IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES, CHANDIGARH

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER &
MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No. 660/Chd/2014
Assessment Year: 2009-10

M/s Spectra Punjab Limited, Chandigarh	Vs.	The ACIT, Circle 4(1), Chandigarh
PAN No. AAECS8115R		
(Appellant)		(Respondent)

Appellant By	:	Sh. Parikshit Aggarwal
Respondent By	:	Sh. Manjit Singh
Date of hearing	:	20.04.2017
Date of Pronouncement	:	19.05.2017

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 27.02.2014 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as CIT(A)], Chandigarh.

2. The sole ground taken by the assessee in this appeal is against the computation of long term capital gain at Rs. 92,58,143/- by the Assessing officer by way of rejection of the claim of the assessee regarding the

indexed cost of acquisition as against long term capital loss claimed by the assessee at Rs. 1,24,53,137/- in relation to sale of capital work in progress.

3. The brief facts of the case are that the assessee company was formed as joint venture of Spectra Net Limited (SNL), Punjab State Electricity Board (PSEB) and Punjab State Electricity Development and Production Corporation Ltd (PSEDPL). Subsequently, PSED and PSEDPL withdrew from JV agreement on 21.11.2000 as per the directions of the Government of Punjab. The main object of the assessee company was to lay optical fibre cable and copper network with an aim to provide internet services in the State of Punjab. The company had started work of laying duct for the optical fibre, but the work was discontinued after sometime. The assessee had shown capital work in progress in this balance sheet as under:-

As on 31.3.2001	Rs. 6,33,17,7626/-
As o 31.3.2002	Rs., 5,98,26,245/-

The assessee sold its capital work in progress vide agreement dated 18.6.2008 to Citigroup for Rs. 6,85,46,638/- and had computed capital loss as under:-

Sale consideration	Rs. 6,85,46,638/-	
Less		
Indexed cost of acquisition (year of acquisition - financial year 2001-02		
CWIP		Rs. 5,98,26,245/-
Liability written back		Rs. 5,37,750/-
Total acquisition cost		Rs. 5,92,88,495/-
Cost of acquisition after indexation		Rs. 8.09,00,775/-

Long Term Capital loss Rs. 1,24,53,137/-

To verify the work in progress and source of the expenditure, the Assessing officer asked the assessee to produce its books of account and bills & vouchers. The assessee submitted that there was no change in capital work in progress after 31.3.2002. The assessee conveyed to the Assessing officer that the documents relating to CWIP should not be insisted upon and that the figures provided in the audited balance sheet should be accepted. The assessee also contended that the assessee having income above taxable limits was required to maintain books of account for a period of 6 years only as per section 44AA of the Income-tax Act, 1961. The Assessing officer, however, was not satisfied with the explanation of the assessee on the ground that the assessee had not produced books of account and bills & vouchers relating to the expenditure on capital work in progress. The Assessing officer finally computed long term capital gain at Rs. 92,58,143/- with the following observations:-

> *"The assessee has submitted the detail regarding CWIP dated 9.12.2012. In this assessee has include the sales tax liability 2000-2001 amount of Rs. 9001.50 in CWIP, it is clear that sales tax liability can not make the part of CWIP, but the assessee has included this amount in CWIP. In another entry dated 31.3.2002 he has added loss on sale of duct amount of Rs. 5,88,856/- in CWIP. It is not understandable how the loss can make the part of CWIP. It is also not clear how the CWIP reduced from Rs. 6,33,17,626/- in March, 2001 to at Rs. 5,98,26,245/- in March, 2002 in the amount of Rs. 34,91,81/-.*
>
> *In the absence of books of account, bills and vouchers of this expenditure capital work in progress. The assessee*

claim of cost of acquisition is not acceptable. The details produced by the assessee are not sufficient.

In the above facts of the assessee cost of acquisition if not acceptable and in the absence of evidence assessee claim of indexation is not allowed.

Sale consideration as shown	Rs. 6,85,46,638/-
Less : Cost of Acquisition	Rs. 5,92,88,495/-
Profit on sale (Long Term Capital Gain)	Rs. 92,58,143/-

4. Being aggrieved by the above order of the Assessing officer, the assessee preferred an appeal before the CIT(A).

5. Ld. CIT(A) while upholding the order of the Assessing officer observed that since the assessee failed to produce the relevant evidences for verification regarding the cost of acquisition and it was even not ascertainable as to what was the year of acquisition, so the Assessing officer had rightly disallowed the benefit of indexation. The Ld. CIT(A) further directed the Assessing officer to exclude the sale tax liability of Rs. 9001/- for assessment year 2000-01 and loss on sale of duct of Rs. 5,88,856/- out of the capital work in progress while working out the long term capital gain.

6. Being aggrieved by the above order of the CIT(A), the assessee has come up in appeal before us raising the only sole issue regarding the indexed cost of acquisition.

7. We have heard the rival submissions and have also gone through the record. No doubt the initial burden was on the assessee to prove the cost of acquisition. The assessee, however, cold not produce the bills and vouchers in this respect. The assessee has relied upon the balance sheet from the assessment year 2001-02 onwards and has submitted that the same work in progress was carried forward up to 31.3.2008 because the project has stopped. However, the said capital work in progress was sold out in assessment year 2009-10 vide agreement dated 18.6.2008. The assessee has also submitted to the Assessing officer the report of the registered valuer regarding the cost of acquisition of the sold assets.

No doubt the assessee had not given sufficient evidence regarding the cost incurred for the acquisition of the above capital work in progress but it is also not the case of the Assessing officer that the said capital work in progress was acquired by the assessee without any cost. Admittedly, the project was started as a joint venture. The assessee has also produced on file the copies of its agreement with PSEB and PSEDPL dated 14.6.2000. This agreement with government undertakings is evidence regarding the commencement of the project and regarding the period of the acquisition of the assets. So far as the cost of acquisition is concerned, the assessee has produced the valuation report of the registered valuer. Once these evidences produced were on the file, the burden got shifted on the Assessing officer to make enquires for the purpose of verification of the cost of the assets. The Assessing officer instead of making any independent verification or enquiry, surprisingly, has adopted the cost of acquisition of the assets as claimed by the assessee. Once the cost of acquisition of assets have been accepted by the Assessing officer, he was supposed to give the assessee the benefit of indexation as per the provisions of section 48 read with section 55 of the Income Tax Act. We do not find any justification on the part of the lower authorities in denying the assessee the benefit of indexed cost of acquisition once the lower authorities had taken and admitted the cost of acquisition of assets. We, therefore, direct the Assessing officer to allow the assessee the benefit of indexation of cost as per the provisions of law.

8. In the result, the appeal of the assessee is hereby allowed.

Order pronounced in the Open Court on 19.05.2017.

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

Dated : 19th May, 2017
Rkk

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT*
4. *The CIT(A)*
5. *The DR*