

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “B” : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

I.T.A. No. 2311/HYD/2018

Assessment Year: 2015-16

PVR Limited (Formerly known as SPI Cinemas Private Limited), Gurgaon, Haryana [PAN: AABCC7343L]	Vs	Asst. Commissioner of Income Tax, Circle-14(1), Hyderabad
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(Appellant)

(Respondent)

For Assessee	: Shri K.A.Sai Prasad, AR
For Revenue	: Smt. Nivedita Biswas, DR
Date of Hearing	: 17-12-2020
Date of Pronouncement	: 04-01-2021

ORDER

PER Smt. P. MADHAVI DEVI, J.M. :

This is assessee's appeal for the AY.2015-16, directed against the order of the Commissioner of Income Tax (Appeals)-6, Hyderabad, dated 21-08-2018.

2. Brief facts of the case are that the assessee-company, engaged in the business of media and entertainment, filed its e-return of income for the AY.2015-16 on 30-11-2015, admitting total income at Rs.17,48,25,240/-. The return of income was initially processed u/s.143(1) of the Income Tax Act [Act]. Pursuant to selection for scrutiny under CASS, the same was taken up for scrutiny u/s.143(3) of the Act. In response to the notices u/s.143(2) and 142(1) of the Act, the

Authorised Representative of the assessee appeared from time to time and furnished the information called-for.

2.1. The AO observed that in the return of income, the assessee had admitted Short Term Capital Loss of Rs.3,64,38,969/- on slump sale of its undertaking i.e., Luxe Cinemas. When the assessee was asked to explain as to how the Short Term Capital Loss was arrived at, the assessee submitted that it has sold its undertaking (Luxe Cinemas) by transferring the assets, including human resources and liabilities as a going concern by way of slump sale w.e.f. 01-02-2015 to the buyer i.e., Jazz Cinemas Pvt. Ltd., for a total consideration of Rs.51.50 Crores and further that the value of the assets as per the Companies Act (net of liabilities) transferred as on the date of transfer, amounted to Rs.49,80,52,582/-. The assessee further submitted the details, according to which the net worth of the undertaking under the I.T.Act was Rs.55,14,38,969/- and thereby, Short Term Capital Loss was computed at Rs.3,64,38,969/-. In support of computation of net worth of the undertaking, the assessee submitted Form-3CEA issued by the accountant. The assessee also filed information regarding the loan sanctioned letter and project cost of Jazz Cinemas Pvt. Ltd. On going through the said details, the AO observed that the Jazz Cinemas Pvt. Ltd., has directly paid a sum of Rs.21,50,00,000/- (to the creditors of M/s.SPI Cinemas Pvt. Ltd., the assessee herein) to SBI and the balance of Rs.30 Crores was paid to the assessee through its banker. Therefore, the AO asked the assessee to show cause as to why the bank liability of Rs.21,50,00,000/- was not included while calculating net worth of undertaking for the

purpose of computation of capital gains as the bank liability was subsisting as on the date of slump sale.

2.2. The assessee explained that the total sale consideration agreed between the parties was Rs.51.50 Crores and the assessee was supposed to clear the debt before handing over the assets to the purchaser and instead of paying the total amount to the assessee, the buyer has paid the loan amount directly to the bank and the balance of Rs.30 Lakhs only was paid to the assessee. Therefore, he submitted that the Short Term Capital Loss incurred by the assessee was Rs.3,64,38,969/-.

2.3. The AO, however, did not accept the assessee's contentions and held that the 'net worth' includes all the assets and liabilities of the undertaking as on the date of sale and therefore, the net worth should be reduced by the sum of Rs.21,50,00,000/- and by doing so, the net worth of the undertaking would be Rs.33,64,38,969/- and if the same is reduced from the sale consideration received by the assessee, there would be Short Term Capital Gain of Rs.17,85,61,013/- as against the loss of Rs.3,64,38,969/-, claimed by the assessee. He therefore brought the Short Term Capital Gain of Rs.17,85,61,013/- to tax.

3. Aggrieved, the assessee filed an appeal before the CIT(A), who confirmed the order of the AO and the assessee is in second appeal before us by raising the following Grounds:

"The grounds of appeal listed below are without prejudice to each other.

1. The order of the learned Commissioner of Income-tax (Appeals)-6, Hyderabad [CIT] is erroneous, bad in law, prejudicial to the Appellant and contrary to the facts and circumstances of the case.

Short term capital gains on slump sale

2. The learned CIT has erred in facts and circumstances of the case by not appreciating the fact that the Slump sale deed does not transfer bank loan amounting to INR 21,50,00,000 as part of the undertaking.

3. The learned CIT has erred by including the liability as part of the net worth of the undertaking for the purpose of computing capital gains while the same was never transferred as part of the slump sale.

4. The learned CIT has erred by failing to appreciate that even in a case where the liability is included as part of the net worth of the undertaking, the settlement of the same shall not form part of the consideration received by the buyer and hence need to be reduced from the consideration.

5. The learned CIT as erred in setting aside the Form 3CEA certifying the net worth of the undertaking.

6. The learned CIT has erred in levying excess interest under section 234C of the Act amounting to INR 2,46,609 as against an amount-of INR 1,68,843 claimed by the Assessee in its revised return dated 15 December 2016.

7. The learned CIT has erred in levying excess interest under section 234B amounting to INR 1,62,51,576 and interest on refund issued under section 234D amounting to 2,18,297 of the Act.

The Appellant craves leave to add, supplement, amend, delete or otherwise modify any of the grounds stated hereinabove at the time of hearing”.

4. The case was taken up for hearing on 17-12-2020 through video conferencing and both the parties were heard.

5. The Ld.Counsel for the assessee reiterated the submissions made before the authorities below and also referred to the Paper Book filed by the assessee, wherein the details of the slump sale and the written submissions filed by the assessee before the authorities below are placed. It is submitted that as per the terms of slump sale itself, the

liability of Rs.21.50 Crores was not to be considered for computing net worth of the company and therefore, the same was not taken into consideration. He referred to the slump sale deed and Clause No.3 thereof, wherein it is mentioned that the total consideration is of Rs.51.50 Crores, out of which the purchaser would pay Rs.21.50 Crores directly to the bank and the balance consideration of Rs.30 Lakhs would be paid to the assessee. He therefore submitted that both the AO as well as the CIT(A) have mis-construed the terms of slump sale and reduced the liability from the net worth of the assets and therefore have arrived at Short Term Capital Gain.

6. The Ld.DR, on the other hand, supported the orders of the authorities below and submitted that net worth of the asset has to be computed u/s.50B of the Act and therefore the AO has rightly reduced the liability of Rs.21.50 Crores from the value of the assets as on the date of sale to arrive at the net worth of the asset.

7. Having regard to the rival contentions and the material on record, the un-disputed facts are that the assessee has sold its asset (Luxe Cinemas) by way of slump sale to Jazz Cinemas Pvt. Ltd., and Clause-3 of the said slump sale deed clearly mentions that the total sale consideration that is agreed to was Rs.51.50 Crores and that out of the same the buyer would pay a sum of Rs.21.50 Crores directly to the creditor i.e., SBI, and only the balance of Rs.30 Crores would be paid to the assessee. Therefore, the AO in para 5(b) of his order has rightly observed that the assessee has applied the sale consideration for making the payment to the creditor i.e., the bank. After

observing so, AO has treated the liability of Rs.21.50 Crores as subsisting liability at the time of sale and has accordingly reduced the net worth of the asset. By doing so, the liability continues to be the liability of the purchaser and if it is so, then the computation of net worth would be at a lower figure resulting in Short Term Capital Gain.

7.1. However, once AO has accepted that payment of part consideration directly to the bank is the application of its sale proceeds by the assessee, then it is to be considered that the liability has been discharged by the assessee and is no longer the liability of the purchaser. Hence, the net worth of the assets does not include the liability of Rs.21.50 Lakhs, (as it is discharged by the assessee). There is no evidence brought on record by the department that the buyer has paid the assessee any amount more than Rs.51.50 Crores. The buyer has received the assets without any liability and therefore the net worth of the asset is Rs.55,14,38,969/-. In such circumstances, it cannot be said that the net worth of the asset has to be further reduced by the liability because the liability has already been discharged by the assessee only.

8. In view of the above, the appeal of assessee is allowed.

Order pronounced in the open court on the 4th day of January, 2021

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 04-01-2021

TNMM

Copy to :

1.PVR Limited (formerly known as SPI Cinemas Private Limited), Block-A, 4th Floor, Building No.9A, DLF Cyber City, Phase-III, Gurgaon.

2.The Asst. Commissioner of Income Tax, Circle-14(1), Hyderabad.

3.CIT(Appeals)-6, Hyderabad.

4.Pr.CIT-6, Hyderabad.

5.D.R. ITAT, Hyderabad.

6.Guard File.