deduction, the appellate authorities were duty bound to consider it. In the instant case, the appellant has brought out sufficient facts to establish that a differential lease rental premium of Rs. 82,59,94,515/-, which was subsequently crystallized and paid by the appellant to TIDCO, has been an integral part of such transfer.*

*6.4.1 As per the scheme of arrangement between L&T Shipbuilding Ltd. ('demerged company') and Marine Infrastructure Developer P. Ltd. ('resulting company'), Part 5 Para 5.8 "all costs, charges and expenses of the companies in relation to or in connection with negotiations leading up to the Scheme and of carrying out and completing the terms and provisions of this Scheme and in relation to or in connection with the Scheme and incidental to the completion of this Scheme shall be borne and paid by the Demerged Company". The 'Appointed Date' as per the scheme is "close of the business hours of March 31, 2016", i.e. relevant to the AY 2016-17. This scheme has been approved by the Hon'ble NCLT, Chennai vide its order dated 20.03.2017.*

*In view of the above, the appellant has sufficiently demonstrated that although these expenses have been subsequently crystallized, they are related to the transfer and that the appellant is eligible for such a deduction."*

8. The Ld. D.R. for the Revenue challenging the impugned findings returned by the Ld. CIT(A) contended that the Ld. CIT(A) has erred in not considering the fact that the amount of liability also enhanced by Rs.82,59,94,515/- on account of differential lease rental premium payable/paid to TIDCO in computing the net worth of undertaking or division within the meaning of explanation 2 to section 50B of the Act for the purpose of calculating the amount of capital gain raises on transfer of such undertaking or division.

9. In short the question before the Bench to be decided is as to whether:

*“The lease rental expenses are related to the transfer of slump sale business while computing the capital gain under section 48(1) of the Act”*

10. To understand the issue we have pursued para 5.8 of the scheme of arrangement between L & T Shipbuilding Limited (demerged company) and Marine Infrastructure Developer Pvt. Ltd. resulting company which is extracted for ready perusal as under:

*"All costs, charges and expense of the Companies in connection with negotiations leading up to the Scheme and of carrying out and completing the terms and provisions of this Scheme and in relation to or in connection with the Scheme and incidental to the completion of this Scheme shall be borne and paid by the Demerged Company"*

11. Furthermore, section 48(i) of the Act specifically says that in computing the taxable capital gains deduction can be claimed for expenses incurred (wholly and exclusively in connection with the transfer of capital assets).

12. It is not in dispute that the company has incurred these charges to complete the transfer of the property as per scheme of agreement and leasehold rights in the land was part of the port undertaking which was transferred as per the scheme of arrangement. The contention raised by the Ld. D.R. that the liability to pay upfront lease rental in favour of TIDCO for bifurcation and transfer of port land is the liability of undertaking as it appears in their books of account, is not sustainable because the assessee has come up with specific claim that this liability was crystallized after filing the return of income which is in accordance with the scheme of arrangement approved by the Hon'ble NCLT, Chennai vide its order dated 20.03.2017. When it was a slump sale section 45 & 48 do not bar the company from claiming expenses.

So in order to compute the capital gains provisions contained under section 48 are applicable which provide that while computing the capital gain the value of consideration reduced by the cost of improvement and cost of acquisition and also expenditure incurred for transfers are to be considered.

13. When the income of the assessee is chargeable under the head capital gains qua the years in which transfers was affected, the expenses pertaining to the transfer, they crystallized later on but as per scheme of arrangement it has to be allowed.

14. The Ld. A.R. for the assessee also relied upon the decision rendered by the Hon'ble Bombay High Court in case of Commissioner of Income Tax vs. Smt. Shakuntala Kantilal reported in 190 ITR 56 qua the identical issue, the operative port of which is extracted as under:

*"The expression 'in connection with such transfer is, in our view, certainly wider than the expression for the transfer. Here again, we are of the view that any amount the payment of which is absolutely necessary to effect the transfer will be an expenditure covered by this clause. In other words, if without removing any encumbrance including the encumbrance of the type involved in this case, sale or transfer could not be effected, the amount paid for removing that encumbrance will fall under clause (i). Accordingly, we agree with the Tribunal that the sale consideration requires to be reduced by the amount of compensation. The first question is, therefore, answered in the affirmative and in favour of the assessee."*

15. So when the assessee has incurred the amount in question to complete the transfer as per scheme of arrangement approved by the Hon'ble NCLT, without which transfer could not have been effected, the Ld. CIT(A) has rightly and validly decided the issue in favour of the assessee.

16. The claim of the assessee in the cross objection is:



*“As to whether deduction claimed by the assessee on account of stamp duty and registration charges of Rs.43,99,651/- are eligible for deduction for the purpose of computing the gains arising on demerger of port business”*

17. In view of the findings returned on the earlier issue when it is proved on record that the assessee is entitled for upfront lease rental expenses incurred in relation to the transfer of slump sale business while computing the capital gains under section 48(i) of the Act the assessee is also entitled for deduction of stamp duty and registration charges. The Ld. CIT(A) despite thrashing the facts has denied this relief to the assessee on the ground that no request for admission of any additional evidence or additional ground has been raised before him hence this claim cannot be entertained. When the amount has been crystallized in the books of account and facts have been brought on record before the Ld. CIT(A) which have not been disputed the claim of the assessee, otherwise admissible, cannot be denied on the basis of hyper technical reasons. Both the questions framed are answered in favour of the assessee. So the AO is directed to allow the stamp duty and registration charges after due verification.

18. In view of what has been discussed above, the appeal filed by the Revenue is hereby dismissed and the cross objection filed by the assessee is hereby allowed.

**Order pronounced in the open court on 20.03.2024.**

**Sd/-  
(MS. PADMAVATHY S)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 20.03.2024.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.