**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 06.01.2016

**+ ITA 1003/2011**

**COMMISSIONER OF INCOME TAX** .....Appellant

versus

**DHARAMPAL SATYAPAL** ..... Respondent

**Advocates who appeared in this case:**

For the Appellant : Mr Raghvendra Kumar Singh, Junior Standing Counsel and Mr Shikhar Garg.

For the Respondent : Mr Ajay Vohra, Senior Advocate with Ms Kavita Jha and Mr Vaibhav Kulkarni.

**CORAM:**
**JUSTICE S.MURALIDHAR**
**JUSTICE VIBHU BAKHRU**

**JUDGMENT**

**VIBHU BAKHRU, J**

1. The Revenue has preferred this appeal under Section 260A of the Income Tax Act, 1961 (hereafter 'Act') impugning an order dated 29th October, 2010 passed by the Income Tax Appellate Tribunal (hereafter 'ITAT') whereby the Assessee's appeal against an order dated 1st October, 2004 passed by the Commissioner of Income Tax (Appeals) [hereafter 'CIT(A)'], was allowed. By the aforesaid order dated 1st October, 2004, the CIT(A) rejected the Assessee's appeal against an assessment order dated 30th January, 2004 in respect of the assessment year (hereafter 'AY') 2001-02.

2. The controversy involved in the present appeal relates to the computation of the net worth of the business transferred by the Assessee by way of a slump sale. The Assessee transferred its entire business by way of a slump sale to M/s Dharampal Satyapal Ltd. on 12th February, 2001 (during the previous year relevant to the AY 2001-02) at a net consideration of Rs. 2.75 crores. The Assessee had established the said business in the preceding financial year i.e. 1999-2000, and had commenced commercial production in March 2000. Admittedly, the Assessee had not claimed any depreciation on its assets for the previous year ended 31st March, 2000. Accordingly, the block of assets was reflected by the Assessee in its books of accounts at the actual cost of acquisition. The Assessee had also capitalised the indirect expenditure incurred prior to the commencement of commercial production and the same was included in the cost of plant and machinery. The Assessee computed the capital gains arising under Section 50B of the Act by calculating the net worth of the business undertaking on the basis of the cost of assets as on 31st March, 2000 without accounting for any depreciation, as none had been claimed.

3. The Assessing Officer (hereafter 'AO') did not accept the capitalisation of indirect expenses and reduced the same from the cost of assets. The AO was also of the view that for the purposes of calculating the net worth of the undertaking, depreciation allowable under sub-item (C) of item (i) of sub-clause (c) of clause (6) of Section 43 of the Act (hereafter, for the sake of brevity,

referred to as 'Clause C') for the AY 2000-01 would have to be deducted even though no such depreciation had been claimed by the Assessee or allowed by the AO. Accordingly, the AO calculated short term capital gains arising out of the slump sale under Section 50B of the Act at Rs.2,26,89,866/-.

4. Aggrieved by the order, the Assessee preferred an appeal before the CIT(A). The CIT(A) concurred with the AO and held that the language of sub-clause (b) of Clause C [Section 43(6)(c)(i)(C)(b)] used the words "would have been allowable" and this indicated the intention of the legislature to determine the capital gains for the purposes of Section 50B of the Act by computing depreciation as allowable to the Assessee and not as was, in fact, allowed.

5. The Assessee successfully impugned the order passed by the CIT(A) before the ITAT. The ITAT held that since the entire assets were transferred, the written down value of the assets would be the written down value of assets in the preceding year as reduced by the depreciation actually allowed. The ITAT held that the reliance placed by the Revenue on the provisions of sub-clause (b) of Clause C was misplaced as the same would be applicable to compute the written down value of the block of assets remaining with the Assessee in a case where part of the assets falling within the block were transferred by way of a slump sale. According to the ITAT, sub-clause (b) of Clause C would have no application where the entire block of assets was

transferred as a part of a slump sale of the business of an Assessee. The Revenue has impugned the aforesaid order in this appeal.

6. In the backdrop of the aforesaid facts, the present appeal was admitted on 7th December, 2011 and the following question of law was framed:-

> "Whether the Income Tax Appellate Tribunal was right in holding that for computing the net worth under Section 50B, Section 43(6)(c)(i)(C) is not applicable in case of slump sale of the undertaking includes the entire block of assets?"

***Submissions***

7. Mr Raghvendra Singh, the learned counsel for the Revenue contended that the concept of block of assets was introduced in the Act with effect from 1st April, 1988. Accordingly, Section 43(6)(c) was introduced to define 'the written down value in case of any of the block of assets'. Corresponding amendment was also made to Section 50 of the Act to provide for special provisions for computation of capital gains in case of depreciable assets. He further referred to the CBDT Circular No. 469 dated 23rd September, 1986 and drew the attention of this Court to the illustrations explaining the working of the concept of 'block of assets' provided therein. He argued that prior to 1st April, 2000 the provisions of Section 50 and Section 43 were inadequate for the computation of capital gains in the case of a slump sale as it was not possible to determine the cost of acquisition in case of sale of an undertaking or business on a slump sale basis. To address this issue, Section 2(42C) and Section 50B of the Act were

introduced w.e.f. 1st April, 2000. Correspondingly, Clause C was also introduced to provide for the computation of written down value of the block of assets in case of a slump sale. He contended that Section 50B of the Act provided for calculation of the cost of acquisition in case of slump sale and Explanation 2 to Section 50B of the Act referred to Clause C only for the purposes of providing the method for determining the written down value of depreciable assets. He contended that the method provided covered both the cases where the entire block of assets was transferred as well as where only some of the assets falling within the block were transferred. He emphatically contended that the ITAT's interpretation of Clause C was erroneous as it would imply that while the legislature had provided for a method of calculating net worth of an undertaking in the cases where part of the assets falling within the block of assets were transferred, no such method was provided where the entire block of assets was transferred. He submitted that Section 50B of the Act read with Clause C was independent of other provisions of Section 43(6)(c)(i) of the Act.

8. Mr Singh also referred to the decision of ITAT Mumbai in ***DCIT v. Warner Lambert*: (2012) 143 TTJ 571 (Mum.)**. He also disputed the contention advanced on behalf of the Assessee that even if the depreciation was allowed in AY 2000-01, the same would have been carried forward as unabsorbed depreciation and set off against short term capital gains arising on a

slump sale of the undertaking. He submitted that the Assessee would have to first establish that it was entitled to a depreciation allowance under Section 32 of the Act and it is possible that the conditions for grant of depreciation allowance would not be satisfied.

9. Mr Vohra, Senior Advocate appearing for the Assessee supported the decision of the ITAT. He further referred to the decision of the Supreme Court in ***Madeva Upendra Sinai v. Union of India*****: (1975) 98 ITR 209 (SC)** in support of its contention that the written down value of the assets would be the actual cost of the assets as reduced by the depreciation actually allowed. He further referred to the decision of the Supreme Court in ***CIT v. Mahendra Mills*****: (2000) 243 ITR 56 (SC)** and contended that depreciation was an allowance available to the Assessee and it was not necessary for the Assessee to avail of the same. He also relied to the recent decision of the Supreme Court in ***Seshasayee Paper & Boards Ltd. v. Deputy Commissioner of Income Tax*****: (2015) 374 ITR 619 (SC)** in which the Supreme Court had noted the decision in the case of ***Mahendra Mills*** *(supra)* and observed that the depreciation is a privilege given to an Assessee and it cannot be turned into a disadvantage. Mr Vohra next referred to the decisions of this Court in ***CIT v. Ansal Properties & Infrastructure Ltd.*****:** (2012) **207 Taxmann 61 (Delhi)**; ***CIT v. Oswal Agro Mills Ltd.*****: (2012) 341 ITR 467 (Delhi)**; and ***CIT v. Eastman Industries Ltd.*****: (2008)**

**174 Taxmann 344 (Delhi)** to illustrate the manner in which capital gains are to be computed in case of depreciable assets.

***Reasoning and conclusion***

10. In order to address the controversy, it would be essential to consider the statutory scheme relating to a block of assets.

11. The Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986 introduced significant changes with regard to the depreciation allowance; the concept of block of assets was introduced. Section 2(11) as enacted by the said Act defined 'block of assets' as under:-

> "(11) "block of assets" means a group of assets falling within a class of assets, being building, machinery, plant or furniture, in respect of which the same percentage of depreciation is prescribed;"

Section 2(11) was, thereafter, substituted by the Finance (No. 2) Act, 1998 with effect from 1st April, 1999 to read as under:-

> "(11) "block of assets" means a group of assets falling within a class of assets comprising-
>
> (a) tangible assets, being buildings, machinery, plant or furniture;
> (b) intangible assets, being know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, in respect of which the same percentage of depreciation is prescribed;"

12. The Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986 also amended Section 32(1) of the Act to provide that in the case of any block of assets, depreciation shall be allowed at such percentage on the written down value thereof as may be prescribed. Corresponding amendments were also carried out in Section 50 of the Act to provide for special provisions for computation of capital gain in the case of block of assets. As per the scheme, all assets in respect of which the same percentage of depreciation is prescribed were to be considered as a single block of assets on which depreciation was allowable at the prescribed rates. In case of transfer of an asset the consideration received or accruing for the transfer would be reduced from the written down value of the block of assets as at the end of the preceding financial year. The cost of any assets purchased would be added to the written down value of the block of assets as existing at the end of the preceding financial year. Under the statutory scheme of Section 50 of the Act now introduced, capital gains would arise only in the cases where the value of block of assets was reduced to nil. And, the written down value of the block of assets could be reduced to nil (i) if the money receivable by the Assessee in regard of assets sold or transferred during the previous year alongwith the amount of scrap value exceeded the written down value of the block of assets at the beginning of the year as increased by the cost of any additional asset acquired during the year; or (ii) if all assets in the relevant block were transferred during the year.

13. Section 50(1) of the Act provides for the manner in which the cost of acquisition of depreciable assets is to be determined. Section 50(1) provides that in cases where block of assets does not physically cease to exist but the full value of consideration received for transfer of any assets during the previous year exceeds (i) the expenditure incurred wholly or exclusively in connection with such transfer; (ii) the written down value of the block of assets at the beginning of the previous year; and (iii) the actual cost of any assets falling within the block of assets acquired during the previous year, the excess would be deemed to be capital gains arising from transfer of short term capital assets. Section 50(2) provides that where the block of assets ceases to exist for the reason that the entire block of assets is transferred, then the written down value of the block of assets at the end of the previous year as increased by the actual cost of an assets falling within the block of assets acquired during the year would be the cost of acquisition of the depreciable assets and any amount received or accruing as a result of transfer of the assets constituting the block of assets would be taxed as short term capital gains.

14. Insofar as depreciation is concerned, the same is provided on the block of assets, that is, the written down value at the beginning of the AY as increased by the cost of assets acquired during the year and as reduced by the sale proceeds of any assets being a part of the block of assets sold or transferred

during the year. Thus, depreciation would be available to an assessee only as long as the written down value of the block of assets remained positive.

15. By virtue of the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, the definition of the expression "written down value" as provided under Section 43(6) of the Act was also amended to provide for computation of the written down value of block of assets by the introduction of Clause (c), which at the material time read as under:

> *" 43. In sections 28 to 41 and in this section, unless the context otherwise requires –*
>
> *XXX*
>
> *(6) 'written down value' means-*
>
> *(a) XXXX XXXX XXXX*
>
> *(b) XXXX XXXX XXXX*
>
> *(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; and*
> >
> > *(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."*

16. At the material time, there was no provision for computation of capital gains arising out of a slump sale, that is, where an undertaking/division was sold for a lump sum consideration and no separate values were assigned to individual assets and liabilities constituting the undertaking/division. Section 50B of the Act was introduced by the Finance Act, 1999 with effect from 1st April, 2000 for the purposes of taxing gains arising on slump sales. Correspondingly, Section 2(42C) was also enacted to define 'slump sale' and the definition of 'written down value' under Section 43(6)(c) was also amended and Clause C was introduced in Section 43(6)(c)(i). After the aforesaid amendment, Section 43(6)(c) of the Act read as under:-

"(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

(*C*) in the case of a slump sale, decrease by the actual cost of the asset falling within that block as reduced—

(*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*)."

17. In order to understand the import of Clause C, it would be necessary to refer to the definition of block of assets. A plain reading of the definition of block of assets - Section 2(11) of the Act - indicates that all assets in respect of which the same percentage of depreciation is prescribed would constitute the block of assets. This would imply that even though the Assessee may have multiple undertakings, all assets of different undertakings would have to be classified under the block of assets based on the rate of depreciation prescribed. As an illustration, an Assessee may have plant and machinery installed in three different undertakings, however, the aggregate value of all the plant and machinery would be classified as a single block of asset. In this scenario, if the Assessee sells one undertaking by way of a slump sale, the written down value

of the remaining block of assets will have to be computed in the manner as provided under Clause C. Concededly, since no separate consideration for the individual asset is ascribed, the provisions of Section 43(6)(c)(i)(B) which provides for reducing of block of assets by the money payable in respect of an asset which is sold/discarded or demolished in the previous year would not be applicable. In this situation, the provisions of Clause C would have to be pressed into service and the block of assets would be reduced by the actual cost of the asset falling within the block of assets which is sold as further reduced by the depreciation allowed in respect of that asset for the AY commencing prior to 1st April, 1988 and/or the amount of depreciation which would have been allowable for the assessment year commencing 1st day of April, 1988. Thus, there is no difficulty in applying the provisions of Section 43(6)(c)(i) where a part of the assets falling within the block of assets are sold. However, if the entire block of assets is sold, then Clause C would have no application. This is first and foremost for the reason that the Assessee would not be left with the block of assets and, therefore, applying any machinery provision for computation of the block of assets does not arise. Secondly, if the provisions of Clause C were applied, then depending on whether the depreciation allowable on the assets has in fact been claimed and allowed and further depending on the effect of the rate of depreciation of any other asset forming a part of the block of asset sold earlier, the computation under Clause C may result in the written down value of the block of assets being positive where, in fact, no asset would

exist in the hands of the Assessee. This is also one of the facets of the problem in the present case. Although the Assessee had sold its entire business, which includes the entire block of assets, the Assessee had not claimed any depreciation on those assets for the AY 2000-01. Thus, if the provisions of Clause C are applied to determine the written down value of the block of assets in the hands of the Assessee, the same would result in the Assessee reflecting the block of assets at a value equal to the depreciation allowable on those assets for the AY 2000-01; however, in fact, the Assessee would have no assets at all.

18. It is difficult to accept that the provisions of Section 43(6)(c) can be read in a manner which provides for the books of an Assessee to reflect a block of assets which physically do not exist. Clause C must be read in the context of the statutory scheme of Section 32 and Section 50 of the Act. As discussed earlier, Section 50 of the Act enacted special provisions for computation of capital gains in the case of depreciable assets. Section 32(1) provides for depreciation in respect of the assets which are owned wholly or partly by the Assessee and used for the purposes of business or profession and such depreciation in case of block of assets is to be computed at such percentage of the written down value as may be prescribed. It is apparent from the plain reading of Section 32 that depreciation on a block of asset necessarily presupposes the existence of a physical asset which are owned and used by the Assessee for its business. Thus, in cases where the Assessee has transferred its entire business and all its assets,

retaining a fictitious block of assets in the books resulting from applying the methodology under Clause C would not conform to the statutory scheme of the Act. Similarly, if provisions of Section 50 of the Act are seen, it would be at once clear that the same also does not contemplate reflecting the existence of a block of assets where assets do not actually exist.

19. It is necessary to interpret the provisions of Section 43(6)(c) of the Act in the context in which the same were enacted. Clearly, the purpose of introducing Clause C in Section 43(6)(c)(i) of the Act was to address the manner in which the block of assets would be computed in case the block of assets was decreased on account of a slump sale. As is expressly clear from the definition of slump sale, that is, Section 2(42C) of the Act - slump sale means a transfer of one or more undertakings as a result of the sale for a lump sum consideration without separate values being assigned to individual assets and liabilities of the undertaking. Thus, in the cases of slump sale where no values have been assigned to the assets forming a part of the block of assets that are transferred, it would be necessary to provide for a machinery for computing the written down value of the block of assets that remains after the transfer of part of the assets. In our view, Clause C must be read only to address this situation. It is apparent that Clause C was introduced for the purpose of computing the written down value of a block of assets; clearly, no such computation would be warranted if the block of assets itself ceases to exist in the hands of the Assessee. This is also

indicated by the plain language of Clause C inasmuch as the opening sentence indicates that the block of assets is to be decreased by the actual cost of asset falling within that block. Further, sub-clause (b) provides for a deeming fiction to reduce the depreciation allowable to the Assessee in respect of an asset *"as if the asset was the only asset in the relevant block of assets"*. This deeming fiction would not be necessary if Clause C was enacted to address a situation where the entire block of assets was transferred.

20. Having examined the purpose and import of Clause C, it is next to be examined whether the reference to the said Clause in Explanation 2 to Section 50B of the Act has a different implication. It has been contended on behalf of the Revenue that the said Clause has been referred to in Explanation 2 to Section 50B of the Act only for the purpose of incorporating a method of computation of the written down value of the block of assets of an undertaking/division sold on slump sale basis.

21. At this stage, it would be necessary to refer to Section 50B of the Act which is reproduced as under:-

> **"50B. Special provision for computation of capital gains in case of slump sale-**
>
> (1) Any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place:

**Provided** that any profits or gains arising from the transfer under the slump sale of any capital asset being one or more undertakings owned and held by an assessee for not more than thirty-six months immediately preceding the date of its transfer shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

(2) In relation to capital assets being an undertaking or division transferred by way of such sale, the "net worth" of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48.

(3) Every assessee, in the case of slump sale, shall furnish in the prescribed form along with the return of income, a report of an accountant as defined in the Explanation below sub-section (2) of section 288, indicating the computation of the net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at in accordance with the provisions of this section.

Explanation 1.—For the purposes of this section, "net worth" shall be the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account:

**Provided** that any change in the value of assets on account of revaluation of assets shall be ignored for the purposes of computing the net worth.

Explanation 2.—For computing the net worth, the aggregate value of total assets shall be,—

(a) in the case of depreciable assets, the written down value of the block of assets determined in accordance with the provisions contained in sub-item (C) of item (i) of sub-clause (c) of clause (6) of section 43;

(b) in the case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD, nil; and

(c) in the case of other assets, the book value of such assets."

22. Section 50B was introduced by virtue of the Finance Act, 1999 w.e.f. 1st April, 2000 to provide for special provisions for computation of capital gains in the case of slump sale. Prior to the insertion of the aforesaid Section, there was much debate as to whether capital gains arising out of slump sale of an undertaking were taxable under the provisions of the Act. The principal ground for excluding capital gains on a slump sale from the charge of tax was the absence of any machinery provisions for computing the cost of acquisition of the undertaking as in a slump sale only the lump sum consideration is fixed without assigning any values to separate assets constituting the undertaking. The machinery provisions for computation of capital gains under Section 48 of the Act require that for the purpose of computing the capital gains, the cost of acquisition of the assets be deducted from the consideration received. This provision could not be applied where it was not possible to ascertain the cost of acquisition. Section 49 of the Act also did not contain any machinery provisions for ascertaining the cost of an undertaking sold on a slump sale basis. It is a settled law that in the absence of machinery provisions for computation of gains the charge itself would fail [see ***Commissioner Of Income-Tax, Bangalore V. B. C. Srinivasa Setty*: (1981) 128 ITR 294 (SC)**].

23. In the circumstances, it was necessary for the Legislature to enact provisions for computation of capital gains in case of a slump sale in the event the same was to be taxed. Section 50B was thus enacted to address the issues of computation of capital gains in case of a slump sale.

24. A plain reading of Section 50B(1) and (2) of the Act indicates that the capital gains on a slump sale are to be computed by deducting the net worth of the undertaking or division from the lump sum consideration received for the sale of such undertaking or division. The definition of the expression 'net worth' is provided by Explanation to Section 50B, which as enacted by the Finance Act, 1999 reads as under:-

> "Explanation.—*For the purposes of this section, "net worth" means the net worth as defined in clause (ga) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986)."*

25. The Finance Act, 2000 substituted the aforesaid Explanation by Explanation 1 and 2 which are quoted hereinbefore. The purpose of the Explanations was to provide a method for computing the net worth of an undertaking or a division sold on slump sale basis. Explanation 1 provides the net worth to be the aggregate value of the total assets of the undertaking or division as reduced by the value of liabilities of such undertaking. This definition is no different from the meaning of the expression 'net worth', as is commonly understood in the accounting parlance. Explanation 2 was inserted for the purpose of computing the aggregate value of total assets. It is clear from

a plain reading of Explanation 2 that its three clauses are exhaustive: Whereas clause (a) is concerned with the computation of depreciable assets; clause (b) provides for the value of the capital assets in respect of which the whole expenditure has been allowed as a deduction under Section 35AD of the Act; and clause (c) is a residuary clause in respect of assets which do not fall within clause (a) or clause (b) of Explanation 2.

26. In the present appeal we are concerned with the clause (a) which provides for determining the correct value of depreciable assets.

27. Plainly, the purpose of clause (a) of Explanation 2 to Section 50B of the Act is to provide a methodology to compute the written down value of the block of assets transferred by an Assessee as a part of the undertaking or division sold by way of a slump sale. The reference to Clause C is clearly not for the purposes of computing the block of assets remaining with the Assessee after the slump sale. It is apparent from the above that the intended object and scope of Clause C as used in Section 50B of the Act is totally different than the purpose of the said provision when read as a part of Section 43 of the Act. In the circumstances, clause (a) of Explanation 2 to Section 50B of the Act must be read in a manner to expressly include the computation provisions of Clause C without reference to other the import of the said provisions of Section 43 of the Act. In our view, the ITAT fell into error in importing the interpretation of

Clause C read as a part of Section 43 of the Act, to interpret the scope of clause (a) of Explanation 2 to Section 50B of the Act.

28. It is trite law that where a later statute incorporates provisions of a former statute by reference, the later statute is read in a manner as if the provisions of the former statue were "bodily transposed into it" (see ***Ramsarup vs. Munshi*: 1963 SC 553**). The oft quoted words of Lord Esher, MR in ***Re Wood's Estate Ex Parte, Works and Building Commissioners*: (1886) 31 CH D 607** - *"If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act as if they had been actually written in it with the pen, or printed in it."* - also clearly articulate the effect of incorporation by reference. This rule would also be equally applicable while interpreting the provisions of a statute which incorporates by reference other provisions of the same statute. Thus, the words of Clause C must be read as an integral part of clause (a) of Explanation 2 to Section 50B of the Act and the clause (a) be interpreted accordingly.

29. In certain cases, where a provision of a statute is incorporated in another statute, it may be open to rely on other provisions of the former statute to interpret the meaning of the provision which is incorporated by reference; however, in the present case, it is apparent that the provision of Clause C as incorporated in clause (a) of Explanation 2 to Section 50B of the Act is for a purpose that is completely different from the purpose for which it is used as a

part of Section 43 of the Act. Thus, the only method to interpret clause (a) of Explanation 2 to Section 50B of the Act would be to read into the said clause (a) the language of Clause C so incorporated. If this is done, it would be apparent that the aggregate value of the assets constituting the block of assets would *"in the case of a slump sale, decrease by the actual cost of the asset falling within that block as reduced -*

*(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,".*

30. Clause (a) of Explanation 2 to Section 50B of the Act when read as incorporating the language of Clause C indicates that the value of the net worth must be computed by decreasing from the actual cost of asset falling within the block, the depreciation actually allowed in respect of previous years relevant to the assessment year commencing before 1st day of April, 1988 and by the amount of depreciation as would have been allowable to the Assessee for any assessment year commencing on or after 1st day of April 1988. The quantum of the depreciation actually allowed to an Assessee in respect of the assessment

year commencing on or after 1st day of April, 1988 would have no relevance while determining the written down value of the block of assets in accordance with clause (a) of Explanation 2 to Section 50B of the Act because the provisions to compute the net worth of an undertaking are not dependent or contingent on the depreciation actually allowed in respect of assessment years commencing on or after 1st April, 1988. It is also necessary to bear in mind that the purport of clause (a) of Explanation 2 to Section 50B of the Act is to ascribe a value to the assets forming a part of the net worth of an undertaking sold by an Assessee. The provisions made in this regard as contained in Explanation 2 to Section 50B of the Act are exhaustive and there is no provision which mandates that the written down value of the assets sold be determined by deducting the depreciation actually allowed with respect to assessment years commencing on or after 1st April, 1988.

31. The ITAT had accepted the Assessee's contention that in case the entire block of assets was sold, the written down value of the block of assets as existing must be taken at the aggregate value of the total assets. We are unable to concur with the said view. First and foremost, for the reason that there is no provision which mandates adopting this method of computation, the machinery provisions provided in Section 50B of the Act exhaustively provide for determining the cost of acquisition of the undertaking or division sold by way of a slump sale. If one examines the three clauses of Explanation 2 to Section 50B

of the Act, the same exhaust all categories of assets. Insofar as depreciable asset is concerned, clause (a) provides an extensive mechanism to compute its value. The working of clause (a) also does not yield results which are absurd or unreasonable so as to warrant looking for other aids to statutory interpretation for ascertaining the true legislative intent. In the circumstances, the language of clause (a) of explanation 2 to Section 50B must be given its plain and literal meaning. It could hardly be disputed that the plain language of sub-clause (b) of Clause C contemplates reduction from the actual cost of assets of the depreciation *"that would have been allowable to the Assessee for any assessment year commencing on or after 1st day of April, 1988 as if the asset was the only asset in the relevant block of assets".* In view of the plain language, there is no scope to read the provisions of sub-clause (b) of Clause C to permit deduction of depreciation actually allowed and not as "would have been allowable".

32. It is also important to bear in mind that with the introduction of the concept of block of assets, the direct co-relation between depreciation allowed and a separate asset constituting the block is lost. And, therefore, it is not possible to co-relate the quantum of depreciation allowed in respect of individual assets constituting a block. This is clear from the illustration as provide in CBDT Circular No.469 dated 23rd September, 1986 which is quoted below:-

*"Example I : Suppose a company "X" has financial year as its accounting year and has three items of plant and machinery in respect of which the prescribed percentage of depreciation for the assessment year 1987-88 is the general rate of fifteen per cent. Further that for the assessment year 1987-88, the written down value of these items of plant and machinery before allowing depreciation for that year was as follows :*

| | Rs. |
|---|---|
| Item 1 | 1,50,000 |
| Item 2 | 2,00,000 |
| Item 3 | 3,00,000 |
| Total | 6,50,000 |

*The depreciation that will be allowable in respect of these items for the assessment year 1987-88 as also the written down value of these items at the beginning of the assessment year 1988-89 will be as follows :*

| | Depreciation | WDV at the beginning of the assessment year 1988-89 |
|---|---|---|
| | Rs. | Rs. |
| Item 1 | 22,500.00 | 1,27,500.00 |
| Item 2 | 30,000.00 | 1,70,000.00 |
| Item 3 | 45,000.00 | 2,55,000.00 |
| Aggregate WDV at the beginning of the as assessment year 1988-89 | | 5,52,500.00 |

*Since the items of plant and machinery which currently qualify for depreciation at the rate of 15 per cent are proposed to be classified into a block of assets which will be entitled to depreciation at the rate of $33^1/3$ per cent for the assessment year 1988-89 and subsequent years, in this example the aggregate written down value of the block of assets at the beginning of the previous year will be Rs. 5,52,500. Presuming that during the financial year 1987-88, the assessee sold item 1 for a consideration of Rs. 2,00,000 and bought a new item (item 4) falling in the same block of assets during the said financial year for a consideration of Rs. 2,50,000, the depreciation to be allowed in respect of the assessment year 1988-89 will be as follows :*

Rs.

| | |
|---|---|
| - *Aggregate WDV of the block at the beginning of the previous year* | *5,52,500* |
| - *The actual cost of the new asset acquired during the previous year* | *2,50,000* |
| | *8,02,500* |
| *Less : Sale proceeds in respect of the assets sold* | *2,00,000* |
| *WDV of the block for the assessment year 1988-89* | *6,02,000* |
| *Depreciation for the assessment year 1988-89 at 33$^{1}$ /3% of Rs. 6,02,000* | *2,00,667* |
| *WDV for the assessment year 1989-90* | *4,01,333"* |

33. Thus, the Assessee's contention that depreciation actually allowed on assessment must be reduced from the cost of assets so as to arrive at the written down value cannot be accepted. In a given case, the block of assets would also stand reduced by the sale proceeds of any assets sold earlier and, thus, there would be no co-relation between the depreciation allowed and the original cost of the asset constituting the block of assets.

34. The decisions relied upon by Mr Vohra also do not assist the Assessee in any manner. In ***Madeva Upendra Sinai*** (*supra),* the Supreme Court was concerned with the vires of second Proviso to Clause 3 of Taxation Laws (Extension to Union Territories) (Removal of Difficulties) Order No. 2 of 1970 issued under clause 7 of the Taxation Laws (Extension to Union Territories) Regulation, 1963. Goa, Daman and Diu which were erstwhile Portuguese territories became a part of the Union of India from 19th December, 1961. Under the Portuguese Laws as was applicable to the assessees within the Portuguese

territories prior to 1961, tax was payable on the basis of gross turnover of an assessee and, thus, the question of allowing any depreciation did not arise. After Goa, Daman & Diu became Union Territories the Central Government promulgated the Taxation Law (Extension to Union Territories) (Removal of Difficulties) Order No. 2 of 1970. The said order provided for a deeming fiction for calculating the written down value of a depreciable asset. It was provided that where the depreciation actually allowed could not be ascertained or no depreciation was actually allowed, the depreciation would be calculated at the rates as applicable under the Indian Income Tax Act, 1922 or Income Tax Act, 1961 as the case may be and such depreciation calculated would be deemed to have been the depreciation actually allowed under the applicable local laws. By virtue of the said order, the written down value of the assets of the assesses were taken at depreciated values even though no depreciation had been claimed or allowed under the taxation laws as applicable to the said erstwhile Portuguese territories prior to 19th December, 1961. The said order was sought to be challenged principally on the ground that there was no difficulty in giving effect to the Indian Income Tax Act and thus there was no ground for exercising powers under Clause 7 of the Taxation Laws - (Extension to Union Territories) Regulation, 1963. It is in the context of the aforesaid challenge that a Constitution Bench of the Supreme Court examined the concept of written down value and held that the same was to be worked out on the basis of depreciation actually allowed in terms of the express language of the relevant

Section. The aforesaid decision would have no applicability to determine the value of depreciable assets under Section 50B of the Act as the said Section provides for a mechanism for computation of the value of depreciable assets for the purposes of determining the net worth of an undertaking or a division.

35. In ***Mahendra Mills*** *(supra)* the Court considered the question whether it was obligatory on the Assessee to claim depreciation and held that the deduction on account of depreciation allowance was available to an Assessee who could claim the same at his option. This decision was also taken note of by the Supreme Court in its later decision in ***Seshasayee Paper & Boards Ltd.*** *(supra)*. In the present case, the question whether the Assessee is obliged to claim depreciation allowance is not an issue; there is no dispute with regard to the provisions for allowing deductions on account of depreciation. The question involved in the present appeal is with regard to the computation of the written down value of depreciable assets as expressly provided for the purposes of computing the net worth of an undertaking sold by way of a slump sale. The calculation of the value of assets is not contingent on the value of the depreciation allowed to the Assessee in respect of assessment year commencing on or after 1st April, 1988. Thus, the aforesaid decision would have no relevance to the issue at hand.

36. The decision of this Court in ***Ansal Properties*** *(supra)* relied upon by the Assessee clearly explains the method of computing capital gains in respect of

sale of assets forming a part of the block of assets. In that case, the Assessee had multiple divisions and had sold the entire assets of one of the divisions (Paper division). The Revenue sought to tax capital gains arising out of the sale of assets of the Paper division by deducting from the consideration written down value of the block of assets relating to that division. The ITAT held - and this Court concurred - that even though the entire assets of the paper division were sold, the block of assets did not cease to exist as the Assessee owned other undertakings which included assets for which the same rate of depreciation as that applicable to the assets sold was prescribed. In the circumstances, the Court referred to the definition of block of assets and held that the sale proceeds of the assets sold would have to be reduced from the written down value of the remaining block of assets and the sale of assets did not result in any capital gains as even after such reduction, the value of the block of assets was positive. The aforesaid decision, in fact, clearly explains the working of Section 50 of the Act and it also follows therefrom that there is no direct co-relation between the depreciation on a block of assets and the individual assets comprising the block of assets.

37. Before concluding it is necessary to also consider Mr Vohra's contention that the depreciation for the year ended 31st March, 2000 would have remained unabsorbed and, therefore, would have been carried forward to the next year. The unabsorbed depreciation would then be available for setting off against

capital gains from the sale of business. He submitted that in this view the Assessee is not liable to pay so much of the tax as attributable to reduction in the value of the block of assets on account of depreciation for the year ended 31st March, 2000. Mr Singh countered the aforesaid argument by contending that the question whether the depreciation would have been allowed to the Assessee for the year ended 31st March, 2000 would be contingent on various factors such as the use of the assets and thus, it cannot be presumed that the depreciation on the block of assets would have been allowed to the Assessee for the year ended 31st March, 2000. There is little merit in Mr Singh's contention as the entire basis of reducing the value of the block of assets in the current assessment year is premised on the basis that depreciation was allowable to the Assessee for the year ended 31st March, 2000. In our view, Mr Vohra is perhaps right that had the Assessee claimed the depreciation on the block of assets for the year ended 31st March, 2000, it could have carried forward the same for setting it off against the short term capital gains arising out of the sale of the business. However, the fact is that the Assessee had not claimed the depreciation for the year ended 31st March, 2000 and as rightly pointed out by Mr Vohra, deduction on allowance of depreciation is available to an Assessee at its option and the Assessee cannot be compelled to claim the same. Since, in the facts of the present case, whether wittingly or unwittingly, the Assessee has not claimed the depreciation for the year ended 31st March, 2000, it is unable to mitigate its tax liability. Whilst, we may sympathise with the Assessee, it is not

possible to grant any relief to the Assessee. We are unable to accept the interpretation of Clause (a) of Explanation 2 to Section 50B as canvassed on behalf of the Assessee.

38. In view of the above, the question of law is answered in the negative, that is, in favour of the Revenue and against the Assessee.

39. The appeal is, accordingly, allowed. In the circumstances the parties are left to bear their own costs.

**VIBHU BAKHRU, J**

**S. MURALIDHAR, J**

**JANUARY 06, 2016**
**RK**